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5–4–10 Tuesday
Vol. 75 No. 85 May 4, 2010

Book 1 of 2 Books

UNITED STATES GOVERNMENT PRINTING OFFICE

Federal Register

5–4–10 Tuesday
Vol. 75 No. 85 May 4, 2010
Book 1 of 2 Books
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WHO: Sponsored by the Office of the Federal Register.

WHAT: Free public briefings (approximately 3 hours) to present:

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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, June 8, 2010
9 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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Presidential Documents

Title 3—

The President

Proclamation 8505 of April 28, 2010

National Foster Care Month, 2010

By the President of the United States of America

A Proclamation

Nearly a half-million children and youth are in foster care in America, all entering the system through no fault of their own. During National Foster Care Month, we recognize the promise of children and youth in foster care, as well as former foster youth. We also celebrate the professionals and foster parents who demonstrate the depth and kindness of the human heart.

Children and youth in foster care deserve the happiness and joy every child should experience through family life and a safe, loving home. Families provide children with unconditional love, stability, trust, and the support to grow into healthy, productive adults. Unfortunately, too many foster youth reach the age at which they must leave foster care and enter adulthood without the support of a permanent family.

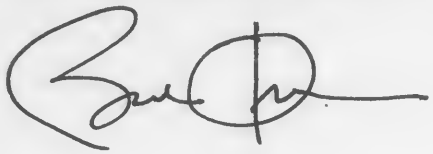
Much work remains to reach the goal of permanence for every child, and my Administration has supported States that increased the number of children adopted out of foster care, providing over $35 million in 2009 through the Adoption Incentives program. We are also committed to meeting the developmental, educational, and health-related needs of children and youth in foster care. The American Recovery and Reinvestment Act provided a significant increase in funding for the Title IV-E adoption and foster care assistance program. States can use these funds to ensure those placed in foster care will enter a safe and stable environment.

In addition, we are implementing the Fostering Connections to Success and Increasing Adoptions Act. This law promotes permanency and improved outcomes for foster youth through support for kinship care and adoption, support for older youth, direct access to Federal resources for Indian tribes, coordinated health benefits, improved educational stability and opportunities, and adoption incentives and assistance. Former foster youth will also benefit from the Affordable Care Act, which, beginning in 2014, will ensure Medicaid coverage for them in every State.

This month, caring foster parents and professionals across our Nation will celebrate the triumphs of children and youth in foster care as they work to remove barriers to reaching a permanent family. Federal, State, and local government agencies, communities, and individuals all have a role to play as well. Together, we can ensure that young people in foster care have the opportunities and encouragement they need to realize their full potential.

NOW, THEREFORE, I, BARACK OBAMA, President of the United States of America, by virtue of the authority vested in me by the Constitution and the laws of the United States, do hereby proclaim May 2010 as National Foster Care Month. I call upon all Americans to observe this month with appropriate programs and activities to honor and support young people in foster care, and to recognize the committed adults who work on their behalf each day.

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



[FR Doc. 2010–10572
Filed 5–3–10; 8:45 am]
Billing code 3195–W0–P

Presidential Documents

Proclamation 8506 of April 28, 2010

Older Americans Month, 2010

By the President of the United States of America

A Proclamation

Older Americans have lived through momentous and trying times in our history, and they have strengthened our national character. Their experience and wisdom connect us to the past and help us meet the challenges of the present. During Older Americans Month, we show our support and appreciation for these treasured individuals who have contributed so much to our Nation.

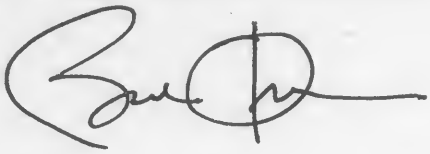
This year's theme for Older Americans Month, "Age Strong, Live Long," recognizes the efforts of people of all ages to promote the well-being, community involvement, and independence of senior citizens. As Americans live longer, healthier, and more productive lives, many are starting second careers and continuing to be involved in their communities. Dedicated older Americans are also answering the call to serve through the Corporation for National and Community Service's Senior Corps.

My Administration is committed to ensuring older Americans can age strong and live long. By strengthening Medicare and Medicaid, while protecting Social Security, we help ensure all Americans can age with dignity. The recently enacted Affordable Care Act strengthens Medicare by providing free preventive care starting next year, enhancing care coordination, and gradually closing the "donut hole" gap in prescription drug coverage. In addition, this law includes provisions to help prevent and eliminate elder abuse, neglect, and exploitation. Along with the Middle Class Task Force's Caregiver Initiative, we are investing in wellness and prevention programs to help seniors remain healthy and close to their loved ones. The Administration on Aging's network of State and local organizations provides services to older Americans that help prevent unnecessary hospitalization or institutionalization. We must also protect seniors by expanding efforts to fight fraud, waste, and abuse in Medicare and Medicaid through national and State efforts, as well as community-based programs that empower retirees to detect and defend against health care fraud.

Many of our Nation's older men and women have worked tirelessly and sacrificed so their children could achieve something greater. Their passion and experience inspire us all and we are privileged to honor and care for the generations whose legacy continues to enrich our Nation and shape our future.

NOW, THEREFORE, I, BARACK OBAMA, President of the United States of America, by virtue of the authority vested in me by the Constitution and the laws of the United States, do hereby proclaim May 2010 as Older Americans Month. I call upon citizens of all ages to honor older Americans this month with appropriate ceremonies and activities.

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



[FR Doc. 2010–10573
Filed 5–3–10; 8:45 am]
Billing code 3195–W0–P

Presidential Documents

Proclamation 8507 of April 28, 2010

Workers Memorial Day, 2010

By the President of the United States of America

A Proclamation

This year marks the 40th anniversary of both the Occupational Safety and Health Act and the Federal Coal Mine Health and Safety Act, which promise American workers the right to a safe workplace and require employers to provide safe conditions. Yet, today, we remain too far from fulfilling that promise. On Workers Memorial Day, we remember all those who have died, been injured, or become sick on the job, and we renew our commitment to ensure the safety of American workers.

The families of the 29 coal miners who lost their lives on April 5 in an explosion at the Upper Big Branch Mine in West Virginia are in our thoughts and prayers. We also mourn the loss of 7 workers who died in a refinery explosion in Washington State just days earlier, the 4 workers who died at a power plant in Connecticut earlier this year, and the 11 workers lost in the oil platform explosion off the coast of Louisiana just last week.

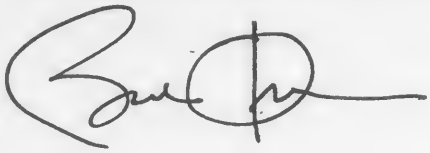
Although these large-scale tragedies are appalling, most workplace deaths result from tragedies that claim one life at a time through preventable incidents or disabling disease. Every day, 14 workers are killed in on-the-job incidents, while thousands die each year of work-related disease, and millions are injured or contract an illness. Most die far from the spotlight, unrecognized and unnoticed by all but their families, friends, and co-workers—but they are not forgotten.

The legal right to a safe workplace was won only after countless lives had been lost over decades in workplaces across America, and after a long and bitter fight waged by workers, unions, and public health advocates. Much remains to be done, and my Administration is dedicated to renewing our Nation's commitment to achieve safe working conditions for all American workers.

Providing safer work environments will take the concerted action of government, businesses, employer associations, unions, community organizations, the scientific and public health communities, and individuals. Today, as we mourn those lost mere weeks ago in the Upper Big Branch Mine and other recent disasters, so do we honor all the men and women who have died on the job. In their memory, we rededicate ourselves to preventing such tragedies, and to securing a safer workplace for every American.

NOW, THEREFORE, I, BARACK OBAMA, President of the United States of America, by virtue of the authority vested in me by the Constitution and the laws of the United States, do hereby proclaim April 28, 2010, as Workers Memorial Day. I call upon all Americans to participate in ceremonies and activities in memory of those who have been killed due to unsafe working conditions.

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



[FR Doc. 2010–10574
Filed 5–3–10; 8:45 am]
Billing code 3195–W0–P

Presidential Documents

Memorandum of April 27, 2010

Delegation of Certain Functions Under Section 104(g) of the United States-India Peaceful Atomic Energy Cooperation Act of 2006, as Amended by Public Law 110–369

Memorandum for the Secretary of State

By the authority vested in me as President by the Constitution and the laws of the United States, including section 301 of title 3, United States Code, I hereby delegate to you the functions and authority conferred upon the President by section 104(g) of the United States-India Peaceful Atomic Energy Cooperation Act of 2006 (Public Law 109–401), as amended by section 105 of Public Law 110–369, to make the specified report to the Congress.

You are authorized and directed to publish this memorandum in the *Federal Register*.

THE WHITE HOUSE,
Washington, April 27, 2010

[FR Doc. 2010–10584
Filed 5–3–10; 8:45 am]
Billing code 4710–10–P

Rules and Regulations

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DEPARTMENT OF AGRICULTURE

Food and Nutrition Service

7 CFR Parts 272 and 273

RIN 0584–AD30

Food Stamp Program: Eligibility and Certification Provisions of the Farm Security and Rural Investment Act of 2002; Approval of Information Collection Request

AGENCY: Food and Nutrition Service (FNS), USDA.

ACTION: Final rule, notice of approval of Information Collection Request (ICR).

SUMMARY: The final rule entitled, Food Stamp Program: Eligibility and Certification Provisions of the Farm Security and Rural Investment Act of 2002, was published on January 29, 2010. This final rule implemented 11 provisions of the Farm Security and Rural Investment Act of 2002 (FSRIA), which established new eligibility and certification requirements for the receipt of food stamps. Those provisions simplified program administration, allowed States greater flexibility, and provided enhanced access to eligible populations. The Food, Conservation, and Energy Act of 2008 changed the program name from Food Stamp Program to Supplemental Nutrition Assistance Program (SNAP). The Office of Management and Budget (OMB) cleared the associated information collection requirements on March 26, 2010. This document announces approval of the ICR.

DATES: The ICR associated with the final rule was approved by OMB on March 26, 2010, under OMB Control Number 0584–0064.

FOR FURTHER INFORMATION CONTACT: Angela Kline, Chief, Certification Policy Branch, Program Development Division, FNS, U.S. Department of Agriculture, 3101 Park Center Drive, Room 812, Alexandria, VA 22302. *E-mail: Angela.Kline@FNS.USDA.GOV.*

SUPPLEMENTARY INFORMATION: This document announces approval by OMB of the information collection requirements contained in the final rule entitled, Food Stamp Program: Eligibility and Certification Provisions of the Farm Security and Rural Investment Act of 2002, which was published on January 29, 2010 (75 FR 4912).

Dated: April 27, 2010.

Julia Paradis,

Administrator, Food and Nutrition Service.

[FR Doc. 2010–10391 Filed 5–3–10; 8:45 am]

BILLING CODE 3410–30–P

DEPARTMENT OF THE TREASURY

Office of Thrift Supervision

12 CFR Part 535

[Docket ID OTS–2010–0009]

RIN 1550–AC38

Unfair or Deceptive Acts or Practices; Amendment

AGENCY: Office of Thrift Supervision, Treasury (OTS).

ACTION: Final rule.

SUMMARY: OTS is amending its regulations at 12 CFR part 535 titled "Prohibited Consumer Credit Practices" to avoid duplication and inconsistency with the Credit Card Accountability Responsibility and Disclosure Act of 2009 and the rules of the Board of Governors of the Federal Reserve implementing that statute.

DATES: This rule is effective on July 1, 2010.

FOR FURTHER INFORMATION CONTACT: Richard Bennett, Senior Compliance Counsel, Regulations and Legislation Division, (202) 906–7409; or April Breslaw, Director, Consumer Regulations, (202) 906–6989, at Office of Thrift Supervision, 1700 G Street, NW., Washington, DC 20552.

SUPPLEMENTARY INFORMATION:

On December 18, 2008, OTS used its authority under the Federal Trade Commission Act (15 U.S.C. 41–58) and the Home Owners' Loan Act (12 U.S.C. 1461 *et seq.*) to adopt a final rule titled "Unfair or Deceptive Acts or Practices" amending its rule at 12 CFR part 535 titled "Prohibited Consumer Credit Practices." The rule was published in the **Federal Register** on January 29, 2009 (January 2009 UDAP rule). 74 FR 5498. OTS issued its rule jointly with rules issued by the Board of Governors of the Federal Reserve (Board) and the National Credit Union Administration (NCUA). The rule was scheduled to go into effect on July 1, 2010.

The January 2009 UDAP rule contained three subparts to part 535 and an Appendix to part 535 containing an Official Staff Commentary. Subparts A and B addressed general provisions and credit practices respectively. Subpart C addressed unfair consumer credit card account practices. The Supplementary Information to the January 2009 UDAP rule described all these changes in detail.

On May 5, 2009, OTS published proposed amendments to the January 2009 UDAP rule (May 2009 proposed amendments). *See* 74 FR 20804.

On May 22, 2009, the President signed into law the Credit Card Accountability Responsibility and Disclosure Act of 2009 (Credit CARD Act). Public Law 111–24, 123 Stat. 1734 (2009). The Credit CARD Act primarily amended the Truth in Lending Act (15 U.S.C. 1601 *et seq.*) and established a number of new substantive and disclosure requires to establish fair and transparent practices pertaining to open-end consumer credit plans, including credit card accounts. On July 22, 2009, the Board published an interim final rule amending Regulation Z (12 CFR pt. 226) and the staff commentary to implement those provisions of the Credit CARD Act that became effective on August 20, 2009. *See* 74 FR 36077. On February 22, 2010, the Board published a new final rule amending Regulation Z and the staff commentary in order to implement the Credit CARD Act. *See* 75 FR 7658.

The Credit CARD Act and the Board's implementing rule do not affect the provisions of subparts A and B and the corresponding portion of the Appendix in the January 2009 UDAP rule. Accordingly, today's final rule repromulgates those provisions, subject only to necessary conforming amendments. These provisions will take effect on July 1, 2010 as previously scheduled.

In contrast, the practices addressed in subpart C and the corresponding portion of the Appendix in the January 2009 UDAP rule, as proposed to be revised by the May 2009 proposed amendments are subsumed within, though not identical to, the practices addressed by Credit CARD Act and the Board's implementing rule. In some respects, the Credit CARD Act and the Board's implementing rule address the same practices addressed in the January 2009 UDAP rule, but in somewhat different ways that afford greater consumer protection. In order to avoid duplication and inconsistency, OTS is removing subpart C and the corresponding portion of the Appendix. For procedural reasons, OTS is making these changes effective July 1, 2010. Consequently, subpart C and the corresponding portion of the Appendix will not take effect. Likewise, OTS does not intend to finalize the May 2009 proposed amendments.

The Credit CARD Act and the Board's implementing rule do not affect the standards for unfairness or deception under the FTC Act. Accordingly, in analyzing whether an act or practice is unfair, OTS will continue to apply the standards described in the Supplementary Information to the January 2009 UDAP rule. *See* 74 FR at 5502–04. Under these standards, an act or practice is unfair where: (1) It causes or is likely to cause substantial injury to consumers; (2) the injury cannot be reasonably avoided by consumers themselves; and (3) the injury is not outweighed by countervailing benefits to consumers or to competition. Established public policy may also be considered in the analysis of whether a particular act or practice is unfair, but public policy may not serve as the primary basis for a determination that an act or practice is unfair. An act or practice is deceptive where: (1) there is a representation or omission of information that is likely to mislead consumers acting reasonably under the circumstances; and (2) that information is material to consumers.

Further, as noted in the Supplementary Information to the January 2009 UDAP rule, the fact that a particular act or practice is not addressed in a rule on unfair or deceptive acts or practices, does not limit the ability of an agency to make a determination that the practice is unfair or deceptive. 74 FR at 5504. Accordingly, OTS will continue to consider the analysis of consumer credit card account practices contained in the Supplementary Information to the January 2009 UDAP rule and the May 2009 proposed amendments, even though OTS is removing subpart C and the corresponding portion of the Appendix.

OTS issued its January 2009 UDAP rule and the May 2009 proposed amendments jointly with rules issued by the Board and the NCUA. Today's final rule, however, applies only to the OTS rule and does not affect the rules issued by the Board and NCUA. OTS notes that on February 22, 2010, the Board issued a corresponding final rule (75 FR 7925) and on February 10, 2010, the NCUA issued a corresponding final rule (75 FR 6558).

Administrative Procedure Act

Under 5 U.S.C. 553(b)(B) of the Administrative Procedure Act (APA), an agency may, for good cause, find (and incorporate the finding and brief statement of reasons therefore in the rule issued) that notice and public procedure thereon are impracticable, unnecessary, or contrary to the public interest. The conforming amendments to subparts A and B and the corresponding portion of the Appendix are technical in nature. The substance of subparts A and B was previously subject to notice and comment, as described in detail in the **SUPPLEMENTARY INFORMATION** contained in January 2009 UDAP rule.

The consumer protections contained in subpart C to part 535 as proposed to be revised by the May 2009 proposed amendments are subsumed within, though not identical to, the protections of the Credit CARD Act and the Board's implementing rule. Accordingly, the removal of subpart C is necessary to avoid duplication and inconsistency. Therefore, OTS has determined that publishing a notice of proposed rulemaking and providing opportunity for public comment are unnecessary.

Regulatory Flexibility Act

Pursuant to section 605(b) of the Regulatory Flexibility Act (Pub. L. 96–354, 5 U.S.C. 601), the OTS Director certifies that these amendments to 12 CFR part 535 will not have a significant economic impact on a substantial number of small entities. OTS previously certified that the January 2009 UDAP rule would not have a significant economic impact on a substantial number of small entities. *See* 74 FR at 5549–50. Since this final rule removes subpart C, any impact of the January 2009 UDAP rule will be even further reduced. Accordingly, this final rule will not have a significant economic impact on a substantial number of small entities.

Paperwork Reduction Act of 1995

Office of Management and Budget (OMB) regulations require OMB to review and approve information collection requirements imposed by agency rule. OTS is submitting notification to OMB of revisions to an approved paperwork section. In this final rule, OTS has removed the paperwork requirements for subpart C, which were contained in section 535.24(a).

Executive Order 12866

OTS previously provided a regulatory impact analysis under Executive Order 12866. 74 FR at 5551–5558. The analysis addressed the impact of the consumer credit card practices in subpart C to part 535. Since this final rule removes subpart C, its impact will be eliminated.

Unfunded Mandates Reform Act of 1995

OTS has determined that the requirements of this final rule will not result in expenditures by State, local, and tribal governments, or by the private sector, of $100 million or more in any one year. Accordingly, a budgetary impact statement is not required under section 202 of the Unfunded Mandates Reform Act of 1995. OTS previously certified that the January 2009 UDAP rule would not result in expenditures by State, local, and tribal governments, of $100 million or more in any one year, but may result in expenditures by the private sector in excess of that threshold. *See* 74 FR at 5558. Since this final rule removes subpart C, any impact of the January 2009 UDAP rule will be even further reduced. Accordingly, this final rule will not result in expenditures by State, local, and tribal governments, or by the private sector, of $100 million or more in any one year.

Executive Order 13132 Determination

OTS previously certified that the January 2009 UDAP rule does not have any federalism implications for purposes of Executive Order 13132. See 74 FR at 5558. That determination continues to apply.

List of Subjects in 12 CFR Part 535

Consumer credit, Consumer protection, Credit, Credit cards, Deception, Intergovernmental relations, Savings associations, Trade practices, Unfairness.

Authority and Issuance

■ For the reasons discussed in the preamble, OTS revises 12 CFR part 535 to read as follows:

PART 535—UNFAIR OR DECEPTIVE ACTS OR PRACTICES

Subpart A—General Provisions

Subpart B—Consumer Credit Practices

Appendix to Part 535—Official Staff Commentary

Authority: 12 U.S.C. 1462a, 1463, 1464; 15 U.S.C. 57a.

Subpart A—General Provisions

§ 535.1 Authority, purpose and scope.

(a) *Authority.* This part is issued by OTS under section 18(f) of the Federal Trade Commission Act, 15 U.S.C. 57a(f) (section 202(a) of the Magnuson-Moss Warranty—Federal Trade Commission Improvement Act, Pub. L. 93–637) and the Home Owners' Loan Act, 12 U.S.C. 1461 *et seq.*

(b) *Purpose.* The purpose of this part is to prohibit unfair or deceptive acts or practices in violation of section 5(a)(1) of the Federal Trade Commission Act, 15 U.S.C. 45(a)(1). Subpart B defines and contains requirements prescribed for the purpose of preventing specific unfair or deceptive acts or practices of savings associations. The prohibitions in subpart B do not limit OTS's authority to enforce the FTC Act with respect to any other unfair or deceptive acts or practices. The purpose of this part is also to prohibit unsafe and unsound practices and protect consumers under the Home Owners' Loan Act; 12 U.S.C. 1461 *et seq.*

(c) *Scope.* This part applies to savings associations and subsidiaries owned in whole or in part by a savings association ("you").

Subpart B—Consumer Credit Practices

§ 535.11 Definitions.

For purposes of this subpart, the following definitions apply:

(a) *Consumer* means a natural person who seeks or acquires goods, services, or money for personal, family, or household purposes, other than for the purchase of real property, and who applies for or is extended *consumer credit.*

(b) *Consumer credit* means credit extended to a natural person for personal, family, or household purposes. It includes consumer loans; educational loans; unsecured loans for real property alteration, repair or improvement, or for the equipping of real property; overdraft loans; and credit cards. It also includes loans secured by liens on real estate and chattel liens secured by mobile homes and leases of personal property to consumers that may be considered the functional equivalent of loans on personal security but only if you rely substantially upon other factors, such as the general credit standing of the borrower, guaranties, or security other than the real estate or mobile home, as the primary security for the loan.

(c) *Earnings* means compensation paid or payable to an individual or for the individual's account for personal services rendered or to be rendered by the individual, whether denominated as wages, salary, commission, bonus, or otherwise, including periodic payments pursuant to a pension, retirement, or disability program.

(d) *Obligation* means an agreement between you and a consumer.

(e) *Person* means an individual, corporation, or other business organization.

§ 535.12 Unfair credit contract provisions.

It is an unfair act or practice for you, directly or indirectly, to enter into a consumer credit obligation that constitutes or contains, or to enforce in a consumer credit obligation you purchased, any of the following provisions:

(a) *Confession of judgment.* A cognovit or confession of judgment (for purposes other than executory process in the State of Louisiana), warrant of attorney, or other waiver of the right to notice and the opportunity to be heard in the event of suit or process thereon.

(b) *Waiver of exemption.* An executory waiver or a limitation of exemption from attachment, execution, or other process on real or personal property held, owned by, or due to the consumer, unless the waiver applies solely to property subject to a security interest executed in connection with the obligation.

(c) *Assignment of wages.* An assignment of wages or other earnings unless:

(1) The assignment by its terms is revocable at the will of the debtor;

(2) The assignment is a payroll deduction plan or preauthorized payment plan, commencing at the time of the transaction, in which the consumer authorizes a series of wage deductions as a method of making each payment; or

(3) The assignment applies only to wages or other earnings already earned at the time of the assignment.

(d) *Security interest in household goods.* A nonpossessory security interest in household goods other than a purchase-money security interest. For purposes of this paragraph, *household goods:*

(1) Means clothing, furniture, appliances, linens, china, crockery, kitchenware, and personal effects of the consumer and the consumer's dependents.

(2) Does not include:

(i) Works of art;

(ii) Electronic entertainment equipment (except one television and one radio);

(iii) Antiques (any item over one hundred years of age, including such items that have been repaired or renovated without changing their original form or character); or

(iv) Jewelry (other than wedding rings).

§ 535.13 Unfair or deceptive cosigner practices.

(a) *Prohibited deception.* It is a deceptive act or practice for you, directly or indirectly in connection with the extension of credit to consumers, to misrepresent the nature or extent of cosigner liability to any person.

(b) *Prohibited unfairness.* It is an unfair act or practice for you, directly or indirectly in connection with the extension of credit to consumers, to obligate a cosigner unless the cosigner is informed, before becoming obligated, of the nature of the cosigner's liability.

(c) *Disclosure requirement*—(1) *Disclosure statement.* A clear and conspicuous statement must be given in writing to the cosigner before becoming obligated. In the case of open-end credit, the disclosure statement must be given to the cosigner before the time that the cosigner becomes obligated for any fees or transactions on the account. The disclosure statement must contain the following statement or one that is substantially similar:

Notice of Cosigner

You are being asked to guarantee this debt. Think carefully before you do. If the borrower doesn't pay the debt, you will have to. Be sure you can afford to pay if you have to, and that you want to accept this responsibility.

You may have to pay up to the full amount of the debt if the borrower does not pay. You may also have to pay late fees or collection costs, which increase this amount.

The creditor can collect this debt from you without first trying to collect from the borrower. The creditor can use the same collection methods against you that can be used against the borrower, such as suing you, garnishing your wages, etc. If this debt is ever in default, that fact may become a part of your credit record.

(2) *Compliance.* Compliance with paragraph (d)(1) of this section

constitutes compliance with the consumer disclosure requirement in paragraph (b) of this section.

(3) *Additional content limitations.* If the notice is a separate document, nothing other than the following items may appear with the notice:

(i) Your name and address;

(ii) An identification of the debt to be cosigned (*e.g.*, a loan identification number);

(iii) The date (of the transaction); and

(iv) The statement, "This notice is not the contract that makes you liable for the debt."

(d) *Cosigner defined.* (1) *Cosigner* means a natural person who assumes liability for the obligation of a consumer without receiving goods, services, or money in return for the obligation, or, in the case of an open-end credit obligation, without receiving the contractual right to obtain extensions of credit under the account.

(2) *Cosigner* includes any person whose signature is requested as a condition to granting credit to a consumer, or as a condition for forbearance on collection of a consumer's obligation that is in default. The term does not include a spouse or other person whose signature is required on a credit obligation to perfect a security interest pursuant to state law.

(3) A person who meets the definition in this paragraph is a *cosigner,* whether or not the person is designated as such on a credit obligation.

§ 535.14 Unfair late charges.

(a) *Prohibition.* In connection with collecting a debt arising out of an extension of credit to a consumer, it is an unfair act or practice for you, directly or indirectly, to levy or collect any delinquency charge on a payment, when the only delinquency is attributable to late fees or ydelinquency charges assessed on earlier installments and the payment is otherwise a full payment for the applicable period and is paid on its due date or within an applicable grace period.

(b) *Collecting a debt defined—Collecting a debt* means, for the purposes of this section, any activity, other than the use of judicial process, that is intended to bring about or does bring about repayment of all or part of money due (or alleged to be due) from a consumer.

Appendix to Part 535—Official Staff Commentary

Subpart A—General Provisions

Section 535.1 Authority, Purpose, and Scope.

1(c) Scope

1. *Penalties for noncompliance.* Administrative enforcement of the rule for savings associations may involve actions under section 8 of the Federal Deposit Insurance Act (12 U.S.C. 1818), including cease-and-desist orders requiring that actions be taken to remedy violations and civil money penalties.

2. *Application to subsidiaries.* The term "savings association" as used in this Appendix also includes subsidiaries owned in whole or in part by a savings association.

Dated: April 27, 2010.

By the Office of Thrift Supervision.

John E. Bowman,

Acting Director.

[FR Doc. 2010–10196 Filed 5–3–10; 8:45 am]

BILLING CODE P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2009–1250; Directorate Identifier 2008–NM–169–AD; Amendment 39–16276; AD 2010–09–11]

RIN 2120–AA64

Airworthiness Directives; BAE Systems (Operations) Limited Model BAe 146–100A, –200A, and –300A Series Airplanes, and Model Avro 146–RJ70A, 146–RJ85A, and 146–RJ100A Airplanes

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

ACTION: Final rule.

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

In 1991, the UK Civil Aviation Authority (CAA) issued AD 015–08–91 [which corresponds to FAA AD 93–01–11], requiring the accomplishment of inspections of, and in case of crack findings, corrective actions on, the wing top skin at rib '0' of pre-modification HCM00851C BAe 146 series aircraft in accordance with British Aerospace Service Bulletin (SB) 57–41 dated 26 July 1991. Recently, BAE Systems (Operations) Ltd has determined that a revised inspection programme for the wing top skin and joint strap at rib '0' on all BAe 146 and AVRO 146–RJ aircraft is necessary to assure the continued structural integrity of this area. Cracking of the wing centre section top skin, if undetected, could lead to structural failure and consequent loss of the aircraft.

* * * * *

We are issuing this AD to require actions to correct the unsafe condition on these products.

DATES: This AD becomes effective June 8, 2010.

The Director of the Federal Register approved the incorporation by reference of a certain publication listed in this AD as of June 8, 2010.

On March 2, 1993 (58 FR 6081, January 26, 1993), the Director of the Federal Register approved the incorporation by reference of a certain other publication listed in this AD.

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

FOR FURTHER INFORMATION CONTACT: Todd Thompson, Aerospace Engineer, International Branch, ANM–116, Transport Airplane Directorate, FAA, 1601 Lind Avenue, SW., Renton, Washington 98057–3356; telephone (425) 227–1175; fax (425) 227–1149.

SUPPLEMENTARY INFORMATION:

Discussion

We issued a notice of proposed rulemaking (NPRM) to amend 14 CFR part 39 to include an AD that would apply to the specified products. That NPRM was published in the **Federal Register** on January 12, 2010 (75 FR 1563), and proposed to supersede AD 93–01–11, Amendment 39–8465 (58 FR 6081, January 26, 1993). That NPRM proposed to correct an unsafe condition for the specified products. The MCAI states:

In 1991, the UK Civil Aviation Authority (CAA) issued AD 015–08–91 [which corresponds to FAA AD 93–01–11], requiring the accomplishment of inspections of, and in case of crack findings, corrective actions on, the wing top skin at rib '0' of pre-modification HCM00851C BAe 146 series aircraft in accordance with British Aerospace Service Bulletin (SB) 57–41 dated 26 July 1991. Recently, BAE Systems (Operations) Ltd has determined that a revised inspection programme for the wing top skin and joint

strap at rib '0' on all BAe 146 and AVRO 146–RJ aircraft is necessary to assure the continued structural integrity of this area. Cracking of the wing centre section top skin, if undetected, could lead to structural failure and consequent loss of the aircraft.

For the reasons described above, this new EASA [European Aviation Safety Agency] AD supersedes UK CAA AD 015–08–91 and requires repetitive high-frequency eddy current (HFEC), radiographic, ultrasonic, and detailed visual inspections [for cracking and corrosion] of the wing top skin and joint strap at rib '0', the reporting of all inspection results to BAE Systems and, in case of findings, the accomplishment of corrective actions.

The corrective actions include repairing cracking and corrosion, and contacting BAE Systems (Operations) Limited for repair instructions and doing the repair. You may obtain further information by examining the MCAI in the AD docket.

Comments

We gave the public the opportunity to participate in developing this AD. We received no comments on the NPRM or on the determination of the cost to the public.

Conclusion

We reviewed the available data and determined that air safety and the public interest require adopting the AD as proposed.

Differences Between This AD and the MCAI or Service Information

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

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

Explanation of Change to Costs of Compliance

After the NPRM was issued, we reviewed the figures we have used over the past several years to calculate AD costs to operators. To account for various inflationary costs in the airline industry, we find it necessary to increase the labor rate used in these calculations from $80 per work hour to $85 per work hour. The cost impact information, below, reflects this increase in the specified hourly labor rate.

Costs of Compliance

We estimate that this AD will affect about 1 product of U.S. registry.

The actions that are required by AD 93–01–11 and retained in this AD take about 4 work-hours per product, at an average labor rate of $85 per work hour. Based on these figures, the estimated cost of the currently required actions is $340 per product.

We estimate that it will take about 4 work-hours per product to comply with the new basic requirements of this AD. The average labor rate is $85 per work-hour. Based on these figures, we estimate the cost of this AD to the U.S. operators to be $340.

Authority for This Rulemaking

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

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

Regulatory Findings

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

For the reasons discussed above, I certify this AD:

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

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

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

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

Examining the AD Docket

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

List of Subjects in 14 CFR Part 39

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

Adoption of the Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

■ 2. The FAA amends § 39.13 by removing Amendment 39–8465 (58 FR 6081, January 26, 1993) and adding the following new AD:

2010–09–11 BAE Systems (Operations) Limited: Amendment 39–16276. Docket No. FAA–2009–1250; Directorate Identifier 2008–NM–169–AD.

Effective Date

(a) This airworthiness directive (AD) becomes effective June 8, 2010.

Affected ADs

(b) The AD supersedes AD 93–01–11, Amendment 39–8465.

Applicability

(c) This AD applies to all BAE SYSTEMS (Operations) Limited Model BAe 146–100A, –200A, and –300A series airplanes, and Model Avro 146–RJ70A, 146–RJ85A, and 146–RJ100A airplanes; certificated in any category.

Subject

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

Reason

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

In 1991, the UK Civil Aviation Authority (CAA) issued AD 015–08–91 [which corresponds to FAA AD 93–01–11], requiring the accomplishment of inspections of, and in case of crack findings, corrective actions on, the wing top skin at rib '0' of pre-

modification HCM00851C BAe 146 series aircraft in accordance with British Aerospace Service Bulletin (SB) 57–41 dated 26 July 1991. Recently, BAE Systems (Operations) Ltd has determined that a revised inspection programme for the wing top skin and joint strap at rib '0' on all BAe 146 and AVRO 146–RJ aircraft is necessary to assure the continued structural integrity of this area. Cracking of the wing centre section top skin, if undetected, could lead to structural failure and consequent loss of the aircraft.

For the reasons described above, this new EASA [European Aviation Safety Agency] AD supersedes UK CAA AD 015–08–91 and requires repetitive high-frequency eddy current (HFEC), radiographic, ultrasonic, and detailed visual inspections [for cracking and corrosion] of the wing top skin and joint strap at rib '0', the reporting of all inspection results to BAE Systems and, in case of findings, the accomplishment of corrective actions.

The corrective actions include repairing cracking and corrosion, and contacting BAE Systems (Operations) Limited for repair instructions and doing the repair.

Restatement of Requirements of AD 93–01–11, With No Changes

(f) Unless already done, for Model BAe 146–100A, –200A, and –300A series airplanes: Prior to the accumulation of 24,000 landings, or within 60 days after March 2, 1993 (the effective date of AD 93–01–11), whichever occurs later: Perform an X-ray inspection to detect fatigue cracks in the left and right wing upper skins, joint straps, and stringers in the vicinity of rib "0," in accordance with British Aerospace Inspection Service Bulletin 57–41, dated July 26, 1991. Doing the inspection required by paragraph (g)(1) of this AD terminates the inspection required by this paragraph.

(1) If cracks are found, prior to further flight, repair in accordance with a method approved by the Manager, Standardization Branch, ANM–113, Transport Airplane Directorate, FAA; or the Manager, International Branch, ANM–116, Transport Airplane Directorate, FAA. As of the effective date of this AD, repair in accordance with a method approved by the Manager, International Branch, ANM–116, Transport Airplane Directorate, FAA. Thereafter, repeat the inspection required by paragraph (f) of this AD at intervals not to exceed 9,000 landings, in accordance with British Aerospace Inspection Service Bulletin 57–41, dated July 26, 1991, until the initial inspection required by paragraph (g)(1) of this AD is accomplished.

(2) If no cracks are found, repeat the inspection required by paragraph (f) of this AD at intervals not to exceed 9,000 landings, in accordance with British Aerospace Inspection Service Bulletin 57–41, dated July 26, 1991, until the initial inspection required by paragraph (g)(1) of this AD is accomplished.

New Requirements of This AD

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

Note 1: The instructions of BAE Systems (Operations) Limited Inspection Service Bulletin ISB.57–070, dated October 15, 2007, which is the subject of this AD, are divided into two parts; consequently, the statement in paragraph 1.C. of BAE Systems (Operations) Limited Inspection Service Bulletin ISB.57–070, dated October 15, 2007, that there are three parts is incorrect and can be disregarded.

(1) At the applicable compliance time specified in paragraph (g)(1)(i) or (g)(1)(ii) of this AD: Do an HFEC inspection of the front and rear spar flanges, a detailed visual inspection of the stringers, and a detailed visual inspection of the stringer crown fittings, all at the rib "0" joint strap, for cracking and corrosion, and do all applicable corrective actions, in accordance with "Part 1" of paragraph 2.C., "Inspection," of BAE Systems (Operations) Limited Inspection Service Bulletin ISB.57–070, dated October 15, 2007. Repeat the inspections thereafter at intervals not to exceed 4,000 flight cycles. Do all applicable corrective actions before further flight. Accomplishment of these initial inspections terminates the inspections required by paragraphs (f), (f)(1), and (f)(2) of this AD.

(i) For airplanes on which an inspection was not done in accordance with Supplemental Structural Inspection (SSI) 57–10–101 (MPD 571001–DVI–10000–1) as of the effective date of this AD: Prior to the accumulation of 20,000 total flight cycles, or within 4,000 flight cycles after the effective date of this AD, whichever occurs later.

(ii) For airplanes on which an inspection was done in accordance with SSI 57–10–101 (MPD 571001–DVI–10000–1) as of the effective date of this AD: Within 3,000 flight cycles after the effective date of this AD.

(2) At the applicable compliance time specified in paragraph (g)(2)(i) or (g)(2)(ii) of this AD: Do detailed visual and HFEC inspections to detect cracking and corrosion of the rib "0" strap, a radiographic inspection of the rib "0" joint, and an ultrasonic inspection of the skin at the rib "0" joint strap, and do all applicable corrective actions, in accordance with "PART 2" of paragraph 2.C. "Inspection" of BAE Systems (Operations) Limited Inspection Service Bulletin ISB.57–070, dated October 15, 2007. Do all applicable corrective actions before further flight. Repeat the inspections thereafter at intervals not to exceed 4,000 flight cycles.

(i) For airplanes on which an inspection was not done in accordance with SSI 57–10–102 and 57–10–102A (MPD 571002–SDI–10000–1 and 571002–SDI–10000–2) as of the effective date of this AD: Before the accumulation of 24,000 total flight cycles, or within 4,000 flight cycles after the effective date of this AD, whichever occurs later.

(ii) For airplanes on which an inspection was done in accordance with SSI 57–10–102 or 57–10–102A (MPD 571002–SDI–10000–1 or 571002–SDI–10000–2) as of the effective date of this AD: Within 3,000 flight cycles after the effective date of this AD.

(3) Submit a report of the findings (both positive and negative) of the initial inspections required by paragraphs (g)(1) and (g)(2) of this AD to BAE Systems (Operations) Limited, at the applicable time specified in paragraph (g)(3)(i) or (g)(3)(ii) of this AD. The report must include the inspection results, a description of any discrepancies found, the airplane serial number, and the number of landings and flight hours on the airplane. Send reports to Customer Liaison, Customer Support (Building 37), BAE SYSTEMS (Operations) Limited, Prestwick International Airport, Ayrshire, KA9 2RW, Scotland; fax +44 (0) 1292 675432; e-mail *raengliaison@baesystems.com*.

(i) If the inspection was done on or after the effective date of this AD: Submit the report within 30 days after the inspection.

(ii) If the inspection was done before the effective date of this AD: Submit the report within 30 days after the effective date of this AD.

(4) Accomplishment of any repair does not constitute terminating action for the inspection requirements of this AD.

FAA AD Differences

Note 2: This AD differs from the MCAI and/or service information as follows: No differences.

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, 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: Todd Thompson, Aerospace Engineer, International Branch, ANM–116, Transport Airplane Directorate, FAA, 1601 Lind Avenue, SW., Renton, Washington 98057–3356; telephone (425) 227–1175; 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 (44 U.S.C. 3501 *et seq.*), the Office of Management and Budget (OMB) has approved the information collection requirements and has assigned OMB Control Number 2120–0056.

Related Information

(i) Refer to MCAI European Aviation Safety Agency (EASA) Airworthiness Directive 2008–0168, dated September 2, 2008; British Aerospace Inspection Service Bulletin 57–41, dated July 26, 1991; and BAE Systems (Operations) Limited Inspection Service Bulletin ISB.57–070, dated October 15, 2007; for related information.

Material Incorporated by Reference

(j) You must use British Aerospace Inspection Service Bulletin 57–41, dated July 26, 1991; and BAE Systems (Operations) Limited Inspection Service Bulletin ISB.57–070, dated October 15, 2007; as applicable; to do the actions required by this AD, unless the AD specifies otherwise.

(1) The Director of the Federal Register approved the incorporation by reference of BAE Systems (Operations) Limited Inspection Service Bulletin ISB.57–070, dated October 15, 2007, under 5 U.S.C. 552(a) and 1 CFR part 51.

(2) The Director of the Federal Register previously approved the incorporation by reference of British Aerospace Inspection Service Bulletin 57–41, dated July 26, 1991, on March 2, 1993 (58 FR 6081, January 26, 1993).

(3) For service information identified in this AD, contact BAE Systems Regional Aircraft, 13850 McLearen Road, Herndon, Virginia 20171; telephone 703–736–1080; e-mail *raebusiness@baesystems.com*; Internet *http://www.baesystems.com/Businesses/RegionalAircraft/index.htm.*

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

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

Issued in Renton, Washington on April 22, 2010.

Jeffrey E. Duven,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 2010–9944 Filed 5–3–10; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2010–0032; Directorate Identifier 2009–NM–213–AD; Amendment 39–16277; AD 2010–09–12]

RIN 2120–AA64

Airworthiness Directives; McDonnell Douglas Corporation Model DC–10–10, DC–10–10F, DC–10–15, DC–10–30, DC–10–30F (KC–10A and KDC–10), DC–10–40, DC–10–40F, MD–10–10F, MD–10–30F, MD–11, and MD–11F Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: We are adopting a new airworthiness directive (AD) for certain Model DC–10–10, DC–10–10F, DC–10–15, DC–10–30, DC–10–30F (KC–10A and KDC–10), DC–10–40, DC–10–40F, MD–10–10F, MD–10–30F, MD–11, and MD–11F airplanes. This AD requires a one-time installation of electrical bonding jumpers for the fill valve controllers of fuel tanks. This AD results from fuel system reviews conducted by the manufacturer. We are issuing this AD to prevent point-of-contact arcing or filament heating damage in the fuel tanks, which could result in fuel tank explosions and consequent loss of the airplane.

DATES: This AD is effective June 8, 2010.

The Director of the Federal Register approved the incorporation by reference of certain publications listed in the AD as of June 8, 2010.

ADDRESSES: For service information identified in this AD, contact Boeing Commercial Airplanes, Attention: Data & Services Management, 3855 Lakewood Boulevard, MC D800–0019, Long Beach, California 90846–0001; telephone 206–544–5000, extension 2; fax 206–766–5683; e-*mail dse.boecom@boeing.com;* Internet *https://www.myboeingfleet.com.*

Examining the AD Docket

You may examine the AD docket on the Internet at *http://www.regulations.gov;* or in person at the Docket Management Facility between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The AD docket contains this AD, the regulatory evaluation, any comments received, and other information. The address for the Docket Office (telephone 800–647–5527) is the Document Management Facility, U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue, SE., Washington, DC 20590.

FOR FURTHER INFORMATION CONTACT: Philip Kush, Aerospace Engineer, Propulsion Branch, ANM–140L, FAA, Los Angeles Aircraft Certification Office, 3960 Paramount Boulevard, Lakewood, California 90712–4137; telephone (562) 627–5263; fax (562) 627–5210.

SUPPLEMENTARY INFORMATION:

Discussion

We issued a notice of proposed rulemaking (NPRM) to amend 14 CFR part 39 to include an airworthiness directive (AD) that would apply to certain Model DC–10–10, DC–10–10F, DC–10–15, DC–10–30, DC–10–30F (KC–10A and KDC–10), DC–10–40, DC–10–40F, MD–10–10F, MD–10–30F, MD–11, and MD–11F airplanes. That NPRM was published in the **Federal Register** on February 8, 2010 (75 FR 6160). That NPRM proposed to require a one-time installation of electrical bonding jumpers for the fill valve controllers of the fuel tanks.

Comments

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

Conclusion

We reviewed the relevant data, considered the comment received, and determined that air safety and the public interest require adopting the AD as proposed.

Costs of Compliance

We estimate that this AD would affect 267 airplanes of U.S. registry. The following table provides the estimated costs for U.S. operators to comply with this AD.

TABLE—ESTIMATED COSTS

Action	Work hours	Average labor rate per hour	Parts	Cost per product	Number of U.S.-registered airplanes	Fleet cost
Installation	8 to 24 [1]	$85	$1,459 to $3,805 [1]	$2,139 to $5,845 [1]	267	$571,113 to $1,560,615 [1]

[1] Depending on airplane group or model.

Authority for This Rulemaking

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

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

Regulatory Findings

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

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

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

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

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

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

List of Subjects in 14 CFR Part 39

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

Adoption of the Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

2010–09–12 McDonnell Douglas Corporation: Amendment 39–16277. Docket No. FAA–2010–0032; Directorate Identifier 2009–NM–213–AD.

Effective Date

(a) This airworthiness directive (AD) is effective June 8, 2010.

Affected ADs

(b) None.

Applicability

(c) This AD applies to McDonnell Douglas Corporation Model DC–10–10, DC–10–10F, DC–10–15, DC–10–30, DC–10–30F (KC–10A and KDC–10), DC–10–40, DC–10–40F, MD–10–10F, MD–10–30F, MD–11, and MD–11F airplanes; certificated in any category.

Subject

(d) Air Transport Association (ATA) of America Code 28: Fuel.

Unsafe Condition

(e) This AD results from fuel system reviews conducted by the manufacturer. The Federal Aviation Administration is issuing this AD to prevent point-of-contact arcing or filament heating damage in the fuel tanks, which could result in fuel tank explosions and consequent loss of the airplane.

Compliance

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

Installation

(g) Within 60 months after the effective date of this AD, install electrical bonding jumpers for the fill valve controllers of the fuel tanks, in accordance with the Accomplishment Instructions of Boeing Service Bulletin DC10–28–249, Revision 1, dated November 6, 2008 (for Model DC–10–10, DC–10–10F, DC–10–15, DC–10–30, DC–10–30F (KC–10A and KDC–10), DC–10–40, DC–10–40F, MD–10–10F, and MD–10–30F airplanes); or Boeing Service Bulletin MD11–28–135, Revision 1, dated November 6, 2008 (for Model MD–11 and MD–11F airplanes).

Alternative Methods of Compliance (AMOCs)

(h)(1) The Manager, Los Angeles Aircraft Certification Office (ACO), FAA, has the authority to approve AMOCs for this AD, if requested using the procedures found in 14 CFR 39.19. Send information to ATTN: Philip Kush, Aerospace Engineer, Propulsion Branch, ANM–140L, FAA, Los Angeles ACO, 3960 Paramount Boulevard, Lakewood, California 90712–4137; telephone (562) 627–5263; fax (562) 627–5210.

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

Material Incorporated by Reference

(i) You must use Boeing Service Bulletin DC10–28–249, Revision 1, dated November 6, 2008; or Boeing Service Bulletin MD11–28–135, Revision 1, dated November 6, 2008; as applicable; to do the actions required by this AD, unless the AD specifies otherwise.

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

(2) For service information identified in this AD, contact Boeing Commercial Airplanes, Attention: Data & Services Management, 3855 Lakewood Boulevard, MC D800–0019, Long Beach, California 90846–0001; telephone 206–544–5000, extension 2; fax 206–766–5683; e-mail *dse.boecom@boeing.com;* Internet *https://www.myboeingfleet.com.*

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

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

Issued in Renton, Washington, on April 22, 2010.

Jeffrey E. Duven,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 2010–9945 Filed 5–3–10; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2009–0789; Directorate Identifier 2008–NM–185–AD; Amendment 39–16228; AD 2010–06–04]

RIN 2120–AA64

Airworthiness Directives; Airbus Model A300 B2–1C, B2–203, B2K–3C, B4–103, B4–203, B4–2C Airplanes; Model A310 Series Airplanes; and Model A300 B4–601, B4–603, B4–605R, B4–620, B4–622, and B4–622R Airplanes

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

ACTION: Final rule; correction.

SUMMARY: The FAA is correcting a typographical error in an existing

airworthiness directive (AD) that was published in the **Federal Register** on March 11, 2010. The error resulted in an imprecise compliance time in a table. This AD applies to certain Airbus Model A300 B2–1C, B2–203, B2K–3C, B4–103, B4–203, B4–2C airplanes; Model A310 series airplanes; and Model A300 B4–601, B4–603, B4–605R, B4–620, B4–622, and B4–622R airplanes. This AD requires repetitive inspections to detect cracks of the pylon side panels (upper section) at rib 8; and corrective actions if necessary.

DATES: This correction is effective May 4, 2010. The effective date of AD 2010–06–04 remains April 15, 2010.

ADDRESSES: You may examine the AD docket on the Internet at *http://www.regulations.gov*; or in person at the Docket Management Facility between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The AD docket contains this AD, the regulatory evaluation, any comments received, and other information. The address for the Docket Office (telephone 800–647–5527) is the Document Management Facility, U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue, SE., Washington, DC 20590.

FOR FURTHER INFORMATION CONTACT: 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: On March 4, 2010, the FAA issued AD 2010–06–04, Amendment 39–16228 (75 FR 11428, March 11, 2010), for certain Airbus Model A300 B2–1C, B2–203, B2K–3C, B4–103, B4–203, B4–2C airplanes; Model A310 series airplanes; and Model A300 B4–601, B4–603, B4–605R, B4–620, B4–622, and B4–622R airplanes. The AD requires repetitive inspections to detect cracks of the pylon side panels (upper section) at rib 8; and corrective actions if necessary.

As published, Table 1 of this AD contained a typographical error in the second row in the second column. The compliance time of ">17,500 total flight [1]" has been corrected to read ">17,500 total flight cycles [1]." (The word "cycles" was omitted in the AD.)

No other part of the regulatory information has been changed; therefore, the final rule is not republished in the **Federal Register**.

The effective date of this AD remains April 15, 2010.

§ 39.13 [Corrected]

■ In the **Federal Register** of March 11, 2010, on page 11430, in the second row in the second column, Table 1 of AD 2010–06–04 is corrected to read as follows:

* * * * *

TABLE 1—COMPLIANCE TIMES FOR CONFIGURATION 1

For Model—	That have accumulated—	Whichever occurs later		And repeat the inspection at intervals not to exceed—
		Inspect before the accumulation of—	Or within—	
A300 B2–1C, B2–203, and B2K–3C airplanes.	≤17,500 total flight cycles [1]	5,350 total flight cycles	2,500 flight cycles [2]	4,300 flight cycles.
A300 B2–1C, B2–203, and B2K–3C airplanes.	>17,500 total flight cycles [1]	20,000 total flight cycles or 40,000 total flight hours, whichever occurs first.	250 flight cycles [2]	4,300 flight cycles.
A300 B4–103, B4–203, and B4–2C airplanes.	≤18,000 total flight cycles [1]	5,350 total flight cycles	2,000 flight cycles [2]	4,300 flight cycles.
A300 B4–103, B4–203, and B4–2C airplanes.	>18,000 total flight cycles [1]	20,000 total flight cycles or 40,000 total flight hours, whichever occurs first.	250 flight cycles [2]	4,300 flight cycles.
A300 B4–601, B4–603, B4–605R, B4–620, B4–622, and B4–622R airplanes.	≤18,000 total flight cycles [1]	4,200 total flight cycles	2,000 flight cycles [2]	3,600 flight cycles.
A300 B4–601, B4–603, B4–605R, B4–620, B4–622, and B4–622R airplanes.	>18,000 total flight cycles [1]	20,000 total flight cycles or 40,000 total flight hours, whichever occurs first.	250 flight cycles [2]	3,600 flight cycles.
A310–200 airplanes with GE CF6–80A3 or Pratt & Whitney engines.	≤18,000 total flight cycles [1]	9,700 total flight cycles or 19,400 total flight hours, whichever occurs first.	1,500 flight cycles [2]	6,700 flight cycles or 13,400 flight hours, whichever occurs first.
A310–200 airplanes with GE CF6–80A3 or Pratt & Whitney engines.	>18,000 total flight cycles [1]	19,500 total flight cycles or 55,500 total flight hours, whichever occurs first.	250 flight cycles [2]	6,700 flight cycles or 13,400 flight hours, whichever occurs first.
A310–200 airplanes with GE CF6–80C2 engines.	≤18,000 total flight cycles [1]	7,800 total flight cycles or 15,600 total flight hours, whichever occurs first.	1,500 flight cycles [2]	5,800 flight cycles or 11,600 flight hours, whichever occurs first.
A310–200 airplanes with GE CF6–80C2 engines.	>18,000 total flight cycles [1]	19,500 total flight cycles or 55,500 total flight hours, whichever occurs first.	250 flight cycles [2]	5,800 flight cycles or 11,600 flight hours, whichever occurs first.
A310–300 SR [3] airplanes with Pratt & Whitney JT9D engines.	≤18,000 total flight cycles [1]	8,600 total flight cycles or 24,000 total flight hours, whichever occurs first.	1,500 total flight cycles [2] ...	6,700 flight cycles or 18,700 flight hours, whichever occurs first.
A310–300 SR [3] airplanes with Pratt & Whitney JT9D engines.	>18,000 total flight cycles [1]	19,500 total flight cycles or 55,500 total flight hours, whichever occurs first.	250 flight cycles [2]	6,700 flight cycles or 18,700 flight hours, whichever occurs first.
A310–300 SR [3] airplanes with GE engines.	≤18,000 total flight cycles [1]	7,000 total flight cycles or 19,600 total flight hours, whichever occurs first.	1,500 flight cycles [2]	5,700 flight cycles or 15,900 flight hours, whichever occurs first.

TABLE 1—COMPLIANCE TIMES FOR CONFIGURATION 1—Continued

For Model—	That have accumulated—	Whichever occurs later		And repeat the inspection at intervals not to exceed—
		Inspect before the accumulation of—	Or within—	
A310–300 SR[3] airplanes with GE engines.	>18,000 total flight cycles[1]	19,500 total flight cycles or 55,500 total flight hours, whichever occurs first.	250 flight cycles[2]	5,700 flight cycles or 15,900 flight hours, whichever occurs first.
A310–300 SR[3] airplanes with Pratt & Whitney 4000 engines.	≤18,000 total flight cycles[1]	7,000 total flight cycles or 19,600 total flight hours, whichever occurs first.	1,500 flight cycles[2]	5,800 flight cycles or 16,200 flight hours, whichever occurs first.
A310–300 SR[3] airplanes with Pratt & Whitney 4000 engines.	>18,000 total flight cycles[1]	19,500 total flight cycles or 55,500 total flight hours, whichever occurs first.	250 flight cycles[2]	5,800 flight cycles or 16,200 flight hours, whichever occurs first.
A310–300 LR[4] airplanes with Pratt & Whitney JT9D engines.	≤18,000 total flight cycles[1]	5,900 total flight cycles or 29,500 total flight hours, whichever occurs first.	1,500 flight cycles[2]	6,000 flight cycles or 30,300 flight hours, whichever occurs first.
A310–300 LR[4] airplanes with Pratt & Whitney JT9D engines.	>18,000 total flight cycles[1]	19,500 total flight cycles or 55,500 total flight hours, whichever occurs first.	250 flight cycles[2]	6,000 flight cycles or 30,300 flight hours, whichever occurs first.
A310–300 LR[4] airplanes with GE engines.	≤18,000 total flight cycles[1]	4,800 total flight cycles or 24,100 total flight hours, whichever occurs first.	1,500 flight cycles[2]	5,100 flight cycles or 25,500 flight hours, whichever occurs first.
A310–300 LR[4] airplanes with GE engines.	>18,000 total flight cycles[1]	19,500 total flight cycles or 55,500 total flight hours, whichever occurs first.	250 flight cycles[2]	5,100 flight cycles or 25,500 flight hours, whichever occurs first.
A310–300 LR[4] airplanes with Pratt & Whitney 4000 engines.	≤18,000 total flight cycles[1]	4,800 total flight cycles or 24,000 total flight hours, whichever occurs first.	1,500 flight cycles[2]	5,200 flight cycles or 26,300 flight hours, whichever occurs first.
A310–300 LR[4] airplanes with Pratt & Whitney 4000 engines.	>18,000 total flight cycles[1]	19,500 total flight cycles or 55,500 total flight hours, whichever occurs first.	250 flight cycles[2]	5,200 flight cycles or 26,300 flight hours, whichever occurs first.

[1] As of the effective date of this AD.
[2] After the effective date of this AD.
[3] "SR" applies to airplanes with average flights less than 4 flight hours.
[4] "LR" refers to airplanes with average flights of 4 or more flight hours.

* * * * *

Issued in Renton, Washington on April 15, 2010.

Ali Bahrami,

Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 2010–9521 Filed 5–3–10; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2008–1353; Directorate Identifier 2008–NE–46–AD; Amendment 39–16279; AD 2010–09–14]

RIN 2120–AA64

Airworthiness Directives; CFM International, S.A. CFM56–5B1/P, –5B2/P, –5B3/P, –5B3/P1, –5B4/P, –5B5/P, –5B6/P, –5B7/P, –5B8/P, –5B9/P, –5B1/2P, –5B2/2P, –5B3/2P, –5B3/2P1, –5B4/2P, –5B4/P1, –5B6/2P, –5B4/2P1, and –5B9/2P Turbofan Engines

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

ACTION: Final rule.

SUMMARY: The FAA is superseding an existing airworthiness directive (AD) for CFM International, S.A. CFM56–5B series turbofan engines. That AD requires reviewing exhaust gas temperature (EGT) monitoring records to determine EGT margin deterioration, and for airplanes where both engines have greater than 80 °centigrade (C) of EGT margin deterioration, borescope-inspecting the high-pressure compressor (HPC) of both engines. That AD also requires removing from service any engine that does not pass the borescope inspection and, if both engines pass, replacing one of the engines with an engine that has 80 °C or less of EGT margin deterioration. That AD also requires continuous monitoring of EGT margin deterioration on engines in service to prevent two engines on an airplane from having greater than 80 °C of EGT margin deterioration. This AD:

- Reduces the number of engine models affected;
- Continues to monitor EGT margin deterioration;
- Lowers the EGT margin threshold from 80 °C to 75 °C;
- Removes FADEC software version 5.B.Q and earlier versions from the engine as mandatory terminating action to the continuous EGT margin deterioration monitoring, for certain engine models;
- Removes the requirement to borescope inspect; and
- Removes the requirement to replace one of the engines with an engine that has 80 °C or less deterioration of EGT margin as a corrective action..

This AD results from a reduction of the affected engine models listed in AD 2009–01–01 from 25 to 19, a reduction in the engine EGT margin deterioration threshold from 80 °C to 75 °C, the introduction of terminating action to the continuous EGT monitoring for certain engines, and a change to the removal plan for the remaining engines if the EGT margin deterioration is greater than 75 °C. We are issuing this AD to prevent HPC stalls, which could prevent continued safe flight or landing.

DATES: This AD becomes effective June 8, 2010. The Director of the Federal Register approved the incorporation by reference of certain publications listed in the regulations as of June 8, 2010.

ADDRESSES: You can get the service information identified in this AD from CFM International, S.A., Technical Customer Support, 1 Neumann Way,

Cincinnati, OH 45215; telephone (513) 552–3272; fax (513) 552–3329, Web address *http://customer.geae.com.*

The Docket Operations office is located at Docket Management Facility, U.S. Department of Transportation, 1200 New Jersey Avenue, SE., West Building Ground Floor, Room W12–140, Washington, DC 20590–0001.

FOR FURTHER INFORMATION CONTACT: Wayne Maguire, Aerospace Engineer, Engine Certification Office, FAA, Engine and Propeller Directorate, 12 New England Executive Park, Burlington, MA 01803; *e-mail: wayne.maguire@faa.gov;* telephone (781) 238–7778; fax (781) 238–7199.

SUPPLEMENTARY INFORMATION: The FAA proposed to amend 14 CFR part 39 by superseding AD 2009–01–01, Amendment 39–15779 (73 FR 80296, December 31, 2008), with a proposed AD. The proposed AD applies to CFM International, S.A. CFM56–5B series turbofan engines. We published the proposed AD in the **Federal Register** on December 21, 2009 (74 FR 67834). That action proposed to require continuous monitoring of EGT margin deterioration, removing FADEC software version 5.B.Q and earlier versions from the engine as mandatory terminating action to the repetitive recalculating and EGT monitoring for certain engine models, and removing other certain engine models from service if the EGT margin deterioration is greater than 75 °C.

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 AD, the regulatory evaluation, any comments received, and other information. The street address for the Docket Operations office (telephone (800) 647–5527) is provided in the **ADDRESSES** section. Comments will be available in the AD docket shortly after receipt.

Comments

We provided the public the opportunity to participate in the development of this AD. We have considered the comments received.

Request To Clarify Engine Replacement Requirements

One commenter, CFM International, S.A., requests that we change the proposed AD to state, in part: "For airplanes where both engines indicate more than 75 °C EGT margin deterioration, within 150 CIS either remove one engine and replace it with an engine indicating less than 75 °C EGT margin."

We do not agree. When both installed engines have greater than 75 °C EGT margin deterioration, the proposed AD no longer allows replacing one of the engines with an engine that has 75 °C or less of EGT margin deterioration as a corrective action. We do not agree with the commenter's requested change, but we see an opportunity to clarify that the terminating action for this AD for certain engine models, is to remove FADEC software version 5.B.Q and earlier. For other engine models, the corrective action is to remove those engines from service that have greater than 75 °C of EGT margin deterioration. We added this clarification to the Summary of this AD. We kept the same engine replacement requirements in this AD, as those in the proposed AD.

Request To Reference the Latest Version of Software

CFM International, S.A. requests that we reference the latest version of software to be installed, which is version 5.B.R.

We do not agree. We intentionally referenced the software versions needing to be removed but not the version to be installed, as that version could become superseded in the future. We did not change the AD.

Request To Correct the Service Information Reference

CFM International, S.A. requests that we correct the service information reference in paragraph (k) to read "CFM International, S.A. Alert Service Bulletin No. CFM56–5B S/B 72–A0722, Revision 1, dated March 20, 2009."

We agree. We changed the AD to reflect the new service information reference throughout the compliance section.

Request To Indent Sub-Paragraphs

CFM International, S.A. requests that we indent the proposed AD numbered sub-paragraphs, as this further distinguishes the unique terminating actions for each group of identified CFM56 engine models.

We do not agree. Rulemaking procedures require that we do not indent sub-paragraphs. We did not change the AD.

Request To Alleviate

Two private commenters request that the prohibition against using engine control software version 5.B.Q or earlier versions, be alleviated for the CFM56–5B/2P (dual annular combustor) family of engine models. One other commenter requests that we move the contents of paragraph (h) to paragraph (f). The commenters state that the currently available engine control software version for those engines is earlier than version 5.B.Q.

We partially agree. We clarified paragraph (h) to apply to only those engine models where terminating action includes engine control software. We also added a second prohibition paragraph to apply to only those engines listed in paragraph (g). However, we did not move the contents of paragraph (h) to paragraph (f).

Conclusion

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

Costs of Compliance

We estimate that this AD will affect 397 engines installed on airplanes of U.S. registry. We also estimate that it will take about one work-hour to install FADEC software. The average labor rate is $80 per work-hour. There are no required parts costs. Based on these figures, we estimate the total cost of the AD to U.S. operators to be $31,760.

Authority for This Rulemaking

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

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

Regulatory Findings

We have determined that this AD will not have federalism implications under Executive Order 13132. This AD will not have a substantial direct effect on the States, on the relationship between the national government and the States,

or on the distribution of power and responsibilities among the various levels of government.

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

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

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

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

We prepared a summary of the costs to comply with this AD and placed it in the AD Docket. You may get a copy of this summary at the address listed under **ADDRESSES.**

List of Subjects in 14 CFR Part 39

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

Adoption of the Amendment

■ Accordingly, under the authority delegated to me by the Administrator, the Federal Aviation Administration amends 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 39–15779 (73 FR 80296, December 31, 2008) and by adding a new airworthiness directive, Amendment 39–16279, to read as follows:

2010–09–14 CFM International, S.A.: Amendment 39–16279. Docket No. FAA–2008–1353; Directorate Identifier 2008–NE–46–AD.

Effective Date

(a) This airworthiness directive (AD) becomes effective June 8, 2010.

Affected ADs

(b) This AD supersedes AD 2009–01–01, Amendment 39–15779.

Applicability

(c) This AD applies to CFM International, S.A. CFM56–5B1/P, –5B2/P, –5B3/P, –5B3/P1, –5B4/P, –5B5/P, –5B6/P, –5B7/P, –5B8/P, –5B9/P, –5B1/2P, –5B2/2P, –5B3/2P, –5B3/2P1, –5B4/2P, –5B4/P1, –5B6/2P, –5B4/2P1, and –5B9/2P turbofan engines. These engines are installed on, but not limited to, Airbus A318, A319, A320, and A321 series airplanes.

Unsafe Condition

(d) This AD results from a reduction of the affected engine models listed in AD 2009–01–01 from 25 to 19, a reduction in the engine exhaust gas temperature (EGT) margin deterioration threshold from 80 °C to 75 °C, the introduction of terminating action to the continuous EGT monitoring for certain engines, and a change to the removal plan for the remaining engines if the EGT margin deterioration is greater than 75 °C. We are issuing this AD to prevent high-pressure compressor stalls, which could prevent continued safe flight or landing.

Compliance

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

(f) On the effective date of this AD, and at any time after the effective date of this AD, for CFM International, S.A. CFM56–5B1/P, –5B2/P, –5B3/P, –5B3/P1, –5B4/P, –5B4/P1, –5B5/P, –5B6/P, –5B7/P, –5B8/P and –5B9/P turbofan engines:

(1) Monitor and calculate engine EGT margin deterioration. Use paragraphs 3.A.(2) and 3.A.(3) of the Accomplishment Instructions and Appendix A of CFM International, S.A. Alert Service Bulletin (ASB) No. CFM56–5B S/B 72–A0722, Revision 1, dated March 20, 2009, to do the monitoring and calculating.

(2) As mandatory terminating action to the repetitive recalculating and monitoring of EGT margin deterioration, remove FADEC software version 5.B.Q and earlier versions from engines that have greater than 75 °C of EGT margin deterioration within 150 additional cycles-in-service (CIS).

(3) As mandatory terminating action to the repetitive recalculating and monitoring of EGT margin deterioration, remove FADEC software version 5.B.Q and earlier versions from engines that have less than or equal to 75 °C of EGT margin deterioration within 900 additional CIS.

(g) On the effective date of this AD, and at any time after the effective date of this AD, for CFM International, S.A. CFM56–5B1/2P, –5B2/2P, –5B3/2P, –5B3/2P1, –5B4/2P, –5B4/2P1, –5B6/2P and –5B9/2P turbofan engines:

(1) Monitor and calculate engine EGT margin deterioration. Use paragraphs 3.A.(2) and 3.A.(3) of the Accomplishment Instructions and Appendix A of CFM International, S.A. ASB No. CFM56–5B S/B 72–A0722, Revision 1, dated March 20, 2009, to do the monitoring and calculating.

(2) Remove engines from service that have greater than 75 °C of EGT margin deterioration within 150 additional CIS.

Installation Prohibitions

(h) For engines listed in paragraph (f) of this AD, after the effective date of this AD, do not install FADEC software version 5.B.Q or any earlier software versions.

(i) For engines listed in paragraph (g) of this AD, after the effective date of this AD, do not install an engine that has greater than 75 °C of EGT margin deterioration.

Interim Actions

(j) These actions are interim actions and we anticipate further rulemaking actions in the future, including further action to address the remaining engines in service that are above 75 °C deterioration of EGT margin.

Alternative Methods of Compliance (AMOCs)

(k) The Manager, Engine Certification Office, FAA, has the authority to approve AMOCs for this AD, if requested using the procedures found in 14 CFR 39.19.

Related Information

(l) Refer to European Aviation Safety Agency Airworthiness Directive 2009–0088, Revision 1, dated April 28, 2009, for related information.

(m) Contact Wayne Maguire, Aerospace Engineer, Engine Certification Office, FAA, Engine and Propeller Directorate, 12 New England Executive Park, Burlington, MA 01803; *e-mail: wayne.maguire@faa.gov;* telephone (781) 238–7778; fax (781) 238–7199, for more information about this AD.

Material Incorporated by Reference

(n) You must use CFM International, S. A. Alert Service Bulletin No. CFM56–5B S/B 72–A0722, Revision 1, dated March 20, 2009, to perform the EGT calculating and monitoring required by this AD. The Director of the Federal Register approved the incorporation by reference of this service bulletin in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Contact CFM International, S.A., Technical Customer Support, 1 Neumann Way, Cincinnati, OH 45215; telephone (513) 552–3272; fax (513) 552–3329, Web address *http://customer.geae.com*, for a copy of this service information. You may review copies at the FAA, New England Region, 12 New England Executive Park, Burlington, MA; or at the National Archives and Records Administration (NARA). For information on the availability of this material at NARA, call 202–741–6030, or go to: *http://www.archives.gov/federal-register/cfr/ibr-locations.html.*

Issued in Burlington, Massachusetts, on April 23, 2010.

Peter A. White,

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

[FR Doc. 2010–10177 Filed 5–3–10; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2010–0463; Directorate Identifier 2010–CE–021–AD; Amendment 39–16280; AD 2010–10–01]

RIN 2120–AA64

Airworthiness Directives; GA 8 Airvan (Pty) Ltd Models GA8 and GA8–TC320 Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule; request for comments.

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

Inspection of a high time aircraft has revealed cracks in the Horizontal Stabiliser rear spar splice plate and inboard main ribs around the area of the Horizontal Stabiliser rear pivot attachment. Additionally, failure of some attach bolts in service may be due to improper assembly.

This amendment is issued to clarify the model applicability.

The previous amendment was issued because the requirement document now contains an inspection for cracking in horizontal stabilisers which have load transferring fittings installed.

This AD requires actions that are intended to address the unsafe condition described in the MCAI.

DATES: This AD becomes effective May 10, 2010.

As of March 2, 2009 (74 FR 8159; February 24, 2009), the Director of the Federal Register approved the incorporation by reference of Gippsland Aeronautics Mandatory Service Bulletin SB–GA8–2002–02, Issue 5, dated November 13, 2008, listed in this AD.

We must receive comments on this AD by June 18, 2010.

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

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

Examining the AD Docket

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

FOR FURTHER INFORMATION CONTACT: Doug Rudolph, Aerospace Engineer, 901 Locust, Room 301, Kansas City, Missouri 64106; telephone: (816) 329–4059; fax: (816) 329–4090.

SUPPLEMENTARY INFORMATION:

Discussion

On February 17, 2009, we issued AD 2009–05–01, Amendment 39–15825 (74 FR 8159; February 24, 2009). That AD required actions intended to address an unsafe condition on Model GA8 airplanes.

Since we issued AD 2009–05–01, the Civil Aviation Safety Authority (CASA), which is the aviation authority for Australia, has issued AD/GA8/5, Amdt 3, dated April 9, 2010 (referred to after this as "the MCAI"), to correct an unsafe condition for the specified products. The Australian AD clarifies the applicability of the AD to include Model GA8–TC320 airplanes. Model GA8–TC320 airplanes have the same tailplane configuration as Model GA8 airplanes. The MCAI states:

Inspection of a high time aircraft has revealed cracks in the Horizontal Stabiliser rear spar splice plate and inboard main ribs around the area of the Horizontal Stabiliser rear pivot attachment. Additionally, failure of some attach bolts in service may be due to improper assembly.

This amendment is issued to clarify the model applicability.

The previous amendment was issued because the requirement document now contains an inspection for cracking in horizontal stabilisers which have load transferring fittings installed.

You may obtain further information by examining the MCAI in the AD docket.

Relevant Service Information

Gippsland Aeronautics has issued Mandatory Service Bulletin SB–GA8–2002–02, Issue 5, dated November 13, 2008. The actions described in this service information are intended to correct the unsafe condition identified in the MCAI.

FAA's Determination and Requirements of the 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 this State of Design Authority, they have notified us of the unsafe condition described in the MCAI and service information referenced above. We are issuing this AD because we evaluated all information provided by the State of Design Authority and determined the 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 have also required different actions in this AD from those in the MCAI in order to follow FAA policies. Any such differences are described in a separate paragraph of the AD. These requirements take precedence over those copied from the MCAI.

FAA's Determination of the Effective Date

An unsafe condition exists that requires the immediate adoption of this AD. The FAA has found that the risk to the flying public justifies waiving notice and comment prior to adoption of this rule because of potential cracking of the horizontal stabilizer structure, which could lead to failure of the tailplane assembly. Therefore, we determined that notice and opportunity for public comment before issuing this AD are impracticable and that good cause exists for making this amendment effective in fewer than 30 days.

Comments Invited

This AD is a final rule that involves requirements affecting flight safety, and we did not precede it by notice and opportunity for public comment. We invite you to send any written relevant data, views, or arguments about this AD.

Send your comments to an address listed under the **ADDRESSES** section. Include "Docket No. FAA–2010–0463; Directorate Identifier 2010–CE–021–AD" at the beginning of your comments. We specifically invite comments on the overall regulatory, economic, environmental, and energy aspects of this AD. We will consider all comments received by the closing date and may amend this AD because of those comments.

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

Authority for This Rulemaking

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

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

Regulatory Findings

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

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

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

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

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

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

List of Subjects in 14 CFR Part 39

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

Adoption of the Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

■ 2. The FAA amends § 39.13 by removing Amendment 39–15825 (74 FR 8159; February 24, 2009), and adding the following new AD:

2010–10–01 GA 8 Airvan (Pty) Ltd: Amendment 39–16280; Docket No. FAA–2010–0463; Directorate Identifier 2010–CE–021–AD.

Effective Date

(a) This airworthiness directive (AD) becomes effective May 10, 2010.

Affected ADs

(b) This AD supersedes AD 2009–05–01, Amendment 39–15825.

Applicability

(c) This AD applies to the following model and serial number airplanes, certificated in any category:

(i) *Group 1 Airplanes* (retains the actions and applicability from AD 2009–05–01): Model GA8 airplanes, serial numbers GA8–00–004 and up; and

(ii) *Group 2 Airplanes:* Model GA8–TC320 airplanes, all serial numbers.

Subject

(d) Air Transport Association of America (ATA) Code 55: Stabilizers.

Reason

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

Inspection of a high time aircraft has revealed cracks in the Horizontal Stabiliser rear spar splice plate and inboard main ribs around the area of the Horizontal Stabiliser rear pivot attachment. Additionally, failure of some attach bolts in service may be due to improper assembly.

This amendment is issued to clarify the model applicability.

The previous amendment was issued because the requirement document now contains an inspection for cracking in horizontal stabilisers which have load transferring fittings installed.

Actions and Compliance

(f) *For Group 1 Airplanes:* Unless already done, do the following actions:

(1) Within the next 10 hours time-in-service (TIS) after March 2, 2009 (the effective date of AD 2009–05–01):

(i) For all aircraft not incorporating computer numeric control (CNC) machined elevator hinges, inspect and repair the left and right horizontal stabilizer rear pivot attachment installation following instruction "3. Rear Pivot Attachment Inspection," of Gippsland Aeronautics Mandatory Service Bulletin SB–GA8–2002–02, Issue 5, dated November 13, 2008; and,

(ii) For all aircraft, inspect the left and right rear attach bolt mating surfaces for damage or an out of square condition and replace the left and right rear attach bolts following instruction "5. Rear Attach Bolt Replacement," of Gippsland Aeronautics Mandatory Service Bulletin SB–GA8–2002–02, Issue 5, dated November 13, 2008. Reworking the mating surfaces by spotfacing is no longer acceptable. If the mating surfaces are damaged, not square, or were previously reworked by spotfacing the surface, replace the parts as specified in Gippsland Aeronautics Mandatory Service Bulletin SB–GA8–2002–02, Issue 5, dated November 13, 2008.

(2) Within the next 10 hours TIS after March 2, 2009 (the effective date of AD 2009–05–01) and repetitively thereafter at intervals not to exceed 100 hours TIS or 12 months, whichever occurs first, for all aircraft:

(i) Inspect the horizontal stabilizer externally following instruction "2. External Inspection (Lower flange, Stabilizer rear spar)," of Gippsland Aeronautics Mandatory Service Bulletin SB–GA8–2002–02, Issue 5, dated November 13, 2008; and

(ii) Inspect the horizontal stabilizer internally following instruction "4. Internal Inspection," of Gippsland Aeronautics Mandatory Service Bulletin SB–GA8–2002–02, Issue 5, dated November 13, 2008.

(3) If during the inspection required by paragraph (f)(2) of this AD any excessive local deflection or movement of the lower skin surrounding the lower pivot attachment, cracking, or working (loose) rivet is found, before further flight, obtain an FAA-approved repair scheme from the manufacturer and incorporate this repair scheme. Due to FAA policy, the repair scheme for crack damage must include an immediate repair of the crack, not a repetitive inspection. Continued operational flight with un-repaired crack damage is not permitted.

(g) *For Group 2 Airplanes:* Unless already done, do the following actions:

(1) Within the next 10 hours TIS after May 10, 2010 (the effective date of this AD):

(i) For all aircraft not incorporating computer numeric control (CNC) machined elevator hinges, inspect and repair the left and right horizontal stabilizer rear pivot attachment installation following instruction "3. Rear Pivot Attachment Inspection," of Gippsland Aeronautics Mandatory Service Bulletin SB–GA8–2002–02, Issue 5, dated November 13, 2008; and,

(ii) For all aircraft, inspect the left and right rear attach bolt mating surfaces for damage or an out of square condition and replace the

left and right rear attach bolts following instruction "5. Rear Attach Bolt Replacement," of Gippsland Aeronautics Mandatory Service Bulletin SB–GA8–2002–02, Issue 5, dated November 13, 2008. Reworking the mating surfaces by spotfacing is no longer acceptable. If the mating surfaces are damaged, not square, or were previously reworked by spotfacing the surface, before further flight, replace the parts as specified in Gippsland Aeronautics Mandatory Service Bulletin SB–GA8–2002–02, Issue 5, dated November 13, 2008.

(2) Within the next 10 hours TIS after May 10, 2010 (the effective date of this AD) and repetitively thereafter at intervals not to exceed 100 hours TIS or 12 months, whichever occurs first, for all aircraft:

(i) Inspect the horizontal stabilizer externally following instruction "2. External Inspection (Lower flange, Stabilizer rear spar)," of Gippsland Aeronautics Mandatory Service Bulletin SB–GA8–2002–02, Issue 5, dated November 13, 2008; and

(ii) Inspect the horizontal stabilizer internally following instruction "4. Internal Inspection," of Gippsland Aeronautics Mandatory Service Bulletin SB–GA8–2002–02, Issue 5, dated November 13, 2008.

(3) If during the inspection required by paragraph (g)(2) of this AD any excessive local deflection or movement of the lower skin surrounding the lower pivot attachment, cracking, or working (loose) rivet is found, before further flight, obtain an FAA-approved repair scheme from the manufacturer and incorporate this repair scheme. Due to FAA policy, the repair scheme for crack damage must include an immediate repair of the crack, not a repetitive inspection. Continued operational flight with un-repaired crack damage is not permitted.

FAA AD Differences

Note: This AD differs from the MCAI and/or service information as follows:

(1) "Requirement: 1. Daily Inspection (Stabilizer attach bolt)" of the service information requires a daily inspection of the stabilizer attach bolt. The daily inspection is not a requirement of this AD. Instead of the daily inspection, we require you to perform, within 10 hours TIS, "Requirement 3. Rear Pivot Attachment Inspection" and "Requirement 5. Rear Attachment Bolt Replacement" of the service information. Compliance with requirement 3. and 5. is a terminating action for the daily inspection, and we are requiring these within 10 hours TIS after the effective date of this AD.

(2) "Requirement: 2. External Inspection (Lower flange, Stabilizer rear spar)" of the service information does not specify any action if excessive local deflection or movement of lower skin, cracking, or working (loose) rivet is found. We require obtaining and incorporating an FAA-approved repair scheme from the manufacturer before further flight.

(3) The MCAI does not state if further flight with known cracks is allowed. FAA policy is to not allow further flight with known cracks in critical structure. We require that if any cracks are found when accomplishing the inspection required in paragraphs (f)(2) and (g)(2) of this AD, you must repair the cracks before further flight.

(4) The service information does not state that parts with spotfaced nut and bolt mating surfaces require replacement. However, the service information no longer allows reworking of the mating surfaces by spotfacing. We require that if any nut and bolt surfaces were previously reworked by spotfacing, you must replace the parts.

(5) The service information has not been revised to include Model GA8–TC320 airplanes; however, the procedures still apply to this model, and actions must be done following the service information.

Other FAA AD Provisions

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

(1) Alternative Methods of Compliance (AMOCs): The Manager, Standards 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: Doug Rudolph, Aerospace Engineer, FAA, Small Airplane Directorate, 901 Locust, Room 301, Kansas City, Missouri 64106; telephone: (816) 329–4059; fax: (816) 329–4090. Before using any approved AMOC on any airplane to which the AMOC applies, notify your appropriate principal inspector (PI) in the FAA Flight Standards District Office (FSDO), or lacking a PI, your local FSDO.

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

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

Related Information

(i) Refer to MCAI Civil Aviation Safety Authority AD No. AD/GA8/5, Amdt 3, dated April 9, 2010; and Gippsland Aeronautics Mandatory Service Bulletin SB–GA8–2002–02, Issue 5, dated November 13, 2008, for related information.

Material Incorporated by Reference

(j) You must use Gippsland Aeronautics Mandatory Service Bulletin SB–GA8–2002–02, Issue 5, dated November 13, 2008, to do the actions required by this AD, unless the AD specifies otherwise.

(1) On March 2, 2009 (74 FR 8159; February 24, 2009), the Director of the Federal Register previously approved the incorporation by reference of Gippsland Aeronautics Mandatory Service Bulletin SB–GA8–2002–02, Issue 5, dated November 13, 2008.

(2) For service information identified in this AD, contact Gippsland Aeronautics, Attn: Technical Services, P.O. Box 881, Morwell Victoria 3840, Australia; telephone: + 61 03 5172 1200; fax: +61 03 5172 1201; Internet: *http://www.gippsaero.com.*

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

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

Issued in Kansas City, Missouri on April 20, 2010.

Steven W. Thompson,

Acting Manager, Small Airplane Directorate, Aircraft Certification Service.

[FR Doc. 2010–10220 Filed 5–3–10; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 2000–NM–418–AD; Amendment 39–12964; AD 2002–23–20]

RIN 2120–AA64

Airworthiness Directives; DASSAULT AVIATION Model FALCON 900EX and MYSTERE–FALCON 900 Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule; correction.

SUMMARY: This document corrects a typographical error that appeared in airworthiness directive (AD) 2002–23–20 that was published in the **Federal Register** on November 29, 2002 (67 FR 71098). The typographical error resulted in an incorrect part number. This AD is applicable to Model FALCON 900EX and MYSTERE–FALCON 900 airplanes. This AD requires repetitive operational tests of the flap asymmetry detection system to verify proper functioning, and repair if necessary; repetitive replacement of the inboard flap jackscrews with new or reconditioned jackscrews; and repetitive measurement of the screw/nut play of the jackscrews on the inboard and outboard flaps to detect discrepancies, and corrective action if necessary. This AD also requires revision of the Airplane Flight Manual.

DATES: This correction is effective May 4, 2010. The effective date of AD 2002–23–20 remains January 3, 2003.

FOR FURTHER INFORMATION CONTACT: Tom Rodriguez, Aerospace Engineer,

International Branch, ANM–116, Transport Airplane Directorate, FAA, 1601 Lind Avenue, SW., Renton, Washington 98057–3356; telephone (425) 227–1137; fax (425) 227–1149.

SUPPLEMENTARY INFORMATION: AD 2002–23–20, amendment 39–12964, applicable to Model FALCON 900EX and MYSTERE–FALCON 900 airplanes, was published in the **Federal Register** on November 29, 2002 (67 FR 71098). That AD requires repetitive operational tests of the flap asymmetry detection system to verify proper functioning, and repair if necessary; repetitive replacement of the inboard flap jackscrews with new or reconditioned jackscrews; and repetitive measurement of the screw/nut play of the jackscrews on the inboard and outboard flaps to detect discrepancies, and corrective action if necessary. That AD also requires revision of the Airplane Flight Manual.

As published, paragraph (e)(1) of the AD specifies in error jackscrew part number 5818–1 Amdt A. P/N 5818–1 Amdt A. does not exist. The correct part number is 5318–1 Amdt A.

Since no other part of the regulatory information has been changed, the final rule is not being republished in the **Federal Register.**

The effective date of this AD remains January 3, 2003.

§ 39.13 [Corrected]

■ On page 71101, in the first column, paragraph (e)(1) of AD 2002–23–20 is corrected to read as follows:

* * * * *

(1) The jackscrew has been reconditioned and reidentified as P/N 5318–1 Amdt A, in accordance with Dassault Service Bulletin AVIAC 5318–27–01, dated September 16, 1999.

* * * * *

Issued in Renton, Washington, on April 22, 2010.

Jeffrey E. Duven,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 2010–9943 Filed 5–3–10; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. FAA–2009–1155; Airspace Docket No. 09–ACE–14]

Amendment of Class E Airspace; Mapleton, IA

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This action amends Class E airspace for Mapleton, IA, adding additional controlled airspace to accommodate Area Navigation (RNAV) Standard Instrument Approach Procedures (SIAPs) at James G. Whiting Memorial Field Airport, Mapleton, IA. The FAA is taking this action to enhance the safety and management of Instrument Flight Rule (IFR) operations at the airport.

DATES: Effective date 0901 UTC, July 29, 2010. 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 February 10, 2010, the FAA published in the **Federal Register** a notice of proposed rulemaking to amend Class E airspace for Mapleton, IA, reconfiguring controlled airspace at James G. Whiting Memorial Field Airport (75 FR 6595) Docket No. FAA–2009–1155. 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 7400.9T signed August 27, 2009, and effective September 15, 2009, 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.

The Rule

This action amends Title 14 Code of Federal Regulations (14 CFR) part 71 by amending Class E airspace for the Mapleton, IA area, adding additional controlled airspace extending upward from 700 feet above the surface to accommodate SIAPs at James G. Whiting Memorial Field Airport. This action is necessary for the safety and management of IFR operations at the airport.

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

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

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 7400.9T, Airspace Designations and Reporting Points, signed August 27, 2009, and effective September 15, 2009, is amended as follows:

* * * * *

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

* * * * *

ACE IA E5 Mapleton, IA [Amended]

Mapleton, James G. Whiting Memorial Field Airport, IA
(Lat. 42°10′42″ N., long. 95°47′37″ W.)
Mapleton NDB
(Lat. 42°10′50″ N., long. 95°47′41″ W.)

That airspace extending upward from 700 feet above the surface within a 6.3-mile radius of James G. Whiting Memorial Field Airport and within 3.1 miles each side of the 030° bearing from the Mapleton NDB extending from the 6.3-mile radius to 10 miles northeast of the airport, and within 4 miles each side of the 204° bearing from the airport extending from the 6.3-mile radius to 10.3 miles southwest of the airport.

Issued in Fort Worth, Texas, on April 23, 2010.

Anthony D. Roetzel,

Manager, Operations Support Group, ATO Central Service Center.

[FR Doc. 2010–10321 Filed 5–3–10; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. FAA–2009–1153; Airspace Docket No. 09–ACE–13]

Amendment of Class E Airspace; Emmetsburg, IA

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This action amends Class E airspace for Emmetsburg, IA, adding additional controlled airspace to accommodate Area Navigation (RNAV) Standard Instrument Approach Procedures (SIAPs) at Emmetsburg Municipal Airport, Emmetsburg, IA. The FAA is taking this action to enhance the safety and management of Instrument Flight Rule (IFR) operations at the airport.

DATES: Effective date 0901 UTC, July 29, 2010. 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 February 10, 2010, the FAA published in the **Federal Register** a notice of proposed rulemaking to amend Class E airspace for Emmetsburg, IA, reconfiguring controlled airspace at Emmetsburg Municipal Airport (75 FR 6592) Docket No. FAA–2009–1153. 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 7400.9T signed August 27, 2009, and effective September 15, 2009, 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.

The Rule

This action amends Title 14 Code of Federal Regulations (14 CFR) Part 71 by amending Class E airspace for the Emmetsburg, IA area, adding additional controlled airspace extending upward from 700 feet above the surface to accommodate SIAPs at Emmetsburg Municipal Airport. This action is necessary for the safety and management of IFR operations at the airport.

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. Therefore, this regulation: (1) Is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule, when promulgated, will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. The FAA's authority to issue rules regarding aviation safety is found in Title 49 of the U.S. Code. Subtitle 1, section 106, describes the authority of the FAA Administrator. Subtitle VII, Aviation Programs, describes in more detail the scope of the agency's authority. This rulemaking is promulgated under the authority described in subtitle VII, part A, subpart I, section 40103. Under that section, the FAA is charged with prescribing regulations to assign the use of airspace necessary to ensure the safety of aircraft and the efficient use of airspace. This regulation is within the scope of that authority as it amends controlled airspace at Emmetsburg Municipal Airport, Emmetsburg, IA.

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 7400.9T, Airspace Designations and Reporting Points, signed August 27, 2009, and effective September 15, 2009, is amended as follows:

* * * * *

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

* * * * *

ACE IA E5 Emmetsburg, IA [Amended]

Emmetsburg Municipal Airport, IA
(Lat. 43°06′07″ N., long. 94°42′17″ W.)
Emmetsburg NDB
(Lat. 43°06′04″ N., long. 94°42″26″ W.)

That airspace extending upward from 700 feet above the surface within a 6.5-mile radius of Emmetsburg Municipal Airport and within 2.6 miles each side of the 128° bearing from the Emmetsburg NDB extending from the 6.5-mile radius to 7.4 miles southeast of the airport, and within 3.8 miles each side of the 316° bearing from the airport extending from the 6.5-mile radius to 10.3 miles northwest of the airport.

Issued in Fort Worth, Texas, on April 23, 2010.

Anthony D. Roetzel,

Manager, Operations Support Group, ATO Central Service Center.

[FR Doc. 2010–10325 Filed 5–3–10; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

24 CFR Part 202

[Docket No. FR 5356–C–03]

RIN 2502–AI81

Federal Housing Administration: Continuation of FHA Reform—Strengthening Risk Management Through Responsible FHA-Approved Lenders; Correction

AGENCY: Office of General Counsel, HUD.

ACTION: Final rule; correction.

SUMMARY: HUD is correcting a final rule that appeared in the **Federal Register** of April 20, 2010 (75 FR 20718). This final rule adopted changes pertaining to the approval of mortgage lenders by the Federal Housing Administration (FHA) that are designed to strengthen FHA by improving its management of risk. Although the preamble to the final rule correctly provides that the revised net worth requirements will take effect for applicants to the FHA programs on May 20, 2010, the corresponding regulatory text incorrectly provides that the requirements will take effect on June 21, 2010. This document makes the necessary correction.

DATES: *Effective Date:* May 20, 2010.

FOR FURTHER INFORMATION CONTACT: Camille E. Acevedo, Associate General Counsel for Legislation and Regulations, Office of General Counsel, Department of Housing and Urban Development, 451 7th Street, SW., Room 10276, Washington, DC 20410–8000; telephone number 202–708–1793 (this is not a toll-free number). Persons with hearing or speech impairments may access this number through TTY by calling the toll-free Federal Information Relay Service at 800–877–8339.

SUPPLEMENTARY INFORMATION: In FR Doc. 2010–8837 appearing on page 20718 in the **Federal Register** of Tuesday, April 20, 2010, the following correction is made:

§ 202.5 [Corrected]

■ 1. On page 20733, in the third column, in § 202.5 General approval standards, in paragraph (n)(2)(i), "Effective on June 21, 2010, applicants shall comply with the net worth requirements set forth in paragraphs (n)(2)(iii) of this section." is corrected to read "Effective on May 20, 2010, applicants shall comply with the net worth requirements set forth in paragraph (n)(2)(iii) of this section."

Dated: April 29, 2010.

Camille E. Acevedo,

Associate General Counsel for Legislation and Regulations.

[FR Doc. 2010–10424 Filed 5–3–10; 8:45 am]

BILLING CODE 4210–67–P

DEPARTMENT OF THE INTERIOR

Minerals Management Service

30 CFR Part 250

[Docket ID: MMS–2007–OMM–0068]

RIN 1010–AD47

Annular Casing Pressure Management for Offshore Wells

AGENCY: Minerals Management Service (MMS), Interior.

ACTION: Final rule.

SUMMARY: This final rule will establish regulations to address sustained casing pressure in oil and gas wells completed in the Outer Continental Shelf. Sustained casing pressure is a problem that, if left untreated, could cause serious harm to human life and the environment. The final rule will establish criteria for monitoring and testing of wells with sustained casing pressure, and will also incorporate the American Petroleum Institute's Recommended Practice for managing annular casing pressure. New regulations are needed because the current regulations do not adequately address the requirements for wells that have sustained casing pressure. This rule will promote human safety and environmental protection, and require Outer Continental Shelf lessees to follow best industry practices for wells with sustained casing pressure.

DATES: *Effective Date:* This rule becomes effective on June 3, 2010. The incorporation by reference of the publication listed in the regulation is approved by the Director of the Federal Register as of June 3, 2010.

FOR FURTHER INFORMATION CONTACT: For comments or questions on procedural issues, contact Kirk Malstrom, Office of Offshore Regulatory Programs, Regulations and Standards Branch, 703–787–1751. For questions on technical issues, contact Russell Hoshman, Technical Assessment and Operations Support Section, Gulf of Mexico Outer Continental Shelf Region, 504–736–2627.

SUPPLEMENTARY INFORMATION: On July 31, 2009, MMS published the proposed rule Annular Casing Pressure Management for Offshore Wells (74 FR 38147). The comment period for the proposed rule was open for 60 days. During the comment period, MMS received three comments. Two comments were in favor of this rule and the remaining comment was not associated with this rulemaking.

There are no changes between the proposed and final rule language. There are also no changes to the procedural matters discussion regarding information collection requirements, cost estimates, benefits, or impacts to small entities.

Public Comments: The MMS received three comments on the proposed rule 1010–AD47 Annular Casing Pressure Management for Offshore Wells. The comments received are summarized as follows:

- British Petroleum (BP)—BP, a large oil and gas company, expressed the importance of this rule and how they have been involved with MMS and industry to develop the industry standard.
- Offshore Operators Committee (OOC)—OOC, a large oil and gas industry organization, stated their support of this rulemaking and their involvement with the industry standard.
- Private citizen—This comment is not associated with this rulemaking.

The two applicable comments received on the proposed rule are fully supportive of this rulemaking.

Background: Sustained casing pressure (SCP) is pressure between the casing and the well's tubing, or between strings of casing, that rebuilds after being bled down. The SCP represents an ongoing safety hazard and can cause serious or immediate harm or damage to human life, the marine and coastal environment, and property. The oil and gas industry in the Gulf of Mexico (GOM) has suffered serious accidents as a result of high SCP, and the lack of proper control and monitoring of these pressures. With over 8,000 affected wells in the GOM with SCP in at least one annulus, immediate elimination of all SCP has proved to be impractical and exceedingly costly. The MMS has sought to identify and eliminate SCP in cases that represent a clear hazard to the safety of personnel or the environment, and establish a monitoring system for the rest, all the while working towards elimination of the problem.

The MMS is currently addressing the issue of casing pressure in a 1994 Letter

to Lessees (LTL) and a 2009 Notice to Lessees (NTL), 2009 G–22, August 3, 2009. Once the final rulemaking becomes effective, both the 1994 LTL and the 2009 NTL on casing pressure will be rescinded.

Included in this final rule is the incorporation of a jointly developed industry standard that addresses management of casing pressure. The American Petroleum Institute (API), industry, and MMS have worked collectively to produce API Recommended Practice (RP) 90. As explained in API RP 90, Section 3, Annular Casing Pressure Management Program, this RP is based on establishing an annular casing pressure management program that filters out non-problematic wells that present an acceptable level of risk, thus allowing for a more focused effort on wells that are problematic. The management program, as outlined in API RP 90, includes monitoring, diagnostic testing, determining maximum allowable wellhead operating pressure (MAWOP) for each annulus, documentation, and risk assessment considerations.

For further background information on this rulemaking, refer to the published proposed rule 1010–AD47 Annular Casing Pressure Management for Offshore Wells (74 FR 38147, July 31, 2009).

Procedural Matters

Regulatory Planning and Review (Executive Order (E.O.) 12866)

This final rule is not a significant rule as determined by the Office of Management and Budget (OMB) and is not subject to review under E.O. 12866.

(1) This final rule will not have an annual effect of $100 million or more on the economy. It will not adversely affect in a material way the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or tribal governments or communities. There will be some costs associated with this rulemaking, mostly for diagnostic testing, MAWOP calculations, and reporting to MMS. Taking into account paperwork burden requirements, diagnostic testing, and MAWOP calculations, the costs associated with this rulemaking will be approximately $5 million industry-wide. The final rule will not require any new equipment to be installed and diagnostic testing is currently being done throughout industry and is not new.

(2) This final rule will not create a serious inconsistency or otherwise interfere with an action taken or planned by another agency.

(3) This final rule will not alter the budgetary effects of entitlements, grants, user fees, or loan programs or the rights or obligations of their recipients. The changes in the final rule are strictly planning requirements for management of annular casing pressure in offshore wells.

(4) This final rule will not raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in E.O. 12866.

Regulatory Flexibility Act

The Department of the Interior certifies that this final rule will not have a significant economic effect on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*).

This rulemaking will affect lessees and operators of leases and pipeline right-of-way holders in the OCS. This could include about 130 active Federal oil and gas lessees. Small entities that operate under this rule are coded under the Small Business Administration's North American Industry Classification System (NAICS) codes 211111, Crude Petroleum and Natural Gas Extraction, and 213111, Drilling Oil and Gas Wells. For these NAICS code classifications, a small company is one with fewer than 500 employees. Based on these criteria, an estimated 70 percent (91) of these companies are considered small. This final rule, therefore, will affect a substantial number of small entities. This rule will affect every well in the OCS, and every operator both large and small will have the same criteria per well regardless of company size.

Nonetheless, this rulemaking will not have a significant economic effect on a substantial number of small entities because management of annular casing pressure will be a moderate cost, mostly attributable to diagnostic testing. Taking into account recordkeeping, diagnostic testing, and MAWOP calculations, the costs associated with this rulemaking will be approximately $5 million industry-wide. In comparison, to remediate the approximate 8,000 wells with SCP (approximately $250,000 per well) would cost approximately $2 billion. The costs that are associated with this rulemaking will be minor when compared to SCP remediation costs and will not impede a company of any size.

Your comments are important. The Small Business and Agriculture Regulatory Enforcement Ombudsman and 10 Regional Fairness Boards were established to receive comments from small businesses about Federal agency enforcement actions. The Ombudsman will annually evaluate the enforcement activities and rate each agency's responsiveness to small business. If you wish to comment on the actions of MMS, call 1–888–734–3247. You may comment to the Small Business Administration without fear of retaliation. Allegations of discrimination/retaliation filed with the Small Business Administration will be investigated for appropriate action.

Small Business Regulatory Enforcement Fairness Act

This final rule is not a major rule under the Small Business Regulatory Enforcement Fairness Act (5 U.S.C. 801 *et seq.*). This final rule:

a. Will not have an annual effect on the economy of $100 million or more.

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

c. Will not have significant adverse effects on competition, employment, investment, productivity, innovation, or the ability of U.S.-based enterprises to compete with foreign-based enterprises.

Unfunded Mandates Reform Act of 1995

This final rule will not impose an unfunded mandate on State, local, or tribal governments or the private sector of more than $100 million per year. The final rule will not have a significant or unique effect on State, local, or tribal governments or the private sector. A statement containing the information required by the Unfunded Mandates Reform Act (2 U.S.C. 1501 *et seq.*) is not required.

Takings Implication Assessment (E.O. 12630)

Under the criteria in E.O. 12630, this final rule does not have significant takings implications. The final rule is not a governmental action capable of interference with constitutionally protected property rights. A Takings Implication Assessment is not required.

Federalism (E.O. 13132)

Under the criteria in E.O. 13132, this final rule does not have federalism implications. This final rule will not substantially and directly affect the relationship between the Federal and State governments. To the extent that State and local governments have a role in OCS activities, this final rule will not affect that role. A Federalism Assessment is not required.

Civil Justice Reform (E.O. 12988)

This rule complies with the requirements of E.O. 12988. Specifically, this rule:

Meets the criteria of section 3(a) requiring that all regulations be reviewed to eliminate errors and ambiguity and be written to minimize litigation; and

Meets the criteria of section 3(b)(2) requiring that all regulations be written in clear language and contain clear legal standards.

Consultation With Indian Tribes (E.O. 13175)

Under the criteria in E.O. 13175, we have evaluated this final rule and determined that it has no substantial effects on federally recognized Indian tribes. There are no Indian or tribal lands in the OCS nor tribally owned businesses subject to the regulation.

Paperwork Reduction Act (PRA)

The final rule contains no new reporting or recordkeeping requirements, and an Office of Management and Budget (OMB) submission under the PRA (44 U.S.C. 3501 *et seq.*) is not required. The PRA provides that an agency may not conduct or sponsor a collection of information unless it displays a currently valid OMB control number. Until OMB approves a collection of information and assigns a control number, you are not required to respond. The final regulations will replace the references to LTLs and NTLs with specific cites to the Code of Federal Regulations. The final rulemaking refers to, but does not change, information collection requirements under approved OMB Control Number 1010–0067 (18,756 hours, expiration 12/31/2010).

National Environmental Policy Act

This rule does not constitute a major Federal action significantly affecting the quality of the human environment. A detailed statement under the National Environmental Policy Act of 1969 is not required because we reached a Finding of No Significant Impact. A copy of the Environmental Assessment can be viewed at *http://www.Regulations.gov.* (type in "environmental assessment" for the document type and use the keyword/ID "MMS–2007–OMM–0068.")

Data Quality Act

In developing this rule, we did not conduct or use a study, experiment, or survey requiring peer review under the Data Quality Act (Pub. L. 106–554, app. C section 515, 114 Stat. 2763, 2763A–153–154).

Effects on the Energy Supply (E.O. 13211)

This rule is not a significant energy action under the definition in E.O. 13211. A Statement of Energy Effects is not required.

List of Subjects in 30 CFR Part 250

Administrative practice and procedure, Continental shelf, Environmental protection, Incorporation by reference, Oil and gas exploration, and Reporting and recordkeeping requirements.

Dated: April 2, 2010.

Ned Farquhar,

Assistant Secretary—Land and Minerals Management.

■ For the reasons stated in the preamble, the Minerals Management Service (MMS) is amending 30 CFR part 250 as follows:

PART 250—OIL AND GAS AND SULPHUR OPERATIONS IN THE OUTER CONTINENTAL SHELF

■ 1. The authority citation for part 250 continues to read as follows:

Authority: 31 U.S.C. 9701, 43 U.S.C. 1334.

■ 2. Amend § 250.198 by adding paragraph (h)(78) to read as follows:

§ 250.198 Documents incorporated by reference.

* * * * *

(h) * * *

(78) API RP 90, Annular Casing Pressure Management for Offshore Wells, First Edition, August 2006, Product No. G09001, incorporated by reference at § 250.518.

* * * * *

■ 3. Revise § 250.517(c) to read as follows:

§ 250.517 Tubing and wellhead equipment.

* * * * *

(c) When the tree is installed, you must equip wells to monitor for casing pressure according to the following chart:

If you have * * *	you must equip * * *	so you can monitor * * *
(1) fixed platform wells,	the wellhead,	all annuli (A, B, C, D, etc., annuli).
(2) subsea wells,	the tubing head,	the production casing annulus (A annulus).
(3) hybrid* wells,	the surface wellhead,	all annuli at the surface (A and B riser annuli). If the production casing below the mudline and the production casing riser above the mudline are pressure isolated from each other, provisions must be made to monitor the production casing below the mudline for casing pressure.

*Characterized as a well drilled with a subsea wellhead and completed with a surface casing head, a surface tubing head, a surface tubing hanger, and a surface christmas tree.

* * * * *

■ 4. Add an undesignated center heading and new §§ 250.518 through 250.530 to Subpart E—Oil and Gas Well-Completion Operations to read as follows:

* * * * *

Casing Pressure Management

Sec.

§ 250.518 What are the requirements for casing pressure management?

Once you install your wellhead, you must meet the casing pressure management requirements of API RP 90 (incorporated by reference as specified in § 250.198) and the requirements of §§ 250.519 through 250.530. If there is a conflict between API RP 90 and the casing pressure requirements of this

subpart, you must follow the requirements of this subpart.

§ 250.519 How often do I have to monitor for casing pressure?

You must monitor for casing pressure in your well according to the following table:

If you have * * *	you must monitor * * *	with a minimum one pressure data point recorded per * * *
(a) fixed platform wells,	monthly,	month for each casing.
(b) subsea wells,	continuously,	day for the production casing.
(c) hybrid wells,	continuously,	day for each riser and/or the production casing.
(d) wells operating under a casing pressure request on a manned fixed platform,	daily,	day for each casing.
(e) wells operating under a casing pressure request on an unmanned fixed platform,	weekly,	week for each casing.

§ 250.520 When do I have to perform a casing diagnostic test?

(a) You must perform a casing diagnostic test within 30 days after first observing or imposing casing pressure according to the following table:

If you have a * * *	you must perform a casing diagnostic test if * * *
(1) fixed platform well,	the casing pressure is greater than 100 psig.
(2) subsea well,	the measurable casing pressure is greater than the external hydrostatic pressure plus 100 psig measured at the subsea wellhead.
(3) hybrid well,	a riser or the production casing pressure is greater than 100 psig measured at the surface.

(b) You are exempt from performing a diagnostic pressure test for the production casing on a well operating under active gas lift.

§ 250.521 How do I manage the thermal effects caused by initial production on a newly completed or recompleted well?

A newly completed or recompleted well often has thermal casing pressure during initial startup. Bleeding casing pressure during the startup process is considered a normal and necessary operation to manage thermal casing pressure; therefore, you do not need to evaluate these operations as a casing diagnostic test. After 30 days of continuous production, the initial production startup operation is complete and you must perform casing diagnostic testing as required in §§ 250.520 and 250.522.

§ 250.522 When do I have to repeat casing diagnostic testing?

Casing diagnostic testing must be repeated according to the following table:

When * * *	you must repeat diagnostic testing * * *
(a) your casing pressure request approved term has expired,	immediately.
(b) your well, previously on gas lift, has been shut-in or returned to flowing status without gas lift for more than 180 days,	immediately on the production casing (A annulus). The production casing (A annulus) of wells on active gas lift are exempt from diagnostic testing.
(c) your casing pressure request becomes invalid,	within 30 days.
(d) a casing or riser has an increase in pressure greater than 200 psig over the previous casing diagnostic test,	within 30 days.
(e) after any corrective action has been taken to remediate undesirable casing pressure, either as a result of a casing pressure request denial or any other action,	within 30 days.
(f) your fixed platform well production casing (A annulus) has pressure exceeding 10 percent of its minimum internal yield pressure (MIYP), except for production casings on active gas lift,	once per year, not to exceed 12 months between tests.
(g) your fixed platform well's outer casing (B, C, D, etc., annuli) has a pressure exceeding 20 percent of its MIYP,	once every 5 years, at a minimum.

§ 250.523 How long do I keep records of casing pressure and diagnostic tests?

Records of casing pressure and diagnostic tests must be kept at the field office nearest the well for a minimum of 2 years. The last casing diagnostic test for each casing or riser must be retained at the field office nearest the well until the well is abandoned.

§ 250.524 When am I required to take action from my casing diagnostic test?

You must take action if you have any of the following conditions:

(a) Any fixed platform well with a casing pressure exceeding its maximum allowable wellhead operating pressure (MAWOP);

(b) Any fixed platform well with a casing pressure that is greater than 100 psig and that cannot bleed to 0 psig

through a ½-inch needle valve within 24 hours, or is not bled to 0 psig during a casing diagnostic test;

(c) Any well that has demonstrated tubing/casing, tubing/riser, casing/casing, riser/casing, or riser/riser communication;

(d) Any well that has sustained casing pressure (SCP) and is bled down to prevent it from exceeding its MAWOP, except during initial startup operations described in § 250.521;

(e) Any hybrid well with casing or riser pressure exceeding 100 psig; or

(f) Any subsea well with a casing pressure 100 psig greater than the external hydrostatic pressure at the subsea wellhead.

§ 250.525 What do I submit if my casing diagnostic test requires action?

Within 14 days after you perform a casing diagnostic test requiring action under § 250.524:

You must submit either:	to the appropriate:	and it must include:	You must also:
(a) a notification of corrective action; or,	District Manager and copy the Regional Supervisor, Field Operations,	requirements under § 250.526	submit an Application for Permit to Modify or Corrective Action Plan within 30 days of the diagnostic test.
(b) a casing pressure request, ...	Regional Supervisor, Field Operations,	requirements under § 250.527.	

§ 250.526 What must I include in my notification of corrective action?

The following information must be included in the notification of corrective

(a) Lessee or Operator name;

(b) Area name and OCS block number;

(c) Well name and API number; and

(d) Casing diagnostic test data.

§ 250.527 What must I include in my casing pressure request?

The following information must be included in the casing pressure request:

(a) API number;

(b) Lease number;

(c) Area name and OCS block number;

(d) Well number;

(e) Company name and mailing address;

(f) All casing, riser, and tubing sizes, weights, grades, and MIYP;

(g) All casing/riser calculated MAWOPs;

(h) All casing/riser pre-bleed down pressures;

(i) Shut-in tubing pressure;

(j) Flowing tubing pressure;

(k) Date and the calculated daily production rate during last well test (oil, gas, basic sediment, and water);

(l) Well status (shut-in, temporarily abandoned, producing, injecting, or gas lift);

(m) Well type (dry tree, hybrid, or subsea);

(n) Date of diagnostic test;

(o) Well schematic;

(p) Water depth;

(q) Volumes and types of fluid bled from each casing or riser evaluated;

(r) Type of diagnostic test performed:

(1) Bleed down/buildup test;

(2) Shut-in the well and monitor the pressure drop test;

(3) Constant production rate and decrease the annular pressure test;

(4) Constant production rate and increase the annular pressure test;

(5) Change the production rate and monitor the casing pressure test; and

(6) Casing pressure and tubing pressure history plot;

(s) The casing diagnostic test data for all casing exceeding 100 psig;

(t) Associated shoe strengths for casing shoes exposed to annular fluids;

(u) Concentration of any H2S that may be present;

(v) Whether the structure on which the well is located is manned or unmanned;

(w) Additional comments; and

(x) Request date.

§ 250.528 What are the terms of my casing pressure request?

Casing pressure requests are approved by the Regional Supervisor, Field Operations, for a term to be determined by the Regional Supervisor on a case-by-case basis. The Regional Supervisor may impose additional restrictions or requirements to allow continued operation of the well.

§ 250.529 What if my casing pressure request is denied?

(a) If your casing pressure request is denied, then the operating company must submit plans for corrective action to the respective District Manager within 30 days of receiving the denial. The District Manager will establish a specific time period in which this corrective action will be taken. You must notify the respective District Manager within 30 days after completion of your corrected action.

(b) You must submit the casing diagnostic test data to the appropriate Regional Supervisor, Field Operations, within 14 days of completion of the diagnostic test required under § 250.522(e).

§ 250.530 When does my casing pressure request approval become invalid?

A casing pressure request becomes invalid when:

(a) The casing or riser pressure increases by 200 psig over the approved casing pressure request pressure;

(b) The approved term ends;

(c) The well is worked-over, sidetracked, redrilled, recompleted, or acid stimulated;

(d) A different casing or riser on the same well requires a casing pressure request; or

(e) A well has more than one casing operating under a casing pressure request and one of the casing pressure requests become invalid, then all casing pressure requests for that well become invalid.

■ 5. Revise § 250.617(c) to read as follows:

§ 250.617 Tubing and wellhead equipment.

* * * * *

(c) When reinstalling the tree, you must:

(1) Equip wells to monitor for casing pressure according to the following chart:

If you have * * *	you must equip * * *	so you can monitor * * *
(i) fixed platform wells, ...	the wellhead, ...	all annuli (A, B, C, D, etc., annuli).
(ii) subsea wells, ...	the tubing head, ...	the production casing annulus (A annulus).

If you have * * *	you must equip * * *	so you can monitor * * *
(iii) hybrid* wells,	the surface wellhead,	all annuli at the surface (A and B riser annuli). If the production casing below the mudline and the production casing riser above the mudline are pressure isolated from each other, provisions must be made to monitor the production casing below the mudline for casing pressure.

*Characterized as a well drilled with a subsea wellhead and completed with a surface casing head, a surface tubing head, a surface tubing hanger, and a surface christmas tree.

(2) Follow the casing pressure management requirements in subpart E of this part.

* * * * *

[FR Doc. 2010–10291 Filed 5–3–10; 8:45 am]

BILLING CODE 4310–MR–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 100

[Docket No. USCG–2010–0346]

Annual Seattle Yacht Club's "Opening Day" Marine Parade

AGENCY: Coast Guard, DHS.

ACTION: Notice of enforcement of regulation.

SUMMARY: The Coast Guard will enforce the Special Local Regulation in Portage Bay, Portage Cut (Montlake Cut), and Union Bay, WA during the Annual Seattle Yacht Club's "Opening Day" Marine Parade from 8 a.m. through 6 p.m. on May 2, 2010. This action is necessary to ensure participant and spectator safety while preventing vessel congestion in these waterways during the parade. During the enforcement period, no spectators shall anchor, block, loiter in, or impede the transit of participants or official patrol vessels in the regulated area. Further, due to the large number of craft confined within this small body of water, all vessels, both spectator and participants will maintain a "NO WAKE" speed.

DATES: The regulations in 33 CFR 100.1304 will be enforced from 8 a.m. through 6 p.m. on May 2, 2010.

FOR FURTHER INFORMATION CONTACT: If you have questions on this notice, call or e-mail Ensign Ashley M. Wanzer, Sector Seattle Waterways Management Division, Coast Guard; telephone 206–217–6175, e-mail *SectorSeattleWWM@uscg.mil.*

SUPPLEMENTARY INFORMATION: The Coast Guard will enforce the Special Local Regulation for the annual Seattle Yacht Club's "Opening Day" Marine Parade in 33 CFR 100.1304 on May 2, 2010, from 8 a.m. to 6 p.m. These regulations can be found in the May 4, 1989 issue of the **Federal Register** (54 FR 19167).

Under the provisions of 33 CFR 100.1304, the regulated area shall be closed for the duration of the event to all vessel traffic not participating in the event and authorized by the event sponsor or Coast Guard Patrol Commander. All persons or vessels not registered with the sponsor as participants or not part of the regatta patrol are considered spectators. Spectator vessels must be at anchor within a designated spectator area or moored to a waterfront facility in a way that will not interfere with the progress of the event. The following are established as spectator areas: Northwest of the University Bridge, north of the log boom which will be placed in Union Bay, and east of Webster Point.

No spectators shall anchor, block, loiter in, or impede the through transit of participants or official patrol vessels in the regulated area during the effective dates and times unless cleared for such entry by the Patrol Commander.

Due to the large number of craft confined within this small body of water, all vessels, both spectator and participants, will maintain a "NO WAKE" speed. This requirement will be strictly enforced to preserve the safety of both life and property.

The Coast Guard may be assisted by other Federal, State, or local law enforcement agencies in enforcing this regulation.

This notice is issued under authority of 33 CFR 100.1304 and 5 U.S.C. 552(a). If the Captain of the Port determines that the regulated area need not be enforced for the full duration stated in this notice, she may use a Broadcast Notice to Mariners to grant general permission to enter the regulated area.

Dated: April 6, 2010.

Suzanne E. Englebert,

Captain, U.S. Coast Guard, Captain of the Port, Puget Sound.

[FR Doc. 2010–10310 Filed 4–30–10; 11:15 am]

BILLING CODE 9110–04–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 100

[Docket No. USCG–2010–0345]

Seattle Seafair Unlimited Hydroplane Race

AGENCY: Coast Guard, DHS.

ACTION: Notice of enforcement of regulation.

SUMMARY: The Coast Guard will enforce the special local regulation supporting the Seattle Seafair Unlimited Hydroplane Race on Lake Washington, WA from 10 a.m. on August 5, 2010 through 6 p.m. on August 8, 2010 during hydroplane race times. This action is necessary to ensure public safety from the inherent dangers associated with high-speed races while ensuring unencumbered access for rescue personnel in the event of an emergency. During the enforcement period, no person or vessel will be allowed to enter the safety zone without the permission of the Captain of the Port, on-scene Patrol Commander or Designated Representative.

DATES: The regulations in 33 CFR 100.1301 will be enforced on: August 5, 2010 from 10 a.m. to 3 p.m.; August 6, 2010 from 8:30 a.m. to 6 p.m.; August 7, 2010 from 8:30 a.m. to 6 p.m.; and August 8, 2010 from 7:30 a.m. to 6 p.m.

FOR FURTHER INFORMATION CONTACT: If you have questions on this notice, call or e-mail Ensign Ashley M. Wanzer, Sector Seattle Waterways Management Division, Coast Guard; telephone 206–217–6175, e-mail *SectorSeattleWWM@uscg.mil.*

SUPPLEMENTARY INFORMATION: The Coast Guard will enforce the special local regulation for the annual Seattle Seafair Unlimited Hydroplane Race in 33 CFR 100.1301 on August 5, 2010 from 10 a.m. to 3 p.m.; August 6, 2010 from 8:30 a.m. to 6 p.m.; August 7, 2010 from 8:30 a.m. to 6 p.m.; and August 8, 2010 from 7:30 a.m. to 6 p.m.

Under the provisions of 33 CFR 100.1301, the Coast Guard will restrict general navigation in the following area:

The waters of Lake Washington bounded by the Interstate 90 (Mercer Island/Lacey V. Murrow) Bridge, the western shore of Lake Washington, and the east/west line drawn tangent to Bailey Peninsula and along the shoreline of Mercer Island.

The regulated area has been divided into two zones. The zones are separated by a line perpendicular from the I–90 Bridge to the northwest corner of the East log boom and a line extending from the southeast corner of the East log boom to the southeast corner of the hydroplane race course and then to the northerly tip of Ohlers Island in Andrews Bay. The western zone is designated Zone I, the eastern zone, Zone II. (Refer to NOAA Chart 18447).

The Coast Guard will maintain a patrol consisting of Coast Guard vessels, assisted by Auxiliary Coast Guard vessels, in Zone II. The Coast Guard patrol of this area is under the direction of the Coast Guard Patrol Commander (the "Patrol Commander"). The Patrol Commander is empowered to control the movement of vessels on the racecourse and in the adjoining waters during the periods this regulation is in effect. The Patrol Commander may be assisted by other federal, state and local law enforcement agencies.

Only authorized vessels may be allowed to enter Zone I during the hours this regulation is in effect. Vessels in the vicinity of Zone I shall maneuver and anchor as directed by Coast Guard Officers or Petty Officers.

During the times in which this regulation is in effect, the following rules shall apply:

1. Swimming, wading, or otherwise entering the water in Zone I by any person is prohibited while hydroplane boats are on the racecourse. At other times in Zone I, any person entering the water from the shoreline shall remain west of the swim line, denoted by buoys, and any person entering the water from the log boom shall remain within ten (10) feet of the log boom.

2. Any person swimming or otherwise entering the water in Zone II shall remain within ten (10) feet of a vessel.

3. Rafting to a log boom will be limited to groups of three vessels.

4. Up to six (6) vessels may raft together in Zone II if none of the vessels are secured to a log boom.

5. Only vessels authorized by the Patrol Commander, other law enforcement agencies or event sponsors shall be permitted to tow other watercraft or inflatable devices.

6. Vessels proceeding in either Zone I or Zone II during the hours this regulation is in effect shall do so only at speeds which will create minimum wake, seven (07) miles per hour or less. This maximum speed may be reduced at the discretion of the Patrol Commander.

7. Upon completion of the daily racing activities, all vessels leaving either Zone I or Zone II shall proceed at speeds of seven (07) miles per hour or less. The maximum speed may be reduced at the discretion of the Patrol Commander.

8. A succession of sharp, short signals by whistle or horn from vessels patrolling the areas under the direction of the Patrol Commander shall serve as signal to stop. Vessels signaled shall stop and shall comply with the orders of the patrol vessel; failure to do so may result in expulsion from the area, citation for failure to comply, or both.

The Coast Guard may be assisted by other Federal, State, or local law enforcement agencies in enforcing this regulation.

This notice is issued under authority of 33 CFR 100.1301 and 5 U.S.C. 552(a). If the COTP determines that the regulated area need not be enforced for the full duration stated in this notice, he or she may use a Broadcast Notice to Mariners to grant general permission to enter the regulated area.

Dated: April 6, 2010.

S.E. Englebert,

Captain, U.S. Coast Guard, Captain of the Port, Puget Sound.

[FR Doc. 2010–10315 Filed 5–3–10; 8:45 am]

BILLING CODE 9110–04–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 117

[Docket No. USCG–2009–1098]

Drawbridge Operation Regulation; Atlantic Intracoastal Waterway, Riviera Beach, FL

AGENCY: Coast Guard, DHS.

ACTION: Notice of temporary deviation from regulations.

SUMMARY: The Commander, Seventh Coast Guard District, has issued a temporary deviation from the regulation governing the operation of the Parker (US–1) bridge across the Atlantic Intracoastal Waterway, mile 1,013.7, at Riviera Beach, Palm Beach County, Florida. The deviation is necessary to allow timely bridge rehabilitation and to provide for worker safety. This deviation allows the bridge to be placed on single-leaf operations. Double-leaf operations will be allowed with a four hour notice. The deviation may be cancelled at any time via Broadcast Notice to Mariners.

DATES: This deviation is effective from May 10, 2010 through October 31, 2010.

ADDRESSES: Documents mentioned in this preamble as being available in the docket are part of docket USCG–2009–1098 and are available online by going to *http://www.regulations.gov*, inserting USCG–2009–1098 in the "Keyword" box and then clicking "Search". They are also available for inspection or copying at the Docket Management Facility (M–30), U.S. Department of Transportation, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE., Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: If you have questions on this rule, call or e-mail Mr. Gene Stratton, Bridge Management Specialist, Seventh District, Bridge Branch, U.S. Coast Guard; telephone 305–415–6740, e-mail *allen.e.stratton@uscg.mil*. If you have questions on viewing the docket, call Renee V. Wright, Program Manager, Docket Operations, telephone 202–366–9826.

SUPPLEMENTARY INFORMATION: The Florida Department of Transportation requests a temporary deviation from the published regulation for the Parker Bridge (US–1) across the Atlantic Intracoastal Waterway as required by 33 CFR 117.261(t): The draw shall open on the quarter and three-quarter hour.

The Florida Department of Transportation requests a deviation allowing for single-leaf operations from May 10, 2010 through October 31, 2010. Double-leaf openings will be available with a four hour notice to the bridge tender.

This deviation will allow the rehabilitation of the bridge to be completed in a timely fashion while not unreasonably affecting vessel traffic as it does provide for requested double-leaf opening with a four hour notice. This rehabilitation is necessary to extend the bridge life.

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

Dated: April 21, 2010.

R.S. Branham,

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

[FR Doc. 2010–10328 Filed 5–3–10; 8:45 am]

BILLING CODE 9110–04–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 165

[Docket No. USCG–2010–0347]

Safety Zone Regulations, Seafair Blue Angels Air Show Performance, Seattle, WA

AGENCY: Coast Guard, DHS.

ACTION: Notice of enforcement of regulation.

SUMMARY: The Coast Guard will enforce a safety zone on Lake Washington, WA for the annual Seafair Blue Angels Air Show from 10 a.m. on August 5, 2010 to 6 p.m. on August 8, 2010. This action is necessary to ensure the safety of the public from inherent dangers associated with aerial displays. During the enforcement period, no person or vessel may enter this safety zone unless authorized by the Captain of the Port or Designated Representative.

DATES: The regulations in 33 CFR 165.1319 will be enforced on: August 5, 2010 from 10 a.m. to 3 p.m.; August 6, 2010 from 8:30 a.m. to 6 p.m.; August 7, 2010 from 8:30 a.m. to 6 p.m.; and August 8, 2010 from 7:30 a.m. to 6 p.m.

FOR FURTHER INFORMATION CONTACT: If you have questions on this notice, call or e-mail Ensign Ashley M. Wanzer, Sector Seattle Waterways Management Division, Coast Guard; telephone 206–217–6175, e-mail *SectorSeattleWWM@uscg.mil.*

SUPPLEMENTARY INFORMATION: On June 24, 2004, the Coast Guard published a Final Rule in the **Federal Register** (69 FR 35250) to establish a safety zone on the waters of Lake Washington for the annual Seafair Blue Angels Air Show Performance. The Coast Guard will enforce the safety zone regulation in 33 CFR 165.1319 on August 5, 2010 from 10 a.m. to 3 p.m.; August 6, 2010 from 8:30 a.m. to 6 p.m.; August 7, 2010 from 8:30 a.m. to 6 p.m.; and August 8, 2010 from 7:30 a.m. to 6 p.m.

Under the provisions of 33 CFR 165.1319, the following area is designated as a safety zone: All waters of Lake Washington, Washington State, enclosed by the following points: Near the termination of Roanoke Way 47°35′44″ N, 122°14′47″ W; thence to 47°35′48″ N, 122°15′45″ W; thence to 47°36′02.1″ N, 122°15′50.2″ W; thence to 47°35′56.6″ N, 122°16′29.2″ W; thence to 47°35′42″ N, 122°16′24″ W; thence to the east side of the entrance to the west high-rise of the Interstate 90 bridge; thence westerly along the south side of the bridge to the shoreline on the western terminus of the bridge; thence southerly along the shoreline to Andrews Bay at 47°33′06″ N, 122°15′32″ W; thence northeast along the shoreline of Bailey Peninsula to its northeast point at 47°33′44″ N, 122°15′04″ W; thence easterly along the east-west line drawn tangent to Bailey Peninsula; thence northerly along the shore of Mercer Island to the point of origin. [Datum: NAD 1983]

In accordance with the general regulations in 33 CFR Part 165, Subpart C, no person or vessel may enter or remain in the zone except for support vessels and support personnel, vessels registered with the event organizer, or other vessels authorized by the Captain of the Port or Designated Representatives. Vessels and persons granted authorization to enter the safety zone shall obey all lawful orders or directions made by the Captain of the Port or Designated Representative.

The Captain of the Port may be assisted by other federal, state and local law enforcement agencies.

This notice is issued under authority of 33 CFR 165.1319 and 5 U.S.C. 552(a).

Dated: April 6, 2010.

S.E. Englebert,

Captain, U.S. Coast Guard, Captain of the Port, Puget Sound.

[FR Doc. 2010–10312 Filed 5–3–10; 8:45 am]

BILLING CODE 9110–04–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 165

[Docket No. USCG–2010–0290]

RIN 1625–AA00

Safety Zones; Blasting Operations and Movement of Explosives, St. Marys River, Sault Sainte Marie, MI

AGENCY: Coast Guard, DHS.

ACTION: Temporary final rule.

SUMMARY: The Coast Guard is establishing four temporary safety zones in the vicinity of the downstream approach to the Sault Sainte Marie, Michigan locks. All vessels are prohibited from transiting the zones to ensure the safety of the maritime community during blasting and dredging operations.

DATES: Effective Date: This rule is effective in the CFR from May 4, 2010 until 10 p.m. August 31, 2010. This rule is effective with actual notice for purposes of enforcement beginning 5 a.m. April 23, 2010 through 10 p.m. August 31, 2010.

ADDRESSES: Documents indicated in this preamble as being available in the docket are part of docket USCG–2010–0290 and are available online by going to *http://www.regulations.gov*, inserting USCG–2010–0290 in the "Keyword" box, and then clicking "Search." They are also available for inspection or copying at the Docket Management Facility (M–30), U.S. Department of Transportation, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue, SE., Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: If you have questions on this temporary rule, call or e-mail BMC Gregory Ford, Facility Inspection Division, U.S. Coast Guard Sector Sault Sainte Marie; telephone 906–635–3222, e-mail *Gregory.C.Ford@uscg.mil.* If you have questions on viewing the docket, call Renee V. Wright, Program Manager, Docket Operations, telephone 202–366–9826.

SUPPLEMENTARY INFORMATION:

Regulatory Information

The Coast Guard is issuing this temporary final rule without prior notice and opportunity to comment pursuant to authority under section 4(a) of the Administrative Procedure Act (APA) (5 U.S.C. 553(b)). This provision authorizes an agency to issue a rule without prior notice and opportunity to comment when the agency for good cause finds that those procedures are "impracticable, unnecessary, or contrary to the public interest." Under 5 U.S.C. 553(b)(B), the Coast Guard finds that good cause exists for not publishing a notice of proposed rulemaking (NPRM) with respect to this rule because the publishing of an NPRM would be contrary to public interest, since immediate action is needed to ensure the public's safety during blasting and dredging operations. Delaying the implementation of the safety zone would subject the public to the hazards associated with blasting and dredging operations and the movement of explosives for those operations. The danger posed by the volume of marine traffic on the Saint Marys River makes safety zone regulations necessary. For the safety concerns noted, it is in the public interest to have these regulations in effect immediately and without waiting for a comment period to run. The Coast Guard will issue broadcast notice to mariners to advise vessel operators of navigational restrictions. The regular presence of Coast Guard and

local law enforcement vessels will also provide actual notice to mariners.

Under 5 U.S.C. 553(d)(3), the Coast Guard finds that good cause exists for making this rule effective less than 30 days after publication in the **Federal Register** because to do otherwise, would be contrary to the interest of the public by jeopardizing public safety during blasting and dredging operations. Immediate action is necessary to prevent possible loss of life and property.

Basis and Purpose

As part of the Sault Sainte Marie replacement lock downstream approach channel deepening project, the Army Corps of Engineers must blast and dredge portions of the Saint Marys River downstream of the Sabin and Davis Locks. Due to the inherent dangers associated with blasting and dredging operations, a temporary safety zone is necessary to help ensure the safety of the maritime public operating near the work site. The worst case potential explosive arc for the work site of this project has been calculated to be approximately 975 feet. The blasting and dredging operations also require the movement of explosives via barge from Sault Sainte Marie, Michigan to the work site. Due to the inherent dangers associated with the movement of explosives, a safety zone is necessary to help ensure the safety of the maritime public operating near the barge when explosives are being loaded and while the barge is in transit with explosives onboard. The worst case potential explosive arc for safety zone has been calculated to be approximately 500 feet. The project is also required to comply with applicable state laws and local ordinances.

Discussion of Rule

The Coast Guard is establishing four temporary safety zones. The first temporary safety zone is a fixed zone on the western portion of the area where the blasting and dredging operations will be taking place. This temporary safety zone applies to the navigable waters downstream of the Sabin and Davis Locks, Sault Sainte Marie, Michigan, with east and west boundaries starting approximately 250 feet due east of the center of the Sabin Lock downstream gate, to approximately 1,750 feet due east of the center of the Davis Lock downstream gate. The zone is further bound by the southern pier face of the Northeast Pier, and the northern pier face of the East Center Pier. It also applies to a portion of the Army Corps of Engineers hydroelectric power plant effluence, and waters surrounding the eastern tip of the Northeast Pier. This portion of the zone extends west approximately 1,100 feet from the tip of the Northeast Pier, and out to the north, approximately 150 feet. The zone is bound by the following coordinates: 46°30′22.50″ N/ 084°20′40.81″ W; 46°30′22.50″ N/ 084°20′29.35″ W; 46°30′20.16″ N/ 084°20′25.29″ W; 46°30′18.81″ N/ 084°20′25.29″ W; 46°30′18.66″ N/ 084°20′28.36″ W; 46°30′12.90″ N/ 084°20′28.36″ W; 46°30′13.18″ N/ 084°20′39.17″ W; 46°30′15.27″ N/ 084°20′48.17″ W; 46°30′15.45″ N/ 084°20′51.00″ W; 46°30′16.41″ N/ 084°20′51.00″ W; 46°30′16.98″ N/ 084°20′40.81″ W; (NAD 83). This zone will be enforced continually from 5 a.m. April 23, 2010 through 10 p.m. August 31, 2010.

The second temporary safety zone is a fixed zone and applies to the navigable waters within a radius of 1,100 feet centered on the test blast location approximately 600 feet due east of the pier between the Sabin and Davis locks, Sault Sainte Marie, Michigan at 46°30′15.46″ N/084°20′39.12″ W; (NAD 83). This zone will be effective from 5 a.m. April 23, 2010 through 10 p.m. May 9, 2010. The public will be notified of enforcement of this zone by Broadcast Notice to Mariners in accordance with the procedures outlined in this regulation.

The third temporary safety zone is a moving zone and applies to the navigable waters within a radius of 500 feet from the barge "M2" at any time the barge is involved in explosives loading operations or while transiting with explosives on board. This zone will be effective from 5 a.m. April 23, 2010 through 10 p.m. August 31, 2010. The public will be notified of enforcement of this zone by Broadcast Notice to Mariners in accordance with the procedures outlined in this regulation.

The fourth temporary safety zone is a fixed zone on the eastern portion of the area where the blasting and dredging operations will be taking place. This temporary safety zone applies to the navigable waters downstream of the Sabin and Davis Locks, Sault Sainte Marie, Michigan, with east and west boundaries starting approximately 1,750 feet due east of the center of the Davis Lock downstream gate, to approximately 2,850 feet due east of the center of the Davis Lock downstream gate. The zone is bound to the south by the northern pier face of the East Center Pier. The northern boundary of the zone is approximately 600 feet north of the East Center Pier. The area is bound by the following coordinates: 46°30′18.66″ N/ 84°20′28.36″ W; 46°30′19.36″ N/ 84°20′14.23″ W; 46°30′19.20″ N/ 84°20′13.87″ W; 46°30′11.59″ N/ 84°20′12.96″ W; 46°30′11.78″ N/ 84°20′19.53″ W; 46°30′12.69″ N/ 84°20′19.68″ W; 46°30′12.90″ N/ 84°20′28.36″ W; (NAD 83). This zone will be effective from 5 a.m. April 23, 2010 through 10 p.m. August 31, 2010. The public will be notified of enforcement of this zone by Broadcast Notice to Mariners in accordance with the procedures outlined in this regulation.

Regulatory Analyses

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

Regulatory Planning and Review

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

Although this regulation will restrict access to the areas, the effect of the rule will not be significant because maritime traffic will be minimally impacted. The water area near the primary work, which is protected by the first temporary safety zone, is blocked on three sides and receives very little vessel traffic. The remaining zones will be enforced as required by blasting and dredging operations, which will typically be only during times of reduced vessel traffic.

Small Entities

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

The Coast Guard certifies under 5 U.S.C. 605(b) that this rule will not have a significant economic impact on a substantial number of small entities.

The following entities may be affected by this rule, some of which may be small entities: The owners or operators of vessels intending to operate, transit, or anchor in portions of the Saint Marys River from April 23, 2010 through

August 31, 2010. The safety zones will not have a significant impact on a substantial number of small entities for the following reasons: Access to most of the primary work zone, which is protected by the first temporary safety zone, is blocked on three sides and receives very little vessel traffic. The remaining zones will be enforced as required by blasting and dredging operations, which will typically be only during times of reduced vessel traffic. Plus, the Coast Guard will make notifications via maritime advisories so mariners can adjust their plans accordingly. Overall, the Coast Guard expects the economic impact of this rule to be minimal traffic.

Assistance for Small Entities

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

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

Collection of Information

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

Federalism

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

Unfunded Mandates Reform Act

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

Taking of Private Property

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

Civil Justice Reform

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

Protection of Children

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

Indian Tribal Governments

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

Energy Effects

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

Technical Standards

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

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

Environment

We have analyzed this rule under Department of Homeland Security Management Directive 023–01 and Commandant Instruction M16475.lD, which guide the Coast Guard in complying with the National Environmental Policy Act of 1969 (NEPA) (42 U.S.C. 4321–4370f), and have concluded this action is one of a category of actions that do not individually or cumulatively have a significant effect on the human environment. This rule is categorically excluded, under figure 2–1, paragraph (34)(g), of the Instruction. This rule involves regulations establishing safety zones to protect the public from the dangers associated with blasting and dredging operations. An environmental analysis checklist and a categorical exclusion determination will be available in the docket where indicated under **ADDRESSES**.

List of Subjects in 33 CFR Part 165

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

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

PART 165—REGULATED NAVIGATION AREAS AND LIMITED ACCESS AREAS

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

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

■ 2. Add § 165.T09–0290 to read as follows:

§ 165.T09–0290 Safety Zones; Blasting Operations and Movement of Explosives, St. Marys River, Sault Sainte Marie, MI.

(a) *Location.* The following areas are safety zones:

(1) All U.S. navigable waters downstream of the Sabin and Davis Locks, Sault Sainte Marie, Michigan, with east and west boundaries starting approximately 250 feet due east of the center of the Sabin Lock downstream gate, to approximately 1,750 feet due east of the center of the Davis Lock downstream gate. The zone is further bound by the southern pier face of the Northeast Pier, and the northern pier face of the East Center Pier. This zone also includes a portion of the Army Corps of Engineers hydroelectric power plant effluence, and waters surrounding the eastern tip of the Northeast Pier. This portion of the zone extends west approximately 1,100 feet from the tip of the Northeast Pier, and out to the north, approximately 150 feet. The zone is bound by the following coordinates: 46°30′22.50″ N/084°20′40.81″ W; 46°30′22.50″ N/084°20′29.35″ W; 46°30′20.16″ N/084°20′25.29″ W; 46°30′18.81″ N/084°20′25.29″ W; 46°30″18.66″ N/084°20′28.36″ W; 46°30′12.90″ N/084°20′28.36″ W; 46°30′13.18″ N/084°20′39.17″ W; 46°30′15.27″ N/084°20′48.17″ W; 46°30′15.45″ N/084°20′51.00″ W; 46°30′16.41″ N/084°20′51.00″ W; 46°30′16.98″ N/084°20′40.81″ W; (NAD 83).

(2) All U.S. navigable waters within a radius of 1,100 feet centered on the test blast location approximately 600 feet due east of the pier between the Sabin and Davis locks, Sault Sainte Marie, Michigan at 46°30′15.46″ N/ 084°20′39.12″ W; (NAD 83).

(3) All U.S. navigable waters within a radius of 500 feet from the barge "M2" at any time the barge is involved in explosives loading operations or while transiting with explosives on board.

(4) All U.S. navigable waters downstream of the Sabin and Davis Locks, Sault Sainte Marie, Michigan, with east and west boundaries starting approximately 1,750 feet due east of the center of the Davis Lock downstream gate, to approximately 2,850 feet due east of the center of the Davis Lock downstream gate. The zone is bound to the south by the northern pier face of the East Center Pier. The northern boundary of the zone is approximately 600 feet north of the East Center Pier. The area is bound by the following coordinates: 46°30′18.66″ N/ 84°20′28.36″ W; 46°30′19.36″ N/ 84°20′14.23" W;

46°30′19.20″ N/84°20′13.87″ W; 46°30′11.59″ N/84°20′12.96″ W;

46°30′11.78″ N/84°20′19.53″ W; 46°30′12.69″ N/84°20′19.68″ W;

46°30′12.90″ N/84°20′28.36″ W; (NAD 83).

(b) *Effective period.* This regulation is effective from 5 a.m. April 23, 2010 through 10 p.m. August 31, 2010. The safety zones established in paragraph (a) of this section will be enforced as follows:

(1) The zone described in paragraph (a)(1) of this section will be enforced continually from 5 a.m. April 23, 2010 through 10 p.m. August 31, 2010.

(2) The zone described paragraph (a)(2) of this section will be intermittently enforced from 5 a.m. April 23, 2010 through 10 p.m. May 14, 2010.

(3) The zone described in paragraph (a)(3) of this section is subject to enforcement from 5 a.m. April 23, 2010 through 10 p.m. August 31, 2010, any time the barge "M2" is transiting with explosives on board or involved in explosives loading operations.

(4) The zone described paragraph (a)(4) of this section will be intermittently enforced from 5 a.m. April 23, 2010 through 10 p.m. August 31, 2010.

(5) The Captain of the Port, Sector Sault Sainte Marie may suspend at any time the enforcement of any safety zone established under this section.

(6) The Captain of the Port, Sector Sault Sainte Marie, will notify the public of the enforcement and suspension of enforcement of a safety zone established by this section via any means that will provide as much notice as possible to the public. These means might include some or all of those listed in 33 CFR 165.7(a). The primary method of notification, however, will be through Broadcast Notice to Mariners and local Notice to Mariners.

(c) *Regulations.* (1) In accordance with the general regulations in section 165.23 of this part, entry into, transiting, or anchoring within an enforced safety zone established by this section is prohibited unless authorized by the Captain of the Port, Sector Sault Sainte Marie, or his on-scene representative.

(2) This safety zone is closed to all vessel traffic, except as may be permitted by the Captain of the Port, Sector Sault Sainte Marie, or his on-scene representative.

(3) The "on-scene representative" of the Captain of the Port, Sector Sault Sainte Marie, is any Coast Guard commissioned, warrant or petty officer who has been designated by the Captain of the Port, Sector Sault Sainte Marie, to act on his behalf. The on-scene representative of the Captain of the Port, Sector Sault Sainte Marie, will be aboard either a Coast Guard or Coast Guard Auxiliary vessel.

(4) Vessel operators desiring to enter or operate within an enforced safety zone shall contact the Captain of the Port, Sector Sault Sainte Marie, or his on-scene representative to obtain permission to do so. The Captain of the Port, Sector Sault Sainte Marie, or his on-scene representative may be contacted via VHF Channel 16. Vessel operators given permission to enter or operate in the safety zone must comply with all directions given to them by the Captain of the Port, Sector Sault Sainte Marie, or his on-scene representative.

Dated: April 20, 2010.

M.J. Huebschman,

Captain, U.S. Coast Guard, Captain of the Port, Sector Sault Sainte Marie.

[FR Doc. 2010–10316 Filed 5–3–10; 8:45 am]

BILLING CODE 9110–04–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 165

[Docket No. USCG–2010–0256]

RIN 1625–AA00

Safety Zone; Neuse River, New Bern, NC; Correction

ACTION: Temporary final rule; correction.

SUMMARY: In the **Federal Register** published on April 23, 2010, the Coast Guard established a temporary safety zone on the waters of the Neuse River in support of the New Bern, North Carolina Tercentennial Celebration. The City of New Bern, North Carolina is sponsoring a civil war naval bombardment reenactment on the waters of the Neuse River, New Bern, North Carolina on May 8, 2010. The safety zone published with an error in the temporary safety zone coordinates. The safety zone coordinates should have read "35°06′12″ N; 077°02′12″ W thence to 35°05′52″ N; 077°02′15″ W thence to 35°05′49″ N; 077°01′49″ W thence to 35°06′17″ N; 077°01′48″ W thence to 35°06′21″ N; 077°02′06″ W".

DATES: This correction is effective May 4, 2010.

FOR FURTHER INFORMATION CONTACT: For information about this correction, contact Jennifer Mehaffey, Office of Regulations and Administrative Law,

(202) 372–3859 *jennifer.a.mehaffey@uscg.mil.* For information about the original regulation, contact CWO4 Stephen Lyons, Waterways Management Division Chief, Coast Guard Sector North Carolina; telephone (252) 247–4525, e-mail *Stephen.W.Lyons@uscg.mil.*

SUPPLEMENTARY INFORMATION: In FR doc 2010–9497 appearing on page 21164 in the issue of Friday, April 23, 2010, the following corrections are made:

1. In the Discussion of the Rule section on page 21165, in the second column, revise the temporary safety zone coordinates to read "35°06′12″ N; 077°02′12″ W thence to 35°05′52″ N; 077°02′15″ W thence to 35°05′49″ N; 077°01′49″ W thence to 35°06′17″ N; 077°01′48″ W thence to 35°06′21″ N; 077°02′06″ W".

§ 165.T05–0256 [Corrected]

■ 2. In the regulatory text on page 21166, third column, revise paragraph (b) safety zone coordinates to read "35°06′12″ N; 077°02′12″ W thence to 35°05′52″ N; 077°02′15″ W thence to 35°05′49″ N; 077°01′49″ W thence to 35°06′17″ N; 077°01′48″ W thence to 35°06′21″ N; 077°02′06″ W".

Dated: April 29, 2010.

S. Venckus,

Office of Regulations and Administrative Law (CG–0943), U.S. Coast Guard.

[FR Doc. 2010–10496 Filed 4–30–10; 11:15 am]

BILLING CODE 9110–04–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

44 CFR Part 65

[Docket ID FEMA–2010–0003; Internal Agency Docket No. FEMA–B–1096]

Changes in Flood Elevation Determinations

AGENCY: Federal Emergency Management Agency, DHS.

ACTION: Interim rule.

SUMMARY: This interim rule lists communities where modification of the Base (1% annual-chance) Flood Elevations (BFEs) is appropriate because of new scientific or technical data. New flood insurance premium rates will be calculated from the modified BFEs for new buildings and their contents.

DATES: These modified BFEs are currently in effect on the dates listed in the table below and revise the Flood Insurance Rate Maps (FIRMs) in effect prior to this determination for the listed communities.

From the date of the second publication of these changes in a newspaper of local circulation, any person has ninety (90) days in which to request through the community that the Deputy Federal Insurance and Mitigation Administrator reconsider the changes. The modified BFEs may be changed during the 90-day period.

ADDRESSES: The modified BFEs for each community are available for inspection at the office of the Chief Executive Officer of each community. The respective addresses are listed in the table below.

FOR FURTHER INFORMATION CONTACT: Kevin C. Long, Acting Chief, Engineering Management Branch, Mitigation Directorate, Federal Emergency Management Agency, 500 C Street, SW., Washington, DC 20472, (202) 646–2820, or (e-mail) *kevin.long@dhs.gov.*

SUPPLEMENTARY INFORMATION: The modified BFEs are not listed for each community in this interim rule. However, the address of the Chief Executive Officer of the community where the modified BFE determinations are available for inspection is provided.

Any request for reconsideration must be based on knowledge of changed conditions or new scientific or technical data.

The modifications are made pursuant to section 201 of the Flood Disaster Protection Act of 1973, 42 U.S.C. 4105, and are in accordance with the National Flood Insurance Act of 1968, 42 U.S.C. 4001 *et seq.*, and with 44 CFR part 65.

For rating purposes, the currently effective community number is shown and must be used for all new policies and renewals.

The modified BFEs are the basis for the floodplain management measures that the community is required either to adopt or to show evidence of being already in effect in order to qualify or to remain qualified for participation in the National Flood Insurance Program (NFIP).

These modified BFEs, together with the floodplain management criteria required by 44 CFR 60.3, are the minimum that are required. They should not be construed to mean that the community must change any existing ordinances that are more stringent in their floodplain management requirements. The community may at any time enact stricter requirements of its own or pursuant to policies established by other Federal, State, or regional entities. The changes in BFEs are in accordance with 44 CFR 65.4.

National Environmental Policy Act. This interim rule is categorically excluded from the requirements of 44 CFR part 10, Environmental Consideration. An environmental impact assessment has not been prepared.

Regulatory Flexibility Act. As flood elevation determinations are not within the scope of the Regulatory Flexibility Act, 5 U.S.C. 601–612, a regulatory flexibility analysis is not required.

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

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

List of Subjects in 44 CFR Part 65

Flood insurance, Floodplains, Reporting and recordkeeping requirements.

■ Accordingly, 44 CFR part 65 is amended to read as follows:

PART 65—[AMENDED]

■ 1. The authority citation for part 65 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.

§ 65.4 [Amended]

■ 2. The tables published under the authority of § 65.4 are amended as follows:

State and county	Location and Case No.	Date and name of newspaper where notice was published	Chief executive officer of community	Effective date of modification	Community No.
Arizona:					

State and county	Location and Case No.	Date and name of newspaper where notice was published	Chief executive officer of community	Effective date of modification	Community No.
Maricopa	Town of Buckeye (09–09–0764P).	November 19, 2009; November 26, 2009; *Arizona Business Gazette.*	The Honorable Jackie A. Meck, Mayor, Town of Buckeye, 530 East Monroe Avenue, Buckeye, AZ 85326.	March 26, 2010	040039
Maricopa	Unincorporated areas of Maricopa County (09–09–0764P).	November 19, 2009; November 26, 2009; *Arizona Business Gazette.*	The Honorable Andrew W. Kunasek, Chairman, Maricopa County Board of Supervisors, 301 West Jefferson Street, 10th Floor, Phoenix, AZ 85003.	March 26, 2010	040037
California:					
San Diego	Unincorporated areas of San Diego (09–09–1604P).	November 20, 2009; November 27, 2009; *San Diego Transcript.*	The Honorable Dianne Jacob, Chairwoman, San Diego County Board of Supervisors, 1600 Pacific Highway, San Diego, CA 92101.	March 29, 2010	060284
Santa Clara	City of Santa Clara (09–09–0375P).	October 21, 2009; October 28, 2009; *Santa Clara Weekly.*	The Honorable Patricia M. Mahan, Mayor, City of Santa Clara, 1500 Warburton Avenue, Santa Clara, CA 95050.	February 25, 2010	060350
Colorado:					
Douglas	Unincorporated areas of Douglas County (09–08–0908P).	November 12, 2009; November 19, 2009; *Douglas County News-Press.*	The Honorable Melanie Worley, Chairman, Douglas County Board of Commissioners, 100 3rd Street, Castle Rock, CO 80104.	March 19, 2010	080049
Grand	Town of Fraser (10–08–0009P).	November 19, 2009; November 26, 2009; *Middle Park Times.*	The Honorable Fran Cook, Mayor, Town of Fraser, P.O. Box 370, Fraser, CO 80442.	March 26, 2010	080073
Grand	Unincorporated areas of Grand County (10–08–0009P).	November 19, 2009; November 26, 2009; *Middle Park Times.*	The Honorable Gary Bumgarner, Chairman, Grand County Board of Commissioners, P.O. Box 264, Hot Sulphur Springs, CO 80451.	March 26, 2010	080280
Teller	Unincorporated areas of Teller County (09–08–0500P).	November 4, 2009; November 11, 2009; *Pikes Peak Courier View.*	The Honorable James Ignatius, Chairman, Teller County Board of Commissioners, P.O. Box 959, Cripple Creek, CO 80813.	March 11, 2010	080173
Teller	City of Woodland Park (09–08–0500P).	November 4, 2009; November 11, 2009; *Pikes Peak Courier View.*	The Honorable Steve Randolph, Mayor, City of Woodland Park, 220 West South Avenue, Woodland Park, CO 80866.	March 11, 2010	080175
Illinois:					
Will	Village of Plainfield (08–05–4590P).	November 30, 2009; December 7, 2009; *Herald News.*	The Honorable Michael P. Collins, President, Village of Plainfield, 24401 West Lockport Street, Plainfield, IL 60544.	December 21, 2009	170771
Will	Unincorporated areas of Will County (08–05–4590P).	November 30, 2009; December 7, 2009; *Herald News.*	The Honorable Lawrence M. Walsh, Executive, Will County, 302 North Chicago Street, Joliet, IL 60432.	December 21, 2009	170695
Louisiana: Livingston	Unincorporated areas of Livingston Parish (09–06–0692P).	November 10, 2009; November 17, 2009; *The Advocate.*	The Honorable Mike Grimmer, President, Livingston Parish, P.O. Box 427, Livingston, LA 70754.	March 17, 2010	220113
Minnesota: Anoka	City of Ramsey (09–05–4652P).	November 20, 2009; November 27, 2009; *Anoka County Union.*	The Honorable Thomas G. Gamec, Mayor, City of Ramsey, 7550 Sunwood Drive Northwest, Ramsey, MN 55303.	December 14, 2009	270681
Nevada: Lyon	Unincorporated areas of Lyon County (09–09–0238P).	November 25, 2009; December 2, 2009; *Dayton Courier.*	The Honorable Phyllis Hunewill, Chair, Lyon County Board of Commissioners, 30 Desert Creek Road, Wellington, NV 89444.	April 2, 2010	320029
South Dakota:					
Lincoln	Unincorporated areas of Lincoln County (09–08–0747P).	November 5, 2009; November 12, 2009; *Lennox Independent.*	The Honorable Dale L. Long, Chairman, Lincoln County Board of Commissioners, 27115 475th Avenue, Harrisburg, SD 57032.	October 28, 2009	460277
Lincoln	Town of Tea (09–08–0747P).	November 5, 2009; November 12, 2009; *Lennox Independent.*	The Honorable John Lawler, Mayor, Town of Tea, 600 East 1st Street, Tea, SD 57064.	October 28, 2009	460143
Tennessee: Bradley	City of Cleveland (09–04–1322P).	November 30, 2009; December 7, 2009; *Cleveland Daily Banner.*	The Honorable Tom Rowland, Mayor, City of Cleveland, P.O. Box 1519, Cleveland, TN 37311.	April 6, 2010	470015
Texas:					
Bell	City of Killeen (08–06–2994P).	October 13, 2009; October 20, 2009; *Killeen Daily Herald.*	The Honorable Timothy L. Hancock, Mayor, City of Killeen, P.O. Box 1329, Killeen, TX 76540.	October 30, 2009	480031
Lubbock	City of Lubbock (08–06–2723P).	November 16, 2009; November 23, 2009; *Lubbock Avalanche-Journal.*	The Honorable Tom Martin, Mayor, City of Lubbock, P.O. Box 2000, Lubbock, TX 79457.	March 23, 2010	480452
Virginia: Arlington	Unincorporated areas of Arlington County (09–03–1117P).	December 3, 2009; December 10, 2009; *Sun-Gazette.*	The Honorable Barbara A. Favola, Chairperson, Arlington County Board, 2100 Clarendon Boulevard, Suite 813, Arlington, VA 22201.	April 9, 2010	515500
Wisconsin: Milwaukee.	Village of Hales Corners (09–05–4413P).	November 12, 2009; November 19, 2009; *My Community Now.*	The Honorable Robert G. Ruesch, President, Village of Hales Corners, 5740 South 124th Street, Hales Corners, WI 53130.	March 19, 2010	550524

(Catalog of Federal Domestic Assistance No. 97.022, "Flood Insurance.")

Dated: April 27, 2010.

Sandra K. Knight,

Deputy Federal Insurance and Mitigation Administrator, Mitigation, Department of Homeland Security, Federal Emergency Management Agency.

[FR Doc. 2010–10340 Filed 5–3–10; 8:45 am]

BILLING CODE 9110–12–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

44 CFR Part 67

[Docket ID FEMA–2010–0003]

Final Flood Elevation Determinations

AGENCY: Federal Emergency Management Agency, DHS.

ACTION: Final rule.

SUMMARY: Base (1% annual-chance) Flood Elevations (BFEs) and modified BFEs are made final for the communities listed below. The BFEs and modified BFEs are the basis for the floodplain management measures that each community is required either to adopt or to show evidence of being already in effect in order to qualify or remain qualified for participation in the National Flood Insurance Program (NFIP).

DATES: The date of issuance of the Flood Insurance Rate Map (FIRM) showing BFEs and modified BFEs for each community. This date may be obtained by contacting the office where the maps are available for inspection as indicated on the table below.

ADDRESSES: The final BFEs for each community are available for inspection at the office of the Chief Executive Officer of each community. The respective addresses are listed in the table below.

FOR FURTHER INFORMATION CONTACT: Kevin C. Long, Acting Chief, Engineering Management Branch, Mitigation Directorate, Federal Emergency Management Agency, 500 C Street, SW., Washington, DC 20472, (202) 646–2820, or (email) *kevin.long@dhs.gov.*

SUPPLEMENTARY INFORMATION: The Federal Emergency Management Agency (FEMA) makes the final determinations listed below for the modified BFEs for each community listed. These modified elevations have been published in newspapers of local circulation and ninety (90) days have elapsed since that publication. The Deputy Federal Insurance and Mitigation Administrator has resolved any appeals resulting from this notification.

This final rule is issued in accordance with section 110 of the Flood Disaster Protection Act of 1973, 42 U.S.C. 4104, and 44 CFR part 67. FEMA has developed criteria for floodplain management in floodprone areas in accordance with 44 CFR part 60.

Interested lessees and owners of real property are encouraged to review the proof Flood Insurance Study and FIRM available at the address cited below for each community. The BFEs and modified BFEs are made final in the communities listed below. Elevations at selected locations in each community are shown.

National Environmental Policy Act. This final rule is categorically excluded from the requirements of 44 CFR part 10, Environmental Consideration. An environmental impact assessment has not been prepared.

Regulatory Flexibility Act. As flood elevation determinations are not within the scope of the Regulatory Flexibility Act, 5 U.S.C. 601–612, a regulatory flexibility analysis is not required.

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

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

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

List of Subjects in 44 CFR Part 67

Administrative practice and procedure, Flood insurance, Reporting and recordkeeping requirements.

■ Accordingly, 44 CFR part 67 is amended as follows:

PART 67—[AMENDED]

■ 1. The authority citation for part 67 continues to read as follows:

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

§ 67.11 [Amended]

■ 2. The tables published under the authority of § 67.11 are amended as follows:

Flooding source(s)	Location of referenced elevation	* Elevation in feet (NGVD) + Elevation in feet (NAVD) # Depth in feet above ground ^ Elevation in meters (MSL) Modified	Communities affected
Crittenden County, Arkansas, and Incorporated Areas Docket No.: FEMA–B–1045			
Mississippi River	Approximately at River Mile 700	+212	Unincorporated Areas of Crittenden County.
	Approximately at River Mile 727	+226	
	Approximately at River Mile 741	+234	
	Approximately at River Mile 750	+237	

* National Geodetic Vertical Datum.
+ North American Vertical Datum.
# Depth in feet above ground.
^ Mean Sea Level, rounded to the nearest 0.1 meter.

ADDRESSES

Unincorporated Areas of Crittenden County

Flooding source(s)	Location of referenced elevation	* Elevation in feet (NGVD) + Elevation in feet (NAVD) # Depth in feet above ground ∧ Elevation in meters (MSL) Modified	Communities affected
Maps are available for inspection at the County Courthouse, 85 Jackson Street, Marion, AR 72482.			
Mesa County, Colorado, and Incorporated Areas Docket No.: FEMA–B–1049			
Gold Star Canyon	Just above the confluence with the Colorado River	+4518	Unincorporated Areas of Mesa County, City of Grand Junction.
	Just upstream of South Broadway	+4805	
Kannah Creek	Just above the confluence with Indian Creek	+4766	Unincorporated Areas of Mesa County.
	Approximately 320 feet upstream of Upper Kannah Creek Road.	+6093	
Kannah Creek Lower Split Flow	Just above the confluence with Kannah Creek	+4806	Unincorporated Areas of Mesa County.
	Just below the divergence from Kannah Creek	+4826	
Kannah Creek Upper Split Flow	Just above the confluence with Kannah Creek	+4894	Unincorporated Areas of Mesa County.
	Just below the divergence from Kannah Creek	+4935	
Red Canyon	Just above the confluence with the Colorado River	+4546	Unincorporated Areas of Mesa County, City of Grand Junction.
	Approximately 5,670 feet above South Camp Road	+5020	

* National Geodetic Vertical Datum.
+ North American Vertical Datum.
# Depth in feet above ground.
∧ Mean Sea Level, rounded to the nearest 0.1 meter.

ADDRESSES

City of Grand Junction
Maps are available for inspection at 250 North 5th Street, Grand Junction, CO 81501.

Unincorporated Areas of Mesa County
Maps are available for inspection at 544 Rood Avenue, Grand Junction, CO 81502.

Dukes County, Massachusetts (All Jurisdictions) Docket No.: FEMA–B–1047			
Atlantic Ocean	Between Gilberts Cove and Quenames Cove	+11	Town of Chilmark, Town of Edgartown, Town of West Tisbury.
	Between Paqua Pond and Jobs Neck Pond	+9	
	Between Long Cove and Homer Road	+9	
Vineyard Sound	Approximately 300 feet east of the intersection of Lobsterville Road and West Basin Road.	+9	Town of Aquinnah, Town of Oak Bluffs, Town of Tisbury.
	Between Farm Pond and Hamlin Pond	+12	
	Between Algonquin Avenue and Yacht Club Lane	+12	

* National Geodetic Vertical Datum.
+ North American Vertical Datum.
# Depth in feet above ground.
∧ Mean Sea Level, rounded to the nearest 0.1 meter.

ADDRESSES

Town of Aquinnah
Maps are available for inspection at the Town Hall, 65 State Road, Aquinnah, MA 02535.

Town of Chilmark
Maps are available for inspection at the Town Hall, 401 Middle Road, Chilmark, MA 02535.

Town of Edgartown
Maps are available for inspection at the Town Hall, 70 Main Street, Edgartown, MA 02539.

Town of Oak Bluffs
Maps are available for inspection at the Town Hall, 56 School Street, Oak Bluffs, MA 02557.

Town of Tisbury
Maps are available for inspection at the Tisbury Town Hall, 51 Spring Street, Vineyard Haven, MA 02568.

Town of West Tisbury
Maps are available for inspection at the Town Hall, 1059 State Road, West Tisbury, MA 02575.

Flooding source(s)	Location of referenced elevation	* Elevation in feet (NGVD) + Elevation in feet (NAVD) # Depth in feet above ground ^ Elevation in meters (MSL) Modified	Communities affected
Walthall County, Mississippi, and Incorporated Areas Docket No.: FEMA–B–1060			
Magees Creek	Approximately 4,050 feet downstream of State Highway 198.	+258	Unincorporated Areas of Walthall County.
	Approximately 2,300 feet upstream of State Highway 198	+264	

* National Geodetic Vertical Datum.
+ North American Vertical Datum.
# Depth in feet above ground.
^ Mean Sea Level, rounded to the nearest 0.1 meter.

ADDRESSES

Unincorporated Areas of Walthall County

Maps are available for inspection at 200 Ball Avenue, Tylertown, MS 39667.

Middlesex County, New Jersey (All Jurisdictions) Docket No.: FEMA–B–1017			
Ambrose Brook	Approximately 1,820 feet upstream of Stelton Road (Route 529).	+78	Township of Edison.
	Approximately 1,875 feet upstream of Stelton Road (Route 529).	+78	
Bonygutt Brook	Approximately 700 feet downstream of Bound Brook Road	+46	Borough of Dunellen, Township of Piscataway.
	Approximately 0.4 mile upstream of South Washington Avenue (Route 529).	+54	
Bound Brook	Upstream side of South Avenue	+47	Township of Piscataway.
	Approximately 750 feet upstream of South Avenue	+48	
Boundary Branch Mill Brook No. 1.	At the confluence with Mill Brook No. 1	+45	Borough of Highland Park, Township of Edison.
	Approximately 25 feet downstream of Brookhill Avenue	+74	
Coppermine Brook	At the confluence with South Branch Rahway River	+40	Township of Edison, Township of Woodbridge.
	Approximately 1,870 feet upstream of Lincoln Highway (Route 27).	+59	
Green Brook	At the confluence with the Raritan River	+34	Borough of Middlesex.
	At the downstream side of New Jersey Central Railroad	+34	
Lake Lefferts	Entire shoreline within Middlesex County	+17	Township of Old Bridge.
Lawrence Brook	At the confluence with the Raritan River	+11	Township of East Brunswick.
	At the downstream side of Westons Mill Dam 1	+11	
Matawan Creek	At the downstream side of Old Bridge-Matawan Road	+17	Township of Old Bridge.
	Approximately 0.8 mile upstream of Old Bridge-Matawan Road.	+25	
Mill Brook No. 1	At the confluence with the Raritan River	+16	Borough of Highland Park.
	Approximately 955 feet upstream of Harrison Avenue	+45	
Rahway River	At the confluence with Arthur Kill	+7	Borough of Carteret, Township of Woodbridge.
	At the county boundary	+7	
Raritan River	Approximately 1.4 mile downstream of the New Jersey Turnpike.	+10	Township of East Brunswick, Borough of Highland Park, Borough of Middlesex, City of New Brunswick, Township of Edison, Township of Piscataway.
	At the confluence with Green Brook	+34	
South Branch Rahway River	At the upstream side of Wood Avenue	+40	Township of Edison, Township of Woodbridge.
	Approximately 450 feet upstream of County Route 657	+44	
West Branch Mill Brook No. 1	At the confluence with Mill Brook No. 1	+31	Borough of Highland Park.
	Approximately 760 feet upstream of Bartle Court	+51	

* National Geodetic Vertical Datum.
+ North American Vertical Datum.
# Depth in feet above ground.
^ Mean Sea Level, rounded to the nearest 0.1 meter.

ADDRESSES

Borough of Carteret

Flooding source(s)	Location of referenced elevation	* Elevation in feet (NGVD) + Elevation in feet (NAVD) # Depth in feet above ground ^ Elevation in meters (MSL) Modified	Communities affected

Maps are available for inspection at the Carteret Memorial Municipal Building. 61 Cooke Avenue, Carteret, NJ 07008.

Borough of Dunellen
Maps are available for inspection at 355 North Avenue, Dunellen, NJ 08812.

Borough of Highland Park
Maps are available for inspection at 3141 Bordertown Avenue, Parlin, NJ 08859.

Borough of Middlesex
Maps are available for inspection at 1200 Mountain Avenue, Middlesex, NJ 08846.

City of New Brunswick
Maps are available for inspection at 78 Bayard Street, New Brunswick, NJ 08901.

Township of East Brunswick
Maps are available for inspection at 1 Jean Walling Civic Center Drive, East Brunswick, NJ 08816.

Township of Edison
Maps are available for inspection at 100 Municipal Boulevard, Edison, NJ 08817.

Township of Old Bridge
Maps are available for inspection at 1 Old Bridge Plaza, Old Bridge, NJ 08857.

Township of Piscataway
Maps are available for inspection at 455 Hoes Lane, Piscataway, NJ 08854.

Township of Woodbridge
Maps are available for inspection at 1 Main Street, Woodbridge, NJ 07095.

Rolette County, North Dakota, and incorporated Areas
Docket No.: FEMA–B–1049

Ox Creek	Approximately 501 feet upstream of the southern corporate limit of Belcourt.	+1903	Chippewa Indian Reservation (Turtle Mountain Band).
	Approximately 27 feet downstream of Belcourt Lake	+2015	
Ox Creek Breakout	Approximately 100 feet upstream of 99th Street Northeast	+1971	Chippewa Indian Reservation (Turtle Mountain Band).
	Approximately 2,154 feet upstream of 99th Street Northeast.	+1972	

* National Geodetic Vertical Datum.
+ North American Vertical Datum.
# Depth in feet above ground.
^ Mean Sea Level, rounded to the nearest 0.1 meter.

ADDRESSES

Chippewa Indian Reservation (Turtle Mountain Band)
Maps are available for inspection at Highway 5 West, Belcourt, ND 58316.

Muskingum County, Ohio, and incorporated Areas
Docket No.: FEMA–B–1047

Moxahala Creek	Approximately 1,300 feet downstream of Ransbottom Road.	+734	Unincorporated Areas of Muskingum County.
	Approximately 500 feet downstream of East 1st Street	+735	
Muskingum River	Approximately 0.4 mile downstream of East Muskingum Avenue (State Route 208).	+718	Village of Dresden.
	At the confluence with Wakatomika Creek	+720	
Muskingum River	Approximately 0.6 mile downstream of the confluence with Salt Creek.	+683	Village of Philo.
	Approximately 0.5 mile upstream of the confluence with Salt Creek.	+685	
Wakatomika Creek	Approximately 0.5 mile downstream of Main Street	+720	Unincorporated Areas of Muskingum County, Village of Dresden.
	Approximately 1,400 feet downstream of Frazeysburg Road.	+725	
Wakatomika Creek	Approximately 0.6 mile downstream of Shannon Road	+745	Unincorporated Areas of Muskingum County, Village of Frazeysburg.
	Just downstream of Canal Road	+751	

* National Geodetic Vertical Datum.

Flooding source(s)	Location of referenced elevation	* Elevation in feet (NGVD) + Elevation in feet (NAVD) # Depth in feet above ground ^ Elevation in meters (MSL) Modified	Communities affected

+ North American Vertical Datum.
# Depth in feet above ground.
^ Mean Sea Level, rounded to the nearest 0.1 meter.

ADDRESSES

Unincorporated Areas of Muskingum County

Maps are available for inspection at 401 Main Street, Zanesville, OH 43701.

Village of Dresden

Maps are available for inspection at 904 Chestnut Street, Dresden, OH 43821.

Village of Frazeysburg

Maps are available for inspection at 7 West Second Street, Frazeysburg, OH 43822.

Village of Philo

Maps are available for inspection at 300 Main Street, Philo, OH 43771.

Yankton County, South Dakota, and Incorporated Areas
Docket No.: FEMA–B–1050

James River	Just upstream of the confluence with the Missouri River	+1167	Unincorporated Areas of Yankton County.
	Approximately 600 feet upstream of County Highway 213 (431st Avenue).	+1188	

* National Geodetic Vertical Datum.
+ North American Vertical Datum.
# Depth in feet above ground.
^ Mean Sea Level, rounded to the nearest 0.1 meter.

ADDRESSES

Unincorporated Areas of Yankton County

Maps are available for inspection at 321 West 3rd Street, Yankton, SD 57078.

Spokane County, Washington, and Incorporated Areas
FEMA Docket Number: B–1009

Argonne Creek	Approximately 1,300 feet downstream of North Maringo Drive.	+1922	Unincorporated Areas of Spokane County.
	Approximately 600 feet upstream of North Boeing Road	+1987	
Forker Draw	Approximately at North Progress Road	+2065	City of Spokane Valley, Unincorporated Areas of Spokane County.
	Approximately 70 feet downstream of East Bigelow Gulch Road.	+2336	

* National Geodetic Vertical Datum.
+ North American Vertical Datum.
# Depth in feet above ground.
^ Mean Sea Level, rounded to the nearest 0.1 meter.

ADDRESSES

City of Spokane Valley

Maps are available for inspection at 11707 East Sprague Avenue, Suite 106, Spokane Valley, WA 99206.

Unincorporated Areas of Spokane County

Maps are available for inspection at 808 West Spokane Falls Boulevard, Spokane, WA 99201.

Black River	Approximately 4,460 feet downstream of County Highway G.	+1113	City of Greenwood.
	Approximately 4,960 feet upstream of County Highway G	+1126	

* National Geodetic Vertical Datum.
+ North American Vertical Datum.
# Depth in feet above ground.
^ Mean Sea Level, rounded to the nearest 0.1 meter.

ADDRESSES

City of Greenwood

Maps are available for inspection at City Hall, 102 North Main Street, Greenwood, WI 54437.

(Catalog of Federal Domestic Assistance No. 97.022, "Flood Insurance.")

Dated: April 27, 2010.

Sandra K. Knight,

Deputy Federal Insurance and Mitigation Administrator, Mitigation, Department of Homeland Security, Federal Emergency Management Agency.

[FR Doc. 2010–10337 Filed 5–3–10; 8:45 am]

BILLING CODE 9110–12–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

44 CFR Part 67

[Docket ID FEMA–2010–0003]

Final Flood Elevation Determinations

AGENCY: Federal Emergency Management Agency, DHS.

ACTION: Final rule.

SUMMARY: Base (1% annual-chance) Flood Elevations (BFEs) and modified BFEs are made final for the communities listed below. The BFEs and modified BFEs are the basis for the floodplain management measures that each community is required either to adopt or to show evidence of being already in effect in order to qualify or remain qualified for participation in the National Flood Insurance Program (NFIP).

DATES: The date of issuance of the Flood Insurance Rate Map (FIRM) showing BFEs and modified BFEs for each community. This date may be obtained by contacting the office where the maps are available for inspection as indicated in the table below.

ADDRESSES: The final BFEs for each community are available for inspection at the office of the Chief Executive Officer of each community. The respective addresses are listed in the table below.

FOR FURTHER INFORMATION CONTACT: Kevin C. Long, Acting Chief, Engineering Management Branch, Mitigation Directorate, Federal Emergency Management Agency, 500 C Street, SW., Washington, DC 20472, (202) 646–2820, or (e-mail) *kevin.long@dhs.gov.*

SUPPLEMENTARY INFORMATION: The Federal Emergency Management Agency (FEMA) makes the final determinations listed below for the modified BFEs for each community listed. These modified elevations have been published in newspapers of local circulation and ninety (90) days have elapsed since that publication. The Deputy Federal Insurance and Mitigation Administrator has resolved any appeals resulting from this notification.

This final rule is issued in accordance with section 110 of the Flood Disaster Protection Act of 1973, 42 U.S.C. 4104, and 44 CFR part 67. FEMA has developed criteria for floodplain management in floodprone areas in accordance with 44 CFR part 60.

Interested lessees and owners of real property are encouraged to review the proof Flood Insurance Study and FIRM available at the address cited below for each community. The BFEs and modified BFEs are made final in the communities listed below. Elevations at selected locations in each community are shown.

National Environmental Policy Act. This final rule is categorically excluded from the requirements of 44 CFR part 10, Environmental Consideration. An environmental impact assessment has not been prepared.

Regulatory Flexibility Act. As flood elevation determinations are not within the scope of the Regulatory Flexibility Act, 5 U.S.C. 601–612, a regulatory flexibility analysis is not required.

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

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

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

List of Subjects in 44 CFR Part 67

Administrative practice and procedure, Flood insurance, Reporting and recordkeeping requirements.

■ Accordingly, 44 CFR part 67 is amended as follows:

PART 67—[AMENDED]

■ 1. The authority citation for part 67 continues to read as follows:

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

§ 67.11 [Amended]

■ 2. The tables published under the authority of § 67.11 are amended as follows:

State	City/town/county	Source of flooding	Location	*Elevation in feet (NGVD) +Elevation in feet (NAVD) #Depth in feet above ground ^Elevation in meters (MSL) Modified
City of Burnside, Kentucky Docket No.: FEMA–B–1040				
Kentucky	City of Burnside	Lake Cumberland	Entire shoreline	+749

*National Geodetic Vertical Datum.
+North American Vertical Datum.
#Depth in feet above ground.
^Mean Sea Level, rounded to the nearest 0.1 meter.

ADDRESSES

City of Burnside
Maps are available for inspection at 7929 South Highway 27, Burnside, KY 42519.

Flooding source(s)	Location of referenced elevation	*Elevation in feet (NGVD) +Elevation in feet (NAVD) #Depth in feet above ground ^Elevation in meters (MSL) Modified	Communities affected
Clinton County, Kentucky, and Incorporated Areas Docket No.: FEMA–B–1040			
Cumberland River	Approximately 2,300 feet downstream of the confluence with Tearcoat Creek.	+568	Unincorporated Areas of Clinton County.
	Approximately 2,300 feet upstream of the confluence with Millers Creek.	+571	
Dale Hollow Lake (Wolf River)	At the confluence with the Wolf River	+663	Unincorporated Areas of Clinton County.
	Approximately 1,800 feet upstream of the confluence with Spring Creek.	+663	
Lake Cumberland	Just upstream of the Wolf Creek Dam	+760	Unincorporated Areas of Clinton County.
	At the confluence with Otter Creek	+760	

*National Geodetic Vertical Datum.
+North American Vertical Datum.
#Depth in feet above ground.
^Mean Sea Level, rounded to the nearest 0.1 meter.

ADDRESSES

Unincorporated Areas of Clinton County

Maps are available for inspection at 100 South Cross Street, Albany, KY 42602.

Jefferson Davis Parish, Louisiana, and Incorporated Areas Docket No.: FEMA–B–1043			
Lake Arthur	Entire shoreline (north to 7th Street from the eastern to the western border of the Town of Lake Arthur).	+8–10	Town of Lake Arthur, Unincorporated Areas of Jefferson Davis Parish.
Lake Charles	Covering an area beginning at the southern border with Cameron Parish, proceeding north along the Calcasieu Parish border to West Niblett Road, to the east to State Route 99, then from State Route 99 below State Route 380 to the Town of Lake Charles border.	+7–11	Unincorporated Areas of Jefferson Davis Parish.

*National Geodetic Vertical Datum.
+North American Vertical Datum.
#Depth in feet above ground.
^Mean Sea Level, rounded to the nearest 0.1 meter.

ADDRESSES

Town of Lake Arthur

Maps are available for inspection at 102 Arthur Avenue, Lake Arthur, LA 70549.

Unincorporated Areas of Jefferson Davis Parish

Maps are available for inspection at 304 North State Street, Jennings, LA 70546.

Tangipahoa Parish, Louisiana, and Incorporated Areas Docket Nos.: FEMA–B–7765 and FEMA–B–1064			
Ponchatoula Creek	Approximately 1,726 feet upstream of the confluence with Unnamed Tributary.	+79	Town of Independence.
	Approximately 1.92 mile upstream of the confluence with Unnamed Tributary.	+87	
Tangipahoa River	Approximately 1.18 mile upstream of the confluence with Big Creek.	+118	Town of Roseland.
	Approximately 1,809 feet downstream of I–10	+126	
Natalbany River	Approximately 2.5 mile upstream of State Route 40	+97	Town of Amite City, Unincorporated Areas of Tangipahoa Parish.
	Approximately 185 feet upstream of State Route 1048	+183	
Unnamed Tributary	Approximately 0.65 mile upstream of the confluence with Ponchatoula Creek.	+79	Town of Independence.
	Approximately 0.81 mile upstream of the confluence with Ponchatoula Creek.	+80	

*National Geodetic Vertical Datum.
+North American Vertical Datum.
#Depth in feet above ground.

Flooding source(s)	Location of referenced elevation	* Elevation in feet (NGVD) + Elevation in feet (NAVD) # Depth in feet above ground ^ Elevation in meters (MSL) Modified	Communities affected

^ Mean Sea Level, rounded to the nearest 0.1 meter.

ADDRESSES

Town of Amite City
Maps are available for inspection at 212 East Oak Street, Amite, LA 70422.

Town of Independence
Maps are available for inspection at P.O. Box 35, Independence, LA 70443.

Town of Roseland
Maps are available for inspection at 62438 Commercial Drive, Roseland, LA 70546.

Unincorporated Areas of Tangipahoa Parish
Maps are available for inspection at 15481 Club Deluxe Road, Hammond, LA 70403.

Marion County, Missouri, and Incorporated Areas
Docket No.: FEMA–B–1038

Bear Creek	Approximately 3,930 feet downstream of County Road 418.	+562	Unincorporated Areas of Marion County.
	At U.S. Route 36	+583	
Minnow Branch	At Munger Lane	+589	City of Hannibal, Unincorporated Areas of Marion County.
	At Veterans Road	+685	
Mississippi River	Approximately 2.175 miles downstream of the confluence with Bear Creek.	+476	City of Hannibal, Unincorporated Areas of Marion County.
	At the confluence with Bear Creek	+477	
	At U.S. Route 24	+487	
St. Clair Creek	Approximately 2,150 feet downstream of Veterans Road	+568	City of Hannibal, Unincorporated Areas of Marion County.
	Approximately 400 feet upstream of Highway MM	+652	

* National Geodetic Vertical Datum.
+ North American Vertical Datum.
# Depth in feet above ground.
^ Mean Sea Level, rounded to the nearest 0.1 meter.

ADDRESSES

City of Hannibal
Maps are available for inspection at 320 Broadway, Hannibal, MO 63401.

Unincorporated Areas of Marion County
Maps are available for inspection at 100 South Main Street, Palmyra, MO 63461.

Custer County, Montana, and Incorporated Areas
Docket No.: FEMA–B–1020

Tongue River	Approximately 1,605 feet upstream of the confluence with the Yellowstone River.	+2359	City of Miles City, Unincorporated Areas of Custer County.
	Approximately 5,315 feet upstream of I–94	+2375	
Tongue River Split 1	Approximately 1,450 feet upstream of the confluence with the Yellowstone River.	+2353	City of Miles City, Unincorporated Areas of Custer County.
	Approximately 2,430 feet upstream of 4th Street	+2358	
Tongue River Split 2A	Approximately 2,135 feet upstream of the confluence with the Yellowstone River.	+2348	City of Miles City, Unincorporated Areas of Custer County.
	Approximately 185 feet upstream of Montana Avenue	+2358	
Tongue River Split 2B	Just downstream of the intersection of Palmer Street and 9th Street.	+2359	City of Miles City.
	Approximately 705 feet upstream of Pleasant Street	+2360	
Tongue River Split 2C	Approximately 380 feet upstream of Palmer Street	+2359	City of Miles City.
	Approximately 1,145 feet upstream of Pacific Avenue	+2363	
Tongue River Split 3A	Approximately 300 feet upstream of the confluence with Tongue River Split 2A.	+2346	City of Miles City, Unincorporated Areas of Custer County.
	Approximately 290 feet upstream of Leighton Street	+2358	

Flooding source(s)	Location of referenced elevation	* Elevation in feet (NGVD) + Elevation in feet (NAVD) # Depth in feet above ground ^ Elevation in meters (MSL) Modified	Communities affected
Tongue River Split 3B	Just downstream of Pleasant Street	+2360	City of Miles City, Unincorporated Areas of Custer County.
	Approximately 75 feet upstream of 4th Avenue	+2365	
Tongue River Split 3C	Approximately 130 feet downstream of Palmer Street	+2358	City of Miles City, Unincorporated Areas of Custer County.
	Approximately 1,465 feet upstream of Balsam Drive	+2368	
Yellowstone River	Approximately 22,675 feet downstream of State Highway 59.	+2336	City of Miles City, Unincorporated Areas of Custer County.
	Approximately 11,500 feet upstream of State Highway 59	+2363	

* National Geodetic Vertical Datum.
+ North American Vertical Datum.
# Depth in feet above ground.
^ Mean Sea Level, rounded to the nearest 0.1 meter.

ADDRESSES

City of Miles City
Maps are available for inspection at 17 South 8th Street, Miles City, MT 59301.

Unincorporated Areas of Custer County
Maps are available for inspection at 1010 Main Street, Miles City, MT 59301.

Fergus County, Montana, and Incorporated Areas
Docket No.: FEMA–B–1050

Flood Channel	Approximately 70 feet upstream of the Main Street Bridge	+3610	Town of Denton.
	Approximately 50 feet upstream of the Railroad Bridge	+3614	
Shallow Flooding	At the intersection of Bain Street and Main Street	#1	Town of Denton.

* National Geodetic Vertical Datum.
+ North American Vertical Datum.
# Depth in feet above ground.
^ Mean Sea Level, rounded to the nearest 0.1 meter.

ADDRESSES

Town of Denton
Maps are available for inspection at 305 West Watson Street, Lewistown, MT 59457.

Ross County, Ohio, and Incorporated Areas
Docket No.: FEMA–B–1043

Kinnikinnick Creek	Approximately 1,850 feet upstream of the confluence with the Scioto River.	+645	Unincorporated Areas of Ross County.
	Approximately 11,050 feet upstream of the confluence with the Scioto River.	+666	

* National Geodetic Vertical Datum.
+ North American Vertical Datum.
# Depth in feet above ground.
^ Mean Sea Level, rounded to the nearest 0.1 meter.

ADDRESSES

Unincorporated Areas of Ross County
Maps are available for inspection at 15 North Paint Street, Chillicothe, OH 45601.

Tuscarawas County, Ohio, and Incorporated Areas
Docket No.: FEMA–B–1050

Beggar Run (Backwater from Tuscarawas River).	At the confluence with Conotton Creek	+909	Unincorporated Areas of Tuscarawas County.
	Approximately 0.78 mile upstream of the confluence with Conotton Creek.	+909	
Browns Run (Backwater from Tuscarawas River).	At the confluence with Conotton Creek	+909	Unincorporated Areas of Tuscarawas County.
	Just downstream of Henderson School Road	+909	
Conotton Creek (Backwater from Tuscarawas River).	At the confluence with the Tuscarawas River	+909	Unincorporated Areas of Tuscarawas County.

Flooding source(s)	Location of referenced elevation	* Elevation in feet (NGVD) + Elevation in feet (NAVD) # Depth in feet above ground ^ Elevation in meters (MSL) Modified	Communities affected
	Approximately 0.76 mile upstream of Miller Hill Road (Carroll County boundary).	+909	
Dog Run (Backwater from Tuscarawas River).	At the confluence with Conotton Creek	+909	Unincorporated Areas of Tuscarawas County.
	Approximately 0.42 mile upstream of Norfolk and Western Railway.	+909	
Huff Run (Backwater from Tuscarawas River).	At the confluence with Conotton Creek	+909	Unincorporated Areas of Tuscarawas County, Village of Mineral City.
	Approximately 1.38 mile upstream of New Cumberland Road.	+909	
Indian Fork (Backwater from Tuscarawas River).	At the confluence with Conotton Creek	+909	Unincorporated Areas of Tuscarawas County.
	Just downstream of State Route 212	+909	
Middle Run (Backwater from Tuscarawas River).	At the confluence with the Tuscarawas River	+909	Unincorporated Areas of Tuscarawas County.
	Approximately 0.72 mile upstream of Dover-Zoar Road	+909	
Small Middle Run (Backwater from Tuscarawas River).	At the confluence with the Tuscarawas River	+909	Unincorporated Areas of Tuscarawas County.
	Approximately 500 feet downstream of Dover-Zoar Road	+909	
Stillwater Creek	Just downstream of Baltimore and Ohio Railroad	+844	City of Midvale.
	Approximately 0.45 mile upstream of U.S. Route 250	+845	
Tuscarawas River	Approximately 1,000 feet upstream of the confluence with Clewell Run.	+831	Village of Gnadenhutten.
Tuscarawas River	Approximately 0.66 mile downstream of Tuscarawas Road	+838	Village of Tuscarawas.
Tuscarawas River	Just upstream of the Dover Dam	+909	Unincorporated Areas of Tuscarawas County, Village of Bolivar, Village of Zoar.
	Approximately 2.18 miles upstream of State Route 212 (Stark County boundary).	+909	
Wolf Run (Backwater from Tuscarawas River).	At the confluence with the Tuscarawas River	+909	Unincorporated Areas of Tuscarawas County.
	Approximately 0.89 mile upstream of Norfolk and Western Railway.	+909	

* National Geodetic Vertical Datum.
+ North American Vertical Datum.
# Depth in feet above ground.
^ Mean Sea Level, rounded to the nearest 0.1 meter.

ADDRESSES

City of Midvale
Maps are available for inspection at City Hall, 311 Barnhill Road, Midvale, OH 44653.

Unincorporated Areas of Tuscarawas County
Maps are available for inspection at the Tuscarawas County Administrative Offices, 125 East High Avenue, New Philadelphia, OH 44663.

Village of Bolivar
Maps are available for inspection at the Village Hall, 109 Canal Street Northwest, Bolivar, OH 44612.

Village of Gnadenhutten
Maps are available for inspection at the Village Hall, 131 South Walnut Street, Gnadenhutten, OH 44629.

Village of Mineral City
Maps are available for inspection at the Village Hall, 8728 North High Street, Mineral City, OH 44656.

Village of Tuscarawas
Maps are available for inspection at the Village Hall, 522 East Cherry Street, Tuscarawas, OH 44682.

Village of Zoar
Maps are available for inspection at the Tuscarawas County Administrative Offices, 125 East High Avenue, New Philadelphia, OH 44663.

Pittsburg County, Oklahoma, and Incorporated Areas
Docket No.: FEMA–B–1034

Tributary AA	Approximately 2,790 feet downstream of 14th Street	+715	City of McAlester.
	Approximately 2,160 feet downstream of 14th Street	+724	
Tributary B	Approximately 470 feet downstream of C Street	+686	City of McAlester, Unincorporated Areas of Pittsburg County.
	Approximately 1,700 feet upstream of Swallow Drive	+728	

Flooding source(s)	Location of referenced elevation	* Elevation in feet (NGVD) + Elevation in feet (NAVD) # Depth in feet above ground ^ Elevation in meters (MSL) Modified	Communities affected
Tributary E	Approximately 1,200 feet upstream of Highway 270	+654	Unincorporated Areas of Pittsburg County.
	Approximately 5,000 feet upstream of Highway 270	+658	

* National Geodetic Vertical Datum.
+ North American Vertical Datum.
# Depth in feet above ground.
^ Mean Sea Level, rounded to the nearest 0.1 meter.

ADDRESSES

City of McAlester
Maps are available for inspection at 28 East Washington Street, McAlester, OK 74502.

Unincorporated Areas of Pittsburg County
Maps are available for inspection at 115 East Carl Albert Parkway, McAlester, OK 74501.

Sanborn County, South Dakota, and Incorporated Areas
Docket No.: FEMA–B–1049

James River	Approximately 2,133 feet downstream of 243rd Street	+1226	Unincorporated Areas of Sanborn County.
	Approximately 1,162 feet upstream of 221st Street	+1237	

* National Geodetic Vertical Datum.
+ North American Vertical Datum.
# Depth in feet above ground.
^ Mean Sea Level, rounded to the nearest 0.1 meter.

ADDRESSES

Unincorporated Areas of Sanborn County
Maps are available for inspection at 604 West 6th Street, Woonsocket, SD 57385.

Val Verde County, Texas, and Incorporated Areas
Docket No.: FEMA–B–1049

Calveras Creek	At the confluence with San Felipe Creek	+924	Unincorporated Areas of Val Verde County.
	Approximately 0.6 mile upstream of Gilberto Road	+1015	
Cantu Branch	Just upstream of Dodson Avenue	+1035	Unincorporated Areas of Val Verde County.
	Approximately 1,222 feet upstream of Grace Drive	+1046	
San Felipe Creek	Just upstream of Gilchrist Lane	+911	Unincorporated Areas of Val Verde County.
	Just upstream of River Road	+929	

* National Geodetic Vertical Datum.
+ North American Vertical Datum.
# Depth in feet above ground.
^ Mean Sea Level, rounded to the nearest 0.1 meter.

ADDRESSES

Unincorporated Areas of Val Verde County
Maps are available for inspection at the Del Rio City Hall, 109 West Broadway Street, Del Rio, TX 78840.

Marathon County, Wisconsin, and Incorporated Areas
Docket No.: FEMA–B–1022

Bull Junior Creek	At the mouth of the Wisconsin River	+1147	City of Mosinee.
	Approximately 450 feet downstream of U.S. Route 51	+1149	
Eau Claire River	At the Brooks and Ross Dam	+1168	City of Schofield, City of Wausau.
	Approximately 1.1 mile upstream of the Brooks and Ross Dam.	+1169	
Wisconsin River	Just upstream of the dam in the City of Mosinee	+1147	City of Mosinee, Unincorporated Areas of Marathon County, Village of Kronenwetter, Village of Rothschild.
	Just downstream of the Rothschild Dam	+1159	

* National Geodetic Vertical Datum.

Flooding source(s)	Location of referenced elevation	* Elevation in feet (NGVD) + Elevation in feet (NAVD) # Depth in feet above ground ^ Elevation in meters (MSL) Modified	Communities affected

+ North American Vertical Datum.
# Depth in feet above ground.
^ Mean Sea Level, rounded to the nearest 0.1 meter.

ADDRESSES

City of Mosinee
Maps are available for inspection at City Hall, 225 Main Street, Mosinee, WI 54455.

City of Schofield
Maps are available for inspection at the Public Works/Building Inspection Department, 200 Park Street, Schofield, WI 54476.

City of Wausau
Maps are available for inspection at the Inspections Department, 407 Grant Street, Wausau, WI 54403.

Unincorporated Areas of Marathon County
Maps are available for inspection at the Marathon County Conservation, Planning, and Zoning Office, 210 River Drive, Wausau, WI 54403.

Village of Kronenwetter
Maps are available for inspection at the Municipal Center, 1582 Kronenwetter Drive, Kronenwetter, WI 54455.

Village of Rothschild
Maps are available for inspection at the Village Hall, 211 Grand Avenue, Rothschild, WI 54470.

Outagamie County, Wisconsin, and Incorporated Areas
Docket No.: FEMA–B–1045

AAL Tributary	At the confluence with Apple Creek	+742	City of Appleton.
	Approximately 410 feet upstream of North Lightning Drive	+746	
Apple Creek	Approximately 0.92 mile upstream of Garrity Road	+646	City of Appleton, Unincorporated Areas of Outagamie County, Village of Little Chute.
	Approximately 0.33 mile upstream of U.S. Route 41	+774	
Apple Creek North	At the confluence with Apple Creek	+729	City of Appleton, Unincorporated Areas of Outagamie County.
	Approximately 90 feet upstream of County Highway E	+780	
Apple Creek North Overland Flow.	At the confluence with Apple Creek	+737	City of Appleton, Unincorporated Areas of Outagamie County.
	At the divergence from Apple Creek North	+744	
Apple Creek Northeast	At the confluence with Apple Creek	+721	City of Appleton, Unincorporated Areas of Outagamie County.
	Approximately 0.35 mile upstream of Lanser Lane	+761	
Apple Creek Overland Flow	At the confluence with Apple Creek	+757	City of Appleton.
	Approximately 0.23 mile above the confluence with Apple Creek.	+767	
County Highway JJ Swale	At the confluence with Apple Creek	+729	Unincorporated Areas of Outagamie County.
	Approximately 920 feet upstream of the confluence with Apple Creek.	+730	
Fox River	Approximately 0.27 mile downstream of the Rapids Croche Dam.	+603	Unincorporated Areas of Outagamie County.
	Approximately 0.87 mile downstream of the Thilmany Dam.	+610	
Fox River	Approximately 0.56 mile upstream of State Highway 441	+703	City of Appleton, Unincorporated Areas of Outagamie County.
	Approximately 200 feet downstream of the Appleton Upper Dam.	+728	
French Road Overland Flow	At the confluence with French Road Swale	+738	City of Appleton.
	Approximately 960 feet above the confluence with French Road Swale.	+743	
French Road Swale	At the confluence with Apple Creek	+733	City of Appleton.
	At the divergence from Apple Creek North	+747	
Garners Creek	At the confluence with the Fox River	+660	City of Appleton, Unincorporated Areas of Outagamie County, Village of Combined Locks, Village of Kimberly, Village of Little Chute.

Flooding source(s)	Location of referenced elevation	* Elevation in feet (NGVD) + Elevation in feet (NAVD) # Depth in feet above ground ^ Elevation in meters (MSL) Modified	Communities affected
	Approximately 0.28 mile upstream of Stoney Brook Road	+773	
Garners Creek Tributary 1	At the confluence with Garners Creek	+666	Unincorporated Areas of Outagamie County, Village of Combined Locks.
	Approximately 1.28 mile upstream of Block Road	+747	
Garners Creek Tributary 2	At the confluence with Garners Creek	+698	Unincorporated Areas of Outagamie County.
	Approximately 30 feet upstream of Greenspire Way	+748	
Garners Creek Tributary 3	At the confluence with Garners Creek	+711	Unincorporated Areas of Outagamie County.
	Approximately 401 feet upstream of Fenceline Drive	+757	
Garners Creek Tributary 3.1	At the confluence with Garners Creek Tributary 3	+733	Unincorporated Areas of Outagamie County.
	Approximately 0.20 mile upstream of the confluence with Garners Creek Tributary 3.	+740	
Garners Creek Tributary 4	At the confluence with Garners Creek	+753	City of Appleton, Unincorporated Areas of Outagamie County.
	Approximately 50 feet downstream of State Highway 441	+753	
Glory Lane Swale	At the confluence with Apple Creek	+733	City of Appleton.
	Approximately 120 feet south of Glory Lane	+734	
Mud Creek	Approximately 1.33 miles downstream of West Spencer Street.	+744	Unincorporated Areas of Outagamie County.
	Approximately 170 feet downstream of North Mayflower Drive.	+837	
Mud Creek Tributary 3.2	At the confluence with Mud Creek Tributary 3	+774	Unincorporated Areas of Outagamie County.
	Approximately 0.51 mile upstream of Elsner Road	+805	
Mud Creek Tributary 3.3	At the confluence with Mud Creek Tributary 3	+774	Unincorporated Areas of Outagamie County.
	Approximately 500 feet upstream of State Highway 15	+846	
Mud Creek Tributary 3.3.2	At the confluence with Mud Creek Tributary 3.3	+791	Unincorporated Areas of Outagamie County.
	Approximately 100 feet downstream of County Highway JJ.	+800	
Mud Creek Tributary 3.3.3	Approximately 370 feet downstream of Barley Way	+797	Unincorporated Areas of Outagamie County.
	Approximately 150 feet downstream of County Highway JJ.	+800	
Wolf River	Approximately 1.19 mile downstream of U.S. Route 45	+761	City of New London.
	Approximately 1.13 mile downstream of U.S. Route 45	+761	

* National Geodetic Vertical Datum.
+ North American Vertical Datum.
# Depth in feet above ground.
^ Mean Sea Level, rounded to the nearest 0.1 meter.

ADDRESSES

City of Appleton
Maps are available for inspection at 100 North Appleton Street, Appleton, WI 54911.

City of New London
Maps are available for inspection at 405 West Wolf River Avenue, New London, WI 54961.

Unincorporated Areas of Outagamie County
Maps are available for inspection at 410 South Walnut Street, Appleton, WI 54911.

Village of Combined Locks
Maps are available for inspection at 405 Wallace Street, Combined Locks, WI 54113.

Village of Kimberly
Maps are available for inspection at 515 West Kimberly Avenue, Kimberly, WI 54136.

Village of Little Chute
Maps are available for inspection at 108 West Main Street, Little Chute, WI 54140.

(Catalog of Federal Domestic Assistance No. 97.022, "Flood Insurance.")

Dated: April 27, 2010.

Sandra K. Knight,

Deputy Federal Insurance and Mitigation Administrator, Mitigation, Department of Homeland Security, Federal Emergency Management Agency.

[FR Doc. 2010–10345 Filed 5–3–10; 8:45 am]

BILLING CODE 9110–12–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

44 CFR Part 67

[Docket ID FEMA–2010–0003]

Final Flood Elevation Determinations

AGENCY: Federal Emergency Management Agency, DHS.

ACTION: Final rule.

SUMMARY: Base (1% annual-chance) Flood Elevations (BFEs) and modified BFEs are made final for the communities listed below. The BFEs and modified BFEs are the basis for the floodplain management measures that each community is required either to adopt or to show evidence of being already in effect in order to qualify or remain qualified for participation in the National Flood Insurance Program (NFIP).

DATES: The date of issuance of the Flood Insurance Rate Map (FIRM) showing BFEs and modified BFEs for each community. This date may be obtained by contacting the office where the maps are available for inspection as indicated in the table below.

ADDRESSES: The final BFEs for each community are available for inspection at the office of the Chief Executive Officer of each community. The respective addresses are listed in the table below.

FOR FURTHER INFORMATION CONTACT: Kevin C. Long, Acting Chief, Engineering Management Branch, Mitigation Directorate, Federal Emergency Management Agency, 500 C Street, SW., Washington, DC 20472, (202) 646–2820, or (e-mail) *kevin.long@dhs.gov*.

SUPPLEMENTARY INFORMATION: The Federal Emergency Management Agency (FEMA) makes the final determinations listed below for the modified BFEs for each community listed. These modified elevations have been published in newspapers of local circulation and ninety (90) days have elapsed since that publication. The Deputy Federal Insurance and Mitigation Administrator has resolved any appeals resulting from this notification.

This final rule is issued in accordance with section 110 of the Flood Disaster Protection Act of 1973, 42 U.S.C. 4104, and 44 CFR part 67. FEMA has developed criteria for floodplain management in floodprone areas in accordance with 44 CFR part 60.

Interested lessees and owners of real property are encouraged to review the proof Flood Insurance Study and FIRM available at the address cited below for each community.

The BFEs and modified BFEs are made final in the communities listed below. Elevations at selected locations in each community are shown.

National Environmental Policy Act. This final rule is categorically excluded from the requirements of 44 CFR part 10, Environmental Consideration. An environmental impact assessment has not been prepared.

Regulatory Flexibility Act. As flood elevation determinations are not within the scope of the Regulatory Flexibility Act, 5 U.S.C. 601–612, a regulatory flexibility analysis is not required.

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

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

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

List of Subjects in 44 CFR Part 67

Administrative practice and procedure, Flood insurance, Reporting and recordkeeping requirements.

■ Accordingly, 44 CFR part 67 is amended as follows:

PART 67—[AMENDED]

■ 1. The authority citation for part 67 continues to read as follows:

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

§ 67.11 [Amended]

■ 2. The tables published under the authority of § 67.11 are amended as follows:

Flooding source(s)	Location of referenced elevation	* Elevation in feet (NGVD) + Elevation in feet (NAVD) # Depth in feet above ground ^ Elevation in meters (MSL) Modified	Communities affected
Hamilton County, Florida, and Incorporated Areas Docket No.: FEMA–B–1018			
Little Alapaha River	At the confluence with Unnamed Tributary	+81	Unincorporated Areas of Hamilton County.
	At the confluence with Little Alapaha River Unnamed Tributary.	+85	
Little Alapaha River Unnamed Tributary.	At the confluence with the Little Alapaha River	+85	Unincorporated Areas of Hamilton County.
	Approximately 950 feet upstream of U.S. Route 129	+125	
Suwannee River Unnamed Tributary.	Just upstream of Jewett Street	+88	Town of White Springs
	Approximately 600 feet upstream of 1st Street	+109	
Timber Lake	Entire shoreline	+135	Unincorporated Areas of Hamilton County.

Flooding source(s)	Location of referenced elevation	* Elevation in feet (NGVD) + Elevation in feet (NAVD) # Depth in feet above ground ^ Elevation in meters (MSL) Modified	Communities affected
Turket Creek	Just upstream of the confluence with the Alapahoochee River.	+92	Unincorporated Areas of Hamilton County, Town of Jennings.
	Approximately 1,000 feet upstream of Hamilton Avenue ...	+138	

* National Geodetic Vertical Datum.
+ North American Vertical Datum.
# Depth in feet above ground.
^ Mean Sea Level, rounded to the nearest 0.1 meter.

ADDRESSES

Town of Jennings
Maps are available for inspection at the Town Hall, 1199 Hamilton Avenue, Jennings, FL 32053

Town of White Springs
Maps are available for inspection at the Town Hall, 10363 Bridge Street, White Springs, FL 32096

Unincorporated Areas of Hamilton County
Maps are available for inspection at the Hamilton County Clerk's Office, 207 1st Street Northeast, Room 106, Jasper, FL 32052.

Middlesex County, Massachusetts (All Jurisdictions)
Docket Nos.: FEMA–B–7781 and FEMA–B–7798

Aberjona River	At the outlet to Lower Mystic Lake	+7	Town of Arlington, City of Medford, City of Woburn, Town of Reading, Town of Winchester.
	At the divergence of the Aberjona River—North Spur	+83	
Aberjona River—North Spur	At the confluence with the Aberjona River	+64	Town of Reading, City of Woburn, Town of Wilmington.
	Approximately 300 feet upstream of Willow Street	+83	
Alewife Brook (Little River)	At the confluence with the Mystic River	+7	Town of Arlington, City of Somerville.
	Approximately 320 feet downstream of Henderson Street	+7	
Assabet River	Entire reach within the Town of Hudson	+181	Town of Hudson.
Assabet River	At the upstream side of I–495	+213	City of Marlborough.
	Approximately 800 feet upstream of I–495	+214	
Beaver Brook 1	Approximately 4,040 feet upstream of Beaver Street	+54	Town of Belmont.
	Approximately 5,765 feet upstream of Beaver Street	+75	
Beaver Brook 3	Approximately 1,000 feet downstream of Pleasant Street	+71	Town of Dracut.
	At Pleasant Street	+71	
Butter Brook	Approximately 1,600 feet upstream of Main Street	+176	Town of Westford.
	Approximately 2,100 feet downstream of Old Road	+176	
Concord River	Approximately 450 feet upstream of I–495 East	+104	Town of Billerica, Town of Chelmsford, Town of Tewksbury.
	Approximately 2,280 feet upstream of I–495 East	+105	
Cummings Brook	At the confluence with Shakers Glen Brook	+47	City of Woburn.
	Approximately 130 feet upstream of Winn Street	+102	
Fort Meadow Brook	At the confluence with the Assabet River	+181	Town of Hudson.
	Approximately 100 feet downstream of Main Street	+181	
Fort Meadow Reservoir	Entire shoreline within the City of Marlborough	+262	City of Marlborough.
Guggins Brook	Approximately 1,000 feet upstream of the confluence with Inch Brook.	+207	Town of Boxborough.
Hales Brook	Approximately 1,350 feet east of Industrial Avenue East and Lowell Connector intersection (backwater area).	+102	City of Lowell, Town of Chelmsford.
Hales Brook	At the confluence with River Meadow Brook	+102	City of Lowell.
	Approximately 1,500 feet upstream of Industrial Avenue East.	+102	
Hales Brook	Approximately 2,200 feet downstream of I–495	+102	Town of Chelmsford.
	Approximately 200 feet downstream of I–495	+102	
Halls Brook	At the confluence with the Aberjona River	+54	City of Woburn.
	Approximately 220 feet upstream of Merrimac Street	+95	
Horn Pond Brook/ Fowle Brook	At the confluence with the Aberjona River	+23	City of Woburn, Town of Winchester.
	At the confluence with Shakers Glen Brook	+47	
Little Brook	At the confluence with Cummings Brook	+67	City of Woburn.
	Approximately 400 feet upstream of Bedford Road	+95	

Flooding source(s)	Location of referenced elevation	*Elevation in feet (NGVD) +Elevation in feet (NAVD) #Depth in feet above ground ^Elevation in meters (MSL) Modified	Communities affected
Lubbers Brook	Approximately 1,800 feet downstream of Cook Street	+102	Town of Wilmington.
	Approximately 3,090 feet upstream of Cook Street	+103	
Marginal Brook	Entire reach within the Town of Tewksbury	+126	Town of Tewksbury.
Merrimack River	Approximately 6,000 feet upstream of the county boundary.	+57	Town of Chelmsford, Town of Dracut, Town of Tewksbury, Town of Tyngsborough.
	Approximately 10,730 feet downstream of Tyngsborough Bridge.	+104	
Mill Brook	Approximately 315 feet downstream of the confluence with Tributary to Mill Brook.	+119	Town of Bedford.
	Approximately 315 feet upstream of the confluence with Tributary to Mill Brook.	+119	
Mill Brook 3	Upstream side of Mystic Valley Parkway	+7	Town of Arlington, Town of Lexington.
	Approximately 70 feet upstream of Boston and Maine Railroad.	+168	
Mystic River	Upstream side of Mystic Valley Parkway (State Route 16)	+5	Town of Arlington, City of Medford.
	At the outlet to Lower Mystic Lake	+7	
Nonesuch Pond	Entire reach within the Town of Natick	+174	Town of Natick.
North Lexington Brook	Approximately 400 feet upstream of the confluence with the Shawsheen River.	+116	Town of Lexington.
	At Boston and Maine Railroad	+117	
Pages Brook	Approximately 250 feet northwest of Larsen Lane and Outlook Road intersection (backwater area).	+119	Town of Billerica.
Peppermint Brook	At the confluence with Beaver Brook 3	+71	Town of Dracut.
	Approximately 50 feet downstream of State Route 113	+74	
Richardson Brook	At the confluence with the Merrimack River	+57	Town of Dracut.
	Downstream side of State Route 10 Dam	+58	
Schneider Brook	At the confluence with the Aberjona River	+45	City of Woburn.
	Approximately 880 feet upstream of Forbes Street	+84	
Shakers Glen Brook	At the confluence with Fowle Brook	+47	City of Woburn.
	At Russell Street	+62	
Shawsheen River	At the upstream side of Boston and Maine Railroad	+91	Town of Wilmington.
	Approximately 1.9 mile downstream of Boston Road (State Road 3A).	+97	
Shawsheen River	Approximately 2,125 feet upstream of Bridge Street	+113	Town of Lexington.
	Approximately 300 feet upstream of Summer Street	+116	
Snake Brook	Approximately 2,420 feet downstream of Main Street	+138	Town of Natick.
	Approximately 2,760 feet downstream of Commonwealth Avenue.	+147	
Sweetwater Brook	At the confluence with the Aberjona River	+36	City of Woburn, Town of Stoneham.
	Approximately 120 feet upstream of Lindenwood Road	+63	
Town Line Brook	Approximately 370 feet upstream of Lynn Street	+8	City of Everett.
	Approximately 1,650 feet upstream of Lynn Street	+8	
Town Line Brook	Approximately 1,850 feet downstream of the county boundary.	+8	City of Everett.
Trull Brook	At the confluence with the Merrimack River	+57	Town of Tewksbury.
	Approximately 100 feet upstream of Golf Course Bridge	+57	
Valley Pond	Entire shoreline within the Town of Weston	+175	Town of Weston.
Wellington Brook	Approximately 600 feet upstream of the confluence with Alewife Brook (Little River).	+7	City of Cambridge, Town of Belmont.
	Approximately 1,700 feet upstream of Concord Avenue	+20	

*National Geodetic Vertical Datum.
+North American Vertical Datum.
#Depth in feet above ground.
^Mean Sea Level, rounded to the nearest 0.1 meter.

ADDRESSES

City of Cambridge
Maps are available for inspection at the Department of Public Works, 147 Hampshire Street, Cambridge, MA 02139.

City of Everett
Maps are available for inspection at City Hall, Office of the City Engineer, 484 Broadway, Room 26, Everett, MA 02149.

City of Lowell

Flooding source(s)	Location of referenced elevation	* Elevation in feet (NGVD) + Elevation in feet (NAVD) # Depth in feet above ground ^ Elevation in meters (MSL) Modified	Communities affected

Maps are available for inspection at City Hall, 375 Merrimack Street, Lowell, MA 01852.

City of Marlborough
Maps are available for inspection at City Hall, Office of Inspectional Services, 140 Main Street, Marlborough, MA 01752.

City of Medford
Maps are available for inspection at City Hall, Engineering Division, 85 George P. Hassett Drive, Room 300, Medford, MA 02155.

City of Somerville
Maps are available for inspection at City Hall, Public Works Department, 93 Highland Avenue, Somerville, MA 02143.

City of Woburn
Maps are available for inspection at City Hall, Engineering Department, 10 Common Street, Woburn, MA 01801.

Town of Arlington
Maps are available for inspection at the Town Hall, 730 Massachusetts Avenue, Arlington, MA 02476.

Town of Bedford
Maps are available for inspection at the Town Hall, 10 Mudge Way, Bedford, MA 01730.

Town of Belmont
Maps are available for inspection at the Community Development Office, 19 Moore Street, Belmont, MA 02478.

Town of Billerica
Maps are available for inspection at the Building Department, 365 Boston Road, Billerica, MA 01821.

Town of Boxborough
Maps are available for inspection at 29 Middle Road, Boxborough, MA 01719.

Town of Chelmsford
Maps are available for inspection at the Public Works Department, 50 Billerica Road, Chelmsford, MA 01824.

Town of Dracut
Maps are available for inspection at the Town Hall, 11 Spring Park Avenue, Dracut, MA 01826.

Town of Hudson
Maps are available for inspection at the Inspections Department, 78 Main Street, Hudson, MA 01749.

Town of Lexington
Maps are available for inspection at the Engineering Department, 1625 Massachusetts Avenue, Lexington, MA 02420.

Town of Natick
Maps are available for inspection at the Town Hall, 13 East Central Street, Natick, MA 01760.

Town of Reading
Maps are available for inspection at the Town Hall, Building Department, 16 Lowell Street, Reading, MA 01867.

Town of Stoneham
Maps are available for inspection at the Department of Public Works, 16 Pine Street, Stoneham, MA 02180.

Town of Tewksbury
Maps are available for inspection at the Town Hall, Building Department, 1009 Main Street, Tewksbury, MA 01876.

Town of Tyngsborough
Maps are available for inspection at the Town Hall, Building Department, 25 Bryants Lane, Tyngsborough, MA 01879.

Town of Westford
Maps are available for inspection at the Town Hall, Building Department, 55 Main Street, Westford, MA 01886.

Town of Weston
Maps are available for inspection at the Town Hall, 11 Town House Road, Weston, MA 02493.

Town of Wilmington
Maps are available for inspection at the Town Hall, 121 Glen Road, Wilmington, MA 01887.

Town of Winchester
Maps are available for inspection at the Town Engineer's Office, 71 Mount Vernon Street, Winchester, MA 01890.

St. Joseph County, Michigan (All Jurisdictions)
Docket No.: FEMA–B–1016

Adams Lake	Entire shoreline	+843	Township of Leonidas.
Clear Lake	Entire shoreline	+876	Township of Fabius.
Corey Lake	Entire shoreline	+877	Township of Fabius.
Fishers Lake	Entire shoreline	+815	Township of Park.
Flowerfield Creek	Approximately 0.8 mile downstream of Marcellus Highway	+817	Township of Flowerfield.
	Approximately 0.3 mile upstream of Main Street on the St. Joseph/.	+842	
	Kalamazoo county border		
Kaiser Lake	Entire shoreline	+877	Township of Fabius.
Lake Templene	Entire shoreline	+831	Township of Sherman.
Long Lake	Entire shoreline	+892	Township of Fabius.
Mud Lake	Entire shoreline	+877	Township of Fabius.
Pleasant Lake	Entire shoreline	+853	Township of Fabius.

Flooding source(s)	Location of referenced elevation	* Elevation in feet (NGVD) + Elevation in feet (NAVD) # Depth in feet above ground ^ Elevation in meters (MSL) Modified	Communities affected
Spring Creek	At the confluence with Flowerfield Creek	+821	Township of Flowerfield, Township of Park.
	Approximately 0.6 mile upstream of Quake Road on the Kalamazoo County. border.	+844	
St. Joseph River	Approximately 0.7 mile downstream of Wakeman Road	+829	Township of Mendon.
	Approximately 350 feet downstream of Wakeman Road	+829	
Unnamed Pond	Entire shoreline	+815	Township of Park.

* National Geodetic Vertical Datum.
+ North American Vertical Datum.
# Depth in feet above ground.
^ Mean Sea Level, rounded to the nearest 0.1 meter.

ADDRESSES

Township of Fabius
Maps are available for inspection at 13108 Broadway, Three Rivers, MI 49093.

Township of Flowerfield
Maps are available for inspection at 12020 Marcellus Highway, Marcellus, MI 49067.

Township of Leonidas
Maps are available for inspection at 53312 Fulton Road, Leonidas, MI 49066.

Township of Mendon
Maps are available for inspection at 136 West Main Street, Mendon, MI 49072.

Township of Park
Maps are available for inspection at 53640 Parkville Road, Three Rivers, MI 49093.

Township of Sherman
Maps are available for inspection at 64962 Balk Road, Sturgis, MI 49091.

Ramsey County, Minnesota, and Incorporated Areas
Docket No.: FEMA–B–1035

Bald Eagle Lake	Entire shoreline in Ramsey County.	+913	Township of White Bear.
Casey Lake	Entire shoreline	+928	City of Maplewood.
Gervais Lake	Entire shoreline	+863	City of Maplewood.
Josephine Lake	Entire shoreline	+886	City of Roseville.
Lake Owasso	Entire shoreline	+889	City of Roseville.
Little Lake Johanna	Entire shoreline	+879	City of Roseville.
Otter Lake	Entire shoreline in Ramsey County	+913	Township of White Bear.
Silver Lake	Entire shoreline	+991	City of Maplewood, City of North St. Paul.
Twin Lake	Entire shoreline	+872	City of Little Canada, City of Vadnais Heights.

* National Geodetic Vertical Datum.
+ North American Vertical Datum.
# Depth in feet above ground.
^ Mean Sea Level, rounded to the nearest 0.1 meter.

ADDRESSES

City of Little Canada
Maps are available for inspection at the Little Canada City Center, 515 Little Canada Road East, Little Canada, MN 55117.

City of Maplewood
Maps are available for inspection at City Hall, 1830 County. Road B East, Maplewood, MN 55109.

City of North St. Paul
Maps are available for inspection at City Hall, 2400 Margaret Street, North St. Paul, MN 55109.

City of Roseville
Maps are available for inspection at City Hall, 2660 Civic Center Drive, Roseville, MN 55113.

City of Vadnais Heights
Maps are available for inspection at City Hall, 800 East County. Road East, Vadnais Heights, MN 55127.

Township of White Bear
Maps are available for inspection at the Township Administration Building, 1281 Hammond Road, White Bear Township, MN 55110.

Lake County, Tennessee, and Incorporated Areas
Docket No.: FEMA–B–1053

Mississippi River	At the Dyer/Lake county boundary (River Mile 845)	+281	Unincorporated Areas of Lake County, Town of Tiptonville.

Flooding source(s)	Location of referenced elevation	* Elevation in feet (NGVD) + Elevation in feet (NAVD) # Depth in feet above ground ^ Elevation in meters (MSL) Modified	Communities affected
	At the Lake County/New Madrid County, Missouri/Fulton County, Kentucky, boundary (River Mile 907.3).	+311	

* National Geodetic Vertical Datum.
+ North American Vertical Datum.
# Depth in feet above ground.
^ Mean Sea Level, rounded to the nearest 0.1 meter.

ADDRESSES

Town of Tiptonville
Maps are available for inspection at the Town Hall, 130 South Court Street, Tiptonville, TN 38079.

Unincorporated Areas of Lake County
Maps are available for inspection at the County Courthouse, 229 Church Street, Tiptonville, TN 38079.

Sequatchie County, Tennessee, and Incorporated Areas
Docket No.: FEMA–B–1051

Big Brush Creek	At the confluence with the Sequatchie River	+702	Unincorporated Areas of Sequatchie County.
	Just upstream of Union Road	+784	
Little Brush Creek	Approximately 0.4 mile downstream of Old Union Road	+791	Unincorporated Areas of Sequatchie County.
	Approximately 588 feet upstream of Old Union Road	+825	
Sequatchie River	Just downstream of U.S. Highway 127	+690	Unincorporated Areas of Sequatchie County.
	Approximately 651 feet upstream of the confluence with Big Brush Creek.	+702	

* National Geodetic Vertical Datum.
+ North American Vertical Datum.
# Depth in feet above ground.
^ Mean Sea Level, rounded to the nearest 0.1 meter.

ADDRESSES

Unincorporated Areas of Sequatchie County
Maps are available for inspection at the County Courthouse, 307 Cherry Street East, Dunlap, TN 37327.

Potter County, Texas, and Incorporated Areas
Docket Nos.: FEMA–B–1014 and FEMA–B–7725

Dry Creek	Approximately 500 feet upstream of Cliffside Road	+3400	City of Amarillo, Unincorporated Areas of Potter County.
	Approximately 500 feet upstream of West 335 North Loop	+3428	
Dry Creek Overflow	Approximately 500 feet downstream from the confluence with Dry Creek.	+3416	City of Amarillo, Unincorporated Areas of Potter County.
	Approximately 120 feet north of West 335 North Loop	+3437	
Playa 21 (T–Anchor Lake)	Approximately 570 feet east of Willow Street and Southeast 15th Avenue.	+3616	City of Amarillo.
Playa Lake 22	Approximately 3,500 feet north of the intersection of Southeast 3rd Avenue and South Whitaker Road.	+3593	City of Amarillo.
Playa Lake 23	Approximately 1,500 feet northwest of the intersection of South Adams Street and Southwest 1st Avenue.	+3619	City of Amarillo.
Playa Lake 24 (Martin Lake)	Approximately 650 feet north of the intersection of Dale Street and Martin Road.	+3631	City of Amarillo.
Playa Lake 26	Approximately 4,600 feet southwest of the intersection of I–40 and Juett Attebury Road.	+3573	City of Amarillo, Unincorporated Areas of Potter County.
Playa Lake 27	Approximately 2,000 feet east of the intersection of Northeast 18th Avenue and Hacienda Drive.	+3548	City of Amarillo.
Playa Lake 28 (Airport Lake)	Approximately 1,350 feet northwest of Amarillo International Airport runway.	+3590	City of Amarillo.
Playa Lake 34	Approximately 4,600 feet southwest of the intersection of Highway 287 and South Parsley Road.	+3553	City of Amarillo, Unincorporated Areas of Potter County.
Playa Lake 6	Approximately 1,000 feet south of the intersection of Pecos Street and I–40.	+3624	City of Amarillo.

Flooding source(s)	Location of referenced elevation	* Elevation in feet (NGVD) + Elevation in feet (NAVD) # Depth in feet above ground ^ Elevation in meters (MSL) Modified	Communities affected
Playa Lake 60	Approximately 2,000 feet east of Spur 228	+3558	Unincorporated Areas of Potter County.
Playa Lake 61	Approximately 1,100 feet northeast of the intersection of Parsley Road and railroad.	+3596	City of Amarillo, Unincorporated Areas of Potter County.
Tributary B	At the confluence with Dry Creek	+3468	City of Amarillo.
	Approximately 100 feet from North Western Street	+3530	
Tributary C	At the confluence with Dry Creek	+3468	City of Amarillo.
	Approximately 100 feet upstream of Fairway Drive	+3506	
Tributary D	At the confluence with Tributary B	+3505	City of Amarillo.
	Approximately 500 feet upstream of West Amarillo Boulevard.	+3582	
Tributary D Tributary	Approximately 50 feet downstream of the confluence with Tributary D.	+3532	City of Amarillo.
	Approximately 1,000 feet upstream of Northwest 10th Avenue.	+3579	
West Amarillo Creek	Approximately 1,000 feet west of the intersection of Helium Road and West 9th Avenue.	+3616	Unincorporated Areas of Potter County.
	Approximately 100 feet upstream of the intersection with Indian Hill Road.	+3708	

* National Geodetic Vertical Datum.
+ North American Vertical Datum.
# Depth in feet above ground.
^ Mean Sea Level, rounded to the nearest 0.1 meter.

ADDRESSES

City of Amarillo

Maps are available for inspection at 509 Southeast 7th Avenue, Amarillo, TX 79101.

Unincorporated Areas of Potter County

Maps are available for inspection at 500 South Fillmore Street, Amarillo, TX 79101.

Randall County, Texas, and Incorporated Areas
Docket Nos.: FEMA–B–1014 and FEMA–B–7758

Palo Duro Creek	At the confluence with Prairie Dog Town Fork of Red River.	+3484	Unincorporated Areas of Randall County.
	At West Country Club Road	+3562	
Playa Lake 11	Approximately 500 feet south of the intersection of Bell Street and Attebury Drive.	+3646	City of Amarillo, Unincorporated Areas of Randall County.
Playa Lake 13	Approximately 2,500 feet southeast of the intersection of West 335 SouthLoop and Valleyview Drive.	+3626	City of Amarillo, Unincorporated Areas of Randall County.
Playa Lake 14 (Diamond Horseshoe Lake).	Approximately 100 feet south of Winners Circle	+3658	City of Amarillo.
Playa Lake 16	Approximately 350 feet south of the intersection of South Hayden and Southwest 48th Avenue.	+3633	City of Amarillo.
Playa Lake 18	Approximately 1,000 feet south of the intersection of Farmers Avenue and Tradewind Street.	+3583	Unincorporated Areas of Randall County.
Playa Lake 19	Approximately 1,200 feet east of the intersection of Southwest 42nd Avenue and South Harrison Street.	+3638	City of Amarillo.
Playa 20 (Gooch Lake)	Approximately 5,000 feet south of the intersection of Southeast 34th Avenue and South Manhattan Street.	+3579	City of Amarillo.
Playa Lake 3	Approximately 1,000 feet north of Ascension Parkway	+3710	Unincorporated Areas of Randall County.
Playa Lake 34	Approximately 4,600 feet southwest of the intersection of Highway 287 and South Parsley Road.	+3553	Unincorporated Areas of Randall County.
Playa Lake 4	At the intersection of West CR 58 and Helium Road	+3699	City of Amarillo, Unincorporated Areas of Randall County.
Playa Lake 5 (McDonald Lake)	Approximately 1,100 feet southeast of the intersection of South Coulter Street and Southwest 45th Street.	+3687	City of Amarillo.
Playa Lake 7	Approximately 100 feet north of the intersection of West 77th Avenue and Cody Drive.	+3675	City of Amarillo, Unincorporated Areas of Randall County.

Flooding source(s)	Location of referenced elevation	* Elevation in feet (NGVD) + Elevation in feet (NAVD) # Depth in feet above ground ^ Elevation in meters (MSL) Modified	Communities affected
Playa Lake 8	Approximately 100 feet south of FM 2186 and 335 South Loop.	+3681	City of Amarillo, Unincorporated Areas of Randall County.
Playa Lake 9	Approximately 480 feet north of the intersection of West Sundown Street and Elaine Street.	+3683	Unincorporated Areas of Randall County.
Prairie Dog Town Fork of Red River.	Approximately 100 feet downstream of the intersection of Exmoor Road and Canyon Creek Road.	+3395	Unincorporated Areas of Randall County, Village of Lake Tanglewood, Village of Palisades.
Tierra Blanca Creek	At the confluence with Tierra Blanca Creek	+3484	City of Canyon, Unincorporated Areas of Randall County.
	At the confluence with Palo Duro Creek	+3484	
	Approximately 1,500 feet downstream of Gordon Cummings Road.	+3547	

* National Geodetic Vertical Datum.
+ North American Vertical Datum.
# Depth in feet above ground.
^ Mean Sea Level, rounded to the nearest 0.1 meter.

ADDRESSES

City of Amarillo
Maps are available for inspection at 509 Southeast 7th Avenue, Amarillo, TX 79101.

City of Canyon
Maps are available for inspection at 301 16th Street, Canyon, TX 79015.

Unincorporated Areas of Randall County
Maps are available for inspection at 301 Highway 60, Canyon, TX 79015.

Village of Lake Tanglewood
Maps are available for inspection at 1000 Tanglewood Drive, Amarillo, TX 79118.

Village of Palisades
Maps are available for inspection at 115 Brentwood Road, Amarillo, TX 79118.

(Catalog of Federal Domestic Assistance No. 97.022, "Flood Insurance.")

Dated: April 27, 2010.

Sandra K. Knight,

Deputy Federal Insurance and Mitigation Administrator, Mitigation, Department of Homeland Security, Federal Emergency Management Agency.

[FR Doc. 2010–10387 Filed 5–3–10; 8:45 am]

BILLING CODE 9110–12–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 660

[Docket No. 0809121213–9221–02]

RIN 0648–AY82

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

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

ACTION: Final rule; inseason adjustments to management measures; announcement of elimination of incidental Pacific halibut retention allowance; request for comments.

SUMMARY: This final rule announces two actions: an inseason change to the regulations regarding the retention of Pacific halibut landed incidentally in the limited entry fixed gear primary sablefish fishery north of Pt. Chehalis, Washington (46°53.30′ N. lat.); and an inseason change to the cumulative limit for minor slope rockfish and darkblotched rockfish north of 40°10.00′ N. lat. in the commercial Pacific Coast groundfish limited entry trawl fishery. These actions, which are authorized by the Pacific Coast Groundfish Fishery Management Plan (FMP), are intended to prevent exceeding the 2010 Area 2A Pacific halibut quota and to prevent exceeding the 2010 OY for darkblotched rockfish, an overfished species.

DATES: Effective 0001 hours (local time) May 1, 2010. Comments on this final rule must be received no later than 5 p.m., local time on June 3, 2010.

ADDRESSES: You may submit comments, identified by RIN 0648–AY82 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 Hanshew.

• *Mail:* Barry A. Thom, Acting Regional Administrator, Northwest Region, NMFS, 7600 Sand Point Way NE., Seattle, WA 98115–0070, Attn: Gretchen Hanshew.

Instructions: No comments will be posted for public viewing until after the comment period has closed. 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). You may submit attachments to electronic comments in Microsoft Word, Excel, WordPerfect, or Adobe PDF file formats only.

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

SUPPLEMENTARY INFORMATION:

Electronic Access

This final rule is accessible via the Internet at the Office of the **Federal Register**'s Web site at *http://www.gpoaccess.gov/fr/index.html*. Background information and documents are available at the Pacific Fishery Management Council's Web site 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 was 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 inseason actions on April 27, 2009 (74 FR 19011), July 6, 2009 (74 FR 31874), October 28, 2009 (74 FR 55468), and February 26, 2010 (75 FR 8820). Additional changes to the 2009–2010 specifications and management measures for petrale sole were made in two final rules: On November 4, 2009 (74 FR 57117), and December 10, 2009 (74 FR 65480). These specifications and management measures are at 50 CFR part 660, subpart G.

The reduction to the bimonthly cumulative limit for minor slope rockfish and darkblotched rockfish in the limited entry bottom trawl fishery implemented by this action was recommended by the Council, in consultation with Pacific Coast Treaty Indian Tribes and the States of Washington, Oregon, and California, at its April 9 through April 15, 2010, meeting in Portland, Oregon. The elimination of incidental Pacific halibut (halibut) retention in the limited entry fixed gear primary sablefish fishery north of Point Chehalis, Washington (46°53.30′ N. lat.) is implemented in order to achieve consistency with the 2010 halibut rule and Catch Sharing Plan published on March 18, 2010 (75 FR 13024). These changes must be effective on May 1, 2010.

On April 23, 2010, NMFS received a decision in the case of *Natural Resources Defense Council* v. *Locke*, Case No. C 01–0421 JL (N.D. Cal.) in which the court has ruled against NMFS on an issue relating to darkblotched rockfish. The court has not yet issued the Order on Remedy, and NMFS is in the process of determining the full implications of this decision. NMFS is publishing this rule as scheduled for the reasons described below. Upon further review of the court decision NMFS will determine whether additional measures may be needed with respect to darkblotched rockfish and will implement any such measures in a subsequent rule.

Limited Entry Fixed Gear Sablefish Primary Fishery

The International Pacific Halibut Commission (IPHC) sets the halibut total allowable catch (TAC) on an annual basis. A portion of the TAC is available to fisheries in Area 2A (waters off the U.S. West Coast). The Council's Catch Sharing Plan (CSP) guides allocation of the Area 2A portion of the TAC to the various commercial and recreational fisheries in Area 2A. It provides that if the Area 2A TAC is greater than 900,000 lb, the portion of the Washington sport allocation that is in excess of 214,110 lb is available to the primary directed sablefish fishery north of Point Chehalis. NMFS published the 2010 halibut final rule and CSP on March 18, 2010 (75 FR 13024). The final Area 2A halibut TAC for 2010 was adopted by the IPHC at their January 26 through January 29, 2010 meeting, and is below 900,000-lbs (408–mt). Therefore, based on the CSP, no halibut quota is assigned to the limited entry fixed gear sablefish primary fishery. Since there is no halibut available for this fishery in 2010, no retention of halibut will be allowed in the limited entry fixed gear sablefish primary fishery north of Point Chehalis, Washington.

The Council was notified of this issue at its March 6 through March 11, 2010 meeting. Through this inseason rule, NMFS is eliminating the halibut retention allowance for the limited entry fixed gear sablefish fishery north of Point Chehalis, Washington (46°53.30′ N. lat.) to change the 2010 Pacific halibut possession and landing limits in this area from "100-lb (45-kg) dressed weight, head-on of halibut per fishing trip" to "no retention of halibut." Limited Entry Trawl Fishery North of 40°10.00′ N. lat.

Catches of darkblotched rockfish in the limited entry trawl fishery north of 40°10.00′ N. lat. are tracking ahead of projections. If no action were taken, and darkblotched rockfish catch rates remain higher than previously expected throughout the year, total coastwide catch of darkblotched rockfish through the end of the year is projected to be 369 mt, exceeding the 2010 coastwide darkblotched rockfish OY of 291 mt by 78 mt. Therefore, to slow catch of darkblotched rockfish and stay below the 2010 darkblotched rockfish OY, the Council at its April 9 through April 15, 2010 meeting considered an inseason adjustment reducing "minor slope rockfish and darkblotched rockfish" cumulative limits in the area north of 40°10.00′ N. lat. beginning on May 1, 2010. The Groundfish Management Team (GMT), an advisory body to the Council, recommended reducing the bimonthly cumulative limit from 6,000 lb (2722 kg) per two months to 2,000 lb (907 kg) per two months. With this change, if the species composition is unchanged under this lower limit, total coastwide catch of darkblotched rockfish through the end of the year is projected to be 285 mt, 6 mt below the 2010 OY.

Based on rationale described above, the Council recommended and NMFS is implementing a decrease in the limited entry trawl fishery cumulative limit for minor slope rockfish and darkblotched rockfish north of 40°10.00′ N. lat. from "6,000 lb (2722 kg) per two months" to "2,000 lb (907 kg) per two months" from May 1 through December 31.

Classification

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

This inseason adjustment is taken under the authority of: (1) The Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act), and is in accordance with 50 CFR part 660, the regulations implementing the FMP; and (2) the Halibut Act and its implementing regulations. This action is based on the most recent data available. The aggregate data upon which this action is 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 revision 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 by May 1, 2010.

The 2010 Pacific halibut TAC was adopted by the IPHC at its January 2010 meeting and was presented to the Council at its March 5 through March 11, 2010, meeting in Sacramento, California. The change for the limited entry fixed gear sablefish fishery described in this rule is based on the 2010 TAC in conjunction with the 2010 CSP. The fishery data upon which the change in the limited entry bottom trawl fishery was based was provided to the Council at its April 10 through April 15, 2010, meeting in Portland, Oregon, the first Council meeting at which this data was available. These changes must be implemented by May 1, 2010 in order to avoid fisheries exceeding the 2010 halibut TAC and the 2010 darkblotched rockfish OY. There was not sufficient time after the March and April Council meetings to conduct 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 or TACs for Federally managed species in accordance with the FMP, the CSP, and applicable laws. The adjustments to management measures in this document affect commercial fisheries off Washington, Oregon and northern California.

These adjustments to management measures must be implemented in a timely manner to prevent the Area 2A portion of the 2010 halibut TAC from being exceeded. The elimination of halibut retention in the limited entry fixed gear sablefish primary fishery is intended to prevent exceeding the Area 2A portion of the 2010 Pacific halibut TAC. These changes must be implemented in a timely manner, by May 1, 2010 which is when the incidental halibut retention allowance is currently scheduled to begin.

These adjustments to management measures must be implemented in a timely manner to prevent the 2010 darkblotched rockfish OY from being exceeded. The decrease to the "minor slope rockfish and darkblotched rockfish" trip limit in the limited entry non-whiting bottom trawl fishery is intended to prevent exceeding the 2010 darkblotched rockfish OY, and prevent premature closure of fisheries that impact darkblotched rockfish, an overfished species. These changes must be implemented in a timely manner, by May 1, 2010, which is the start of the cumulative period. Even a short delay in implementation could allow fisheries to take the entire two month limit for this period.

Delaying the implementation of this rule would impair achievement of the Pacific halibut Catch Sharing Plan objective to manage fisheries to remain within the TAC for Area 2A, while also allowing each commercial, recreational (sport), and Tribal fishery to target halibut in the manner that is appropriate to meet both the conservation requirements for species that co-occur with Pacific halibut and the needs of fishery participants in particular fisheries and fishing areas. Such delay would also 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, and staying within the OY for darkblotched rockfish.

List of Subjects in 50 CFR Part 660

Fisheries, Fishing, Indian fisheries.

Dated: April 29, 2010.

Emily H. Menashes,

Acting 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 U.S.C. 773 *et seq.*

■ 2. In § 660.372, paragraph (b)(3)(iv) is revised to read as follows:

§ 660.372 Fixed gear sablefish fishery management.

* * * * *

(b) * * *

(3) * * *

(iv) *Incidental halibut retention north of Pt. Chehalis, WA (46°53.30′ N. lat.).* No halibut retention is allowed during the primary sablefish fishery in 2010.

* * * * *

■ 3. Table 3 (North) to part 660, subpart G is revised to read as follows:

BILLING CODE 3510–22–P

Table 3 (North) to Part 660, Subpart G -- 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 05012010

		JAN-FEB	MAR-APR	MAY-JUN	JUL-AUG	SEP-OCT	NOV-DEC
	Rockfish Conservation Area (RCA)[6/]:						
1	North of 48°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**	6,000 lb/ 2 months		2,000 lb/ 2 months			
5	**Pacific ocean perch**	1,500 lb/ 2 months					
6	**DTS complex**						
7	Sablefish						
8	large & small footrope gear	20,000 lb/ 2 months		24,000 lb/ 2 months			20,000 lb/ 2 months
9	selective flatfish trawl gear	9,000 lb/ 2 months					
10	multiple bottom trawl gear[8/]	9,000 lb/ 2 months					
11	Longspine thornyhead						
12	large & small footrope gear	24,000 lb/ 2 months					
13	selective flatfish trawl gear	5,000 lb/ 2 months					
14	multiple bottom trawl gear[8/]	5,000 lb/ 2 months					
15	Shortspine thornyhead						
16	large & small footrope gear	18,000 lb/2 months					
17	selective flatfish trawl gear	5,000 lb/ 2 months					
18	multiple bottom trawl gear[8/]	5,000 lb/ 2 months					
19	Dover sole						
20	large & small footrope gear	110,000 lb/ 2 months					
21	selective flatfish trawl gear	65,000 lb/ 2 months					
22	multiple bottom trawl gear[8/]	65,000 lb/ 2 months					

TABLE 3 (North)

Table 3 (North). Continued

TABLE 3 (North) con't

		JAN-FEB	MAR-APR	MAY-JUN	JUL-AUG	SEP-OCT	NOV-DEC
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 [2/]	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 9,500 lb/ 2 months of which may be petrale sole.				110,000 lb/ 2 months
33	large & small footrope gear for Petrale sole	9,500 lb/ 2 months					9,500 lb/ 2 months
34	selective flatfish trawl gear for Other flatfish [3/], English sole, & starry flounder	90,000 lb/ 2 months, no more than 9,500 lb/ 2 months of which may be petrale sole.	60,000 lb/ 2 months, no more than 9,500 lb/ 2 months of which may be petrale sole.				
35	selective flatfish trawl gear for Petrale sole						
36	multiple bottom trawl gear [2/]	90,000 lb/ 2 months, no more than 9,500 lb/ 2 months of which may be petrale sole.	60,000 lb/ 2 months, no more than 9,500 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 [2/]	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

		JAN-FEB	MAR-APR	MAY-JUN	JUL-AUG	SEP-OCT	NOV-DEC
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 6/	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 6/	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 6/	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 6/						
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. 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 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 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, 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.

[FR Doc. 2010–10400 Filed 4–29–10; 4:15 pm]
BILLING CODE 3510–22–C

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 660

[Docket No. 100421192–0193–01]

RIN 0648–AY78 and 0648–AY59

Magnuson-Stevens Act Provisions; Fisheries Off West Coast States; Pacific Coast Groundfish Fishery; Biennial Specifications and Management Measures

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

ACTION: Final rule; inseason adjustments to groundfish management measures; Pacific whiting harvest specifications and tribal allocation; request for comments.

SUMMARY: This final rule establishes the 2010 fishery specifications for Pacific whiting in the U.S. exclusive economic zone (EEZ) and state waters off the coasts of Washington, Oregon, and California, as authorized by the Pacific Coast Groundfish Fishery Management Plan (FMP). These specifications include the level of the acceptable biological catch (ABC), optimum yield (OY), and allocations for the non-tribal commercial sectors. This final rule also announces the tribal allocation of Pacific whiting for the 2010 season and inseason adjustments of bycatch limits for the 2010 Pacific whiting fishery.

DATES: Effective April 29, 2010. Comments on the revisions to bycatch limits must be received no later than 5 p.m., local time on May 19, 2010.

ADDRESSES: You may submit comments, identified by RIN 0648–AY78 by any 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: Kevin C. Duffy.
- *Mail:* Barry A. Thom, Acting Regional Administrator, Northwest Region, NMFS, Attn: Kevin C. Duffy, 7600 Sand Point Way NE., Seattle, WA 98115–0070.

Instructions: No comments will be posted for public viewing until after the comment period has closed. 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). You may submit attachments to electronic comments in Microsoft Word, Excel, WordPerfect, or Adobe PDF file formats only.

FOR FURTHER INFORMATION CONTACT: Kevin C. Duffy (Northwest Region, NMFS), phone: 206–526–4743, fax: 206–

526–6736 and e-mail: *kevin.duffy@noaa.gov*.

SUPPLEMENTARY INFORMATION:

Electronic Access

This final rule is accessible via the Internet at the Office of the Federal Register's Web site at *http://www.gpoaccess.gov/fr/index.html*. Background information and documents are available at the Pacific Fishery Management Council's Web site at *http://www.pcouncil.org/*. Background information and documents are also available at the NMFS Northwest Region Web site at *http://www.nwr.noaa.gov/Groundfish-Halibut/Groundfish-Fishery-Management/index.cfm*.

Copies of the final environmental impact statement (FEIS) for the 2009–2010 Groundfish Specifications and Management Measures are available from Donald McIsaac, Executive Director, Pacific Fishery Management Council (Council), 7700 NE Ambassador Place, Portland, OR 97220, phone: 503–820–2280.

Copies of additional reports referred to in this document may also be obtained from the Council. Copies of the Record of Decision (ROD), final regulatory flexibility analysis (FRFA), and the Small Entity Compliance Guide are available from Barry A. Thom, Acting Administrator, Northwest Region (Regional Administrator), NMFS, 7600 Sand Point Way, NE., Seattle, WA 98115–0070.

Background

On December 31, 2008, NMFS published a proposed rule to implement the 2009–2010 specifications and management measures for the Pacific Coast groundfish fishery (73 FR 80516). A final rule was published on March 6, 2009 (74 FR 9874), which codified the specifications and management measures in the CFR (50 CFR part 660, subpart G), except for the Pacific whiting harvest specifications. This final rule establishes the 2010 harvest specifications for Pacific whiting. The proposed rule announced a range of Pacific whiting harvest specifications that were being considered for 2009 and 2010, and also announced the intent to adopt final specifications after the Council's March 2009 and 2010 meetings. As explained below, the information necessary for the annual updated stock assessment is not available until January or February, which necessarily delays the preparation of the stock assessment until February.

Delaying the adoption of Pacific whiting specifications until March is also consistent with the U.S.-Canada agreement for Pacific whiting. The U.S.-Canada agreement for Pacific whiting was signed in November 2003. This agreement addresses the conservation, research, and catch sharing of Pacific whiting. Presently, both countries are taking steps to fully implement the agreement. Until this occurs, the negotiators recommended that each country apply the agreed-upon provisions to their respective fisheries. In addition to the time frame in which stock assessments are to be considered and harvest specifications established, the U.S.-Canada agreement specifies how the catch is to be shared between the two countries. The Pacific whiting catch sharing arrangement provides 73.88 percent of the total catch Optimum Yield (OY)[a] to the U.S. fisheries, and 26.12 percent to the Canadian fisheries. This action accounts for this division of catch share allocation between the U.S. and Canada.

On April 23, 2010, NMFS received a decision in the case of *Natural Resources Defense Council* v. *Locke*, Case No. C 01–0421 JL (N.D. Cal.), in which the court has ruled against NMFS on an issue related to darkblotched rockfish. The court has not yet issued the Order on Remedy, and NMFS is in the process of determining the full implications of this decision. NMFS is publishing this rule as scheduled so that it will be in place for the start of the Pacific whiting season. Upon further review of the court decision, NMFS will determine whether additional measures may be needed with respect to darkblotched rockfish, and will implement any such measures through an emergency rule.

Comments and Responses

In addition to the December 2008 proposed rule, on March 12, 2010 NMFS issued a proposed rule for the allocation and management of the 2010 tribal Pacific whiting fishery (75 FR 11829). The comment period on this proposed rule closed on April 2, 2010. During the comment period, NMFS received four letters of comment. The Makah Tribe and the Quileute Tribe each submitted letters of comment concerning the tribal allocation for Pacific whiting. The Pacific Whiting Conservation Cooperative and the West Coast Seafood Processors Association also submitted letters of comment. As discussed further below, this final rule takes the tribal allocation figures into account in its final allocation of Pacific whiting.

Makah Tribe

Comment 1: The Makah Tribe requested that NMFS establish interim individual tribal set-asides for Makah and Quileute in 2010, as it did in 2009. They requested a 2010 Makah Pacific whiting set aside of 17.5 percent of the 2010 Pacific whiting U.S. OY, the amount reflected in the proposed rule. They commented on the Quileute's request for a 16,000 mt set aside in 2010, stating the Quileute have provided no indication that they have two boats that will participate. Further, they pointed out that when Makah entered the fishery in 1996, the tribal allocation was 5,000 mt per boat, and in the following two years, the allocation increased to 6,000 mt per boat. They said that during this time period, there were fewer serious bycatch constraints on the fishery than there are today. They also pointed out that the set aside for Makah in 2009 averaged less than 5,000 mt per boat.

The Makah also expressed support for NMFS's position regarding reapportionment of the tribal Pacific whiting allocation stated in the proposed rule. They stated their belief that the Quileute's usual and accustomed grounds are much less extensive than those currently designated by NMFS, and the Makah noted that they have initiated a sub-proceeding in *United States* v. *Washington* to determine the actual boundaries of those areas. Finally, the Makah clarified that there are five boats, rather than four, in their Pacific whiting fishery.

Response: NMFS supports the Makah request for 17.5 percent of the 2010 Pacific whiting U.S. OY, as stated in the proposed rule, and is using that amount in its calculation of the overall tribal allocation for 2010. However, NMFS supports this request as a component of the total tribal allocation for 2010 as opposed to an individual tribal set aside. On March 6, 2009, NMFS adopted a Pacific whiting tribal allocation of 50,000 mt for the 2009 fishing season (74 FR 9874). This allocation was codified at 50 CFR 660.385. In the rule, individual set asides for the Makah Tribe (42,000 mt) and Quileute Tribe (8,000 mt) were established for 2009. In a May, 2009 rule (74 FR 20620), NMFS reapportioned 18,211 mt of the tribal allocation to the non-tribal sector. This action was based on the low OY of

[a] OY is the amount of fish that will provide the greatest overall benefit to the Nation, taking into account the protection of marine ecosystems. It is defined on the basis of maximum sustained yield from the fishery, as reduced by any relevant economic, social, or ecological factors. For overfished species, OY provides for rebuilding to a level consistent with producing maximum sustained yield.

Pacific whiting for 2009, the Makah Tribe's intent to harvest only 23,789 mt of their 42,000 mt set aside, and their request that the 18,211 mt be reapportioned to the non-tribal sectors of the fishery.

Based on the separate requests by the Makah and Quileute Tribes, NMFS set the individual tribal set asides for 2009 at 42,000 mt and 8,000 mt, respectively. At the June 2008 Council meeting, where the specific motion to create tribal set asides was discussed, NMFS met with the Makah Tribe, the Quileute Tribe, and the State of Washington. For 2010, NMFS has decided to issue an overall tribal allocation, without individual set asides, primarily for two reasons. First, although the Makah Tribe made a request for a specific allocation, the Quileute Tribe did not. Second, NMFS has received comments from the Quileute Tribe (addressed below), disputing that they agreed to a set aside for the 2009 season, and specifically requesting that no such set aside be created this year.

NMFS acknowledges the Makah Tribes' comments on the Quileute Tribal request of 8,000 mt per boat for economic viability, but does not agree that this requested amount for 2010 is unreasonable. Further, as the Makah Tribe notes, the resulting tribal allocation appears to be within the total treaty right, based on the existing scientific information. NMFS is aware of the current litigation over the boundaries of the Quileute and Quinault usual and accustomed fishing grounds, and will make adjustments to the boundaries as described in its regulations if any are needed to achieve consistency with any court orders that result from that litigation. NMFS acknowledges the Makah's clarification on the number of boats in their Pacific whiting fishery.

Quileute Tribe

Comment 2: The Quileute Tribe stated that they never requested or agreed to specific set asides for their proposed Pacific whiting fishery in 2009, and feel NMFS lacks the authority to establish intertribal allocations. They did not object to the total amount of the tribal Pacific whiting allocation that would be derived under the formula stated in the proposed rule (17.5 percent of U.S. OY + 16,000 mt), but requested that the final rule simply provide for a total tribal allocation, as opposed to individual set asides. Regarding reapportionment, the Quileute Tribe feels a mechanism does not exist for reapportionment between these separately managed tribal and non-tribal fisheries, and stated their desire to develop a process where reapportionment may be desirable, consistent with consultation required by Executive Order 13175 and with unanimous tribal consensus. The Quileute Tribe also indicated that they will likely have no more than one vessel participating in the fishery in 2010, and reiterated their belief that at least 8,000 mt per boat is necessary for economic feasibility. Finally, they stated that the total tribal Pacific whiting allocation should not be changed based on this information, because it is within the range of tribal treaty rights to Pacific whiting.

Response: NMFS notes that the Pacific whiting set asides established for the Makah and Quileute Tribes in 2009 were based on individual tribal requests, and did not set any precedent regarding future allocations of Pacific whiting to the tribes. The final rule for 2010 establishes a total tribal allocation, as opposed to individual tribal set asides. NMFS does not agree that no mechanism exists to reapportion unused Pacific whiting from the tribal to the non-tribal fishery. NMFS currently has the authority to reapportion Pacific whiting from the tribal to the non-tribal fishery under 50 CFR 660.323(c). NMFS will coordinate and consult with the affected tribes, and will attempt to reach consensus before any reapportionment decisions are made in 2010. However, absent consensus, the NMFS Regional Administrator will make reapportionment decisions. NMFS acknowledges the Quileute Tribe's comments that they will probably have no more than one vessel participating in the fishery in 2010, and that they believe the total tribal allocation should not be changed, given this information.

Pacific Whiting Conservation Cooperative

Comment 3: The Pacific Whiting Conservation Cooperative (PWCC) strongly supports NMFS' authority to reapportion unharvested whiting from the tribal fishery to the non-tribal fishery, consistent with 50 CFR 660.323(c), stating that current regulations and past practice provide the necessary authority. PWCC stated their support for the Makah tribal request of 17.5 percent of the U.S. OY. Finally, PWCC expressed concern that NMFS is not requiring greater certainty from the Quileute Tribe regarding their fishing operation's capacity to harvest 16,000 mt of Pacific whiting in 2010, and that NMFS is not requesting greater clarity from the Quileute Tribe about its plans to manage bycatch of overfished rockfish and salmonids in a manner consistent with the Pacific Fishery Management Council's groundfish conservation goals and objectives.

Response 3: NMFS acknowledges and agrees with the PWCC comments supporting our authority to reapportion Pacific whiting. NMFS concurs with PWCC's support of the Makah request for 17.5 percent of the Pacific whiting U.S. OY in 2010, but acknowledges that this is only a portion of the total tribal allocation, and not an individual tribal set aside. NMFS is working with all tribes participating in the Pacific whiting fishery, encouraging them to share information about their fisheries plans and harvests before and during the fishing season. NMFS will make this reasonable request a priority for tribal participation in Pacific whiting fisheries in 2011 and beyond.

West Coast Seafood Processors Association

Comment 4: The West Coast Seafood Processors Association (WCSPA) did not object to the Makah Tribes' request for 17.5 percent of the U.S. OY to the extent that it falls within the range of tribal treaty rights. They also stated their belief that the allocation of 16,000 mt to the Quileute Tribe in the first year of their fishery is excessive. They state that 2 inexperienced vessels harvesting that amount of fish in the relatively short time that market-grade Pacific whiting are available in the Quileute Tribe's usual and accustomed fishing area, without exceeding bycatch limits, is exceedingly far-fetched, and that a lesser amount should be allocated. They also stated their support for NMFS' assertion of its authority to reapportion potentially unharvested whiting among all sectors, tribal and non-tribal, in accordance with regulations governing the Pacific groundfish fishery. They stated that they expect NMFS to exercise this authority "with due diligence" in 2010, and in consultation with all sectors of the fishery.

Response 4: NMFS agrees with WCSPA's lack of objection to the Makah Tribes' request for 17.5 percent of the Pacific whiting U.S. OY in 2010, and reflects that support in this final rule. NMFS acknowledges the WCSPA perspective that 16,000 mt to the Quileute Tribe in their first year of operation is excessive. NMFS has considered these comments, as well as others, in making a final determination of the tribal allocation for 2010. NMFS will take under advisement the WCSPA comment that NMFS assert its authority to reapportion potentially unharvested whiting among all sectors, tribal and non-tribal, in accordance with regulations governing the Pacific groundfish fishery. NMFS believes it

currently has the regulatory authority to reapportion Pacific whiting, through 50 CFR 660.323(c). NMFS will consult with all sectors of the fishery in determining whether and when to reapportion, consistent with WCSPA comment.

Pacific Whiting Stock Status

The joint U.S.-Canada Stock Assessment Review (STAR) panel met February 8–10, 2010 in Seattle, Washington, to review two draft stock assessment documents: one had been prepared by Stewart & Hamel (Stock Synthesis III model, 2010) and the second had been prepared by Martell (TINSS, 2010). The Stock Synthesis III model is an age-structured stock assessment model. Age-structured assessment models of various forms have been used to assess Pacific whiting since the early 1980s. The Stock Synthesis III model uses data on total fishery landings, fishery length and age compositions and survey abundance indices. The TINSS model provides an age-structured assessment that directly estimates management variables C^* (the maximum sustained yield) and F^* (the fishing mortality rate that produces C^*).

During its deliberations, the 2010 STAR panel identified major issues with both assessments, namely whether: (a) The age and length data from the acoustic survey are an accurate representation of Pacific whiting; (b) the commercial length and conditional catch-at-age data are inconsistent with the assumptions of the models; and (c) the 1986 acoustic survey estimate is biased because the pre- and post-survey calibrations are substantially different. These issues had been raised by past STAR panels, and have also been reflected in past research recommendations. Additionally, the 2010 Pacific whiting STAR panel expressed concern about the reliability of the acoustic signal because of the presence of Humboldt squid, which has an acoustic signal similar to Pacific whiting.

The STAR Panel responded to these concerns by identifying a simpler model that did not use data it considered questionable. This led to two new model formulations. The panel considered both of these as equally acceptable, but adopted the modified TINSS model as its base model because it had the capacity to provide immediate results that quantified uncertainty.

At the March 2010 Council meeting, the Council's Scientific and Statistical Committee (SSC) reviewed and discussed both the revised TINSS and the original Stock Synthesis III models in detail. The SSC was unable to reach consensus regarding which model formulation reflected the best available science for Pacific whiting in 2010, and put forth both models as the best available science, without assigning weights to either.

In general, Pacific whiting is a very productive species with highly variable recruitment and a relatively short life span when compared to most other groundfish species. The base model indicates that the Pacific whiting female spawning biomass declined rapidly after a peak in 1984. The decline continued until 2000, and was followed by a brief increase to a peak in 2003 as the large 1999 year class matured (fish spawned during a particular year are referred to as a year class).

Acceptable Biological Catch (ABC)/OY Recommendations

From these stock assessments, the U.S. OYs analyzed in the FEIS for 2009 and 2010 specifications and management measures varied between a low OY of 134,773 mt and a high OY of 404,318 mt (a U.S.-Canada OY range of 182,421 mt—547,263 mt). This range represents 50 to 150 percent of the 2008 U.S. OY of 269,545. These broad ranges in Pacific whiting harvest levels were analyzed in order to assess the potential range of the effects of the harvest of Pacific whiting on incidentally-caught overfished species, and the economic effects to coastal communities.

The final Acceptable Biological Catch (ABC)[b] and OY values recommended by the Council for 2010 are based on the new stock assessments, and are consistent with the U.S.-Canada agreement and the impacts considered in the FEIS for the 2009 and 2010 management measures. For this rule, ABC is used as defined in the current Pacific Coast Groundfish FMP.[c]

Based on the SSC advice that both models be put forward as the best available science, and additional input from Council advisory bodies and public comment, the Council adopted both the Pacific whiting stock assessments to decide harvest specifications for 2010 Pacific whiting fisheries.

Ultimately, for the 2010 Pacific whiting fisheries, the Council adopted a coastwide (U.S. plus Canada) ABC of 455,550 mt, which is the average of the ABCs estimated in each of the two stock assessments adopted by the Council. The U.S. share of the ABC is 336,560 mt (or 73.88 percent of the coastwide ABC). Due to the considerable uncertainty in the scientific advice, the Council used a more precautionary approach in choosing the OY and did not choose the average of the two model OYs. The OY values from the two models ranged from 186,000 mt (SS model) to 550,000 mt (TINSS model), and the average OY between the two models is 368,000 mt. Instead of choosing the average, the Council started with an OY value of 339,000 mt from the modified TINSS model. The TINSS model estimated the harvest rate that produces maximum sustained yield of F53%, which is more conservative than the proxy F_{MSY} harvest rate of F40%. The OY estimated in that assessment, using the F53% harvest rate, is 339,000 mt, and projects the stock depletion level to be 31 percent in 2011, which will maintain the stock well above the overfished threshold. Next, the Council selected the OY value of 186,000 mt from the Stock Synthesis III model under an F40% harvest rate, which is projected to result in a depletion of 25 percent in 2011. The Council then averaged these two OY values, and adopted a coastwide OY of 262,500 mt for 2010, which is considerably closer to the OY value of the more conservative Stock Synthesis III model. Under the terms of the U.S.-Canada agreement on Pacific whiting, the U.S. allocation of the coastwide OY is 73.88 percent, which equates to a U.S. OY of 193,935 mt.

Allocations

Since 1996, NMFS has been allocating a portion of the U.S. OY of Pacific whiting to the tribal fishery, following the process established in 50 CFR 660.324(d). The tribal allocation is subtracted from the total U.S. Pacific whiting OY before it is allocated to the non-tribal sectors. The tribal Pacific whiting fishery is a separate fishery, and is not governed by the limited entry or open access regulations or allocations. To date, only the Makah Tribe has prosecuted a tribal fishery for Pacific whiting.

For 2010, both the Makah and Quileute have stated their intent to participate in the Pacific whiting fishery. The Quinault Nation has indicated that they plan to participate in the 2011 fishery, but not the 2010 fishery.

The final rule for the tribal allocation in 2010 is not intended to establish any precedent for future Pacific whiting seasons, or for the long-term tribal allocation of whiting. Based on the formula for the tribal allocation used in

[b] Defined in the FMP as the Maximum Sustainable Yield, or the largest average catch that can be taken continuously from a stock under average environmental conditions while maintaining current stock abundance.

[c] The term ABC is not used here in the same sense as it is in the Magnuson-Stevens Act's National Standard 1 Guidelines, which will be implemented in the groundfish harvest specifications and management measures for 2011–12.

the proposed rule, and taking into account public comments received on the proposed rule, the tribal allocation of Pacific whiting in 2010 is [17.5 percent * (U.S. OY)] + 16,000 mt. With a U.S. OY of 193,935 mt, the tribal allocation for the 2010 tribal Pacific whiting fishery is 49,939 mt.

The 2010 commercial (non-tribal) OY for Pacific whiting is 140,996 mt. This amount was determined by deducting from the total U.S. OY of 193,935 mt, the 49,939 mt tribal allocation, along with 3,000 mt for research catch and bycatch in non-groundfish fisheries. Regulations at 50 CFR 660.323(a)(2) allocate the commercial OY among the non-tribal catcher/processor, mothership, and shore-based sectors of the Pacific whiting fishery.

The catcher/processor sector is comprised of vessels that harvest and process Pacific whiting. The mothership sector is comprised of motherships and catcher vessels that harvest Pacific whiting for delivery to motherships. Motherships are vessels that process, but do not harvest, Pacific whiting. The shoreside sector is comprised of vessels that harvest Pacific whiting for delivery to shoreside processors. Each sector receives a portion of the commercial OY, with the catcher/processors getting 34 percent (or 47,939 mt for 2010), motherships getting 24 percent (or 33,839 mt for 2010), and the shore-based sector getting 42 percent (or 59,218 mt for 2010). The fishery south of 42°N. lat. may not take more than 2,961 mt (5 percent of the shore-based allocation) prior to the start of the primary Pacific whiting season North of 42°N. lat.

Bycatch Limit Adjustments

Bycatch limits have been used to restrict the catch of overfished species, particularly canary, darkblotched and widow rockfish, in the non-tribal Pacific whiting fisheries. With bycatch limits, the industry has the opportunity to harvest a larger Pacific whiting OY, provided the incidental catch of these overfished species does not exceed the adopted bycatch limits.

Since 2005, a single bycatch limit for darkblotched, canary and widow rockfish species has been used for all commercial sectors of the fishery. However, beginning in 2009, concern that bycatch in one sector would result in the closure of a different sector of the fishery led to the implementation of sector-specific bycatch limits, rather than a single bycatch limit, for all commercial sectors (74 FR 9874, March 6, 2009). This practice is continued in 2010.

If a sector-specific bycatch limit is reached, or is projected to be reached, the Pacific whiting fishery for that sector will be closed, regardless of whether the Pacific whiting allocation has been achieved. When a sector is closed because a bycatch limit has been reached or was projected to be reached, unused amounts of the other bycatch limit species will be rolled-over to the remaining sectors of the non-tribal Pacific whiting fishery. If a sector reaches its Pacific whiting allocation, unused amounts of bycatch limit species will be shifted to those sectors of the non-tribal Pacific whiting fishery that remain open. Sector-specific bycatch limits are apportioned in the same percentages used to calculate the original sector Pacific whiting allocations.

During the development of the 2009–2010 specifications and management measures, the non-tribal Pacific whiting fishery bycatch limits were preliminarily set at 18 mt for canary rockfish, 25 mt for darkblotched rockfish, and 450 mt for widow rockfish (74 FR 9874, March 6, 2009). The final 2009 widow rockfish bycatch limit for the non-tribal Pacific whiting fishery was reduced to 250 mt, due to higher projected catch of widow rockfish in the non-Pacific whiting fisheries and the need to keep the total projected widow rockfish catch below the 2009 OY of 522 mt. The best available data at the March 2010 Council meeting indicated that there is an increasing trend in the bycatch rate for widow rockfish in the non-tribal Pacific whiting fishery and, given the higher 2010 Pacific whiting OY, the Council recommended increasing the widow rockfish bycatch limit for 2010. The 279 mt widow rockfish bycatch limit for 2010 is based on a linear interpolation of the bycatch rates for widow rockfish from 2006–2009. From the overall bycatch limit of 279 mt, the following sector-specific bycatch limits are established for widow rockfish: The catcher/processors bycatch limit is increased from 85.0 mt to 95.0 mt; the mothership bycatch limit is increased from 60.0 mt to 67.0 mt; and the shorebased bycatch limit is increased from 105.0 mt to 117.0 mt.

The 2009 canary rockfish bycatch limit was 18.0 mt. The 2009 canary bycatch limit was approximately 12 mt higher than it had been in the previous four years. The bycatch limit was increased for 2009–2010, based on the much higher canary rockfish harvest specifications for that period. The best available data at the March 2010 Council meeting indicated that there is an increasing trend in the bycatch rate for canary rockfish in the non-tribal whiting fishery. However, based on (1) The latest understanding of canary biomass from the most recent assessment (biomass is lower than previously thought), (2) that only 17 percent of the 2009 bycatch limit was caught, and (3) that the non-Pacific whiting fisheries would need to be further limited to keep the projected impacts to canary rockfish below the 2010 OY of 105 mt if the 18 mt bycatch limit was not reduced, the Council recommended decreasing the canary rockfish bycatch limit for 2010. The 2010 canary rockfish bycatch limit of 14 mt is based on the need to balance an increasing canary rockfish bycatch rate in the non-tribal Pacific whiting fishery with the needs of the non-Pacific whiting sectors. From the overall bycatch limit of 14 mt, the following sector-specific bycatch limits are established for canary rockfish: The catcher/processors bycatch limit is decreased from 6.1 mt to 4.8 mt; the mothership bycatch limit is decreased from 4.3 mt to 3.3 mt; and the shore-based bycatch limit is decreased from 7.6 mt to 5.9 mt.

At their March 2010 meeting, the Council also considered revising the darkblotched rockfish bycatch limits, but found no reason to revise them before the start of the 2010 season.

Classification

The final Pacific whiting specifications and management measures for 2010 are issued under the authority of the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act), and the Pacific Whiting Act of 2006, and are in accordance with 50 CFR part 660, subpart G, the regulations implementing the FMP. The Administrator, Northwest Region, NMFS, has determined that this rule is consistent with the national standards of the Magnuson-Stevens Act and other applicable laws.

Pursuant to the Administrative Procedure Act, 5 U.S.C. 553(b)(B), NMFS finds good cause to waive prior public notice and comment on the 2010 Pacific whiting specifications. NMFS also 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 as soon as possible after April 1, 2010, the typical fishery start date.

These waivers are necessary and in the public interest. The FMP requires that fishery specifications be evaluated periodically using the best scientific information available. Every year, NMFS conducts a Pacific whiting stock assessment in which U.S. and Canadian scientists cooperate. The 2010 stock assessment for Pacific whiting was prepared in early 2010, which is the

optimal time of year to conduct stock assessments for this species. New 2009 data used in this assessment that were not available until January, 2010 include: updated total catch; length and age data from the U.S. and Canadian fisheries; and biomass indices from the Joint US–Canadian acoustic/midwater trawl surveys. Pacific whiting differs from other groundfish species in that it has a shorter life span and the population fluctuates more swiftly. Thus, it is important to use the most recent stock assessment for Pacific whiting when determining ABC and OY. Because of the timing of obtaining the data and conducting the assessment, the results of Pacific whiting stock assessments are not available for use in developing the new ABC and OY until just before the Council's annual March meeting. The new Pacific whiting season begins in April 2010. Thus, if the actions in this final rule are to be implemented early in this fishing season, affording the time necessary for prior notice and opportunity for public comment would prevent the agency from managing the Pacific whiting and related fisheries using the best available science.

Moreover, delaying this rule would leave in place the harvest specifications and bycatch limits from the 2009 fishery. Through setting lower bycatch limits, this rule is intended to ensure that the rebuilding OYs for darkblotched, canary and widow rockfish are not exceeded. Without these lower limits, these rebuilding OY levels could be exceeded, contrary to the requirements of the Magnuson-Stevens Act and the Groundfish FMP. This would be contrary to not only the interest of the fishing communities, but to the public at large. Additionally, failing to implement the higher Pacific whiting harvest specifications as early as possible in 2010 could prevent the tribal and non-tribal fisheries from attaining their higher allocations, and thus would result in unnecessary short-term adverse economic effects for the Pacific whiting fishing vessels and the associated fishing communities.

The environmental impacts associated with the Pacific whiting harvest levels being adopted by this action are consistent with the impacts in the FEIS for the 2009–2010 specification and management measures. In approving the 2009–2010 groundfish harvest specifications and management measures, NMFS issued a Record of Decision (ROD). The ROD was signed on February 23, 2009. Copies of the FEIS and the ROD are available from the Council (*see* **ADDRESSES**).

Pursuant to the Regulatory Flexibility Act (RFA), 5 U.S.C. 601 *et seq.*, NMFS prepared an Initial Regulatory Flexibility Analysis (IRFA) and FRFA for the 2009–2010 harvest specifications and management measures. These analyses included the regulatory impacts of this action on small entities. The IRFA was summarized in the proposed rule published on December 31, 2008 (73 FR 80516). A summary of the FRFA analysis, which covers the entire groundfish regulatory scheme of which this is a part, was published in the final rule on March 6, 2009 (74 FR 9874). An IRFA was also prepared for the proposed rule on the tribal fishery for Pacific whiting in 2010. This proposed rule was published on March 12, 2010 (75 FR 11829). A FRFA for that rule was also prepared, and a summary of that FRFA is contained below. A copy of this analysis is available from NMFS (*see* **ADDRESSES**). The need for and objectives of this final rule are contained in the **SUMMARY** and in the Background section under **SUPPLEMENTARY INFORMATION.**

The final 2009–2010 specifications and management measures were intended to allow West Coast commercial and recreational fisheries participants to fish the harvestable surplus of more abundant stocks, while also ensuring that those fisheries do not exceed the allowable catch levels intended to rebuild and protect overfished stocks. The ABCs and OYS follow the guidance of the Magnuson-Stevens Act, the national standard guidelines, and the FMP for protecting and conserving fish stocks. Fishery management measures include trip and bag limits, size limits, time/area closures, gear restrictions, and others intended to allow year-round West Coast groundfish landings, without compromising overfished species rebuilding measures.

In recent years the number of participants engaged in the Pacific whiting fishery has varied with changes in the Pacific whiting OY and economic conditions. Pacific whiting shoreside vessels (26 to 29), mothership processors (4 to 6), mothership catcher vessels (11–20), catcher/processors (5 to 9), Pacific whiting shoreside first receivers (8–16), and five tribal trawlers are the major units of this fishery. For 2010, an additional one to two tribal trawlers may enter the fishery. NMFS records suggest the gross annual revenue for each of the catcher/processor and mothership operations on the Pacific coast exceeds $4,000,000. Therefore, they are not considered small businesses. NMFS records also show that 10–43 catcher vessels have taken part in the mothership fishery yearly since 1994. These companies are all assumed to be small businesses as defined by the RFA (although some of these vessels may be affiliated with larger processing companies). Since 1994, 26–31 catcher vessels participated in the shoreside fishery annually. These companies are all assumed to be small businesses (although some of these vessels may be affiliated to larger processing companies). Tribal trawlers are presumed to be small entities, whereas the Tribes are presumed to be small government jurisdictions.

In 2008, these participants harvested about 248,000 tons of Pacific whiting, worth about $63 million in ex-vessel value, based on shoreside ex-vessel prices of $254 per ton—the highest ex-vessel revenues and prices on record. In comparison, the 2007 fishery harvested about 224,000 tons, worth $36 million at an average ex-vessel price of about $160 per ton. From 2003–2007, estimated Pacific whiting ex-vessel values averaged about $29 million.

Seafood processors convert Pacific whiting into surimi, fillets, fish meal, and headed gutted products. Besides recent high OY levels, ex-vessel revenues have been increasing due to increased prices for headed and gutted Pacific whiting. From 2004–2007, wholesale prices for headed and gutted Pacific whiting product increased from about $1,200 per ton, to $1,600 per ton. In 2008, wholesale prices averaged $1,980 per ton according to U.S. Export Trade statistics. Fuel prices, a major expense for Pacific whiting vessels, also increased dramatically. For example, at the start of the primary fishery in June 2008 fuel prices were about $4.30 per gallon, compared to June 2007 levels of $2.70 per gallon.

In 2009, wholesale headed gutted prices fell slightly to $1,950 per ton. Fuel prices, a major expense for Pacific whiting vessels, continued to fluctuate. However, by 2009, these prices fell from their June, 2008 high to about $2.32 per gallon.

The fisheries' ability to harvest the entire 2010 Pacific whiting OY will depend on how well the industry stays within the overfished species bycatch limits. For example, in 2008 the Pacific whiting shoreside fishery was closed prematurely because of overfished species bycatch issues, leaving a major portion its allocation unharvested. Although NMFS transferred the unharvested allocations to the other nontribal fleets, by year's end, 7 percent of the 2008 Pacific whiting OY remained unharvested. In 2009, the ex-vessel price of Pacific whiting averaged about $115 per ton. Based on this price,

if the total amount of Pacific whiting available to the tribal and non-tribal commercial fisheries is harvested in 2010, the revenues generated would approach $22 million—a potential increase over the $14 million generated in 2009.

Pursuant to Executive Order 13175, this action was developed after meaningful consultation and collaboration with tribal officials from the area covered by the FMP. Under the Magnuson-Stevens Act, 16 U.S.C. 1852(b)(5), one of the voting members of the Council must be a representative of an Indian tribe with federally recognized fishing rights from the area of the Council's jurisdiction. In addition, regulations implementing the FMP establish a procedure by which the tribes with treaty fishing rights in the area covered by the FMP request, in writing, new allocations or regulations specific to the tribes before the first of the two meetings at which the Council considers groundfish management measures. Both the Makah and Quileute Tribes requested a Pacific whiting allocation for 2009. The regulations at 50 CFR 660.324(d) further state that, "the Secretary will develop tribal allocations and regulations under this paragraph in consultation with the affected tribe(s) and, insofar as possible, with tribal consensus."

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

List of Subjects in 50 CFR Part 660

Fisheries, Fishing, and Indian fisheries.

Dated: April 29, 2010.

Eric C. Schwaab,

Assistant Administrator for 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 U.S.C. 7001 *et seq.*

■ 2. In § 660.373 paragraph (b)(4)(i) is revised to read as follows:

§ 660.373 Pacific whiting (whiting) fishery management.

* * * * *

(b) * * *

(4) * * *

(i) The whiting fishery bycatch limit is apportioned among the sectors identified in paragraph (a) of this section based on the same percentages used to allocate whiting among the sectors, established in § 660.323(a). The sector specific bycatch limits are: for catcher/processors 4.8 mt of canary rockfish, 95 mt of widow rockfish, and 8.5 mt of darkblotched rockfish; for motherships 3.3 mt of canary rockfish, 67 mt of widow rockfish, and 6.0 mt of darkblotched rockfish; and for shore-based 5.9 mt of canary rockfish, 117 mt of widow rockfish, and 10.5 mt of darkblotched rockfish.

* * * * *

■ 3. In § 660.385 paragraph (e) is revised to read as follows:

§ 660.385 Washington coastal tribal fisheries management measures.

* * * * *

(e) *Pacific whiting*—The tribal allocation for 2010 is 49,939 mt.

* * * * *

■ 4. Revise Table 2a to Part 660, Subpart G, and footnotes "/f" and "/q" following Tables 2a through 2c to Part 660, Subpart G to read as follows:

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Table 2a. To Part 660, Subpart G-2010, Specifications of ABCs, OYs, and HGs, by Management Area (weights in metric tons).

Species	ABC Specifications								
	ABC Contributions by Area					ABC	OY	HG b/	
	Vancouver a/	Columbia	Eureka	Monterey	Conception			Commercial	Recreational
ROUNDFISH:									
Lingcod c/ N of 42 N. lat.	4,058		771			4,829	4,829		
S of 42 N. lat.									
Pacific Cod e/	3,200		d/			3,200	1,600		
Pacific Whiting f/	336,560					336,560	193,935		
Sablefish g/ N of 36 N. lat.	9,217					9,217	6,471		
S of 36 N. lat.							1,258		
Cabezon h/ S of 42 N. lat.	d/		86		25	111	79		
FLATFISH:									
Dover sole	28,582					28,582	16,500		
English sole j/	9,745					9,745	9,745	-	
Petrale sole k/	1,514		1,237			2,751	1,200	-	
Arrowtooth flounder l/	10,112					10,112	10,112	-	
Starry Flounder m/	1,578					1,578	1,077		
Other flatfish n/	6,731					6,731	4,884	-	
ROCKFISH:									
Pacific Ocean Perch o/	1,173					1,173	200	198	

Species	ABC Specifications						OY	HG b/	
	ABC Contributions by Area					ABC		Commercial	Recreational
	Vancouver a/	Columbia	Eureka	Monterey	Conception				
Shortbelly p/	6,950					6,950	6,950		
Widow q/	6,937					6,937	509	447.4	7.2
Canary r/	940					940	44 - 105		
Chilipepper s/	d/			2,576		2,576	2,447	2,447	
Bocaccio t/	d/			793		793	288	206.4	67.3
Splitnose u/	d/			615		615	461		
Yellowtail v/	4,562			d/		4,562	4,562		
Shortspine thornyhead w/ N of 34 27' N. lat.	2,411					2,411	1,591	1,591	
S of 34 27' N. lat.							410		
Longspine thornyhead x/ N of 34 27' N. lat.	3,671					3,671	2,175		
S of 34 27' N. lat.							385		
Cowcod y/	d/			14		14	4		
Darkblotched z/	440					440	291	288.05	
Yelloweye aa/						32	17	3.1	8.0
California Scorpionfish bb/					155	155	155		
Black cc/ N of 46 16' N. lat.	464					464	464		
S of 46 16' N. lat.			1,317			1,317	1,000		

Species	ABC Specifications							HG b/	
	ABC Contributions by Area								
	Vancouver a/	Columbia	Eureka	Monterey	Conception	ABC	OY	Commercial	Recreational
Minor Rockfish dd/ N of 40 10' N. lat.	3,678			--		3,678	2,283		
Minor Rockfish ee/ S of 40 10' N. lat.	--			3,382		3,382	1,990		
Remaining	1,640			1,318					
bank ff/	d/			350					
blackgill gg/	d/			292					
blue	28			211					
bocaccio north	318			--					
chilipepper north	32			--					
redstripe	576			d/					
sharpchin	307			45					
silvergrey	38			d/					
splitnose north	242			--					
yellowmouth	99			d/					
yellowtail	--			116					
gopher	d/			302					
Other rockfish hh/	2,038			2,066					
SHARKS/SKATES/RATFISH/MORIDS/GRENADIERS/KELP GREENLING:									
Longnose Skate ii/			3,269			3,269	1,349		
Other fish jj/			11,200			11,200	5,600		

* * * * *

[f] Pacific whiting—The most recent stock assessment was prepared in January 2010. The stock assessment base model estimated the Pacific whiting biomass to be at 31 percent (50th percentile estimate of depletion) of its unfished biomass in 2010. The U.S.-Canada coastwide ABC is 455,550 mt, the U.S. share of the ABC is 336,560 mt (73.88 percent of the coastwide ABC). The U.S.-Canada coastwide Pacific whiting OY is 262,500 mt, with a corresponding U.S. OY of 193,935 mt. The tribal allocation is 49,939 mt. The amount estimated to be taken as research catch and in non-groundfish fisheries is 3,000 mt. The commercial OY is 140,996 mt. Each sector receives a portion of the commercial OY, with the catcher/processors getting 34 percent (47,939 mt), motherships getting 24 percent (33,839 mt), and the shore-based sector getting 42 percent (59,218 mt). No more than 2,961 mt (5 percent of the shore-based allocation) may be taken in the fishery south of 42° N. lat. prior to the start of the primary season for the shorebased fishery north of 42° N. lat.

* * * * *

[q] Widow rockfish was assessed in 2005, and an update was prepared in 2007. The stock assessment update estimated the stock

to be at 36.2 percent of its unfished biomass in 2006. The ABC of 6,937 mt is based on the stock assessment update with an F50% FMSY proxy. The OY of 509 mt is based on a rebuilding plan with a target year to rebuild of 2015 and an SPR harvest rate or 95 percent. To derive the commercial harvest guideline of 447.4 mt, the OY is reduced by 1.1 mt for the amount anticipated to be taken during research activity, 45.5 mt for the tribal set-aside, 7.2 mt the amount estimated to be taken in the recreational fisheries, 0.4 mt for the amount expected to be taken incidentally in non-groundfish fisheries, and 7.4 mt for EFP fishing activities.

* * * * *

[FR Doc. 2010–10403 Filed 4–29–10; 4:15 pm]

BILLING CODE 3510–22–C

Proposed Rules

Federal Register
Vol. 75, No. 85
Tuesday, May 4, 2010

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

DEPARTMENT OF AGRICULTURE

Foreign Agricultural Service

7 CFR Part 1530

Sugar Re-Export Program, the Sugar-Containing Products Re-Export Program, and the Polyhydric Alcohol Program

AGENCY: Foreign Agricultural Service, USDA.

ACTION: Proposed rule; withdrawal.

SUMMARY: The Foreign Agricultural Service (FAS) is withdrawing the proposed rule published at 70 FR 3150 on January 21, 2005, to implement Chapter 17 of the Harmonized Tariff Schedule of the United States (HTS), Additional U.S. Note 6, which authorizes entry of raw cane sugar under subheading 1701.11.20 of the HTS for the production of polyhydric alcohols, except polyhydric alcohols for use as a substitute for sugar in human food consumption, or to be refined and re-exported in refined form or in sugar-containing products, or to be substituted for domestically produced raw cane sugar that has been or will be exported. The proposed rule would have revised the current regulation at 7 CFR part 1530.

DATES: Effective date: May 4, 2010.

FOR FURTHER INFORMATION CONTACT: Ronald C. Lord, Chief, Sugar and Dairy Branch, Import Programs and Export Reporting Division, Foreign Agricultural Service, U.S. Department of Agriculture or by phone (202) 720–2916; or by fax (202) 720–0876; or by e-mail: *Ronald.Lord@fas.usda.gov*.

SUPPLEMENTARY INFORMATION:

Background

The U.S. and Mexican sugar markets have become increasingly integrated since duty-free, quota-free trade in sugar was fully implemented on January 1, 2008 under the North American Free Trade Agreement (NAFTA). FAS is withdrawing this proposed rule because market conditions have changed. FAS intends to publish an advance notice of proposed rulemaking concerning trade under the Sugar Re-Export Program with Mexico, requesting comments on revisions to the regulation, in particular with respect to issues not fully addressed in previous comments on the proposed rule that is being withdrawn by this action.

Signed at Washington, DC on the 26th of April, 2010.

John D. Brewer,

Administrator, Foreign Agricultural Service.

[FR Doc. 2010–10425 Filed 5–3–10; 8:45 am]

BILLING CODE P

FEDERAL HOUSING FINANCE BOARD

12 CFR Part 956

FEDERAL HOUSING FINANCE AGENCY

12 CFR Part 1267

RIN 2590–AA32

Federal Home Loan Bank Investments

AGENCY: Federal Housing Finance Agency, Federal Housing Finance Board.

ACTION: Notice of proposed rulemaking; request for comment.

SUMMARY: The Federal Housing Finance Agency (FHFA) is proposing to re-organize and re-adopt existing investment regulations that apply to the Federal Home Loan Banks (Banks) and that were previously adopted by the Federal Housing Finance Board (Finance Board) as new part 1267 of the FHFA's regulations. FHFA is also proposing to incorporate into the new part 1267 limits on the Banks' investment in mortgage-backed securities (MBS) and certain asset-backed securities (ABS) that are now set forth in the Financial Management Policy (FMP) that had been issued by the Finance Board. If the proposed rule is adopted in its current form, FHFA expects to terminate the FMP as of the effective date of the new rule.

DATES: Comments on the proposed rule must be received on or before July 6, 2010. For additional information, *see* **SUPPLEMENTARY INFORMATION.**

ADDRESSES: You may submit your comments on the proposed rule, identified by regulatory information number (RIN) 2590–AA32 by any of the following methods:

- *E-mail:* Comments to Alfred M. Pollard, General Counsel, may be sent by e-mail to *RegComments@FHFA.gov*. Please include "RIN 2590–AA32" in the subject line of the message.
- *Federal eRulemaking Portal: http://www.regulations.gov*. Follow the instructions for submitting comments. If you submit your comments to the Federal eRulemaking Portal, please also send it by e-mail to FHFA at *RegComments@FHFA.gov* to ensure timely receipt by the agency. Please include "RIN 2590–AA32" in the subject line of the message.
- *Hand Delivery/Courier:* The hand delivery address is: Alfred M. Pollard, General Counsel, Attention: Comments/RIN 2590–AA32, Federal Housing Finance Agency, Fourth Floor, 1700 G Street, NW., Washington, DC 20552. The package should be logged at the Guard Desk, First Floor, on business days between 9 a.m. and 5 p.m.
- *U.S. Mail, United Parcel Service, Federal Express, or Other Mail Service:* The mailing address for comments is: Alfred M. Pollard, General Counsel, Attention: Comments/RIN 2590–AA32, Federal Housing Finance Agency, Fourth Floor, 1700 G Street, NW., Washington, DC 20552.

FOR FURTHER INFORMATION CONTACT: Louis Scalza, Associate Director, 202–408–2953, Division of Federal Home Loan Bank Regulation, Federal Housing Finance Agency, 1625 Eye Street, NW., Washington, DC 20006; or Thomas E. Joseph, Senior Attorney-Advisor, 202–414–3095, Office of General Counsel, Federal Housing Finance Agency, Fourth Floor, 1700 G Street, NW., Washington, DC 20552. The telephone number for the Telecommunications Device for the Deaf is (800) 877–8339.

SUPPLEMENTARY INFORMATION:

I. Comments

FHFA invites comments on all aspects of the proposed rule, and will adopt a final regulation with appropriate changes after taking all comments into consideration. Copies of all comments will be posted on the Internet Web site at *https://www.fhfa.gov*. 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.

II. Background

A. Creation of the Federal Housing Finance Agency and Recent Legislation

Effective July 30, 2008, the Housing and Economic Recovery Act of 2008 (HERA), Public Law 110–289, 122 Stat. 2654, created FHFA as a new independent agency of the Federal Government, and transferred to FHFA the supervisory and oversight responsibilities of the Office of Federal Housing Enterprise Oversight (OFHEO) over the Federal National Mortgage Association (Fannie Mae), and the Federal Home Loan Mortgage Corporation (Freddie Mac) (collectively, the Enterprises), the oversight responsibilities of the Finance Board over the Banks and the Office of Finance (OF) (which acts as the Banks' fiscal agent) and certain functions of the Department of Housing and Urban Development. *See id.* at section 1101, 122 Stat. 2661–62. FHFA is responsible for ensuring that the Enterprises and the Banks operate in a safe and sound manner, including that they maintain adequate capital and internal controls, that their activities foster liquid, efficient, competitive and resilient national housing finance markets, and that they carry out their public policy missions through authorized activities. *See id.* at section 1102, 122 Stat. 2663–64. OFHEO and the Finance Board were abolished July 30, 2009, one year after the enactment of HERA, however, the Enterprises, the Banks, and the OF continue to operate under regulations promulgated by OFHEO and the Finance Board until such regulations are superseded by regulations issued by FHFA. *See id.* at sections 1301, 1302, 1311, 1312, 122 Stat. 2794–95, 2797–98.

B. The Bank System Generally

The twelve Banks are instrumentalities of the United States organized under the Federal Home Loan Bank Act (Bank Act).[1] *See* 12 U.S.C. 1423, 1432(a). The Banks are cooperatives; only members of a Bank may purchase the capital stock of a Bank, and only members or certain eligible housing associates (such as state housing finance agencies) may obtain access to secured loans, known as advances, or other products provided by a Bank. *See* 12 U.S.C. 1426(a)(4), 1430(a), 1430b. Each Bank is managed by its own board of directors and serves the public interest by enhancing the availability of residential mortgage and community lending credit through its member institutions. *See* 12 U.S.C. 1427. Any eligible institution (generally a federally insured depository institution or state-regulated insurance company) may become a member of a Bank if it satisfies certain criteria and purchases a specified amount of the Bank's capital stock. *See* 12 U.S.C. 1424; 12 CFR part 1263.

As government-sponsored enterprises (GSEs), the Banks are granted certain privileges under federal law. In light of those privileges and their status as GSEs, the Banks typically can borrow funds at spreads over the rates on U.S. Treasury securities of comparable maturity lower than most other entities. The Banks pass along a portion of their GSE funding advantage to their members—and ultimately to consumers—by providing advances and other financial services at rates that would not otherwise be available to their members.

C. Investment Requirements and the FMP

Under sections 11(g), 11(h) and 16(a) of the Bank Act, 12 U.S.C. 1431(g), 1431(h), 1436(a), a Bank is specifically authorized, subject to the rules of FHFA, to invest in: (1) Obligations of the United States; (2) deposits in banks and trust companies; (3) obligations, participations or other instruments of, or issued by, Fannie Mae or Government National Mortgage Association (Ginnie Mae); (4) mortgages, obligations or other securities that are or ever have been sold by Freddie Mac; (5) stock of Fannie Mae; (6) stock, obligations or other securities of any small business investment company (SBIC) formed pursuant to 15 U.S.C. 681, to the extent the investment is made for purposes of aiding a Bank member; and (7) instruments that a Bank has determined are permissible investments for fiduciary and trust funds under the laws of the state in which the Bank is located. Part 956 of the Finance Board regulations authorizes the Banks to invest in all the instruments specifically identified in the statute, except for stock in Fannie Mae, subject to certain safety and soundness limitations that are also set forth in the regulation. *See* 12 CFR 956.2, 956.3. The part 956 regulations also allow the Banks to enter into derivative transactions, standby letters of credit which conform to other regulations, and commitments to make advances or commitments to make or purchase other loans. *See* 12 CFR 956.5. The Banks may, however, enter into derivative contracts only for hedging or other documented, non-speculative purposes, such as intermediating derivative transactions for members, and the Banks are subject to prudential and safety and soundness requirements with regard to derivative transactions. *See* 12 CFR 956.6.

The FMP evolved from a series of policies and guidelines initially adopted by the former Federal Home Loan Bank Board, predecessor agency to the Finance Board, in the 1970s and revised a number of times thereafter. The Finance Board adopted the FMP in 1991, consolidating into one document the previously separate policies on funds management, hedging and interest-rate swaps, and adding new guidelines on the management of unsecured credit and interest-rate risks.[2] Prior to the adoption of the part 956 regulations in 2000, the FMP governed how the Banks implemented their financial management strategies by specifying the types of investments the Banks could purchase. *See* Proposed Rule: *Federal Home Loan Bank Acquired Member Assets, Core Mission Activities, Investments and Advances*, 65 FR 25676, 25686 (May 3, 2000). The FMP also established mandatory guidelines relating to the funding and hedging practices of the Banks, the management of their credit, interest-rate, and liquidity risks, and the liquidity requirements for the Banks in addition to those required by statute.

Beginning in 2000, many of the provisions contained in the FMP were superseded by regulations adopted by the Finance Board including regulations that implemented the new capital structure for the Banks that had been mandated by the Gramm-Leach-Bliley Act of 1999, Public Law 106–102, 113 Stat. 1338 (Nov. 12, 1999) (GLB Act). Among other things, the new capital structure incorporated risk-based capital requirements to support the risks in the Banks' activities, and therefore eliminated the need for most of the FMP restrictions on investments. *See* 12 CFR part 932. In approving the capital plans that each Bank was required to adopt under provisions of the GLB Act, the Finance Board issued separate orders providing that upon a Bank's implementation of its capital plan and its full coverage by the capital regime in part 932 of the regulations, the Bank would be exempted from future

[1] The twelve Banks are located in: Boston, New York, Pittsburgh, Atlanta, Cincinnati, Indianapolis, Chicago, Des Moines, Dallas, Topeka, San Francisco, and Seattle.

[2] *See* Fin. Bd. Res. No. 96–45 (July 3, 1996), as amended by Fin. Bd. Res. No. 96–90 (Dec. 6, 1996), Fin. Bd. Res. No. 97–05 (Jan. 14, 1997), and Fin. Bd. Res. No. 97–86 (Dec. 17, 1997). *See also* 62 FR 13146 (Mar. 19, 1997)).

compliance with all provisions of the FMP except for a few specific restrictions related to the Bank's investment in mortgage-backed and certain asset-backed securities along with some related restrictions on entering into some derivative transactions.[3] *See, e.g.*, Fin. Bd. Res. No. 2002–11 (Mar. 13, 2002). Currently, all the Banks but the Federal Home Loan Bank of Chicago (Chicago Bank) have implemented their capital plans and are fully subject to the part 932 capital provisions. Thus, only a few of the provisions of the FMP remain applicable to all the Banks.

In addition to the FMP provisions already discussed and applicable to all the Banks, the Chicago Bank remains subject to FMP provisions related to prudential limits on investments (other than MBS or ABS)[4] and interest rate risk guidelines. The latter have been subsumed into the risk management and hedging guidelines that the Chicago Bank was required to submit for review and approval (and update as necessary) under Article III of the *Consent Order To Cease and Desist* entered into with the Finance Board on October 10, 2007 and which remains in effect. *See* 2007–SUP–01.

D. Considerations of Differences Between the Banks and the Enterprises

Section 1201 of HERA requires the Director, when promulgating regulations relating to the Banks, to consider the following differences between the Banks and the Enterprises: Cooperative ownership structure; mission of providing liquidity to members; affordable housing and community development mission; capital structure; and joint and several liability. *See* section 1201 Public Law 110–289, 122 Stat. 2782–83 (*amending* 12 U.S.C. 4513). The Director also may consider any other differences that are deemed appropriate. In preparing this proposed rule, FHFA considered the differences between the Banks and the Enterprises as they relate to the above factors. FHFA requests comments from the public about whether differences related to these factors should result in any revisions to the proposal. FHFA also requests comment on whether differences related to these factors are relevant to the issues and questions raised in section III.B. below.

III. The Proposed Rule

The proposed rule would re-organize current part 956 of the Finance Board's regulations and re-adopt it as part 1267 of the FHFA's regulations. More significantly, it would also incorporate into the regulation restrictions that are now applicable to the Banks and are contained in the FMP. Adopting these restrictions in a regulation would consolidate all the investment requirements in one place and allow FHFA to terminate the FMP. In addition, the proposed rule would make other conforming changes to the part 956 regulations related to the transfer of the regulations to chapter XII, 12 CFR part 1267 and to the incorporation of the FMP restrictions into the rule.

A. Highlights of the Proposed Rule

The proposed rule would re-organize the current 956 rules by combining § 956.2 and § 956.5, which respectively provide a list of authorized investments and authorization for derivative and other transactions, into new § 1267.2. This would consolidate all authority for investments and other transactions into a single section but does not otherwise substantially alter the part 956 provisions. The proposed rule would carry over current § 956.3, which sets forth a list of prohibited investments and other prudential requirements as new § 1267.3. The proposed rule would incorporate as new § 1267.3(a)(5) through (7) restrictions found in section II.C.3. through C.5. of the FMP related to investment in MBS and ABS, including the prohibition on investment in residual interest and interest accrual classes of securities and interest-only and principal-only stripped MBS and ABS.

New § 1267.3(c) would incorporate the limits now in section II.C.2. of the FMP that limit a Bank's level of investment in MBS and eligible ABS to 300 percent of its total capital. The proposed provision also states that a Bank's purchase of MBS and ABS in any calendar quarter cannot cause its total holdings of such securities to increase by more than 50 percent of its total capital as of the beginning of such quarter. Both these limits are carried over directly from the Finance Board's FMP without change. The proposed provision also clarifies that a Bank would not be required to divest securities solely to bring the level of its holdings into compliance with the limits in new § 1267.3(c), provided that the original purchase of the securities complied with these limits.

The proposed rule also would re-adopt the limitations and prudential requirement on use of derivative instruments now found in § 956.6 as new § 1267.4. FHFA is also proposing to add to this section new paragraph (b) which would incorporate the remaining applicable limitations on derivative transaction found in section V.C.5. of the FMP. These FMP restrictions are meant to prevent the Banks from using derivatives to create exposures or investments similar to residual interest and interest accrual classes of securities, interest-only and principal-only stripped MBS and ABS, or other investments that are currently prohibited by section II.C. of the FMP (and would continue to be prohibited by new § 1267.3(a)(5) through (7)).

B. Potential Additional Limitations and Specific Requests for Information

The FMP limits on total investment in MBS and ABS that FHFA is proposing to incorporate into new § 1267.3 address both mission and safety and soundness concerns. FHFA acknowledges that some of the Banks' investments in private-label MBS have resulted in accounting charges for other-than-temporary impairment (OTTI) but is proposing transferring the existing limits on MBS and ABS contained in the FMP as an administrative reorganization. FHFA is specifically requesting comments on whether more restrictive limits or other modifications to the MBS investment requirements are needed.

Some of the Banks' OTTI charges were on private-label MBS that were backed by subprime and nontraditional residential mortgage loans. To address certain issues associated with subprime and nontraditional loans, the Finance Board's Office of Supervision issued two advisory bulletins that remain

[3] The restrictions in question are found in sections II.C.2.,3.,4. and 5. and Section V.C.5. of the FMP. These limits, among other things, prohibit investment in residual interest and interest accrual classes of securities and in interest-only and principal-only stripped securities, and limit a Bank's investment in MBS and ABS to 300 percent of a Bank's total capital. The provisions also limit an increase in a Bank's holdings of MBS and ABS to no more than 50 percent of its total capital in any calendar quarter. The restrictions also prohibit the Bank from entering into swap transactions that would amortize similar to residual interest or interest accrual classes of securities or to interest-only and principal-only stripped securities.

In March 2008, the Finance Board temporarily expanded the Banks' authority to invest in MBS guaranteed by the Enterprises by an additional three times total capital, subject to certain conditions. *See* Fin. Brd. Res. No. 2008–08 (Mar. 24, 2008). The temporary authority expired on March 31, 2010. The Finance Board believed that the temporary increase in the Banks' investment authority would help address severe liquidity and other constraints that were affecting the housing finance markets in early 2008.

[4] Even if the FMP were terminated so that these FMP prudential limits were no longer applicable to the Chicago Bank, the Bank would be subject to the new business activity requirements under part 980 of current regulations. Therefore, the Bank would require FHFA's approval before it could make investments beyond what it is currently allowed, and FHFA could impose any prudent limits, as appropriate, as part of the approval process. *See* 12 CFR part 980.

applicable to the Banks and contain guidance designed to promote better risk management of private-label MBS with these types of underlying loans. On April 12, 2007, the Office of Supervision issued Advisory Bulletin 2007–AB–01 that established expectations for the Banks' pre-purchase analysis and periodic reviews of MBS investments. The Bulletin also advised the Banks' boards of directors to establish: (1) Limits on the level of MBS with underlying nontraditional or subprime mortgage collateral; (2) requirements for the level of credit protection for particular credit tranches when purchased at the time of original issuance of the security, and (3) limits on concentrations by geographic area, issuer, servicer, and size. On July 1, 2008, the Office of Supervision issued Advisory Bulletin 2008–AB–02 that expressed the expectation that the Banks' purchases of private-label MBS will be limited to securities in which the underlying mortgage loans comply with all aspects of the federal banking agencies' *Interagency Guidance on Nontraditional Mortgage Product Risks*, issued on October 4, 2006 (71 FR 58609), and *Statement on Subprime Mortgage Lending*, issued on July 10, 2007 (72 FR 37569), (collectively "interagency guidance"). The interagency guidance emphasizes underwriting standards intended to ensure a borrower's ability to repay a mortgage loan at the fully indexed rate and assuming an amortizing repayment schedule. FHFA believes that future investments in private-label MBS backed by mortgage loans that conform to the interagency guidance and are purchased in line with the guidelines set forth in the April 2007 Advisory Bulletin may offer some protection against OTTI losses.

The Banks' OTTI charges are problematic. In the third quarter of 2009, the Banks' OTTI charges on private-label MBS totaled $2.2 billion. Cumulative OTTI on such investments through the third quarter of 2009 was $12.4 billion. These charges raise questions as to the Banks' ability to: (1) Properly manage the risks associated with investments in private-label MBS, and (2) adopt and implement prudent private-label MBS investment and credit risk policies.

In particular, in the FHFA's 2008 Annual Report to Congress, the agency expressed concern regarding the financial condition of some Banks and the negative performance of their private-label MBS. FHFA examination comments were that, to varying degrees, the Banks' investment policies and risk mitigation measures were deficient in terms of post-purchase monitoring, overreliance on NRSRO ratings, and limited risk reporting. Considering these factors, several Banks were found to have significant weaknesses in their private-label MBS credit risk management systems.

Thus, FHFA is considering whether it should adopt additional restrictions, or lower the overall limit, on the Banks' investment in MBS generally, and in private-label MBS, in particular, as part of the final rule. In this regard, FHFA is seeking specific comments and information on the following:

1. Although the proposed rule would retain the FMP provision limiting MBS holdings to 300 percent of a Bank's capital, FHFA also requests comment on what other measures might offer a prudent limit on MBS holdings that also would mitigate potential future losses from the Banks' MBS portfolios. Comments on this issue may address both the magnitude of the limit (*i.e.*, 300 percent of capital) and its basis (*i.e.*, capital). For example, because retained earnings can absorb losses without compromising the par value of Bank capital stock, a limit based on a Bank's retained earnings may offer a more prudent basis for limiting private-label MBS investments.

2. In addition to the overall limit on MBS investments, FHFA requests comments on whether there should be a separate limit or additional restrictions on the purchase of private-label MBS (*e.g.*, a limit of one or two times capital, or a separate limit linked to retained earnings or some other basis). If such provisions are appropriate, FHFA seeks comments on the appropriate magnitude of the limit and its basis, as well as whether the rule should prohibit the purchase of private-label MBS.

3. In addition to the types of limits contemplated by the questions immediately above, FHFA seeks comments on whether it should restrict purchases of private-label MBS based on collateral characteristics (*e.g.*, restrictions based on whether the underlying mortgages are commercial or residential real estate loans, adjustable-rate loans, interest-only loans, or credit scores below certain levels). If such limits are appropriate, FHFA also would request comments on the types of characteristics and restrictions that should be implemented. For example, FHFA has considered proposing a limit on a Bank's private-label MBS purchases that decreases as the amount of relatively risky collateral in the Bank's mortgage pools and portfolio increases. Such restrictions could serve to limit the Bank's exposure to credit losses by reducing purchases of private-label MBS with relatively risky collateral.

4. At one time, the FMP limited the purchase of private-label MBS to only those instruments rated in the highest investment grade category.[5] FHFA requests comments on whether it should re-introduce that type of limit as a means to limit the potential risks to the Banks from their MBS portfolios, and whether it would suffice to adopt a ratings requirement only for private-label MBS backed by certain types of collateral (*e.g.*, subprime or Alt-A loans).

If the proposed rule is adopted in its current form, FHFA anticipates that it would rescind the FMP as of the effective date of the new rule.

IV. Paperwork Reduction Act

The proposed rule does not contain any collections of information pursuant to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*). Therefore, FHFA has not submitted any information to the Office of Management and Budget for review.

V. Regulatory Flexibility Act

The proposed rule applies only to the Banks, which do not come within the meaning of small entities as defined in the Regulatory Flexibility Act (RFA). *See* 5 U.S.C. 601(6). Therefore in accordance with section 605(b) of the RFA, FHFA certifies that this proposed rule, if promulgated as a final rule, will not have significant economic impact on a substantial number of small entities.

List of Subjects in 12 CFR Parts 956 and 1267

Community development, Credit, Federal home loan bank, Housing, Reporting and recordkeeping requirements.

Accordingly, for reasons stated in the preamble and under the authority of 12 U.S.C. 1429, 1430, 1430b, 1431, 1436, 4511, 4513, 4526, FHFA proposes to amend subchapter G of chapter IX and subchapter D of chapter XII of title 12 of the Code of Federal Regulations as follows:

CHAPTER IX—FEDERAL HOUSING FINANCE BOARD

SUBCHAPTER G—FEDERAL HOME LOAN BANK ASSETS AND OFF-BALANCE SHEET ITEMS

PART 956—[REMOVED]

1. Remove part 956.

[5] This provision was in section II.B. of the FMP, and no longer applies to the Banks that have converted to the GLB Act capital structure.

CHAPTER XII—FEDERAL HOUSING FINANCE AGENCY

SUBCHAPTER D—FEDERAL HOME LOAN BANKS

2. Add part 1267 to subchapter D to read as follows:

PART 1267—FEDERAL HOME LOAN BANK INVESTMENTS

Sec.
1267.1 Definitions.
1267.2 Authorized investments and transactions.
1267.3 Prohibited investments and prudential rules.
1267.4 Limitations and prudential requirements on use of derivative instruments.
1267.5 Risk-based capital requirements for investments.

Authority: 12 U.S.C. 1429, 1430, 1430b, 1431, 1436, 4511, 4513, 4526.

§ 1267.1 Definitions.

As used in this part:

Asset-backed security or ABS means a debt instrument backed by loans, but does not include debt instruments that meet the definition of a mortgage-backed security.

Bank, written in title case, means a Federal Home Loan Bank established under section 12 of the Bank Act, as amended (12 U.S.C. 1432).

Bank Act means the Federal Home Loan Bank Act, as amended (12 U.S.C. 1421 through 1449).

Consolidated obligation means any bond, debenture or note on which the Banks are jointly and severally liable and which was issued under section 11 of the Bank Act (12 U.S.C. 1431) and in accordance with any implementing regulations, whether or not such instrument was originally issued jointly by the Banks or by the Federal Housing Finance Board on behalf of the Banks.

Deposits in banks or trust companies means:

(1) A deposit in another Bank;

(2) A demand account in a Federal Reserve Bank;

(3) A deposit in or sale of federal funds to:

(i) An insured depository institution, as defined in section 2(9) of the Bank Act, that is designated by the Bank's board of directors;

(ii) A trust company that is a member of the Federal Reserve System or insured by the Federal Deposit Insurance Corporation and is designated by the Bank's board of directors; or

(iii) A U.S. branch or agency of a foreign Bank as defined in the International Banking Act of 1978, as amended, (12 U.S.C. 3101 *et seq.*) that is subject to supervision of the Board of Governors of the Federal Reserve System and is designated by the Bank's board of directors.

Derivative contract means generally a financial contract the value of which is derived from the values of one or more referenced assets, rates, or indices of asset values, or credit-related events. Derivative contracts include interest rate derivative contracts, foreign exchange rate derivative contracts, equity derivative contracts, precious metals derivative contracts, commodity derivative contracts and credit derivatives, and any other instruments that pose similar risks.

GAAP means the United States generally accepted accounting principles.

Indexed principal swap means an interest rate swap agreement in which the notional principal balance amortizes based upon the prepayment experience of a specified group of MBS or ABS or the behavior of an interest rate index.

Interest-only stripped security or *IO* means a class of mortgage-backed or asset-backed security that is allocated only the interest payments made on the underlying mortgages or loans and receives no principal payments.

Investment grade means:

(1) A credit quality rating in one of the four highest credit rating categories by an NRSRO and not below the fourth highest credit rating category by any NRSRO; or

(2) If there is no credit quality rating by an NRSRO, a determination by a Bank that the issuer, asset or instrument is the credit equivalent of investment grade using credit rating standards available from an NRSRO or similar standards.

Mortgage-backed security or MBS means a security or instrument, including collateralized mortgage obligations (CMOs), and Real Estate Mortgage Investment Trusts (REMICS), that represents an interest in, or is secured by, one or more pools of mortgages loans.

NRSRO means a credit rating organization registered with the Securities and Exchange Commission as a nationally recognized statistical rating organization.

Principal-only stripped security or *PO* means a class of mortgage-backed or asset-backed security that is allocated only the principal payments made on the underlying mortgages, or loans and receives no interest payments.

Total capital shall have the meaning set forth in § 1229.1 of this title.

§ 1267.2 Authorized investments and transactions.

(a) In addition to assets enumerated in parts 950 and 955 of this title and subject to the applicable limitations set forth in this part, and in part 980 of this title, each Bank may invest in:

(1) Obligations of the United States;

(2) Deposits in banks or trust companies;

(3) Obligations, participations or other instruments of, or issued by, the Federal National Mortgage Association or the Government National Mortgage Association;

(4) Mortgages, obligations, or other securities that are, or ever have been, sold by the Federal Home Loan Mortgage Corporation pursuant to section 305 or 306 of the Federal Home Loan Mortgage Corporation Act (12 U.S.C. 1454 or 1455);

(5) Stock, obligations, or other securities of any small business investment company formed pursuant to 15 U.S.C. 681, to the extent such investment is made for purposes of aiding members of the Bank; and

(6) Instruments that the Bank has determined are permissible investments for fiduciary or trust funds under the laws of the state in which the Bank is located.

(b) Subject to any applicable limitations set forth in this part and in part 980 of this title, a Bank also may enter into the following types of transactions:

(1) Derivative contracts;

(2) Standby letters of credit, pursuant to the requirements of part 1269 of this title;

(3) Forward asset purchases and sales;

(4) Commitments to make advances; and

(5) Commitments to make or purchase other loans.

§ 1267.3 Prohibited investments and prudential rules.

(a) *Prohibited investments.* A Bank may not invest in:

(1) Instruments that provide an ownership interest in an entity, except for investments described in § 1265.3(e) and (f) of this title;

(2) Instruments issued by non-United States entities, except United States branches and agency offices of foreign commercial banks;

(3) Debt instruments that are not rated as investment grade, except:

(i) Investments described in § 1265.3(e) of this title; and

(ii) Debt instruments that were downgraded to a below investment grade rating after acquisition by the Bank;

(4) Whole mortgages or other whole loans, or interests in mortgages or loans, except:

(i) Acquired member assets;

(ii) Investments described in § 1265.3(e) of this title;

(iii) Marketable direct obligations of state, local, or tribal government units or agencies, having at least the second highest credit rating from an NRSRO, where the purchase of such obligations by the Bank provides to the issuer the customized terms, necessary liquidity, or favorable pricing required to generate needed funding for housing or community lending;

(iv) Mortgage-backed securities, or asset-backed securities collateralized by manufactured housing loans or home equity loans, that meet the definition of the term "securities" under 15 U.S.C. 77b(a)(1) and are not otherwise prohibited under paragraphs (a)(5) through (a)(7) of this section; and

(v) Loans held or acquired pursuant to section 12(b) of the Bank Act (12 U.S.C. 1432(b)).

(5) Residual interest and interest accrual classes of securities;

(6) Interest-only and principal-only stripped securities; and

(7) Fixed rate mortgage-backed securities or eligible asset-backed securities or floating rate mortgage-backed securities or eligible asset-backed securities that on the trade date are at rates equal to their contractual cap, with average lives that vary more than six years under an assumed instantaneous interest rate change of 300 basis points, unless the instrument qualifies as an acquired member asset under part 955 of this title.

(b) *Foreign currency or commodity positions prohibited.* A Bank may not take a position in any commodity or foreign currency. The Banks may issue consolidated obligations denominated in a currency other than U.S. Dollars or linked to equity or commodity prices, provided that the Banks meet the requirements of § 966.8(d) of this title, and all other applicable requirements related to issuing consolidated obligations.

(c) *Limits on certain investments.* (1) A purchase, otherwise authorized under this part, of mortgage-backed securities or asset-backed securities, may not cause the aggregate book value of all such securities held by the Bank to exceed 300 percent of the Bank's total capital. A Bank will not be required to divest securities solely to bring the level of its holdings into compliance with the limits of this paragraph, provided that the original purchase of the securities complied with the limits in this paragraph.

(2) A Bank's purchase of any mortgage-backed or asset-backed security may not cause its total holdings of mortgage-backed and asset-backed securities to increase in any calendar quarter by more than 50 percent of its total capital as of the beginning of such quarter.

§ 1267.4 Limitations and prudential requirements on use of derivative instruments.

(a) *Non-speculative use.* Derivative instruments that do not qualify as hedging instruments pursuant to GAAP may be used only if a non-speculative use is documented by the Bank.

(b) *Additional prohibitions.* (1) A Bank may not enter into interest rate swaps that amortize according to behavior of instruments described in § 1267.3(a)(5) or (a)(6) of this part.

(2) A Bank may not enter into indexed principal swaps that have lives that vary by more than six years under an assumed instantaneous change in interest rates of 300 basis points, unless they are entered into in conjunction with the issuance of consolidated obligations or the purchase of permissible investments or entry into a permissible transaction in which all interest rate risk is passed through to the investor or counterparty.

(c) *Documentation requirements.* (1) Derivative transactions with a single counterparty shall be governed by a single master agreement when practicable.

(2) A Bank's agreement with the counterparty for over-the-counter derivative contracts shall include:

(i) A requirement that market value determinations and subsequent adjustments of collateral be made at least on a monthly basis;

(ii) A statement that failure of a counterparty to meet a collateral call will result in an early termination event;

(iii) A description of early termination pricing and methodology, with the methodology reflecting a reasonable estimate of the market value of the over-the-counter derivative contract at termination (standard International Swaps and Derivatives Association, Inc. language relative to early termination pricing and methodology may be used to satisfy this requirement); and

(iv) A requirement that the Bank's consent be obtained prior to the transfer of an agreement or contract by a counterparty.

§ 1267.5 Risk-based capital requirements for investments.

Any Bank which is not subject to the capital requirements set forth in part 932 of this title shall hold retained earnings plus general allowance for losses as support for the credit risk of all investments that are not rated by an NRSRO, or are rated or have a putative rating below the second highest credit rating, in an amount equal to or greater than the outstanding balance of the investments multiplied by:

(a) A factor associated with the credit rating of the investments as determined by FHFA on a case-by-case basis for rated assets to be sufficient to raise the credit quality of the asset to the second highest credit rating category; and

(b) 0.08 for assets having neither a putative nor actual rating.

Dated: April 28, 2010.

Edward J. DeMarco,

Acting Director, Federal Housing Finance Agency.

[FR Doc. 2010–10426 Filed 5–3–10; 8:45 am]

BILLING CODE 8070–01–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. FAA–2010–0403; Airspace Docket No. 10–ACE–4]

Proposed Amendment of Class E Airspace; Perryville, MO

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This action proposes to amend Class E airspace at Perryville, MO. Additional controlled airspace is necessary to accommodate new Standard Instrument Approach Procedures (SIAPs) at Perryville Municipal Airport, Perryville, MO. The FAA is taking this action to enhance the safety and management of Instrument Flight Rules (IFR) operations at the airport.

DATES: 0901 UTC. Comments must be received on or before June 18, 2010.

ADDRESSES: Send comments on this proposal to the U.S. Department of Transportation, Docket Operations, 1200 New Jersey Avenue, SE., West Building Ground Floor, Room W12–140, Washington, DC 20590–0001. You must identify the docket number FAA–2010–0403/Airspace Docket No. 10–ACE–4, at the beginning of your comments. You may also submit comments through 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 ground floor of the building at the above address.

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:

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–2010–0403/Airspace Docket No. 10–ACE–4." The postcard will be date/time stamped and returned to the commenter.

Availability of NPRMs

An electronic copy of this document may be downloaded through the Internet at *http://www.regulations.gov*. Recently published rulemaking documents can also be accessed through the FAA's Web page at *http://www.faa.gov/airports_airtraffic/air_traffic/publications/airspace_amendments/*.

You may review the public docket containing the proposal, any comments received and any final disposition in person in the Dockets Office (*see* **ADDRESSES** section for address and phone number) between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. An informal docket may also be examined during normal business hours at the office of the Central Service Center, 2601 Meacham Blvd, Fort Worth, TX 76137.

Persons interested in being placed on a mailing list for future NPRM's should contact the FAA's Office of Rulemaking 202–267–9677, to request a copy of Advisory Circular No. 11–2A, Notice of Proposed Rulemaking Distribution System, which describes the application procedure.

The Proposal

This action proposes to amend Title 14, Code of Federal Regulations (14 CFR), part 71 by adding additional Class E airspace extending upward from 700 feet above the surface for SIAPs at Perryville Municipal Airport, Perryville, MO. Controlled airspace is needed for the safety and management of IFR operations at the airport.

Class E airspace areas are published in Paragraph 6005 of FAA Order 7400.9T, dated August 27, 2009, and effective September 15, 2009, which is incorporated by reference in 14 CFR 71.1. The Class E airspace designation 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. 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 would add additional controlled airspace at Perryville Municipal Airport, Perryville, MO.

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, 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 7400.9T, Airspace Designations and Reporting Points, signed August 27, 2009, and effective September 15, 2009, is amended as follows:

Paragroph 6005 Class E Airspoce oreos extending upword from 700 feet or more above the surface of the earth.

* * * * *

ACE MO E5 Perryville, MO [Amended]

Perryville Municipal Airport, MO
(Lat. 37°52′07″ N., long. 89°51′44″ W.)

Farmington VORTAC, MO
(Lat. 37°40′24″ N., long. 90°14′03″ W.)

That airspace extending upward from 700 feet above the surface within a 6.6-mile radius of Perryville Municipal Airport and within 1.8 miles each side of the 057° radial of the Farmington VORTAC extending from the 6.6-mile radius to 8.2 miles southwest of the airport, and within 3.9 miles each side of the 197° bearing from the airport extending from the 6.6-mile radius to 11 miles south of the airport.

Issued in Fort Worth, TX on April 23, 2010.

Anthony D. Roetzel,

Monoger, Operotions Support Group, ATO Central Service Center.

[FR Doc. 2010–10323 Filed 5–3–10; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF LABOR

Occupational Safety and Health Administration

29 CFR Part 1910

Injury and Illness Prevention Program

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

ACTION: Notice of stakeholder meetings.

SUMMARY: OSHA invites interested parties to participate in informal stakeholder meetings on Injury and Illness Prevention Programs, referred to as "I2P2." OSHA plans to use the information gathered at these meetings in developing an Injury and Illness Prevention Program proposed rule. The discussions will be informal and will provide the Agency with the necessary

information to develop a rule that will help employers reduce workplace injuries and illnesses through a systematic process that proactively addresses workplace safety and health hazards.

DATES: Dates and locations for the stakeholder meetings are:

- June 3, 2010, 8:30 a.m. to 4:30 p.m., in East Brunswick, NJ.
- June 10, 2010, 8:30 a.m. to 4:30 p.m., in Dallas, TX.
- June 29, 2010, 8:30 a.m. to 4:30 p.m., in Washington, DC.

The deadlines for confirmed registration at each meeting are May 20, May 27, and June 15, 2010 respectively.

ADDRESSES:

I. Registration

Submit your notice of intent to participate in one of the scheduled meetings by one of the following:

- *Electronic.* Register at *https://www2.ergweb.com/projects/conferences/osha/register-osha-I2P2.htm* (follow the instructions online).
- *Facsimile.* Fax your request to: (781) 674–2906, and label it "Attention: OSHA I2P2 Stakeholder Meeting Registration."
- *Regular mail, express delivery, hand (courier) delivery, and messenger service.*

Send your request to: Eastern Research Group, Inc., 110 Hartwell Avenue, Lexington, MA 02421; Attention: OSHA I2P2 Stakeholder Meeting Registration.

II. Meetings

Specific information on the location of each meeting can be found on the I2P2 Web site at *https://www2.ergweb.com/projects/conferences/osha/register-osha-I2P2.htm.*

FOR FURTHER INFORMATION CONTACT: Information regarding this notice is available from the following sources:

- *Press inquiries.* Contact Jennifer Ashley, Director, OSHA Office of Communications, Room N–3647, U.S. Department of Labor, 200 Constitution Avenue, NW., Washington, DC 20210; telephone: (202) 693–1999.
- *General and technical information.* Contact Michael Seymour, OSHA Directorate of Standards and Guidance, Room N–3718, U.S. Department of Labor, 200 Constitution Avenue, NW., Washington, DC 20210, telephone: (202) 693–1950.
- *Copies of this Federal Register notice.* Electronic copies are available at *http://www.regulations.gov.* This **Federal Register** notice, as well as news releases and other relevant information, also are available on the OSHA Web page at *http://www.osha.gov.*

SUPPLEMENTARY INFORMATION:

I. Background

Over the past 30 years, the occupational safety and health community has used various names to describe systematic approaches to reducing injuries and illnesses in the workplace. OSHA has voluntary Safety and Health Management Program guidelines, consensus and international standards use the term "Safety and Health Management Systems," and OSHA's state plan states use terms such as "Injury and Illness Prevention Programs" and "Accident Prevention Programs." In this notice, OSHA uses the term "Injury and Illness Prevention Programs." Regardless of the title, the common goal of these approaches is to help employers reduce workplace injuries and illnesses through a systematic process that proactively addresses workplace safety and health hazards.

OSHA's History With Safety and Health Programs

The Occupational Safety and Health Act (29 U.S.C. 651 *et seq.*) (the Act) in Section 17, paragraph (j), provides the Occupational Safety and Health Review Commission (OSHRC) the authority to assess civil penalties giving due consideration to the good faith of the employer. Based on this paragraph of the Act, OSHA has also had a policy of reducing penalties for employers who have violated OSHA standards but who have demonstrated a good faith effort to provide a safe and healthy workplace to their employees. The Agency has long recognized the implementation of a safety and health program as a way of demonstrating good faith. Similarly, in its first decision, the OSHRC held that good faith compliance efforts are gauged primarily by the presence of effective safety and health programs (*Nacirema Operating Co.*, 1 O.S.H. Cas. (BNA) 1001 (Rev. Comm'n 1972)).

Over the years, OSHA has established a number of initiatives to encourage employers to develop and implement employee safety and health programs. OSHA's Small Business Consultation Program, which offers small businesses with exemplary safety and health programs an opportunity for recognition under their Safety and Health Achievement Recognition Program (SHARP) and the Agency's Voluntary Protection Program (VPP) are two examples of such initiatives. The Agency established the VPP to recognize companies in the private sector with outstanding records in the area of employee safety and health. It became apparent that many of these worksites, which had higher levels of compliance, fewer serious hazards, and injury and illness rates markedly below industry averages, were relying on safety and health programs to produce these results.

Based on the growing support for safety and health programs, OSHA issued the Safety and Health Program Management Guidelines in 1989 (54 FR 3908). These guidelines reflect the best management practices of successful companies and encourage employers to institute and maintain a program which provides systematic policies, procedures, and practices that are adequate to recognize and protect their employees from occupational safety and health hazards. The guidelines identify four major elements of an effective program: Management commitment and employee involvement; worksite analysis; hazard prevention and controls; and safety and health training.

OSHA's Previous Rulemaking Effort

In October of 1995, OSHA held the first series of stakeholder meetings to discuss preliminary ideas for a safety and health program rule and the significant issues that would be raised by such a rule. Many small businesses and organizations representing small businesses attended the stakeholder meetings. Staff members from the Office of Advocacy of the Small Business Administration (SBA) were also present at the stakeholder meetings.

In all, OSHA interacted with hundreds of stakeholders, including employers, employees, employee representatives, trade associations, State and local government personnel, safety and health professionals, Advisory Committees, and other interested parties.

In 1998, OSHA developed a draft proposed rule that would have required employers in general industry and maritime workplaces to establish safety and health programs. The program in the draft proposed rule had five core elements, including: Management leadership and employee participation; hazard identification and assessment; hazard prevention and control; information and training; and evaluation of the program's effectiveness. In developing the draft proposed rule, OSHA worked extensively with stakeholders from labor, industry, safety and health organizations, State governments, trade associations, insurance companies, and small businesses.

On October 20, 1998, OSHA convened a Small Business Regulatory

Enforcement Fairness Act (SBREFA) Panel for the draft Safety and Health Programs proposed rule. The Panel provided small entity representatives (SERs) with initial drafts of the rule, a summary of the rule, the Initial Regulatory Flexibility Analysis, a summary of the benefits and costs of the rule as it affected firms in the small entity representative's industry, OSHA's draft enforcement policy for the rule, and a list of issues of interest to panel members.

The SBREFA Panel held teleconferences and received written comments from the SERs. The comments, and the Panel's responses to them, formed the principal basis for the Panel's report. The Panel's report provided background information on the draft proposed rule and the types of small entities that would be subject to the proposed rule, described the Panel's efforts to obtain the advice and recommendations of representatives of those small entities, summarized the comments that had been received from those representatives, and presented the findings and recommendations of the Panel.

A proposed Safety and Health Program rule was never published, and the rulemaking effort was removed from the Regulatory Agenda on August 15, 2002. However, the effort in the 1990s showed the interest of OSHA, the States, employers, employees, OSHA's advisory committees, and others in a systematic process that proactively addresses workplace safety and health hazards. It demonstrated that OSHA was not alone in believing that these processes work to save lives and to prevent injuries and illnesses in the workplace.

Safety and Health Management System Consensus Standards

Recently, consensus standards have been developed that address safety and health management systems. The American Industrial Hygiene Association published a voluntary consensus standard, *ANSI/AIHA Z10—2005 Occupational Safety and Health Management Systems*, based on the "Plan-Do-Check-Act" cycle. The Z10 standard places an emphasis on continual improvement and systematically eliminating the underlying root cause of hazards. In addition, the Occupational Health and Safety Assessment Series (OHSAS) Project Group, which is an international association of government agencies, private industries, and consulting organizations, developed *OHSAS 18001—2007 Occupational Health and Safety Management Systems* in response to customer demand for a recognized occupational health and safety management system standard against which their management systems could be assessed and certified. The OHSAS 18001 is published by the British Standards Institute.

II. Stakeholder Meetings

Stakeholder meetings will provide OSHA with current information and appreciation of the views of a wide range of interests. The meetings will be conducted as a group discussion. To facilitate as much group interaction as possible, formal presentations will not be permitted. OSHA believes the stakeholder meeting discussion should center on major issues such as:

- Possible regulatory approaches.
- Scope and application of a rule.

—Covered industries.
—Covered employers (size, high/low injury rates).
—Covered hazards.
—Relationship to existing OSHA requirements.

- Organization of a rule.

—Regulatory text.
—Mandatory or voluntary appendices.
—Other standards incorporated by reference.

- The role of consensus standards.
- Economic impacts.
- Any additional topics as time permits.

In addition, OSHA is interested in receiving feedback on the following specific questions:

- In light of the ANSI Z10 standard, the OHSAS 18001 standard, and OSHA's 1989 guidelines, what are the advantages and disadvantages of addressing through rulemaking a systematic process that proactively addresses workplace safety and health hazards?
- Based on OSHA's experience, the agency believes that an I2P2 rule would include the following elements:

1. Management duties (including items such as establishing a policy, setting goals, planning and allocating resources, and assigning and communicating roles and responsibilities);

2. Employee participation (including items such as involving employees in establishing, maintaining and evaluating the program, employee access to safety and health information, and employee role in incident investigations);

3. Hazard identification and assessment (including items such as what hazards must be identified, information gathering, workplace inspections, incident investigations, hazards associated with changes in the workplace, emergency hazards, hazard assessment and prioritization, and hazard identification tools);

4. Hazard prevention and control (including items such as what hazards must be controlled, hazard control priorities, and the effectiveness of the controls);

5. Education and training (including items such as content of training, relationship to other OSHA training requirements, and periodic training); and

6. Program evaluation and improvement (including items such as monitoring performance, correcting program deficiencies, and improving program performance).

Are these the appropriate elements? Which elements are essential for an effective approach? Should additional elements be included?

- How can OSHA ensure that small business employers are able to implement and maintain an effective I2P2?
- Should an OSHA I2P2 rule apply to every business or should it be limited in some way based on an employer's size, industry, incident rates, and/or hazard indices?
- To what extent should OSHA rely on existing consensus standards in developing a rule?
- How can OSHA use state experience with injury and illness prevention in developing a rule?
- What mechanisms have been found to be effective for enabling employees to participate in safety and health in the workplace?
- Given the variety of names used to describe processes to reduce injuries and illnesses in the workplace, what is the most appropriate name for OSHA to describe this topic?

III. Public Participation

Approximately 50 participants will be accommodated in each meeting, and eight hours will be allotted for each meeting. Members of the general public may observe, but not participate in, the meetings on a first-come, first-served basis as space permits. OSHA staff will be present to take part in the discussions. Logistics for the meetings are being managed by Eastern Research Group (ERG), which will provide a facilitator and compile notes summarizing the discussion; these notes will not identify individual speakers. ERG also will make an audio recording of each session to ensure that the summary notes are accurate; these recordings will not be transcribed. The summary notes will be available on OSHA's Web page at *http://www.osha.gov*.

Specific information on the location of each meeting can be found on the I2P2 Web site at *https://www2.ergweb.com/projects/conferences/osha/register-osha-I2P2.htm.*

To participate in one of the stakeholder meetings, or be a nonparticipating observer, you may submit notice of intent electronically, by facsimile, or by hard copy. In order to encourage as wide a range of viewpoints as possible, OSHA will confirm participants as necessary to ensure a fair representation of interests and to facilitate gathering diverse viewpoints. To receive a confirmation of your participation 1 week before the meeting, register by the date listed in the **DATES** section of this notice. However, registration will remain open until the meetings are full. Additional nonparticipating observers that do not register for the meeting will be accommodated as space permits. See the **ADDRESSES** section of this notice for the registration Web site, facsimile number, and address. To register electronically, follow the instructions provided on the Web site. To register by mail or facsimile, please indicate the following:

- Name, address, phone, fax, and e-mail.
- Meeting location you would like to attend.
- Organization for which you work.
- Organization you represent (if different).
- Stakeholder category: Government, industry, standards-developing organization, research or testing agency, union, trade association, insurance, consultant, or other (if other, please specify).
- Industry sector (if applicable).

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

IV. Authority and Signature

This document was prepared under the direction of David Michaels, PhD, MPH, Assistant Secretary of Labor for Occupational Safety and Health, U.S. Department of Labor, pursuant to sections 4, 6, and 8 of the Occupational Safety and Health Act of 1970 (29 U.S.C. 653, 655, 657), 29 CFR part 1911, and Secretary's Order 5–2007 (72 FR 31160).

Signed at Washington, DC, on April 12, 2010.

David Michaels,

Assistant Secretary of Labor for Occupational Safety and Health.

[FR Doc. 2010–10138 Filed 5–3–10; 8:45 am]

BILLING CODE 4510–26–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R02–OAR–2009–0462, FRL–9144–6]

Approval and Promulgation of Implementation Plans; New York Reasonably Available Control Technology and Reasonably Available Control Measures

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: On August 25, 2009, the EPA proposed to disapprove portions of a proposed revision to the New York State Implementation Plan, submitted on February 8, 2008, that was intended to meet specific Clean Air Act requirements for attaining the 0.08 parts per million 8-hour ozone national ambient air quality standards. Specifically, EPA proposed to disapprove New York's reasonably available control measure analysis and New York's efforts to meet the reasonably available control technology requirements. Subsequent to that action, New York passed two additional rules and submitted them for review and inclusion in the State Implementation Plan and made additional commitments to meet the remaining reasonably available control technology and reasonably available control measure requirements. Therefore, in this action EPA is proposing a conditional approval of the reasonably available control technology requirement which applies to the entire State of New York, including the New York portion of the New York-Northern New Jersey-Long Island, NY–NJ–CT and the Poughkeepsie 8-hour ozone moderate nonattainment areas. In addition, EPA is proposing a conditional approval of the reasonably available control measure analysis which applies to the New York portion of the New York-Northern New Jersey-Long Island, NY–NJ–CT 8-hour ozone moderate nonattainment area.

DATES: Comments must be received on or before June 3, 2010.

ADDRESSES: Submit your comments, identified by Docket Number EPA–R02–OAR–2009–0462, by one of the following methods:

- *http://www.regulations.gov:* Follow the on-line instructions for submitting comments.
- *E-mail: Werner.Raymond@epa.gov.*
- *Fax:* 212–637–3901.
- *Mail:* Raymond Werner, Chief, Air Programs Branch, Environmental Protection Agency, Region 2 Office, 290 Broadway, 25th Floor, New York, New York 10007–1866.
- *Hand Delivery:* Raymond Werner, Chief, Air Programs Branch, Environmental Protection Agency, Region 2 Office, 290 Broadway, 25th Floor, New York, New York 10007–1866. Such deliveries are only accepted during the Regional Office's normal hours of operation. The Regional Office's official hours of business are Monday through Friday, 8:30 to 4:30 excluding Federal holidays.

Instructions: Direct your comments to Docket No. EPA–R02–OAR–2009–0462. 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 or any form of encryption, and be free of any defects or viruses. For additional information about EPA's public docket visit the EPA Docket Center homepage at *http://www.epa.gov/epahome/dockets.htm.*

Docket: All documents in the 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 Environmental Protection Agency, Region 2 Office, Air Programs Branch, 290 Broadway, 25th Floor, New York, New York 10007–1866. EPA requests, if at all possible, that you contact the individual listed in the **FOR FURTHER INFORMATION CONTACT** section to view the hard copy of the docket. You may view the hard copy of the docket Monday through Friday, 8 a.m. to 4 p.m., excluding Federal holidays.

FOR FURTHER INFORMATION CONTACT: Kirk Wieber (*wieber.kirk@epa.gov*), Air Programs Branch, Environmental Protection Agency, 290 Broadway, 25th Floor, New York, New York 10007–1866, (212) 637–4249.

SUPPLEMENTARY INFORMATION:

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I. What action is EPA proposing?

The Environmental Protection Agency (EPA) has reviewed elements of New York's comprehensive proposed State Implementation Plan (SIP) revisions for the 0.08 parts per million (ppm) 8-hour ozone national ambient air quality standards (NAAQS or standard) [1] along with other related Clean Air Act (Act) requirements necessary to ensure attainment of the standard. On August 25, 2009 (74 FR 42813), EPA proposed to disapprove New York's reasonably available control measure (RACM) analysis and New York's efforts to meet the reasonably available control technology (RACT) requirement. The reader is referred to that rulemaking action and its accompanying technical support document for a more detailed discussion of New York's RACT and RACM plans. New York submitted a letter committing to adopt the necessary control measures that will satisfy the RACT and RACM requirement by August 31, 2010, which is no more than one year from our anticipated final action on the SIP submittals. Therefore, in this action, EPA is proposing a conditional approval of New York's RACT and RACM plans.

[1] Unless otherwise specifically noted in this action, references to the 8-hour ozone standard are to the 0.08 ppm ozone standard promulgated in 1997.

II. What was included in New York's SIP submittals?

After completing the appropriate public notice and comment procedures, New York made a series of submittals in order to address the Act's 8-hour ozone attainment requirements. On September 1, 2006, New York submitted its statewide 8-hour ozone RACT SIP, which included a determination that many of the RACT rules currently contained in its SIP meet the RACT obligation for the 8-hour standard. On February 8, 2008, New York submitted two comprehensive 8-hour ozone SIPs—one for the New York portion of the New York-Northern New Jersey-Long Island, NY–NJ–CT nonattainment area, entitled, "New York SIP for Ozone—Attainment Demonstration for New York Metro Area" and one for the Poughkeepsie nonattainment area, entitled, "New York SIP for Ozone—Attainment Demonstration for Poughkeepsie, NY Area." The submittals included the 2002 base year emissions inventory, projection year emissions, attainment demonstrations, Reasonable Further Progress (RFP) plans, RACT analysis, RACM analysis, contingency measures, new source review and on-road motor vehicle emission budgets. These proposed SIP revisions were subject to notice and comment by the public and the State addressed the comments received on the proposed SIP revisions before adopting the plans and submitting them for EPA review and rulemaking action.

Included in New York's February 8, 2008 8-hour Ozone SIP submittal was a list of additional control measures identified by the State as RACT and RACM. The State committed to adopt additional control measures applicable to the following source categories: Adhesives and Sealants, Consumer Products, Portable Fuel Containers, Graphic Arts, Asphalt Formulation, Asphalt Paving Production, Portland Cement Plants, Glass Manufacturing, and NOx RACT.

Of the source categories identified by New York, on July 15, 2009 and September 30, 2009, the State adopted rules for Portable Fuel Containers and Consumer Products, respectively. New York submitted the Consumer Products rule (on October 21, 2009) and the Portable Fuel Container rule (on November 23, 2009) to EPA, for review and approval into the SIP. On March 2, 2010 (75 FR 9373), EPA proposed to approve New York's Consumer Products and Portable Fuel Container rules and will take final action in the near future.

On December 28, 2009, New York provided supplemental information intended to clarify the RFP and 2002 base year emissions inventory, projection year emissions and conformity budgets that were included in the February 8, 2008 ozone SIP submittals. EPA is reviewing this information and will make a decision in the near future as to whether these submissions satisfy the requirements of the Act.

III. What is the rationale for this proposed rulemaking action?

On August 25, 2009 (74 FR 42813), EPA proposed to disapprove New York's RACT and RACM plans. In that proposed rulemaking action, EPA made suggestions for how New York could correct the identified deficiencies and strengthen the 8-hour ozone SIP (see 74 FR 42819). As discussed in Section II, New York adopted and submitted for inclusion in the SIP two of the control measures it had adopted. On December 23, 2009, New York proposed adoption of all but one of the remaining additional control measures that it committed to adopt as satisfying the RACT and RACM requirement. Based on this recent progress and on New York's commitment to submit adopted RACT/RACM rules by August 31, 2010, EPA is proposing a conditional approval of the RACT and RACM SIPs for the 8-hour ozone NAAQS. EPA has determined that New York will be able to meet this commitment because the State has already adopted rules for two of the source categories and recently proposed, and concluded public comment on, RACT/RACM provisions for all but one of the remaining source categories.

IV. What are EPA's conclusions?

EPA is proposing a conditional approval of the moderate area RACM analysis for the New York portion of the New York-Northern New Jersey-Long Island, NY–NJ–CT 8-hour ozone moderate nonattainment area as presented in the February 8, 2008 "New York SIP for Ozone—Attainment Demonstration for New York Metro Area" SIP submittal.

EPA is also proposing a conditional approval of the September 1, 2006 New York RACT assessment SIP submittal, supplemented on February 8, 2008 and September 16, 2008, which applies to the entire State and to the New York portion of the New York-Northern New Jersey-Long Island, NY–NJ–CT and the Poughkeepsie 8-hour ozone moderate nonattainment areas.

EPA is proposing a conditional approval of the RACT and RACM analyses for the 8-hour ozone NAAQS based on New York's letter committing

to submit adopted RACT/RACM rules for several source categories by August 31, 2010. EPA has determined that New York will be able to meet this commitment because the State has already adopted rules for two of the source categories and recently proposed, and concluded public comment on, RACT/RACM provisions for all but one of the remaining source categories.

Under section 110(k)(4) of the Act, EPA may conditionally approve a plan based on a commitment from the State to adopt specific enforceable measures by a date certain, but not later than 1 year from the date of approval. If EPA conditionally approves the commitment in a final rulemaking action, the State must meet its commitment to adopt the identified regulations. If the State fails to do so, this action will become a disapproval upon the State's failure to meet its commitment. EPA will notify the State by letter that this action has occurred. If the conditional approval converts to a disapproval, the commitment will no longer be a part of the approved New York SIP. Upon notification to the State that the conditional approval has converted to a disapproval, EPA will publish a notice in the **Federal Register** notifying the public that the conditional approval automatically converted to a disapproval. If EPA disapproves the RACT and RACM SIP submittals, such action will start a sanctions and FIP clock (see section V). If the State meets its commitment, within the applicable time frame, the conditionally approved submission will remain a part of the SIP until EPA takes final action approving or disapproving the RACT and RACM submittals. If EPA approves the submittals, the RACT and RACM analyses will be fully approved into the SIP in their entirety.

V. What are the consequences if a final conditional approval is converted to a disapproval?

The Act provides for the imposition of sanctions and the promulgation of a federal implementation plan (FIP) if states fail to correct any deficiencies identified by EPA in a final disapproval action within certain timeframes.

A. What are the Act's provisions for sanctions?

If EPA disapproves a required SIP submittal or component of a SIP submittal, section 179(a) provides for the imposition of sanctions unless the deficiency is corrected within 18 months of the final rulemaking of disapproval. The first sanction would apply 18 months after EPA disapproves the SIP submittal if a state fails to make the required submittal that EPA proposes to fully or conditionally approve within that time. Under EPA's sanctions regulations, 40 CFR 52.31, the first sanction would be 2:1 offsets for sources subject to the new source review requirements under section 173 of the Act. If the state has still failed to submit a SIP for which EPA proposes full or conditional approval 6 months after the first sanction is imposed, the second sanction will apply. The second sanction is a limitation on the receipt of federal highway funds. EPA also has authority under section 110(m) to sanction a broader area.

B. What federal implementation plan provisions apply if a state fails to submit an approvable plan?

In addition to sanctions, if EPA finds that a state failed to submit the required SIP revision or disapproves the required SIP revision, or a portion thereof, EPA must promulgate a FIP no later than 2 years from the date of the finding if the deficiency has not been corrected.

VI. Statutory and Executive Order Reviews

Under the 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 Act. Accordingly, this proposed action merely approves state law as meeting federal requirements and does not impose additional requirements beyond those imposed by state law. For that reason, this proposed action:

- Is not a "significant regulatory action" subject to review by the Office of Management and Budget under Executive Order 12866 (58 FR 51735, October 4, 1993);
- Does not impose an information collection burden under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*);
- Is certified as not having a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*);
- Does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4);
- Does not have Federalism implications as specified in Executive Order 13132 (64 FR 43255, August 10, 1999);
- Is not an economically significant regulatory action based on health or safety risks subject to Executive Order 13045 (62 FR 19885, April 23, 1997);
- Is not a significant regulatory action subject to Executive Order 13211 (66 FR 28355, May 22, 2001);
- Is not subject to requirements of Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) because application of those requirements would be inconsistent with the 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 rule does not have tribal implications as specified by Executive Order 13175 (65 FR 67249, November 9, 2000), because the SIP is not approved to apply in Indian country located in the state, and EPA notes that it will not impose substantial direct costs on tribal governments or preempt tribal law.

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Hydrocarbons, Incorporation by reference, Intergovernmental relations, Oxides of nitrogen, Ozone, Reporting and recordkeeping requirements, Volatile organic compounds.

Dated: April 23, 2010.

Judith A. Enck,

Regional Administrator, Region 2.

[FR Doc. 2010–10416 Filed 5–3–10; 8:45 am]

BILLING CODE 6560–50–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

44 CFR Part 67

[Docket ID FEMA–2010–0003; Internal Agency Docket No. FEMA–B–1093]

Proposed Flood Elevation Determinations

AGENCY: Federal Emergency Management Agency, DHS.

ACTION: Proposed rule.

SUMMARY: Comments are requested on the proposed Base (1% annual-chance) Flood Elevations (BFEs) and proposed BFE modifications for the communities listed in the table below. The purpose of this notice is to seek general information and comment regarding the proposed regulatory flood elevations for

the reach described by the downstream and upstream locations in the table below. The BFEs and modified BFEs are a part of the floodplain management measures that the community is required either to adopt or to show evidence of having in effect in order to qualify or remain qualified for participation in the National Flood Insurance Program (NFIP). In addition, these elevations, once finalized, will be used by insurance agents and others to calculate appropriate flood insurance premium rates for new buildings and the contents in those buildings.

DATES: Comments are to be submitted on or before August 2, 2010.

ADDRESSES: The corresponding preliminary Flood Insurance Rate Map (FIRM) for the proposed BFEs for each community is available for inspection at the community's map repository. The respective addresses are listed in the table below.

You may submit comments, identified by Docket No. FEMA–B–1093, to Kevin C. Long, Acting Chief, Engineering Management Branch, Mitigation Directorate, Federal Emergency Management Agency, 500 C Street, SW., Washington, DC 20472, (202) 646–2820, or (e-mail) *kevin.long@dhs.gov*.

FOR FURTHER INFORMATION CONTACT: Kevin C. Long, Acting Chief, Engineering Management Branch, Mitigation Directorate, Federal Emergency Management Agency, 500 C Street, SW., Washington, DC 20472, (202) 646–2820, or (e-mail) *kevin.long@dhs.gov*.

SUPPLEMENTARY INFORMATION: The Federal Emergency Management Agency (FEMA) proposes to make determinations of BFEs and modified BFEs for each community listed below, in accordance with section 110 of the Flood Disaster Protection Act of 1973, 42 U.S.C. 4104, and 44 CFR 67.4(a).

These proposed BFEs and modified BFEs, together with the floodplain management criteria required by 44 CFR 60.3, are the minimum that are required. They should not be construed to mean that the community must change any existing ordinances that are more stringent in their floodplain management requirements. The community may at any time enact stricter requirements of its own or pursuant to policies established by other Federal, State, or regional entities. These proposed elevations are used to meet the floodplain management requirements of the NFIP and also are used to calculate the appropriate flood insurance premium rates for new buildings built after these elevations are made final, and for the contents in those buildings.

Comments on any aspect of the Flood Insurance Study and FIRM, other than the proposed BFEs, will be considered. A letter acknowledging receipt of any comments will not be sent.

National Environmental Policy Act. This proposed rule is categorically excluded from the requirements of 44 CFR part 10, Environmental Consideration. An environmental impact assessment has not been prepared.

Regulatory Flexibility Act. As flood elevation determinations are not within the scope of the Regulatory Flexibility Act, 5 U.S.C. 601–612, a regulatory flexibility analysis is not required.

Executive Order 12866, Regulatory Planning and Review. This proposed rule is not a significant regulatory action under the criteria of section 3(f) of Executive Order 12866, as amended.

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

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

List of Subjects in 44 CFR Part 67

Administrative practice and procedure, Flood insurance, Reporting and recordkeeping requirements.

Accordingly, 44 CFR part 67 is proposed to be amended as follows:

PART 67—[AMENDED]

1. The authority citation for part 67 continues to read as follows:

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

§ 67.4 [Amended]

2. The tables published under the authority of § 67.4 are proposed to be amended as follows:

Flooding source(s)	Location of referenced elevation	* Elevation in feet (NGVD) + Elevation in feet (NAVD) # Depth in feet above ground ^ Elevation in meters (MSL)		Communities affected
		Effective	Modified	
Douglas County, Illinois, and Incorporated Areas				
Bourbon No. 3	Approximately 0.4 mile downstream of Vine Street	None	+654	Unincorporated Areas of Douglas County.
	At Vine Street	None	+658	
Embarras River	Approximately 0.7 mile upstream of U.S. Route 36	None	+641	Village of Camargo.
	Approximately 0.5 mile upstream of Main Street	None	+644	
Lake Fork	Approximately 900 feet downstream of U.S. Route 36	None	+657	Village of Atwood.
	Approximately 100 feet downstream of U.S. Route 36	None	+657	
West Ditch	Approximately 50 feet downstream of Sycamore Street.	+649	+650	City of Villa Grove, Unincorporated Areas of Douglas County.
	Approximately 0.41 mile upstream of Harrison Street	None	+651	
West Fork Kaskaskia River	At the railroad	None	+653	Unincorporated Areas of Douglas County.
	Approximately 300 feet upstream of County Road 500 North.	None	+655	

* National Geodetic Vertical Datum.
+ North American Vertical Datum.
# Depth in feet above ground.
^ Mean Sea Level, rounded to the nearest 0.1 meter.

Flooding source(s)	Location of referenced elevation	*Elevation in feet (NGVD) +Elevation in feet (NAVD) #Depth in feet above ground ^Elevation in meters (MSL)		Communities affected
		Effective	Modified	

**BFEs to be changed include the listed downstream and upstream BFEs, and include BFEs located on the stream reach between the referenced locations above. Please refer to the revised Flood Insurance Rate Map located at the community map repository (see below) for exact locations of all BFEs to be changed.

Send comments to Kevin C. Long, Acting Chief, Engineering Management Branch, Mitigation Directorate, Federal Emergency Management Agency, 500 C Street, SW., Washington, DC 20472.

ADDRESSES

City of Villa Grove

Maps are available for inspection at City Hall, 612 East Front Street, Villa Grove, IL 61956.

Unincorporated Areas of Douglas County

Maps are available for inspection at the Douglas County Courthouse, 401 South Center Street, Tuscola, IL 61953.

Village of Atwood

Maps are available for inspection at the Atwood Municipal Building, 110 West Central Avenue, Atwood, IL 61913.

Village of Camargo

Maps are available for inspection at the Douglas County Courthouse, 401 South Center Street, Tuscola, IL 61953.

Mason County, Illinois, and Incorporated Areas

Ponding	North boundary: Private drive approximately 230 feet north of north entrance to Linwood Lake Estates Road/East boundary: Abandoned road approximately 660 feet west of Highway 78/South boundary: Private drive approximately 665 feet north of beginning of North Elm Street/West boundary: Highway 78.	None	+466	Unincorporated Areas of Mason County.
Ponding	North boundary: Approximately 2,470 feet north of County Highway 1/East boundary: Approximately 0.86 mile east of Olive Street along County Highway 1/South boundary: 385 feet south of County Highway 1/West boundary: Approximately 0.49 mile east of Olive Street along County Highway 1.	None	+471	Unincorporated Areas of Mason County.
Ponding	North boundary: Approximately 1,300 feet south of County Highway 1/East boundary: Approximately 0.54 mile east of southeastern tip of East Main Street/South boundary: Approximately 0.72 mile south of County Highway 1/West boundary: Approximately 300 feet east of southeastern tip of East Main Street.	None	+472	Unincorporated Areas of Mason County.
Ponding	North boundary: 330 feet south of B Street along Highway 78/East boundary: At Highway 78/South boundary: Approximately 810 feet south of B Street along Highway 78/West boundary: 425 feet west of Highway 78.	None	+465	Unincorporated Areas of Mason County.
Ponding	North boundary: Approximately 1,030 feet north of East 800 North Road along North 1100 East Road/East boundary: Approximately 930 feet east of North 1100 East Road/South boundary: Approximately 1,580 feet south of intersection of East 800 North Road and North 1100 East Road/West boundary: Approximately 1,950 feet east of Highway 78.	None	+465	Unincorporated Areas of Mason County.
Ponding	North boundary: At East 800 North Road/East boundary: Approximately 1,380 feet east of Highway 78/South boundary: Approximately 275 feet north of East 750 North Road/West boundary: At Highway 78.	None	+462	Unincorporated Areas of Mason County.
Ponding	North boundary: Approximately 830 feet north of Hurst Street/East boundary: Approximately 1,200 feet east of Promenade Street along railroad/South boundary: Approximately 760 feet north of Hurst Street/West boundary: Approximately 770 feet west of Promenade Street along railroad.	None	+460	Unincorporated Areas of Mason County.
Ponding	North boundary: Approximately 430 feet north of Mason Street/East boundary: Approximately 310 feet west of William Boulevard/South boundary: At Mason Street/West boundary: At Mason Street and railroad crossing.	None	+468	Unincorporated Areas of Mason County.

Flooding source(s)	Location of referenced elevation	* Elevation in feet (NGVD) + Elevation in feet (NAVD) # Depth in feet above ground ^ Elevation in meters (MSL)		Communities affected
		Effective	Modified	
Ponding	North boundary: Approximately 240 feet north of Mason Street/East boundary: Approximately 0.59 mile west of North 1800 East Road/South boundary: Approximately 1,090 feet north of U.S. Route 136/West boundary: Approximately 1,050 feet east of William Boulevard.	None	+472	Unincorporated Areas of Mason County.
Ponding	North boundary: Approximately 1,230 feet south of intersection of Maywood Street and Oakwood Avenue/East boundary: Approximately 75 feet east of railroad/South boundary: Approximately 1,290 feet south of intersection of Maywood Street and Oakwood Avenue/West boundary: Approximately 25 feet east of railroad.	None	+468	Unincorporated Areas of Mason County.
Ponding	North boundary: Approximately 125 feet south of Hillcrest Court extended/East boundary: At railroad/South boundary: Approximately 500 feet south of Hillcrest Court extended/West boundary: Approximately 75 feet west of railroad.	None	+476	Unincorporated Areas of Mason County.
Ponding	North boundary: Approximately 970 feet south of Highway 97 railroad crossing/East boundary: Approximately 480 feet from end of Hillcrest Court/South boundary approximately 1,550 feet south of Highway 97 railroad crossing/West boundary: At railroad.	None	+476	Unincorporated Areas of Mason County.
Ponding	North boundary: Approximately 0.51 mile north of East 1500 North Road/East boundary: Approximately 140 feet west of Highway 97/South boundary: Approximately 0.47 mile north of East 1500 North Road/West boundary: Approximately 465 feet west of Highway 97.	None	+476	Unincorporated Areas of Mason County.
Ponding	North boundary: Approximately 1,470 feet north of East 1500 North Road/East boundary: Approximately 0.6 mile west of North 1800 East Road/South boundary: Approximately 940 feet south of intersection of Highway 97 and East 1500 North Road/West boundary: Approximately 625 feet west of intersection of Highway 97 and East 1500 North Road.	None	+480	Unincorporated Areas of Mason County.
Ponding	North boundary: Approximately 0.68 mile north of East 1500 North Road/East boundary: Approximately 0.41 mile west of North 1800 East Road/South boundary: Approximately 250 feet south of East 1500 North Road/West boundary: Approximately 1,460 feet west of Highway 97.	None	+480	Unincorporated Areas of Mason County.
Ponding	North boundary: Private drive approximately 665 feet north of beginning of North Elm Street/East boundary: Approximately 1,000 feet east of Vine Street/South boundary: Approximately 315 feet north of East 800 North Road/West boundary: Approximately at Highway 78.	None	+463	Village of Bath.
Ponding	North boundary: Approximately 250 feet south of County Highway 1/East boundary: Approximately 1,950 feet east of intersection of Olive Street and Cedar Street/South boundary: Approximately 2,000 feet south of intersection of Hickory Street and Main Street/West boundary: 980 feet east of southern tip of Locust Street.	None	#1	Village of Bath.
Ponding	North boundary: At Lincoln Street/East boundary: 50 feet west of Highway 78/South boundary: At northernmost entrance to Bath Cemetery/West boundary: Approximately 400 feet west of Highway 78 along 1st Street.	None	#3	Village of Bath.
Ponding	North boundary: 225 feet south of 4th Street/East boundary: Approximately 140 feet east of Highway 78/South boundary: Approximately 200 feet north of B Street/West boundary: At Highway 78.	None	+463	Village of Bath.

Flooding source(s)	Location of referenced elevation	* Elevation in feet (NGVD) + Elevation in feet (NAVD) # Depth in feet above ground ^ Elevation in meters (MSL)		Communities affected
		Effective	Modified	
Ponding	North boundary: Approximately 600 feet north of Hurst Street/East boundary: Approximately 125 feet west of Promenade Street/South boundary: Approximately 420 feet north of Hurst Street/West boundary: Approximately 330 feet east of Pearl Street extended.	None	+460	City of Havana.
Ponding	North boundary: Approximately 415 feet north of Hurst Street/East boundary: At Promenade Street/South boundary: Approximately 500 feet north of Mound Street/West boundary: Approximately 365 feet east of intersection of Pearl Street and Hurst Street.	None	+460	City of Havana.
Ponding	North boundary: Approximately 100 feet south of Mound Street/East boundary: At Promenade Street/South boundary: Approximately 220 feet south of Mound Street/West boundary: Approximately 240 feet east of High Street.	None	+460	City of Havana.
Ponding	North boundary: Approximately 60 feet north of Mason Street/East boundary: At Teal Drive/South boundary: At Mason Street/West boundary: Approximately 175 feet west of Teal Drive.	None	+468	City of Havana.
Ponding	North boundary: Approximately 20 feet north of Mason Street/East boundary: At Mason Street railroad crossing/South boundary: At Mason Street/West boundary: Approximately 125 feet west of Teal Drive.	None	+468	City of Havana.
Ponding	North boundary: Approximately 470 feet north of Mason Street/East boundary: Approximately 1,030 feet east of William Boulevard along Mason Street/South boundary: Approximately 1,300 feet north of Laurel Street/West boundary: At railroad (560 feet east of Teal Drive).	None	+468	City of Havana.
Ponding	North boundary: At Mason Street/East boundary: At railroad (560 feet east of Teal Drive)/South boundary: At Adams Street/West boundary: Approximately 230 feet west of Promenade Street along Main Street.	None	+468	City of Havana.
Ponding	North boundary: Approximately 915 feet south of Laurel Street/East boundary: Approximately 250 feet west of railroad (560 feet east of Teal Drive)/South boundary: Approximately 410 feet north of East 1600 North Road/West boundary: At Highway 97.	None	+472	City of Havana.
Ponding	North boundary: At Windsor Street/East boundary: At Highway 97/South boundary: Approximately 800 feet north of East 1600 North Road along Highway 97/West boundary: Approximately 50 feet west of Highway 97.	None	+472	City of Havana.
Ponding	North boundary: Approximately 350 feet north of East 1600 North Road/East boundary: Approximately 375 feet west of Highway 97/South boundary: Approximately 275 feet north of East 1600 North Road/West boundary: Approximately 415 feet east of McKinley Street.	None	+472	City of Havana.
Ponding	North boundary: Approximately 140 feet south of East 1600 North Road/East boundary: Approximately 330 feet west of Highway 97/South boundary: Approximately 740 feet south of East 1600 North Road/West boundary: Approximately 500 feet west of Highway 97.	None	+472	City of Havana.
Ponding	North boundary: Approximately 80 feet south of intersection of Tinkham Street and Lincoln Street/East boundary: Approximately 535 feet west of Promenade Street/South boundary: Approximately 375 feet south of intersection of Tinkham Street and Lincoln Street/West boundary: Approximately 610 feet west of Promenade Street.	None	+472	City of Havana.

Flooding source(s)	Location of referenced elevation	* Elevation in feet (NGVD) + Elevation in feet (NAVD) # Depth in feet above ground ^ Elevation in meters (MSL)		Communities affected
		Effective	Modified	
Ponding	North boundary: Approximately 75 feet south of intersection of Schrader Street and 1st Street/East boundary: Approximately 40 feet west of 1st Street/South boundary: Approximately 110 feet north of Oakwood Avenue/West boundary: Approximately 105 feet east of Highway 78.	None	+467	City of Havana.
Ponding	North boundary: Approximately 230 feet south of intersection of Dearborn Street and Water Street/East boundary: Approximately 75 feet east of Highway 78/South boundary: At intersection of Tinkham Street and Water Street/West boundary: Approximately 55 feet west of Highway 78.	None	+467	City of Havana.
Ponding	North boundary: At intersection of Water Street and 10th Street/East boundary: Approximately 160 feet east of railroad that runs parallel to Maywood Street/South boundary: Approximately 230 feet south of Water Street railroad crossing/West boundary: At Water Street.	None	#3	City of Havana.
Ponding	North boundary: Approximately 810 feet south of Wagner Avenue/East boundary: Approximately 580 feet east of Pear Street/South boundary: Approximately 1,460 feet south of Wagner Avenue/West boundary: Approximately at Pear Street.	None	+469	City of Havana.

* National Geodetic Vertical Datum.
+ North American Vertical Datum.
# Depth in feet above ground.
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Send comments to Kevin C. Long, Acting Chief, Engineering Management Branch, Mitigation Directorate, Federal Emergency Management Agency, 500 C Street, SW., Washington, DC 20472.

ADDRESSES

City of Havana
Maps are available for inspection at City Hall, 227 West Main Street, Havana, IL 62644.

Unincorporated Areas of Mason County
Maps are available for inspection at the Mason County Courthouse, County Zoning Office, 125 North Plum Street, Havana, IL 62644.

Village of Bath
Maps are available for inspection at the Village Hall, 205 East 1st Street, Bath, IL 62617.

Des Moines County, Iowa, and Incorporated Areas

Mississippi River	Approximately 6.6 miles downstream of Burlington Northern Railroad.	+531	+532	City of Burlington, Unincorporated Areas of Des Moines County.
	Approximately 13.7 miles upstream of Lock and Dam No. 18.	+542	+543	
Spring Creek	Approximately 0.6 mile downstream of Summer Street	None	+533	Unincorporated Areas of Des Moines County.
	Approximately 0.5 mile downstream of Summer Street	None	+534	
Unnamed Tributary (Backwater from Long Creek).	Approximately 1,100 feet upstream of the confluence with Long Creek.	None	+700	Town of Danville.
	Approximately 1,400 feet upstream of the confluence with Long Creek.	None	+700	

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Send comments to Kevin C. Long, Acting Chief, Engineering Management Branch, Mitigation Directorate, Federal Emergency Management Agency, 500 C Street, SW., Washington, DC 20472.

Flooding source(s)	Location of referenced elevation	* Elevation in feet (NGVD) + Elevation in feet (NAVD) # Depth in feet above ground ^ Elevation in meters (MSL)		Communities affected
		Effective	Modified	

ADDRESSES

City of Burlington
Maps are available for inspection at City Hall, 400 Washington Street, Burlington, IA 52601.

Unincorporated Areas of Des Moines County
Maps are available for inspection at 200 North Front Street, Suite 400, Burlington, IA 52601.

Town of Danville
Maps are available for inspection at City Hall, 105 West Shepherd Street, Danville, IA 52623.

Dubuque County, Iowa, and Incorporated Areas

Mississippi River	Approximately 11.1 miles downstream of the confluence with Catfish Creek.	+605	+606	City of Dubuque, Unincorporated Areas of Dubuque County.
	Approximately 17.5 miles upstream of Lock and Dam 11.	+615	+616	

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Send comments to Kevin C. Long, Acting Chief, Engineering Management Branch, Mitigation Directorate, Federal Emergency Management Agency, 500 C Street, SW., Washington, DC 20472.

ADDRESSES

City of Dubuque
Maps are available for inspection at City Hall, 50 West 13th Street, Dubuque, IA 52001.

Unincorporated Areas of Dubuque County
Maps are available for inspection at 720 Central Avenue, Dubuque, IA 52001.

Louisa County, Iowa, and Unincorporated Areas

Mississippi River	Approximately 8.3 miles downstream of the confluence with the Iowa River.	+543	+544	Unincorporated Areas of Louisa County.
	Approximately 1.4 miles upstream of the confluence with Michaels Creek.	+553	+552	

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+ North American Vertical Datum.
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Send comments to Kevin C. Long, Acting Chief, Engineering Management Branch, Mitigation Directorate, Federal Emergency Management Agency, 500 C Street, SW., Washington, DC 20472.

ADDRESSES

Unincorporated Areas of Louisa County
Maps are available for inspection at the Louisa County Courthouse, 117 South Main Street, Wapello, IA 52653.

Nelson County, Kentucky, and Incorporated Areas

Beech Fork Tributary 27 (Backwater effects from Beech Fork).	From the confluence with Beech Fork to just downstream of Martha Layne Collins Bluegrass Parkway.	None	+480	Unincorporated Areas of Nelson County.
Beech Fork Tributary 29 (Backwater effects from Beech Fork).	From the confluence with Beech Fork to approximately 0.8 mile upstream of the confluence with Beech Fork.	None	+478	Unincorporated Areas of Nelson County.
Buffalo Creek (Backwater effects from Beech Fork).	From the confluence with Beech Fork to just downstream of Boston Road.	None	+482	Unincorporated Areas of Nelson County.
Cedar Creek (Backwater effects from Beech Fork).	From the confluence with Beech Fork to approximately 1,710 feet upstream of the confluence with Cedar Creek Tributary 12.	None	+475	Unincorporated Areas of Nelson County.

Flooding source(s)	Location of referenced elevation	* Elevation in feet (NGVD) + Elevation in feet (NAVD) # Depth in feet above ground ^ Elevation in meters (MSL)		Communities affected
		Effective	Modified	
David Run (Backwater effects from Rolling Fork).	From the confluence with Rolling Fork to approximately 0.7 mile upstream of the confluence with Rolling Fork.	None	+467	Unincorporated Areas of Nelson County.
Price Creek (Backwater effects from Rolling Fork).	From the confluence with Rolling Fork to approximately 0.6 mile upstream of the confluence with Price Creek Tributary 7.	None	+465	Unincorporated Areas of Nelson County.
Price Creek Tributary 7 (Backwater effects from Rolling Fork).	From the confluence with Price Creek to approximately 0.5 mile upstream of the confluence with Price Creek.	None	+465	Unincorporated Areas of Nelson County.
Rowan Creek (Backwater effects from Beech Fork).	From the confluence with Beech Fork to approximately 1,140 feet upstream of the confluence with Town Creek.	+487	+486	City of Bardstown, Unincorporated Areas of Nelson County.
Taylorsville Lake	Entire shoreline of Taylorsville Lake	None	+592	Unincorporated Areas of Nelson County.
Timber Creek (Backwater effects from Taylorsville Lake).	From the confluence with Taylorsville Lake to approximately 0.7 mile downstream of Highview Church Road.	None	+592	Unincorporated Areas of Nelson County.
Town Creek (Backwater effects from Beech Fork).	From the confluence with Rowan Creek to approximately 585 feet upstream of the confluence with Rowan Creek.	+487	+486	City of Bardstown, Unincorporated Areas of Nelson County.
Vittow Creek (Backwater effects from Rolling Fork).	From the confluence with Rolling Fork to approximately 0.6 mile upstream of the confluence with Rolling Fork.	None	+463	Unincorporated Areas of Nelson County.

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Depth in feet above ground.

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Send comments to Kevin C. Long, Acting Chief, Engineering Management Branch, Mitigation Directorate, Federal Emergency Management Agency, 500 C Street, SW., Washington, DC 20472.

ADDRESSES

City of Bardstown

Maps are available for inspection at City Hall, 220 North 5th Street, Morgantown, KY 42261.

Unincorporated Areas of Nelson County

Maps are available for inspection at the Nelson County Courthouse, 113 East Stephen Foster Avenue, Morgantown, KY 42261.

Taylor County, Kentucky, and Incorporated Areas

Brushy Fork (Backwater effects from Green River Lake).	From the confluence with Long Branch to approximately 0.4 mile upstream of the confluence with Long Branch.	None	+713	Unincorporated Areas of Taylor County.
Green River Lake	Entire shoreline	None	+713	Unincorporated Areas of Taylor County.
Green River Tributary 24.2 (Backwater effects from Green River Lake).	From the confluence with Green River Lake to approximately 1,300 feet upstream of the confluence with Green River Lake.	None	+713	Unincorporated Areas of Taylor County.
Long Branch (Backwater effects from Green River Lake).	From the confluence with Green River Lake to approximately 1,022 feet upstream of the confluence with Brushy Fork.	None	+713	Unincorporated Areas of Taylor County.
Opossum Branch (Backwater effects from Green River Lake).	From the confluence with Robinson Creek to approximately 1,716 feet upstream of the confluence with Robinson Creek.	None	+713	Unincorporated Areas of Taylor County.
Robinson Creek (Backwater effects from Green River Lake).	From the confluence with Green River Lake to approximately 730 feet downstream of the confluence with Duton Creek.	None	+713	Unincorporated Areas of Taylor County.
Robinson Creek Tributary 1 (Backwater effects from Green River Lake).	From the confluence with Green River Lake to approximately 0.6 mile upstream of the confluence with Green River Lake.	None	+713	Unincorporated Areas of Taylor County.
Robinson Creek Tributary 10 (Backwater effects from Robinson Creek).	From the confluence with Robinson Creek to approximately 88 feet upstream of Bradfordsville Road.	None	+741	Unincorporated Areas of Taylor County.

Flooding source(s)	Location of referenced elevation	* Elevation in feet (NGVD) + Elevation in feet (NAVD) # Depth in feet above ground ^ Elevation in meters (MSL)		Communities affected
		Effective	Modified	
Robinson Creek Tributary 12 (Backwater effects from Robinson Creek).	From the confluence with Robinson Creek to approximately 1,166 feet upstream of the confluence with Robinson Creek.	None	+732	Unincorporated Areas of Taylor County.
Robinson Creek Tributary 7 (Backwater effects from Robinson Creek).	From the confluence with Robinson Creek to approximately 1,855 feet upstream of the confluence with Robinson Creek.	None	+750	Unincorporated Areas of Taylor County.
Robinson Creek Tributary 8 (Backwater effects from Robinson Creek).	From the confluence with Robinson Creek to approximately 1,041 feet upstream of the confluence with Robinson Creek.	None	+744	Unincorporated Areas of Taylor County.
Robinson Creek Tributary 9 (Backwater effects from Robinson Creek).	From the confluence with Robinson Creek to approximately 55 feet upstream of Bradfordsville Road.	None	+743	Unincorporated Areas of Taylor County.
Sprat Branch (Backwater effects from Green River Lake).	From the confluence with Green River Lake to approximately 0.7 mile upstream of Elkhorn Road.	None	+713	Unincorporated Areas of Taylor County.
Stone Quarry Creek (Backwater effects from Green River Lake).	From the confluence with Green River Lake to approximately 1,010 feet upstream of the confluence with Stone Quarry Creek Tributary 5.	None	+713	Unincorporated Areas of Taylor County.
Stone Quarry Creek Tributary 5 (Backwater effects from Green River Lake).	From the confluence with Stone Quarry Creek to approximately 845 feet upstream of the confluence with Stone Quarry Creek.	None	+713	Unincorporated Areas of Taylor County.
Stoner Creek (Backwater effects from Green River Lake).	From the confluence with Robinson Creek to approximately 1.2 miles upstream of the confluence with Robinson Creek.	None	+713	Unincorporated Areas of Taylor County.
Tallow Creek Tributary 4 (Backwater effects from Tallow Creek).	From the confluence with Tallow Creek to approximately 920 feet upstream of Bradfordsville Road.	None	+831	Unincorporated Areas of Taylor County.
Wilson Creek (Backwater effects from Green River Lake).	From the confluence with Green River Lake to approximately 1,630 feet upstream of the confluence with Wilson Creek Tributary 14.	None	+713	Unincorporated Areas of Taylor County.
Wilson Creek Tributary 14 (Backwater effects from Green River Lake).	From the confluence with Wilson Creek to approximately 670 feet upstream of the confluence with Wilson Creek.	None	+713	Unincorporated Areas of Taylor County.

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Send comments to Kevin C. Long, Acting Chief, Engineering Management Branch, Mitigation Directorate, Federal Emergency Management Agency, 500 C Street, SW., Washington, DC 20472.

ADDRESSES

Unincorporated Areas of Taylor County

Maps are available for inspection at the Taylor County Judicial Center, 300 East Main Street, Campbellsville, KY 42718.

Clay County, Mississippi, and Incorporated Areas

Tombigbee River	Approximately 1.7 mile upstream of the confluence with Tibbee Creek.	+176	+177	Unincorporated Areas of Clay County.
	Approximately 4.2 miles upstream of the confluence with Town Creek East.	+187	+188	

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Send comments to Kevin C. Long, Acting Chief, Engineering Management Branch, Mitigation Directorate, Federal Emergency Management Agency, 500 C Street, SW., Washington, DC 20472.

Flooding source(s)	Location of referenced elevation	* Elevation in feet (NGVD) + Elevation in feet (NAVD) # Depth in feet above ground ∧ Elevation in meters (MSL)		Communities affected
		Effective	Modified	

ADDRESSES

Unincorporated Areas of Clay County

Maps are available for inspection at the Clay County Courthouse, 205 Court Street, West Point, MS 39773.

Grenada County, Mississippi, and Incorporated Areas

Grenada Lake	Entire shoreline within Grenada County	None	+237	City of Grenada, Unincorporated Areas of Grenada County.

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+ North American Vertical Datum.

Depth in feet above ground.

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Send comments to Kevin C. Long, Acting Chief, Engineering Management Branch, Mitigation Directorate, Federal Emergency Management Agency, 500 C Street, SW., Washington, DC 20472.

ADDRESSES

City of Grenada

Maps are available for inspection at City Hall, 108 South Main Street, Grenada, MS 38901.

Unincorporated Areas of Grenada County

Maps are available for inspection at the Grenada County Courthouse, 59 Green Street, Room 1, Grenada, MS 38901.

Lawrence County, Mississippi, and Incorporated Areas

Runnels Creek	Approximately 0.5 mile downstream of Robinwood Road.	+192	+193	Town of Monticello, Unincorporated Areas of Lawrence County.
	Approximately 100 feet downstream of Robinwood Road.	+192	+193	

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Send comments to Kevin C. Long, Acting Chief, Engineering Management Branch, Mitigation Directorate, Federal Emergency Management Agency, 500 C Street, SW., Washington, DC 20472.

ADDRESSES

Town of Monticello

Maps are available for inspection at 202 Jefferson Street South, Monticello, MS 39654.

Unincorporated Areas of Lawrence County

Maps are available for inspection at 435 Brinson Street, Monticello, MS 39564.

Dade County, Missouri, and Incorporated Areas

Stockton Lake	Entire shoreline	None	+887	Unincorporated Areas of Dade County.

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Send comments to Kevin C. Long, Acting Chief, Engineering Management Branch, Mitigation Directorate, Federal Emergency Management Agency, 500 C Street, SW., Washington, DC 20472.

Flooding source(s)	Location of referenced elevation	* Elevation in feet (NGVD) + Elevation in feet (NAVD) # Depth in feet above ground ^ Elevation in meters (MSL)		Communities affected
		Effective	Modified	
ADDRESSES				
Unincorporated Areas of Dade County				
Maps are available for inspection at 300 West Water Street, Greenfield, MO 65661.				
St. Francois County, Missouri, and Incorporated Areas				
Flat River	Approximately 375 feet downstream of the confluence with Walker Branch.	None	+683	City of Desloge, City of Park Hills, Unincorporated Areas of St. Francois County.
	At St. Joe Drive	None	+701	
	Approximately 875 feet downstream of East Elvins Boulevard.	None	+750	
	Approximately 3,000 feet upstream of State Highway 32.	None	+784	
Kennedy Branch	Approximately 425 feet downstream of County Highway F.	None	+837	City of Farmington, Unincorporated Areas of St. Francois County.
	Approximately 1,400 feet upstream of Middle Street	+894	+893	
Koen Creek	Approximately 100 feet upstream of the City of Park Hills and City of Desloge corporate limits.	None	+695	City of Desloge, City of Park Hills, Unincorporated Areas of St. Francois County.
	Approximately 2,350 feet upstream of Hurryville Road	None	+846	
Koen Creek Tributary	Approximately 325 feet upstream of the confluence with Koen Creek.	None	+718	City of Park Hills, Unincorporated Areas of St. Francois County.
	Approximately 100 feet upstream of 5th Street	None	+792	
Shaw Creek	Approximately 700 feet upstream of the confluence with Flat Creek.	None	+732	City of Park Hills, Unincorporated Areas of St. Francois County.
	Approximately 2,000 feet upstream of City of Park Hills corporate limits.	None	+767	
St. Francois River	Approximately 150 feet upstream of the City of Farmington corporate limits.	None	+844	City of Farmington, Unincorporated Areas of St. Francois County.
	Approximately 50 feet upstream of County Highway W.	None	+859	
St. Francois Tributary	Approximately 750 feet upstream of the confluence with the St. Francois River.	None	+846	City of Farmington, Unincorporated Areas of St. Francois County.
	Approximately 75 feet upstream of County Highway W.	+878	+881	
	Approximately 925 feet downstream of Liberty Street	None	+896	
	Approximately 200 feet upstream of the City of Farmington corporate limits.	None	+910	
Walker Branch	Approximately 600 feet upstream of the confluence with the Flat River.	None	+685	Unincorporated Areas of St. Francois County.
	Approximately 7,000 feet upstream of Halter Road	None	+783	

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Send comments to Kevin C. Long, Acting Chief, Engineering Management Branch, Mitigation Directorate, Federal Emergency Management Agency, 500 C Street, SW., Washington, DC 20472.

ADDRESSES

City of Desloge
Maps are available for inspection at 300 North Lincoln, Desloge, MO 63601.

City of Farmington
Maps are available for inspection at 110 West Columbia Street, Farmington, MO 63640.

City of Park Hills
Maps are available for inspection at 9 Bennet Street, Park Hills, MO 63601.

Flooding source(s)	Location of referenced elevation	* Elevation in feet (NGVD) + Elevation in feet (NAVD) # Depth in feet above ground ^ Elevation in meters (MSL)		Communities affected
		Effective	Modified	
Unincorporated Areas of St. Francois County				
Maps are available for inspection at 1 West Liberty Street, 2nd Floor, Farmington, MO 63640.				
Wayne County, Missouri, and Incorporated Areas				
Clearwater Lake	Entire shoreline in Wayne County	None	+572	Unincorporated Areas of Wayne County.
Lake Wappapello	Entire shoreline in Wayne County	None	+403	Unincorporated Areas of Wayne County.

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+ North American Vertical Datum.
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Send comments to Kevin C. Long, Acting Chief, Engineering Management Branch, Mitigation Directorate, Federal Emergency Management Agency, 500 C Street, SW., Washington, DC 20472.

ADDRESSES

Unincorporated Areas of Wayne County

Maps are available for inspection at 109 Walnut Street, Greenville, MO 63944.

Greenwood County, South Carolina, and Incorporated Areas				
Lake Greenwood	Entire shoreline within Greenwood County	None	+442	Unincorporated Areas of Greenwood County.
Ninety-Six Creek	Approximately 1.0 mile downstream of U.S. Route 702.	None	+399	Unincorporated Areas of Greenwood County.
	Approximately 1,655 feet upstream of U.S. Route 702	None	+403	
Rocky Creek Tributary	Approximately 516 feet downstream of Bypass 72	None	+575	City of Greenwood.
	Approximately 2,177 feet upstream of Bypass 72	None	+590	
Saluda River	Approximately 3.9 miles downstream of U.S. Route 25.	None	+448	Town of Ware Shoals, Unincorporated Areas of Greenwood County.
	Approximately 200 feet upstream of Saluda Avenue	None	+531	
Sample Branch	Approximately 1,206 feet upstream of the confluence with Rocky Creek.	None	+527	Unincorporated Areas of Greenwood County, City of Greenwood.
	Approximately 130 feet upstream of Dry Branch Court	None	+563	

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Send comments to Kevin C. Long, Acting Chief, Engineering Management Branch, Mitigation Directorate, Federal Emergency Management Agency, 500 C Street, SW., Washington, DC 20472.

ADDRESSES

City of Greenwood

Maps are available for inspection at City Hall, 520 Monument Street, Greenwood, SC 29648.

Town of Ware Shoals

Maps are available for inspection at the Town Hall, 8 Mill Street, Ware Shoals, SC 29692.

Unincorporated Areas of Greenwood County

Maps are available for inspection at the Greenwood County Courthouse, 600 Monument Street, Greenwood, SC 29646.

(Catalog of Federal Domestic Assistance No. 97.022, "Flood Insurance.")

Dated: April 15, 2010.

Sandra K. Knight,

Deputy Federal Insurance and Mitigation Administrator, Mitigation, Department of Homeland Security, Federal Emergency Management Agency.

[FR Doc. 2010–10342 Filed 5–3–10; 8:45 am]

BILLING CODE 9110–12–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

[Docket No. FWS–R8–ES–2010–0031]
[MO 92210–0–0008–B2]

Endangered and Threatened Wildlife and Plants; 90-Day Finding on a Petition to List Hermes Copper Butterfly as Threatened or Endangered

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of petition finding and initiation of status review.

SUMMARY: We, the U.S. Fish and Wildlife Service (Service), announce a 90–day finding on a petition to list Hermes copper butterfly (*Hermelycaena [Lycaena] hermes*) as a threatened or endangered species under the Endangered Species Act of 1973, as amended (Act) and to designate critical habitat. We find the petition presents substantial scientific or commercial information indicating that listing the Hermes copper butterfly may be warranted. Therefore, with the publication of this notice, we are initiating a status review to determine if the petitioned action is warranted. To ensure that the status review is comprehensive, we are soliciting scientific and commercial data and other information regarding this species. Based on the status review, we will issue a 12–month finding on the petition, which will address whether the petitioned action is warranted, as provided in section 4(b)(3)(B) of the Act.

DATES: To allow us adequate time to conduct this review, we request that we receive information on or before July 6, 2010. Please note that if you are using the *Federal eRulemaking Portal* (see **ADDRESSES** section, below), the deadline for submitting an electronic comment is 11:59 p.m. Eastern Time on this date. After July 6, 2010, you must submit information directly to the Field Office (see **FOR FURTHER INFORMATION CONTACT** section below). Please note that we might not be able to address or incorporate information that we receive after the above requested date.

ADDRESSES: You may submit comments by one of the following methods:

- Federal eRulemaking Portal: *http://www.regulations.gov*. Search for docket FWS–R8–ES–2010–0031 and then follow the instructions for submitting comments.
- U.S. mail or hand-delivery: Public Comments Processing, Attn: FWS–R8–ES–2010–0031; Division of Policy and Directives Management; U.S. Fish and Wildlife Service; 4401 N. Fairfax Drive, Suite 222; Arlington, VA 22203.

We will post all comments on *http://www.regulations.gov*. This generally means that we will post any personal information you provide us (see the Request for Information section below for more details).

FOR FURTHER INFORMATION CONTACT: Jim Bartel, Field Supervisor, Carlsbad Fish and Wildlife Office, Carlsbad Fish and Wildlife Office, U.S. Fish and Wildlife Service, 6010 Hidden Valley Road, Suite 101, Carlsbad, CA 92011, by telephone at 760–431–9440, or by facsimile to 760–431–9624. Persons who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 800–877–8339.

SUPPLEMENTARY INFORMATION:

Request for Information

When we make a finding that a petition presents substantial information indicating that listing a species may be warranted, we are required to promptly review the status of the species (status review). For the status review to be complete and based on the best available scientific and commercial information, we request information on the Hermes copper butterfly from governmental agencies, Native American Tribes, the scientific community, industry, and any other interested parties. We seek information on:

(1) The species' biology, range, and population trends, including:

(a) Habitat requirements for feeding, breeding, and sheltering;

(b) Genetics and taxonomy;

(c) Historical and current range, including distribution patterns;

(d) Historical and current population levels, and current and projected trends; and

(e) Past and ongoing conservation measures for the species and its habitat in the United States and Mexico.

(2) The factors that are the basis for making a listing determination for a species under section 4(a) of the Endangered Species Act of 1973, as amended (Act) (16 U.S.C. 1531 *et seq.*), which are:

(a) The present or threatened destruction, modification, or curtailment of 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.

(3) Information on management programs for the conservation of Hermes copper butterfly.

(4) The potential effects of climate change on this species and its habitat, what regional climate change models are available, and whether they are reliable and credible to use as step-down models for assessing the effects of climate change on this species and its habitat.

(5) Additional information on the following locations in San Diego County, California, United States of America (U.S.A.) where the status of the species or level of the threat (such as fire), is unknown (petitioner location names used for the first time are in quotation marks if we added a location description):

- approximately 3 miles (mi) (5 kilometers (km)) south of the City of El Cajon ("El Cajon (3 miles South)");
- the neighborhood of Flinn Springs in the City of El Cajon ("Flinn Springs (El Cajon)");
- Fairmont Canyon in the City of San Diego ("Fairmont Canyon");
- the community of Kearny Mesa ("Kearny Mesa");
- City of San Diego urban core area;
- the Crosby property in the City of Rancho Santa Fe ("The Crosby");
- City of Spring Valley ("Spring Valley");
- community of Harmony Grove in the City of Escondido ("Harmony Grove");
- Steel Canyon near the community of Jamul ("Steel Canyon");
- Mission Valley in the City of San Diego ("Mission Valley");
- City of Poway near the intersection of Poway Road and State Route 395 ("Poway Road/Highway 395");
- community of Dulzura ("Dulzura");
-- Deerhorn Valley near the community of Jamul ("Deerhorn Valley");
- area near Mt. Miguel; the community of Pine Valley ("Pine Valley");
- Big Rock Road in the city of Santee ("Santee's Big Rock Road;");
- community of Alpine ("Alpine");
- community of Miramar ("Miramar");
- Sycamore Canyon and Gooden Ranch in the City of Santee ("Sycamore Canyon and Gooden Ranch");
- Otay Mountain foothills ("Otay-Foothill area");

- 1 mi (1.6 km) west of Lake Hodges ("Lake Hodges (1 mile West)");
- Boulder Creek Road near the community of Descanso ("Boulder Creek Road");
- Harbison Canyon near the community of Crest ("Harbison Canyon");
- Little Cedar Creek near Otay Mountain ("Little Cedar Creek");
- San Marcos Creek in the City of San Marcos ("San Marcos Creek");
- Spring Canyon near the City of Santee ("Spring Canyon"); and
- Sycuan Peak in the community of Jamul ("Sycuan Peak").

We would also like information for the following locations in Baja California, Mexico:

- 12 mi (19 km) north of the city of Ensenada ("Ensenada (12 mi north)");
- 18 mi (29 km) south of Santo Tomas Valley ("Santo Tomas (18 mi south)");
- the community of Bajamar ("Bajamar"); and the community of Salsipuedes ("Salsi Puedes")..

(6) Information on U.S. Forest Service Land and Resource Management Plan revisions and the status of the species on U.S. Forest Service lands.

Please include sufficient information with your submission (such as full references) to allow us to verify any scientific or commercial information you include.

If, after the status review, we determine that listing Hermes copper butterfly is warranted, we intend to propose critical habitat (see definition in section 3(5)(A) of the Act), as per section 4 of the Act, to the maximum extent prudent and determinable at the time we propose to list the species. Therefore, within the geographical range currently occupied by Hermes copper butterfly, we request data and information on:

(1) What may constitute "physical or biological features essential to the conservation of the species,"

(2) Where these features are currently found, and

(3) Whether any of these features may require special management considerations or protection.

In addition, we request data and information on "specific areas outside the geographical area occupied by the species" that are "essential to the conservation of the species." Please provide specific comments and information as to what, if any, critical habitat you think we should propose for designation if the species is proposed for listing, and why such habitat meets the requirements of section 4 of the Act.

Submissions merely stating support for or opposition to the action under consideration without providing supporting information, although noted, will not be considered in making a determination. Section 4(b)(1)(A) of the Act directs that determinations as to whether any species is an endangered or threatened species must be made "solely on the basis of the best scientific and commercial data available."

You may submit your information concerning this status review by one of the methods listed in the **ADDRESSES** section. If you submit information via *http://www.regulations.gov*, your entire submission—including any personal identifying information—will be posted on the website. If you submit a hardcopy that includes personal identifying information, you may request at the top of your document that we withhold this personal identifying information from public review. However, we cannot guarantee that we will be able to do so. We will post all hardcopy submissions on *http://www.regulations.gov*.

Information and supporting documentation that we received and used in preparing this finding, will be available for you to review at *http://www.regulations.gov*, or you may make an appointment during normal business hours at the U.S. Fish and Wildlife Service, Carlsbad Fish and Wildlife Office (see **FOR FURTHER INFORMATION CONTACT**).

Background

Section 4(b)(3)(A) of the Act requires that we make a finding on whether a petition to list, delist, or reclassify a species presents substantial scientific or commercial information indicating that the petitioned action may be warranted. We are to base this finding on information provided in the petition, supporting information submitted with the petition, and information otherwise available in our files. To the maximum extent practicable, we are to make this finding within 90 days of our receipt of the petition and publish our notice of the finding promptly in the **Federal Register**.

Our standard for substantial scientific or commercial information within the Code of Federal Regulations (CFR) with regard to a 90–day petition finding is "that amount of information that would lead a reasonable person to believe that the measure proposed in the petition may be warranted" (50 CFR 424.14(b)). If we find that substantial scientific or commercial information was presented, we are required to promptly review the status of the species, which is subsequently summarized in our 12–month finding.

New species information received since the our previous 90–day finding (71 FR 44966, August 8, 2006) is limited to Marschalek and Deutschman's (2008) study of the effect of habitat edges on Hermes copper butterfly, new species observation locations, and fire data (see *Species Information* sections below). We received additional information from the petitioners in an email on March 5, 2010 (Evans 2010). We reviewed and evaluated the information they submitted, and did not find that it provided any new data relative to the status of the species or threats to it or its habitat. The petitioners submitted one piece of anecdotal species information that we did not already have in our files, a personal communication (cited "D. Faulkner, V. Marquez-Waller pers. comm. on 4/16/08") that a "Ladybird beetle" is a potential Hermes copper butterfly predator (Evans 2010 attachment, p. 8).

For biological and other scientific information on Hermes copper butterfly, please refer to our previous 90–day finding published in the **Federal Register** on August 8, 2006 (71 FR 44966).

Previous Federal Actions

On August 8, 2006, we published 90–day findings for both Hermes copper butterfly and Thorne's hairstreak butterfly in the **Federal Register**. The findings concluded that the petitions and information in our files did not present substantial scientific or commercial information indicating that listing Hermes copper (71 FR 44966) or Thorne's hairstreak butterflies (71 FR 44980) was warranted. (For a detailed history of Federal actions involving Hermes copper butterfly prior to the 2006 90–day finding, please see the August 8, 2006, **Federal Register** Notice (71 FR 44966)). On March 17, 2009, CBD and David Hogan filed a complaint for declaratory and injunctive relief challenging the Service's decision not to list Hermes copper butterfly and Thorne's hairstreak butterfly as threatened or endangered under the Act. In a settlement agreement dated October 23, 2009 (Case No. 09-0533 S.D. Cal.), the Service agreed to submit new 90–day petition findings to the **Federal Register** by April 2, 2010, for Thorne's hairstreak butterfly, and by May 13, 2010, for Hermes copper butterfly. As a part of the settlement agreement, we agreed to evaluate the October 25, 2004, petition filed by David Hogan and CBD, supporting information submitted with the petition, and information available in the Service's files, including information that has become available since the publication of the negative 90–day findings on August 8, 2006. If the 90–day findings determine that listing

may be warranted, we agreed to submit a 12–month finding to the **Federal Register** by March 4, 2011, for Thorne's hairstreak butterfly, and by April 15, 2011, for Hermes copper butterfly. We published a 90–day finding in the **Federal Register** on April 5, 2010 (75 FR 17062) concluding that listing Thorne's hairstreak butterfly may be warranted. This notice constitutes our 90–day finding on the petition to list Hermes copper butterfly under section 4(b)(1)(A) of the Act.

Species Information

Hermes copper butterfly is endemic to the southern California region, primarily occurring in San Diego County, California, and a few records of the species have been documented in Baja California, Mexico (Faulkner and Klein 2005, p. 23). The species inhabits coastal sage scrub and southern mixed chaparral (Marschalek and Deutschman 2008, p. 98) and is dependent on its larval host plant, *Rhamnus crocea* (spiny redberry), to complete its lifecycle. Adult Hermes copper butterflies lay single eggs on *R. crocea* stems where they hatch and feed until pupation occurs at the base of the plant. Hermes copper butterflies have one flight period (termed univoltine) occurring in mid-May to early-July, depending on weather conditions and elevation (Faulkner and Klein 2005, pp. 23–24).

Adult Hermes copper butterflies have been known to nectar (feed) in coastal sage scrub and chaparral ecosystems on *Adenostema fasciculatum* (chamise), *Eriogonum fasciculatum* (California buckwheat), *Helianthus gracilentus* (slender sunflower), *Toxicodendron diversilobum* (poison oak), and *Hirshfeldia incana* (short-podded mustard) and are rarely seen far from their nectar source or host plant (Faulkner and Klein 2005, pp. 24–25; Marschalek and Deutschman 2008, p. 102). Marschalek and Deutschman (2008) documented densities of Hermes copper butterflies on paired transects along edges and within the interior of host plant stands in rural areas. Their study results indicate Hermes copper butterfly densities are significantly higher near host plant stand edges than in the interior (Marschalek and Deutschman 2008, p. 102), suggesting that this single factor in natural areas may have a positive effect on species' density.

Historical data indicate Hermes copper butterflies ranged from Fallbrook, California, in northern San Diego County to 18 mi (29 km) south of Santo Tomas in Baja California, Mexico, and from Pine Valley in eastern San Diego County to Lopez Canyon in western San Diego County. Range-wide species surveys have not been completed; therefore, it is difficult to assess the extent of occupation throughout the historical range.

Habitat

According to Thorne (1963, pp. 143–144), Hermes copper butterflies are dependent on *Rhamnus crocea* (spiny redberry), a wide-ranging perennial coastal sage scrub and chaparral-associated species, as its larval host and for completion of its lifecycle. The range of *R. crocea* extends throughout coastal northern California, central western California, southwestern California, and into Baja California, Mexico, to an elevation of 3,280 feet (ft) (1000 meters (m)). The coastal sage scrub and chaparral ecosystems in San Diego County have been subject to multiple fires of various levels of severity (Keeley and Fotheringham 2003, pp. 242–243; Faulkner and Klein 2005, p. 25). *Rhamnus crocea* and other coastal sage scrub or chaparral-associated species are adapted to intermittent fire, but researchers postulate that increased fire frequency may result in altered vegetation structure or type conversion throughout the range (Keeley and Fotheringham 2003, pp. 243–244; Keeley 2004, pp. 2–3) and lead to a significant decline in Hermes copper butterfly habitat availability and suitability. Anecdotal evidence indicates Hermes copper butterflies require mature *R. crocea* to complete their lifecycle; therefore, increased fire frequency may reduce suitable host plant availability. However, no quantitative studies have occurred to test this hypothesis.

For additional detailed species information on Hermes copper butterfly, please refer to our previous 90–day finding, which published in the **Federal Register** on August 8, 2006 (71 FR 44966).

Evaluation of Information for this Finding

Section 4 of the Act (16 U.S.C. 1533), and its implementing regulations in the Code of Federal Regulations (CFR) at 50 CFR 424, set forth the procedures for adding species to the Federal Lists of Endangered and Threatened Wildlife and Plants. A species may be determined to be an endangered or threatened species due to one or more of the five factors described in section 4(a)(1) of the Act: (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.

In making this 90–day finding, we evaluated whether information on threats to Hermes copper butterfly, as presented in the 2004 petition and other information available in our files, is substantial, thereby indicating that the petitioned action may be warranted. In the sections that follow, we summarize information included in the 2004 petition and evaluate any new information in our files. For additional information regarding Hermes copper butterfly please refer to the previous 90–day finding published in the **Federal Register** on August 8, 2006 (71 FR 44966).

A. The Present or Threatened Destruction, Modification, or Curtailment of the Species' Habitat or Range

The petition, its appendices, and referenced documents discuss the following threats that are grouped under Factor A: development, wildfire, fire management techniques, and habitat fragmentation.

The petition includes a table that lists Hermes copper butterfly populations and their presumed status at 56 occurrences throughout San Diego County and into Mexico. The table identifies 22 occurrences that were presumed lost in the 2003 Otay, Cedar, and Paradise fires; 6 occurrences that were presumed lost to urban development; 8 occurrences that were known to be occupied and were mentioned in various environmental review documents; 2 occurrences with unknown locations and occupancy status; and 18 occurrences of unknown occupancy status (which include 4 in Baja California, Mexico).

Development

Information Provided in the Petition

The petitioner stated that Hermes copper butterfly is vulnerable to extinction due to loss of populations and habitat loss as a result of urban development. The petitioner's table lists 6 locations that are presumed lost to development and 8 locations discovered as a result of surveys and environmental reviews for development projects. There are 14 Hermes copper butterfly locations in the petitioner's table that do not include any indication of current occupancy status and an additional 2 occurrences with unknown locations and status.

Evaluation of Information Provided in the Petition and Available in Service Files

At one of the 6 locations presumed lost to development ("Scripps Gateway" at the southwest corner of Interstate 15 and Scripps Poway Parkway), the last Hermes copper butterfly observation was in 1996, and information in our files indicates that development has not impacted this area. Further investigation is needed to accurately determine the species' status at this location. The remaining 5 locations identified by the petitioner as lost to development were observed 45 or more years ago. We do not have more recent data on these specific locations and further investigation is needed to determine their status. However, information in our files indicates that some of the historical occurrences referenced by the petitioner (Kearny Mesa, Mission Valley, San Diego State College, and "Suncrest" in the community of Crest) have probably been impacted by urban development.

Information in our files indicates that the status of Hermes copper butterfly at 4 (the Crosby property in Rancho Santa Fe, Spring Valley, Harmony Grove, and Steel Canyon) of the 8 locations discovered as a result of surveys and environmental reviews for development projects is currently unknown, and the butterfly is currently extant at the other 4 locations (Skyline Truck Trail, Lyons Valley, Lawson Valley, and Jamul Highlands Road in the community of Jamul). Further investigation is needed to determine the status of Hermes copper butterfly at the Crosby property in Rancho Santa Fe, Spring Valley, Harmony Grove, and Steel Canyon.

Our files do not contain more recent data for the Mexico occurrences cited in the petition, or data on the 2 unknown locations listed in the petition that are of unknown status (Mission Valley and Poway Road/Highway 395). Further investigation is needed to accurately determine the status of Hermes copper butterfly at those locations.

Of the locations in the petitioner's table, information in our files indicates that the current status of 5 (Dulzura, Deerhorn Valley, Mt. Miguel, Pine Valley, and Santee's Big Rock Road) of the 14 locations is unknown, and that 9 of the occurrences (Lyons Peak, Black Mountain, the community of "Guatay," McGinty Mountain, Poway, "Robert's Ranch" near the intersection of State Route 79 and Interstate 8, San Diego National Wildlife Refuge, Sycuan Peak, and "Wright's Field" in the community of Alpine) are extant. Further investigation of Hermes copper butterfly occupancy at the Dulzura, Deerhorn Valley, Mt. Miguel, Pine Valley, and Santee's Big Rock Road locations is needed to determine the species' status at these locations.

Information in our files indicates the Service is currently evaluating habitat conservation plans (HCPs) for the San Diego County Water Authority, Joint Water Agencies, North San Diego County, East San Diego County, and the City of Santee where Hermes copper butterfly may be included as a "covered species" in order to avoid conflict with planned future development. These HCPs are seeking coverage for take of Hermes copper butterfly throughout their plan areas, but the plans are not yet finalized (see "*D. The Inadequacy of Existing Regulatory Mechanisms*" section below for further discussion of approved HCPs). Additionally, the population of San Diego County is predicted to grow 25.2 percent from 2000 to 2020 (California Department of Finance 2007), suggesting that urbanization pressure will continue to pose an increasing threat to remaining populations within the range of Hermes copper butterfly. Development on U.S. Forest Service lands may also pose a threat to Hermes copper butterflies. The species is considered an animal species-at-risk by the U.S. Forest Service; defined specifically, as an uncommon, narrow endemic, disjunct, or peripheral in the Cleveland National Forest (CNF) Land Resource Management Plan (LRMP)) area, with substantial threats to species persistence or distribution from Forest Service activities (USFS 2005a, p. 119). Information in our files indicates that one specific project is currently in the permitting and implementation phase (Sunrise Powerlink) and there are existing energy projects within the CNF (Winter 2010, pers. comm.) that may pose a threat to Hermes copper butterfly habitat. These projects may impact Hermes copper butterfly through direct loss or fragmentation of available habitat. Although no roads or facility development has been planned for the CNF within Hermes copper butterfly habitat that we are aware of at this time, future development or the maintenance of existing facilities may potentially be a threat to Hermes copper butterfly through fragmentation of habitat. Information in our files indicates that the existing electrical energy lines that pass through the CNF may pose a potential threat of wildfire through accidental ignition (see "*Wildfire*" section below).

In summary, we have evaluated information in our files and the petition and find there has been some loss of Hermes copper butterfly habitat due to development, and we conclude there is substantial information indicating Hermes copper butterfly listing may be warranted due to the threat of urban development.

Wildfire

Information Provided in the Petition

The petitioner claims that Hermes copper butterfly is highly vulnerable to extinction due to the threat of fire. The petitioner claims that excessive human-induced fires threaten the species' survival, even on lands protected from development. The petitioner lists 22 locations that are presumed lost to fire (see analysis below for location descriptions).

Evaluation of Information Provided in the Petition and Available in Service Files

Information in our files indicates that wildfire regimes throughout southern California have been changing for some time, and much of this change is attributed to human demography and population density. Specifically, fire frequency and season have increased throughout chaparral and coastal sage scrub ecosystems (Keeley and Fotheringham 2003, pp. 239–242). Information in our files indicates that the 2003 Otay, Cedar, and Paradise fires and the 2007 Harris, Poomacha, and Witch fires did impact some of the areas with documented Hermes copper butterfly occurrences (Alpine, Crestridge Ecological Reserve, the community of Descanso, Spring Valley, Miramar, Mission Trails Regional Park, Santee, Sycamore Canyon, Otay-Foothill area, and Rancho Jamul Ecological Reserve). However, the extent to which the habitat (chaparral and coastal sage scrub and, more specifically, the host plant *Rhamnus crocea*) was impacted is unknown and requires further investigation to accurately assess the impact to Hermes copper butterfly. Of the 22 locations identified in the petition as presumed lost to fire, 12 of these locations cited observation data dating back 20 or more years. We do not have more recent data on Hermes copper butterfly at those locations, and their current status is unknown. Of the remaining 10 locations, we have data in our files indicating that Hermes copper butterfly is extant at 5 locations: Mission Trails Regional Park, Crestridge Ecological Reserve, Descanso, Rancho Jamul, and Santee (Fanita Ranch). The remaining 5 locations noted in the petitioner's table that potentially harbor Hermes copper butterfly would require further investigation to determine the species' status.

Information in our files indicates that occurrences at 5 of the 22 locations identified in the petition as lost to wildfire are currently extant. Further investigation is needed to determine the status of the species at the remaining 17 locations; however, with the expected increased frequency of fires, the species may not be able to recolonize habitat patches where they have been extirpated by fire. Additionally, information in our files indicates that approximately 80 percent of the Hermes copper butterfly habitat (*Rhamnus crocea* and other coastal sage scrub or associated-chaparral species) on CNF lands burned in the 2003 and 2007 fires and only few of the historical locations on CNF are currently persisting (Winter 2010, pers. comm.)

After reviewing the petition and information in our files, we find substantial information exists indicating that listing Hermes copper butterfly may be warranted due to the threat to Hermes copper butterfly habitat as the result of increased fire frequency or excessive wildfire relative to historic conditions.

Fire Management Techniques

Information Provided in the Petition

The petitioner claims that prescribed burns used as fire management techniques are likely to impact the Hermes copper butterfly in a number of locations throughout the County of San Diego, including the Cleveland National Forest (CNF). The petitioner asserts that the County has relied on excessive brush clearing around homes and communities for fire protection and that the CNF has aggressively pursued prescribed burning as a vegetation management tool. The petitioner claims that prescribed burns are likely to reduce the survival of Hermes copper butterflies.

Evaluation of Information Provided in the Petition and Available in Service Files

The County of San Diego's Zoning and Ordinance regulations and recommendations indicate that lands within the County of San Diego are required to have a defensible space around homes and structures, which may impact Hermes copper butterfly habitat; however, emphasis is placed on replacing flammable roofing material with fire-resistant shingles, planting fire-resistant landscape vegetation, using fire-resistant native plant species, avoiding invasive nonnative species in landscaping, and implementing other effective conservation-oriented fire management techniques (County of San Diego 2006, p. 2; The Fire Safe Council of San Diego County 2009, p. 1). Information available to us at this time does not support the petitioner's claim that the County of San Diego is rejecting conservation-oriented rural planning or emphasizing prescribed burns. Although prescribed burning is conducted in potential Hermes copper butterfly habitat on Marine Corps Air Station Miramar, neither the petition nor information in our files indicates that prescribed burning is being conducted in occupied Hermes copper butterfly habitat.

According to the U.S. Forest Service's 2005 final environmental impact statement for land management plans in the Angeles, Cleveland, Los Padres and San Bernardino National Forests, Hermes copper butterfly is an animal species-at-risk due to prescribed burns or fuel reduction projects in the CNF (USFS 2005(a), p. 175). The CNF's conservation strategy for the next 3 to 5 years states their intention to monitor Hermes copper butterfly in burned areas and to prevent and suppress fires throughout the habitat of Hermes copper butterflies (USFS 2005(b), pp. 88-89). To further fire prevention efforts, the CNF is creating fuel breaks adjacent to homes and other developed areas to prevent spread of wildfire from developed areas onto CNF lands. Information in our files also indicates that CNF is not conducting large scale prescribed burns, but is actively engaged in fuel reduction throughout the forest (Winter 2010, pers. comm.).

After reviewing information in our files and in the petition, we do not find substantial information to indicate that listing of Hermes copper butterfly may be warranted due to the use of prescribed fire as a fire management technique either in the County of San Diego or on the CNF. However, we will further investigate the potential threat of prescribed fires in our status review for this species.

Habitat Fragmentation

Information Provided in the Petition

The petitioner claims habitat (chaparral and coastal sage scrub) for Hermes copper butterfly is being fragmented through various mechanisms (i.e., urban development, fire, type-conversion, and roads) and that this threatens the species' survival. The petitioner's claims include the following:

(1) Habitat fragmentation is reducing the overall area of habitat available for the Hermes copper butterfly;

(2) Host plant, *Rhamnus crocea*, population distributions have been fragmented throughout the range of Hermes copper butterfly by urban development, fire, vegetation type-conversion, road construction, and other factors; and

(3) Fragmentation leads to expansion of edge habitat that stresses Hermes copper butterfly populations.

Evaluation of Information Provided in the Petition and Available in Service Files

Habitat fragmentation increases the ratio of edge to interior habitat area, creating a boundary around existing suitable habitat where the surrounding area is unsuitable for the particular organism. This process isolates the habitat patch from other surrounding suitable habitat patches and, depending on the movement dynamics of a particular organism, this habitat separation (or fragmentation) and isolation may result in increased extirpation risk (Bell *et al.* 1991, pp. 1–438).

Information in our files and in the petition indicates that habitat for Hermes copper butterfly has been fragmented by wildfire and urban development. Comparison of Hermes copper butterfly and host plant distribution data with satellite imagery indicates wildfire causes short-term fragmentation of habitat, and much historical habitat has been fragmented by development. Additionally, the extent of habitat fragmentation on USFS lands has not been quantified, but information available at this time indicates that there has been significant loss and possible patchy distribution of the habitat that is remaining (Winter 2010, pers. comm.). Specific impacts of habitat fragmentation on Hermes copper butterfly have not been documented and require further investigation. The smaller and more isolated butterfly populations are, the less likely its habitat patches will be recolonized following extirpation due to wildfire or another catastrophic event. Given that some locations that historically harbored Hermes copper butterflies have been impacted and the existence of a possibility of habitat fragmentation, further investigation is necessary to determine the implications of these findings to Hermes copper butterfly's persistence.

In summary, we evaluated the petition and information in our files and find substantial information has been presented in the petition or is available in our files to indicate listing Hermes copper butterfly may be warranted due to the present or threatened destruction, modification, or curtailment of the species' habitat or range. In particular,

we find that fires that have occurred in the north and south of the species' range and development (including urban development and activities on CNF lands) through the center of its distribution may have impacted the habitat (host plant and nectar sources) through loss or fragmentation and, in turn, may threaten the species' existence.

B. Overutilization for Commercial, Recreational, Scientific, or Educational Purposes

Information Provided in the Petition

The petitioner claims at least one commercial operation may impact Hermes copper butterfly. According to the petition, a company called "Morningstar Flower and Vibrational Essences" markets a Hermes copper "butterfly essence" through their website. The petitioner states it is unclear how these essences are manufactured or obtained; however, the petition states that flower essences are produced by soaking the material in water, alcohol, or vinegar. Additionally, the petition states that over-collection may impact the Hermes copper butterfly. The petitioner claims that a female Hermes copper butterfly was worth up to $20.00 in 1986.

Evaluation of Information Provided in the Petition and Available in Service Files

Neither the petition nor information available in our files indicates that commercial use threatens the existence of Hermes copper butterfly. Information in our files indicates that no Hermes copper butterflies, whole or physical parts, are used in the process of making these butterfly essences (Morning Star Essences, pers. comm., 2006). We are unaware of any other business that markets and sells "butterfly essences," and we have no information to indicate this activity threatens Hermes copper butterfly.

Additionally, there is no information in our files or the petition to indicate over-collection is a threat to Hermes copper butterfly. We have information in our files that on June 26, 2004, two different advertisements on the Internet offered specimens of Hermes copper butterfly for sale for approximately $152.00 (Martin, pers. comm., 2004). However, there is no evidence that trade or collection directly contributes, or is a substantial threat, to the species.

After a review of information in our files and in the petition, we do not find substantial information to indicate that listing Hermes copper butterfly may be warranted due to overutilization for commercial, recreational, scientific, or educational purposes. However, we will further investigate the potential threat of overutilization for commercial, recreational, scientific, or education purposes in our status review for this species.

C. Disease or Predation

Disease

There was no information provided in the petition nor do we have any information in our files to indicate that disease is a threat to the Hermes copper butterfly.

Predation

Information Provided in the Petition

The petitioner states that species experts suspect predatory insects, and parasitic insects, spiders, and possibly birds, prey upon Hermes copper butterfly. Additionally, the petitioner asserts that the harmful effects of otherwise normal predation or parasitism might be exacerbated by population reduction from excessive fires. We received additional information from the petitioner in an email on March 5, 2010 (Evans 2010). The petitioner submitted one piece of anecdotal species information we did not already have in our files, a personal communication (cited "D. Faulkner, V. Marquez-Waller pers. comm. on 4/16/08") that a "Ladybird beetle" is a potential Hermes copper butterfly predator (Evans 2010 attachment, p. 8).

Evaluation of Information Provided in the Petition and Available in Service Files

Faulkner and Klein (2005, p. 26) state that no documentation exists of parasitism or predation on Hermes copper butterfly, and we have no information in our files that suggests parasitism or predation is a threat to the species' existence. The petitioner did not provide information to support the hypothesis that predation or parasitism may exacerbate population reduction as result of fire or any specific information that "Ladybird beetles" may be a significant predator, and we have no information in our files to support either of these claims.

After a review of information in our files and in the petition, we do not find substantial information to indicate that listing Hermes copper butterfly may be warranted due to disease or predation. However, we will further investigate the potential threat of disease and predation in our status review for this species.

D. The Inadequacy of Existing Regulatory Mechanisms

The petition states very few regulatory mechanisms are in place that afford Hermes copper butterfly conservation; however, the petitioner states the following mechanisms may provide some conservation:

(1) The California Environmental Quality Act (CEQA);

(2) National Environmental Policy Act (NEPA) (42 U.S.C. 4321 *et seq.*);

(3) U.S. Forest Service management;

(4) San Diego Multiple Species Conservation Plan (MSCP);

(5) Biological Mitigation Ordinance (BMO);

(6) County of San Diego Resource Protection Ordinance (RPO); and

(7) City and County of San Diego open space parks.

The petitioner states that although the measures listed above exist, they have not proven effective in reducing what the petitioner believes are the primary threats to Hermes copper butterfly survival (urban development, wildfire, and habitat degradation).

California Environmental Quality (CEQA) and National Environmental Policy Acts (NEPA)

Information Provided in the Petition

The petitioner claims the Service has previously provided extensive discussion of the inadequacy of CEQA to protect imperiled species, identifying several listings in the **Federal Register** (62 FR 2318, January 16, 1997; 62 FR 4935, February 3, 1997; 61 FR 25829, May 23, 1996; 69 FR 47236, August 4, 2004). The petitioner did not provide information regarding NEPA.

Evaluation of Information Provided in the Petition and Available in Service Files

CEQA and NEPA provide some protection for Hermes copper butterfly. CEQA (Public Resources Code, Sections 21000-21178, and Title 14 CCR, Section 753, and Sections 15000-15387) requires public agencies to disclose environmental impacts of a project on native species and natural communities during the land use planning process and to identify and impose mitigation measures to reduce project impacts to a less than significant level unless the agency makes a finding of overriding consideration. Through this process, CEQA ensures that proposed project effects on Hermes copper butterflies will be considered and, generally, reduced or mitigated. NEPA requires Federal agencies to disclose the significant impacts of a proposed action but does not require that such impacts be

reduced to a level of insignificance. These statutes provide some protection for Hermes copper butterfly and its habitat.

U.S. Forest Service (USFS) Management

Information Provided in the Petition

The petitioner claims U.S. Forest Service regulations and management activities appear to provide few protections to Hermes copper butterfly. The petitioner states that, aside from monitoring survey results by others, there is no indication that the Cleveland National Forest (CNF) is engaged in the conservation of Hermes copper butterfly. Additionally, the petitioner states that Hermes copper butterfly is not recognized as a "sensitive species" by the U.S. Forest Service, which would provide monitoring efforts to track the species' status and some protection from harmful projects. However, the petitioner states that even if the U.S. Forest Service recognized Hermes copper butterfly as a "sensitive species," proactive conservation activities would not be implemented until the species receives protection from the Act.

Evaluation of Information Provided in the Petition and Available in Service Files

Information in our files does support the petitioner's claim that inadequacy of U.S. Forest Service management may be a contributing factor impacting the survival of the Hermes copper butterfly. According to the 2005 LRMP currently in place for CNF, Hermes copper butterfly is considered an animal species-at-risk by U.S. Forest Service but is not currently recognized as a "sensitive species" by the U.S. Forest Service. Because the butterfly is not currently identified as a "sensitive species," preventative measures by the U.S. Forest Service to avoid impacts from development, excessive wildfire often as a result of development projects, and habitat fragmentation (see Factor A discussion) to Hermes copper butterflies or their habitat are not required. However, information in our files indicates that the U.S. Forest Service is taking some management actions to protect and conserve this species. The following management efforts are being implemented or are planned on U.S. Forest Service lands leading to the conservation and protection of Hermes copper butterfly:

(1) All historical locations have been surveyed;

(2) Re-vegetation of *Eriogonum fasciculatum* (California buckwheat), an important nectar source, is planned for the Barber Mountain area where most of this nectar source was burned in the 2007 fire; and

(3) The Sunrise Powerlink project was modified to protect remaining Hermes copper butterfly habitat on Barber Mountain (Winter 2009, pers. comm.).

The "sensitive species" list is currently being updated by U.S. Forest Service and will likely include Hermes copper butterfly (Winter 2009, pers. comm.); however, this is a future action that is not certain.

In summary, although U.S. Forest Service has undertaken or is planning some preventative measures to avoid impacts to Hermes copper butterfly and its habitat, the failure of the CNF to identify Hermes copper butterfly as a sensitive species under its LRMP suggests that current regulation may not be adequate to protect the species and its habitat from future development, related impacts, such as habitat loss, (fragmentation and excessive wildfire), and similar impacts resulting for the maintenance of existing facilities and roads on U.S. Forest Service lands. The conservation measures and preventative actions listed above that the U.S. Forest Service has implemented or is planning to implement on the CNF are not required and do not prohibit activities that may impact Hermes copper butterfly or its habitat.

San Diego Multiple Species Conservation Plan (MSCP), the Biological Mitigation Ordinance, and the County of San Diego Resource Protection Ordinance

Information Provided in the Petition

The petitioner states that:

(1) Hermes copper butterfly is not recognized as a "covered species" under the County of San Diego's Subarea Plan under the MSCP (MSCP 1998);

(2) The MSCP cannot provide the necessary management to benefit the species because no species-specific management is planned, described, or required; and

(3) The MSCP can benefit Hermes copper butterfly only in the event of collaterally beneficial conservation activities for other species and habitats.

The petitioner claims the informal treatment of Hermes copper butterfly by the MSCP provides few conservation benefits. The petitioner also states that the MSCP identifies only three sites where the butterfly occurs in the Metro-Lakeside-Jamul Segment of the County of San Diego Subarea Plan. The petitioner claims that conservation under the County of San Diego Subarea Plan is presumably provided under the Biological Mitigation Ordinance (BMO) that applies to more species than those covered under MSCP, and establishes mitigation ratios and conditions for impacted species within the County. However, the petitioner states that the BMO only protects those "non-covered" species if they are inside the County of San Diego Subarea Plan's Biological Resources Core Areas, and even then, the County of San Diego Subarea Plan does not require avoidance of important Hermes copper butterfly populations, habitat, or dispersal corridors. Moreover, the BMO would not improve the species' status. The petitioners also claim the County of San Diego Resource Protection Ordinance (RPO), which imposes controls on development of wetlands, floodplains, steep slopes, sensitive biological habitats, and historical sites outside the boundaries of the County of San Diego Subarea Plan, does not directly protect species or impose any species-specific management efforts. Rather, the RPO attempts to minimize the impacts of urban development on habitat. The petition states that the County of San Diego asserts these regulatory measures will still contribute to conservation of the Hermes copper butterfly; however, the petitioner noted that the County of San Diego Subarea Plan provides only inadvertent protection to the species, which the petitioner believes is insufficient.

Evaluation of Information Provided in the Petition and Available in Service Files

Information in our files indicates that Hermes copper butterfly is not a "covered species" under the County of San Diego Subarea Plan (Service 1998, p. 2). Although not a "covered species" under the plan, the Hermes copper butterfly and its habitat receive some indirect protection through land use restrictions applicable to lands within the County of San Diego under the BMO (in effect since 2004) and the RPO. The BMO, which applies to areas in the county covered by the County's approved MSCP Subarea Plan, implements preserve design criteria for urban development and provides for conservation of sensitive biological habitats, such as chaparral, coastal sage scrub, and woodland, by establishing mitigation ratios and project development conditions. Therefore, the BMO may provide some protection and mitigation for larval and adult habitat for the Hermes copper butterfly within the County of San Diego MSCP Subarea Plan to the extent that habitat occurs within sensitive biological habitats regulated by the BML. The RPO, which applies to the entire County of San Diego (and not solely outside the

boundaries of the MSCP as stated in the petition), provides protection and requires mitigation for impacts to Hermes copper butterfly habitat that is deemed sensitive habitat land or occurs on steep slopes. The County of San Diego Guidelines for Determining Significance and Report Format and Content Requirements for Biological Resources (County of San Diego 2009, p. 7) includes guidance that habitat occupied by Hermes copper butterfly should be considered sensitive, thus triggering species-based mitigation and avoidance to the maximum extent possible under the RPO. Hermes copper butterfly is included on the County's Group 1 Sensitive Animals List because it is considered a rare endemic species and is on the State of California's special animal taxa list (County of San Diego 2009, p. 50; CDFG 2009). Therefore, the MSCP, BMO, and RPO provide variable protection to the Hermes copper butterfly habitat depending on the specific regulatory mechanism and habitat location.

City of San Diego and County of San Diego Open Space Parks

Information Provided in the Petition

The petition states that remaining Hermes copper butterfly populations are not necessarily protected from edge effects, wildfire, or potential park development by the nature of their location on the following open space park lands managed by the City or County of San Diego: Mission Trails Regional Park, McGinty Mountain, and Black Mountain. The petitioner claims Hermes copper butterfly cannot directly benefit from these open spaces without formal protection.

Evaluation of Information Provided in the Petition and Available in Service Files

Information in our files does not support the petitioner's claim that lack of specific management plans or area-specific management directives for open space parks threatens the persistence of Hermes copper butterfly. Furthermore, McGinty Mountain is part of the San Diego National Wildlife Refuge and is not managed by the City or County of San Diego. Although there are no formal management plans in our files written by the City or County of San Diego for these specific parks, it appears Hermes copper butterfly is persisting at all three locations listed in the petition. Information in our files indicates that:

(1) Hermes copper butterfly has been observed historically at Mission Trails Regional Park since the late 1950s through current surveys in 2009;

(2) Observations at McGinty Mountain were first reported in the 1980s and the butterfly has been repeatedly observed since; and

(3) The City of San Diego's website on the Black Mountain Open Space Park states that all plants and animals found within the park are protected and must not be harmed or removed (City of San Diego 2009); Hermes copper butterflies were observed on Black Mountain in 2004.

There are few known occurrences of Hermes copper butterflies in City or County open space parks. Although there is no formal regulation or management specifically for Hermes copper butterflies on these lands, we are not aware of any evidence to suggest that the absence of such regulation and management poses a threat to the Hermes copper butterfly or its habitat.

In summary, we have evaluated the petition and information in our files and find substantial information exists to indicate that listing the Hermes butterfly may be warranted because existing regulatory mechanisms may not adequately address the threats of habitat loss and fragmentation posed by development related impacts, including human-induced, excessive wildfire (see Factor A discussion). The regulatory mechanisms discussed above provide a patchwork of protection for Hermes copper butterfly and its habitat; however, the cumulative protection provided by these mechanisms may not adequately remove the threat of habitat loss and fragmentation resulting from development. We do not believe that the observed increase in frequency of natural wildfires recently observed in Hermes butterfly habitat is a threat amenable to reduction or elimination by regulatory mechanisms. However, we will further investigate the effectiveness of existing regulatory mechanisms to protect the Hermes copper butterfly and its habitat from wildfire and other potential threats in our status review of the species.

E. Other Natural or Manmade Factors Affecting the Species' Continued Existence

The petition, its appendices, and referenced documents discuss the following threats that are grouped under Factor E: wildfire, vulnerability of small and isolated populations, and global climate change.

Mortality Due to Wildfire

Information Provided in the Petition

The petitioner states that the Hermes copper butterfly cannot escape fire. The petitioner states that: (1) Pupae and larvae are likely killed when fire burns *Rhamnus crocea* and other nearby coastal sage scrub or chaparral vegetation; (2) adults are likely killed by fire due to their habit of remaining close to their host plant; and (3) adults are likely outpaced by an approaching fire. The petition claims excessive fires over the last several decades have reduced Hermes copper butterfly population numbers and disrupted metapopulation dynamics and stability.

Evaluation of Information Provided in the Petition and Available in Service Files

Fire causes direct mortality of Hermes copper butterflies, and is reported to have extirpated a population in habitat where they were not observed again until 18 years after the fire (Faulkner and Klein 2005, pp. 24–26). The persistence of Hermes copper butterfly after the 2003 fires was at first questioned because much of the fire footprint appeared to cover known locations occupied by the species (Betzler *et al.* 2003, p. 12). However, information in our files indicates Hermes copper butterfly persisted in reduced numbers at sites within the 2003 and 2007 fire footprints (such as Mission Trails Regional Park, Wildwood Glen Lane in CNF, Barber Mountain, and Potrero Road). Given the described negative impacts of fire on Hermes copper butterfly populations (Faulkner and Klein 2005, pp. 24–26), it is likely the species' existence is threatened by wildfires. Additional surveys and monitoring are needed to determine the survival and recolonization rate following fire to address the petitioner's claim of a direct mortality extinction threat due to high fire frequency. After reviewing the petition and information in our files, we find substantial information exists indicating that listing the Hermes copper butterfly may be warranted due to the threat of mortality from wildfire.

Vulnerability of Small and Isolated Populations

Information Provided in the Petition

The petitioner asserts that endemic taxa such as Hermes copper butterfly are considered more prone to extinction than widespread species due to their restricted geographical range and that population isolation is exacerbated by habitat fragmentation (see Factor A above for discussion of habitat fragmentation). According to the petition, the common factors that increase the vulnerability of small and isolated populations to extinction are demographic fluctuations,

environmental stochasticity (random events), and reduced genetic diversity.

Evaluation of Information Provided in the Petition and Available in Service Files

Small population size, a low number of populations, or population isolation are not necessarily factors that may threaten a species independently. Typically, it is the combination of small size and number and isolation of populations in conjunction with other threats (such as the present or threatened destruction, modification, or curtailment of the species' habitat or range) that may significantly increase the probability of species' extinction.

Information in our files indicates large annual fluctuations in observed abundance of adult butterflies are common throughout this butterfly's range. Adult butterfly abundance may fluctuate approximately two orders of magnitude from one year to the next and may be correlated with rainfall levels (Klein and Faulkner 2003, p. 96); however, it is not clear how adult observations correlate with abundance of all life stages, including diapausing (quiescent) stages. Also, much uncertainty exists regarding the species' distribution because the range of its host plant, *Rhamnus crocea*, extends well beyond the known range of the butterfly and surveys have not been conducted throughout the host plant's range (especially inland San Diego County and northwestern Baja California, Mexico).

Population isolation and fragmentation may render smaller populations more vulnerable to stochastic extirpation. Small populations and isolation could also subject the butterfly to genetic drift and restricted gene flow that may decrease genetic variability over time and could adversely affect species' viability (Allee 1931, pp. 12-37; Stephens *et al.* 1999, pp. 185-190; Dennis 2002, pp. 389-401). Information in our files indicates that reduced adult Hermes copper butterfly densities are present in burned areas (see Factor A discussion on *Wildfire*) and new occurrences (such as at Potrero Road, north Lyons Valley, and west Japatul Valley) have been documented after the 2003 and 2007 fires. Sufficient distribution, population structure, genetic, or demographic information about the species to determine the effect of isolation and small population size is currently unavailable. However, information in our files indicates that the habitat area and range that the species inhabits have been reduced and fragmented and the status of some historical occurrences remains unknown after recent fires; therefore, stochastic extinction as a result of restricted geographical range or population isolation may pose a significant threat to the species.

Global Climate Change

Information Provided in the Petition

The petitioner asserts that butterflies (in general) are threatened by global climate change and are specifically sensitive to small changes in microclimate, such as fluctuations in moisture, temperature, or sunlight. According to the petition, studies of Edith's checkerspot butterfly (*Euphydryas editha*) have shown that whole ecosystems may move northward or shift in elevation as the Earth's climate warms (Parmesan and Galbraith 2004, p. 9).

Evaluation of Information Provided in the Petition and Available in Service Files

We recognize recent evaluations by Parmesan and Galbraith (2004, pp. 1–2, 29–33) that indicate that whole ecosystems may be shifting northward and upward in elevation, or are otherwise being altered by differing climate tolerance among species within a community. Additionally, we recognize that climate change is likely to cause changes in the arrangement and community composition of occupied habitat patches. Current climate change predictions for terrestrial areas in the Northern Hemisphere indicate warmer air temperatures, more intense precipitation events, and increased summer continental drying (Field *et al.* 1999, pp. 1–3; Hayhoe *et al.* 2004, p. 12422; Cayan *et al.* 2005, p. 6; Intergovernmental Panel on Climate Change (IPCC) 2007, p. 11). However, predictions of climatic conditions for smaller subregions, such as California, remain less certain. Thus, the information currently available in our files on the effects of global climate change, such as increasing temperatures or moisture, require further analysis and comparison with local climate models and other literature to make sufficiently certain estimates of the likely magnitude of predicted effects on Hermes copper butterfly. Given the current uncertainty, we find that information in our files does not provide substantial information suggesting that global climate change may be a factor that threatens Hermes copper butterfly. We will further investigate this potential threat to Hermes copper butterfly in our status review of the species.

In summary, we find the petition and information in our files provide substantial information indicating that listing Hermes copper butterfly may be warranted due to other natural or manmade factors affecting the species' continued existence. Specifically, we find that mortality due to wildfire and restricted geographical range or population isolation may pose significant threats to the species.

Finding

On the basis of our determination under section 4(b)(3)(A) of the Act, we determine that the petition presents substantial scientific or commercial information indicating that listing the Hermes copper butterfly may be warranted. This finding is based on information provided under Factor A (present or threatened destruction, modification, or curtailment of the species' habitat or range), Factor D (the inadequacy of existing regulatory mechanisms), and Factor E (other natural or manmade factors affecting the species' continued existence). Because we find that the petition presents substantial information indicating that listing the Hermes copper butterfly may be warranted, we are initiating a status review to determine whether listing the Hermes copper butterfly under the Act is warranted.

The "substantial information" standard for a 90–day finding differs from the Act's "best scientific and commercial data" standard that applies to a status review to determine whether a petitioned action is warranted. A 90–day finding does not constitute a status review under the Act. In a 12–month finding, we will determine whether a petitioned action is warranted after we have completed a thorough status review of the species, which is conducted following a substantial 90–day finding. Because the Act's standards for 90–day and 12–month findings are different, as described above, a substantial 90–day finding does not mean that the 12–month finding will result in a warranted finding.

The petitioner requested that critical habitat be designated for this species. If we determine in our 12–month finding that listing Hermes copper butterfly is warranted, we will address the designation of critical habitat at the time of the proposed rulemaking. The proposed rulemaking may be published concurrently with the 12–month finding or at a later date.

References Cited

A complete list of references cited is available on the Internet at *http://www.regulations.gov* and upon request from the Carlsbad Fish and Wildlife

Office (see **FOR FURTHER INFORMATION CONTACT**).

Author

The primary authors of this notice are staff members of the Carlsbad Fish and Wildlife Office (see **FOR FURTHER INFORMATION CONTACT**).

Authority

The authority for this action is the Endangered Species Act of 1973, as amended (16 U.S.C. 1531 *et seq.*).

Dated: April 19, 2010.

Daniel M. Ashe,

Acting Director, Fish and Wildlife Service.

[FR Doc. 2010–10317 Filed 5–3–10; 8:45 am]

BILLING CODE 4310–55–S

Notices

Federal Register
Vol. 75, No. 85
Tuesday, May 4, 2010

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

Submission for OMB Review; Comment Request

April 29, 2010.

The Department of Agriculture has submitted the following information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1995, Public Law 104–13. Comments regarding (a) whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (b) the accuracy of the agency's estimate of burden including the validity of the methodology and assumptions used; (c) ways to enhance the quality, utility and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology should be addressed to: Desk Officer for Agriculture, Office of Information and Regulatory Affairs, Office of Management and Budget (OMB), *Pamela_Beverly_OIRA_Submission@OMB.EOP.GOV* or fax (202) 395–5806 and to Departmental Clearance Office, USDA, OCIO, Mail Stop 7602, Washington, DC 20250–7602. Comments regarding these information collections are best assured of having their full effect if received within 30 days of this notification. Copies of the submission(s) may be obtained by calling (202) 720–8958.

An agency may not conduct or sponsor a collection of information unless the collection of information displays a currently valid OMB control number and the agency informs potential persons who are to respond to the collection of information that such persons are not required to respond to the collection of information unless it displays a currently valid OMB control number.

Cooperative State Research, Education, and Extension Service

Title: Veterinary Medicine Loan Repayment Program (VMLRP) Shortage Situation.

OMB Control Number: 0524–0046.

Summary of Collection: In January 2003, the National Veterinary Medical Service Act (NVMSA) was passed into law adding section 1415A to the National Agricultural Research, Extension, and Teaching Policy Act of 1997. This law established a new Veterinary Medicine Loan Repayment Program (VMLRP) (7 U.S.C. 3151a) authorizing the Secretary of Agriculture to carry out a program of entering into agreements with veterinarians under which they agree to provide veterinary services in veterinarian shortage situations. The purpose of the program is to assure an adequate supply of trained food animal veterinarians in shortage situations and provide USDA with a pool of veterinary specialists to assist in the control and eradication of animal disease outbreaks.

Need and Use of the Information: The National Institute of Food and Agriculture (NIFA) will collect information using the Veterinarian Shortage Situation Nomination form. Applications for the VMLRP will be accepted from eligible veterinarians who agree to serve in one of the designated shortage situations in exchange for the repayment of the veterinarian's qualifying educational loans. The nomination form includes a series of questions that will need to be answered before the nomination can be submitted to the peer panelists for their review and recommendations.

Description of Respondents: State, Local or Tribal Government.

Number of Respondents: 60.

Frequency of Responses: Reporting: Biennially.

Total Burden Hours: 480.

Ruth Brown,

Departmental Information Collection Clearance Officer.

[FR Doc. 2010–10427 Filed 5–3–10; 8:45 am]

BILLING CODE 3410–09–P

DEPARTMENT OF AGRICULTURE

Submission for OMB Review; Comment Request

April 29, 2010.

The Department of Agriculture has submitted the following information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1995, Public Law 104–13. Comments regarding (a) whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (b) the accuracy of the agency's estimate of burden including the validity of the methodology and assumptions used; (c) ways to enhance the quality, utility and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology should be addressed to: Desk Officer for Agriculture, Office of Information and Regulatory Affairs, Office of Management and Budget (OMB), *OIRA_Submission@OMB.EOP.GOV* or fax (202) 395–5806 and to Departmental Clearance Office, USDA, OCIO, Mail Stop 7602, Washington, DC 20250–7602. Comments regarding these information collections are best assured of having their full effect if received within 30 days of this notification. Copies of the submission(s) may be obtained by calling (202) 720–8958.

An agency may not conduct or sponsor a collection of information unless the collection of information displays a currently valid OMB control number and the agency informs potential persons who are to respond to the collection of information that such persons are not required to respond to the collection of information unless it displays a currently valid OMB control number.

Animal and Plant Health Inspection Service

Title: Untreated Oranges, Tangerines, and Grapefruit from Mexico Transiting the United States to Foreign Countries.

OMB Control Number: 0579–0303.

Summary of Collection: Under the Plant Protection Act (7 U.S.C. 7701–7772), the Secretary of Agriculture is authorized to prohibit or restrict the importation, entry, or movement of plants and plant pests to prevent the introduction of plant pests into the United States or their dissemination within the United States. The Code of Federal Regulations, § 352.30 addresses the movement into or through the United States of untreated oranges, tangerines, and grapefruit from Mexico that transit the United States en route to foreign countries.

Need and Use of the Information: The Animal and Plant Health Inspection Service (APHIS) is taking action to provide additional protection against the possible introduction of fruit flies via untreated oranges, tangerines, and grapefruit from Mexico that transit the United States. Untreated oranges, tangerines, and grapefruit from Mexico transiting the United States for export to another country must be shipped in sealed, refrigerated container and insect-proof packaging. A transportation and exportation permit must be issued by an inspector for shipments of untreated oranges, tangerines, and grapefruit from Mexico. Without the information, APHIS would not be able to allow the movement of untreated citrus to transit the United States to foreign countries.

Description of Respondents: Business or other for-profit; Individual or households.

Number of Respondents: 25.

Frequency of Responses: Reporting: On occasion.

Total Burden Hours: 13.

Ruth Brown,

Departmental Information Collection Clearance Officer.

[FR Doc. 2010–10429 Filed 5–3–10; 8:45 am]

BILLING CODE 3410–34–P

DEPARTMENT OF AGRICULTURE

Food and Nutrition Service

Agency Information Collection Activities: Proposed Collection; Comment Request—Supplemental Nutrition Assistance Program State Agency Options

AGENCY: Food and Nutrition Service, USDA.

ACTION: Notice.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, this notice invites the general public and other public agencies to comment on the proposed collection. This collection is an extension without change for the State Agency Options, Standard Utility Allowance and Self Employment Costs, burden calculations for the Supplemental Nutrition Assistance Program (SNAP), formerly known as the Food Stamp Program.

DATES: Written comments must be received on or before July 6, 2010.

ADDRESSES: Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information including the validity of the methodology and assumptions used; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on those who respond, 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 Angela Kline, Chief, Certification Policy Branch, Program Development Division, FNS, U.S. Department of Agriculture, 3101 Park Center Drive, Room 812, Alexandria, VA 22302. Comments may also be faxed to the attention of Ms. Kline at (703) 305–2486. The Internet address is: *Angela.Kline@FNS.USDA.GOV.*

Comments will also be accepted through the Federal eRulemaking Portal. Go to *http://www.regulations.gov* and follow the online instructions for submitting comments electronically.

All written comments will be open for public inspection at the office of the FNS during regular business hours (8:30 a.m. to 5 p.m., Monday through Friday) at 3101 Park Center Drive, Alexandria, Virginia, 22302, Room 800.

All responses to this notice will be summarized and included in the request for OMB approval. All comments will be a matter of public record.

FOR FURTHER INFORMATION CONTACT: Requests for additional information should be directed to Ms. Kline at (703) 305–2495.

SUPPLEMENTARY INFORMATION:

Title: Supplemental Nutrition Assistance Program: State Agency Options.

OMB Number: 0584–0496.

Form Number: None.

Expiration Date: 10/31/2010.

Type of Request: Extension without change of a currently approved information collection.

Abstract: This collection is an extension without change for the State Agency Options, Standard Utility Allowance and Self Employment Costs, burden calculations for SNAP, formerly known as the Food Stamp Program. The program's name was changed by the Food, Conservation, and Energy Act of 2008 (Pub. L. 110–246) (FCEA) on October 1, 2008, to reflect the fact that participants no longer receive stamps or coupons to make food purchases and to emphasize the nutritional aspect of the program. To comply with current law, FNS is using the new program name SNAP in this extension of information collection for OMB No. 0584–0496. It should be noted, however, that the program regulations at 7 CFR parts 271–285 have not yet been revised to reflect the new name.

The SNAP regulations at 7 CFR part 273 contain the requirements for the application, certification and continued eligibility for SNAP benefits. On January 29, 2010, FNS published a final rule in the **Federal Register** (75 FR 4912), which codified the eligibility and certification provisions of the Farm Security and Rural Investment Act of 2002 (FSRIA). This notice extends the collection burden. which was recently revised and approved by OMB on March 26, 2010, to account for changes required by the final FSRIA rule.

Establishing and reviewing standard utility allowances. The regulations at 7 CFR 273.9(d)(6)(iii) allow State agencies to establish standard utility allowances (SUA) in place of the actual utility costs incurred by a household. Once SUAs are established, State agencies are required to review and adjust SUAs annually to reflect changes in the costs of utilities. Many State agencies already have one or more approved standards, which they update annually. State agencies may use information already available from case files, quality control reviews or other sources and from utility companies. State agencies may make adjustments based on cost-of-living increases. The information will be used to establish standards to be used in place of actual utility costs in the computation of the excess shelter deduction. State agencies are required to submit the amounts of these standards and methodologies used in developing and updating the standards to FNS when they are developed or changed.

Estimates of burden: Currently 52 State agencies have a standard that includes heating or cooling costs and 41 have a standard for utility costs other than heating or cooling. In addition, 51 State agencies have a telephone allowance standard. We estimate a minimum of 2.5 hours annually to make this review and adjustment (2.5 hours × 52 State agencies = 130 hours). Total

burden for this provision is estimated to be 130 hours per year.

Self-employment costs. The regulations at 7 CFR 273.11(b) allow self-employment gross income to be reduced by the cost of producing such income. The regulations allow the State agencies, with approval from FNS, to establish the methodology for offsetting the costs of producing self-employment income, as long as the procedure does not increase program costs. State agencies may submit a request to FNS to use a method of producing a reasonable estimate of the costs of producing self-employment income in lieu of calculating the actual costs for each household with such income. Different methods may be proposed for different types of self-employment. The proposal shall include a description of the proposed method, the number and type of households and percent of the caseload affected, and documentation indicating that the proposed procedure will not increase program costs. State agencies may collect this data from household case records or other sources that may be available.

Estimates of burden: We estimate that 10 State agencies will submit a request of this type each year for the next three years. It is estimated that these States will incur a one-time burden of at least 10 working hours gathering and analyzing data, developing the methodology, determining the cost implication, and submitting a request to FNS for a total burden of 100 hours annually (10 State agencies × 10 working hours = 100 burden hours). State agencies are not required to periodically review their approved methodologies. We do not anticipate that State agencies will voluntarily review their methodologies for change on a regular basis, thus burden is not being assessed for this purpose.

Recordkeeping burden only: Each State agency would be required to keep a record of the information gathered and submitted to FNS for the SUA and self-employment costs. We estimate this to be 7 minutes or .1169 hours per year for the 53 State agencies to equal a total of 6 burden hours annually (53 State agencies × .1169 hours = 6 hours annual burden).

Summary of burden hours:

Affected Public: State agencies and local governments administering the SNAP.

Estimated Number of Respondents: 53.

Estimated Number of Responses Per Respondent: 1.

Estimated Number of Responses: 115.

Estimated Hours per Response: 12.6.

Estimated Total Annual Burden on Respondents: 236.

OMB # 0584–0496	Requirement	Estimated number of respondents	Response annually per respondent	Total annual responses	Hours per response	Annual burden hours
Affected Public						
State Agency						
Reporting Burden	Standard Utility Allowance	52	1	52	2.5	130
	Self-employment costs	10	1	10	10	100
	Reporting Totals	52		62		230
Recordkeeping Burden	Recordkeeping	53	1	53	.1169	6
	Recordkeeping Totals	53		53		6
	Total Recordkeeping and Reporting Burden.	53		115		236
	Total Number of Record Keepers.	53				

Dated: April 27, 2010.

Julia Paradis,

Administrator, Food and Nutrition Service.

[FR Doc. 2010–10390 Filed 5–3–10; 8:45 am]

BILLING CODE 3410–30–P

DEPARTMENT OF AGRICULTURE

Forest Service

Huron-Manistee National Forests, White Pines Wind Farm Project, Mason County, MI

AGENCY: Forest Service, USDA.

ACTION: Cancellation Notice of notice of intent to prepare an environmental impact statement.

SUMMARY: The Forest Service proposed to prepare an environmental impact statement for the White Pines Wind Farm Project on National Forest System (NFS) lands managed by the Huron-Manistee National Forests. This project has been cancelled. This cancellation notice terminates the environmental analysis process for the White Pines Wind Farm Project.

DATES: The Notice of Intent to prepare the White Pines Wind Farm Project environmental impact statement was published in the **Federal Register** on September 12, 2008, Vol. 73, No. 178, page 52945. The draft environmental impact statement was expected May 2009 and the final environmental impact statement was expected December 2009. This project has been cancelled.

FOR FURTHER INFORMATION CONTACT: Patricia O'Connell, Cadillac-Manistee Ranger District, Huron-Manistee National Forests; Manistee Ranger Stations, 412 Red Apple Road, Manistee, MI 49660; telephone: 231–723–2211, ext. 3119; fax: 231–723–8642; e-mail: *poconnell@fs.fed.us.* Information updating the status of this project can be found on the Forest's Web site at: *http://fs.usda.gov/Internet/FSE_DOCUMENTS/stelprdb5150088.pdf.*

Responsible Official

Barry Paulson, Forest Supervisor, Huron-Manistee National Forests, 1755 S. Mitchell Street, Cadillac, MI 49601.

Dated: April 26, 2010.

Barry Paulson,

Forest Supervisor.

[FR Doc. 2010–10397 Filed 5–3–10; 8:45 am]

BILLING CODE 3410–11–M

DEPARTMENT OF AGRICULTURE

Foreign Agricultural Service

Trade Adjustment Assistance for Farmers

AGENCY: Foreign Agricultural Service, USDA.

ACTION: Notice of public hearings.

The Administrator today accepted a petition, and began a review of a petition, for trade adjustment assistance by the Michigan Agricultural Cooperative Marketing Association on behalf of apple producers in Michigan. A public hearing to review the merits of the petition will be held in Room 411–P of Suite 400, Portals Office Building, 1250 Maryland Ave., SW., Washington, DC 20024 on May 5, 2010, at 11 a.m. Eastern Time to receive written and oral comments associated with this petition.

SUPPLEMENTARY INFORMATION: The Administrator will determine within 40 days whether or not increasing imports of apple juice contributed to a greater than 15 percent decrease in the national average price of apples compared to the average of the 3 preceding marketing years. The petition maintains that Michigan apple producers have suffered primarily due to increased imports of apple juice concentrate. Over 81 percent of the apple juice consumed in the U.S. is from imported concentrate. If a determination is affirmative, producers who produce and market apples in Michigan will be eligible to apply to the Farm Service Agency for technical assistance and cash benefits. Persons who wish to speak at the hearing must register with the TAA Coordinator at (202) 720–0638 or (202) 690–0633, at least 24 hours before the hearing. Presenters will be allotted time to speak and should submit a written summary of their remarks for the record.

FOR FURTHER INFORMATION CONTACT: Trade Adjustment Assistance Staff, Office of Trade Programs, Foreign Agricultural Service, U.S. Department Agriculture at (202) 720–0638, or by e-mail at: *tradeadjustment@fas.usda.gov.* Additional program information can be obtained at the Web site for the Trade Adjustment Assistance for Farmers program. The URL is *http://www.fas.usda.gov/itp/taa.*

Dated: April 28, 2010.

John D. Brewer,

Administrator, Foreign Agricultural Service.

[FR Doc. 2010–10431 Filed 5–3–10; 8:45 am]

BILLING CODE 3410–10–P

DEPARTMENT OF AGRICULTURE

Foreign Agricultural Service

Trade Adjustment Assistance for Farmers

AGENCY: Foreign Agricultural Service, USDA.

ACTION: Notice of public hearing.

The Administrator today accepted a petition, and began review of a petition, for trade adjustment assistance by the Prune Bargaining Association on behalf of prune producers in California. A public hearing to review the merits of the petition will be held via teleconference on May 6, 2010, at 3 p.m. Eastern Time to receive oral comments associated with this petition.

SUPPLEMENTARY INFORMATION: The Administrator will determine within 40 days whether or not increasing imports of prune juice contributed importantly to a greater than 15 percent decrease in the national average price of prunes compared to the average of the three preceding marketing years. The petition maintains that California prune producers have suffered a greater than 15 percent decrease in the national average price due primarily to U.S. imports of prune juice (primarily in the form of prune juice concentrate) and, to a smaller degree, dried prunes. If a determination is affirmative, producers who produce and market prunes in California will be eligible to apply to the Farm Service Agency for cash benefits and technical assistance at no cost. Persons who wish to listen or speak at the hearing must register with the TAA Coordinator at (202) 720–0638 or (202) 690–0633, at least 24 hours before the hearing. Presenters will be allotted time to speak via telephone and must dial 1 (800) 867–6144. When prompted for your conference code, please enter 4843 on your telephone keypad. Speakers should also submit a written summary of their remarks for the record by faxing them to (202) 720–0876.

FOR FURTHER INFORMATION CONTACT: Trade Adjustment Assistance Staff, FAS, USDA, at (202) 720–0638, or by e-mail at: *tradeadjustment@fas.usda.gov.* Additional program information can be obtained at the Web site for the Trade Adjustment Assistance for Farmers program. The URL is *http://www.fas.usda.gov/itp/taa.*

Dated: April 28, 2010.

John D. Brewer,

Administrator, Foreign Agricultural Service.

[FR Doc. 2010–10439 Filed 5–3–10; 8:45 am]

BILLING CODE 3410–10–P

DEPARTMENT OF COMMERCE

International Trade Administration

A–560–822, A–583–843, A–552–806

Antidumping Duty Orders: Polyethylene Retail Carrier Bags from Indonesia, Taiwan, and the Socialist Republic of Vietnam

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

SUMMARY: Based on affirmative final determinations by the Department of Commerce (the Department) and the International Trade Commission (ITC), the Department is issuing antidumping duty orders on polyethylene retail carrier bags (PRCBs) from Indonesia, Taiwan, and the Socialist Republic of Vietnam (Vietnam). On April 26, 2010, the ITC notified the Department of its affirmative determination of the threat of material injury to a U.S. industry. Pursuant to section 736(a) of the Tariff Act of 1930, as amended (the Act), the Department of Commerce is issuing the antidumping duty orders on PRCBs from Indonesia, Taiwan, and Vietnam.

EFFECTIVE DATE: May 4, 2010

FOR FURTHER INFORMATION CONTACT: Yang Jin Chun (Indonesia) at (202) 482–5760 and Dmitry Vladimirov (Taiwan) at (202) 482–0665, AD/CVD Operations, Office 5, and Shawn Higgins (Vietnam) at (202) 482–0679, AD/CVD Operations, Office 4, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Washington, DC 20230.

SUPPLEMENTARY INFORMATION:

Background

On March 26, 2010, the Department published its affirmative final determination of sales at less than fair value in the antidumping duty investigation of PRCBs from Taiwan. *See Polyethylene Retail Carrier Bags from Taiwan: Final Determination of Sales at Less Than Fair Value*, 75 FR 14569 (March 26, 2010). On April 1, 2010, the Department published its affirmative final determinations of sales at less than fair value in the antidumping duty investigations of PRCBs from Indonesia and Vietnam. *See Polyethylene Retail Carrier Bags From Indonesia: Final Determination of Sales at Less Than Fair Value*, 75 FR 16431 (April 1, 2010), and *Polyethylene Retail Carrier Bags From the Socialist Republic of Vietnam: Final Determination of Sales at Less Than Fair Value*, 75 FR 16434 (April 1, 2010).

On April 26, 2010, the ITC notified the Department of its final

determination, pursuant to section 735(d) of the Act, that an industry in the United States is threatened with material injury by reason of less–than-fair–value imports of PRCBs from Indonesia, Taiwan, and Vietnam. See section 735(b)(1)(A)(i) of the Act and *Polyethylene Retail Carrier Bags from Indonesia, Taiwan, and Vietnam*, Investigation Nos. 701–TA–462 and 731–TA–1156–1158 (Final), USITC Publication 4144 (April 2010).

Scope of the Orders

The merchandise subject to these antidumping duty orders are PRCBs, which also may be referred to as t–shirt sacks, merchandise bags, grocery bags, or checkout bags. The subject merchandise is defined as non–sealable sacks and bags with handles (including drawstrings), without zippers or integral extruded closures, with or without gussets, with or without printing, of polyethylene film having a thickness no greater than 0.035 inch (0.889 mm) and no less than 0.00035 inch (0.00889 mm), and with no length or width shorter than 6 inches (15.24 cm) or longer than 40 inches (101.6 cm). The depth of the bag may be shorter than 6 inches (15.24 cm) but not longer than 40 inches (101.6 cm).

PRCBs are typically provided without any consumer packaging and free of charge by retail establishments, *e.g.*, grocery, drug, convenience, department, specialty retail, discount stores, and restaurants to their customers to package and carry their purchased products. The scope of these antidumping duty orders exclude (1) polyethylene bags that are not printed with logos or store names and that are closeable with drawstrings made of polyethylene film and (2) polyethylene bags that are packed in consumer packaging with printing that refers to specific end–uses other than packaging and carrying merchandise from retail establishments, *e.g.*, garbage bags, lawn bags, trash–can liners.

Imports of merchandise included within the scope of these antidumping duty orders are currently classifiable under statistical category 3923.21.0085 of the Harmonized Tariff Schedule of the United States (HTSUS). This subheading may also cover products that are outside the scope of these antidumping duty orders. Although the HTSUS subheading is provided for convenience and customs purposes, the written description of the scope of these antidumping duty orders is dispositive.

Antidumping Duty Orders

On April 26, 2010, in accordance with section 735(d) of the Act, the ITC notified the Department of its final determination that an industry in the United States is threatened with material injury within the meaning of section 735(b)(1)(A)(ii) of the Act by reason of less–than-fair–value imports of PRCBs from Indonesia, Taiwan, and Vietnam.

In accordance with section 736(a)(1) of the Act, the Department will direct U.S. Customs and Border Protection (CBP) to assess, upon further instruction by the Department, antidumping duties equal to the amount by which the normal value of the merchandise exceeds U.S. price of the merchandise for all relevant entries of PRCBs from Indonesia, Taiwan, and Vietnam.

Pursuant to section 736(b)(2) of the Act, duties shall be assessed on subject merchandise entered, or withdrawn from warehouse, for consumption on or after the date of publication of the ITC's notice of final determination if that determination is based on the threat of material injury, other than threat of material injury described in section 736(b)(1) of the Act. Section 736(b)(1) states that, "{i}f the Commission, in its final determination under section 735(b), finds material injury or threat of material injury which, but for the suspension of liquidation under section 733(d)(2) would have led to a finding of material injury, then entries of the subject merchandise, the liquidation of which has been suspended under section 733(d)(2), shall be subject to the imposition of antidumping duties under section 731." In addition, section 736(b)(2) of the Act requires CBP to release any bond or other security and refund any cash deposit made of estimated antidumping duties posted since the Department's preliminary antidumping duty determinations.

Because the ITC's final determination is based on the threat of material injury and is not accompanied by a finding that injury would have resulted but for the imposition of suspension of liquidation of entries since the Department's preliminary determinations, section 736(b)(2) of the Act is applicable. According to section 736(b)(2) of the Act, where the ITC finds threat of material injury, duties shall only be assessed on subject merchandise entered, or withdrawn from warehouse, for consumption on or after the date of publication of the ITC's notice of final determination. In addition, section 736(b)(2) of the Act requires CBP to refund any cash deposits or bonds of estimated antidumping duties posted since the preliminary antidumping determinations and prior to the ITC's notice of final determination.

Therefore, on or after the date of publication of the ITC's notice of final determination in the **Federal Register**, CBP will require, pursuant to section 736(a)(3) of the Act, at the same time as importers would normally deposit estimated duties on this merchandise, a cash deposit equal to the estimated dumping margins listed below. The all–others rates for Indonesia and Taiwan apply to all Indonesian and Taiwanese producers or exporters not specifically listed. The Vietnam–wide rate applies to all Vietnamese exporters of subject merchandise not specifically listed.

The antidumping duty margins and cash–deposit rates are as follows:

INDONESIA

Producer or Exporter	Antidumping Duty Percent Margin
P.T. Sido Bangun Indonesia	85.17
P.T. Super Exim Sari Ltd. and P.T. Super Makmur	69.64
All Others	69.64

TAIWAN

Producer or Exporter	Antidumping Duty Percent Margin
Ipsido Corporation	95.81
TCI Plastic Co., Ltd.	36.54
All Others	36.54

SOCIALIST REPUBLIC OF VIETNAM[1]

Manufacturer	Exporter	Antidumping–Duty Percent Margin
Alpha Plastics (Vietnam) Co., Ltd.^	Alpha Plastics (Vietnam) Co., Ltd.^	52.30
Alta Company°	Alta Company°	52.30
Ampac Packaging Vietnam Ltd.^	Ampac Packaging Vietnam Ltd. ^	52.30
BITAHACO*	BITAHACO*	52.30
Chin Sheng Co., Ltd.*	Chin Sheng Co., Ltd.*	52.30
Chung Va (Vietnam) Plastic Packaging Co., Ltd.^	Chung Va Century Macao Commercial Offshore Limited^	52.30
Hanoi 27–7 Packaging Company Limited, aka Hanoi 27–7 Packaging Company Limited, aka HAPACK Co. Ltd, aka HAPACK°	Hanoi 27–7 Packing Company Limited, aka Hanoi 27–7 Packing Company Limited,aka HAPACK Co. Ltd, aka HAPACK°	52.30
Hoi Hung Company Limited^	Kong Wai Polybag Printing Company^	52.30
Kinsplastic Vietnam Ltd. Co.^	Kinsplastic Vietnam Ltd. Co.^	52.30
Loc Cuong Trading Producing Company Limited, aka Loc Cuong Trading Producing Company, aka Loc Cuong Trading Producing Co. Ltd.*	Loc Cuong Trading Producing Company Limited, aka Loc Cuong Trading Producing Company, aka Loc Cuong Trading Producing Co. Ltd.*	52.30
Ontrue Plastics Co., Ltd. (Vietnam)^	Ontrue Plastics Co., Ltd. (Vietnam)^	52.30
Richway Plastics Vietnam Co., Ltd.^	Richway Plastics Vietnam Co., Ltd.^	52.30
RKW Lotus Limited Co., Ltd., aka RKW Lotus Limited, aka RKW Lotus Ltd.^	RKW Lotus Limited Co., Ltd., aka RKW Lotus Limited, aka RKW Lotus Ltd.^	52.30
VINAPACKINK Co., Ltd.*	VINAPACKINK Co., Ltd.*	52.30
VN K's International Polybags Joint Stock Company *	K's International Polybags MFG Ltd *	52.30
VN Plastic Industries Co. Ltd.^	VN Plastic Industries Co. Ltd.^	52.30
Vietnam–Wide Entity[2]		76.11

[1] The symbol "^"designates companies as foreign-owned separate-rate recipients, "*" designates companies as Vietnamese separate-rate recipients, and "°" designates companies as state-owned separate-rate recipients.

[2] Advance Polybag Co., Ltd., Fotai Vietnam Enterprise Corp., Green Care Packaging Industrial (Vietnam) Co., An Phat Plastic and Packing Joint Stock Co., Genius Development Ltd., J.K.C. Vina Co., Ltd., are all part of the Vietnam-wide entity.

In accordance with section 736(b)(2) of the Act and 19 CFR 351.211(b), the Department will instruct CBP to terminate the suspension of liquidation for entries of PRCBs from Indonesia, Taiwan, and Vietnam entered, or withdrawn from warehouse, for consumption and refund any cash deposits made and release any bonds posted for estimated antidumping duties between the dates of publication of the Department's preliminary determinations on October 27, 2009,[3] for Taiwan and November 3, 2009,[4] for Indonesia and Vietnam and the day before publication of the ITC's final determination in the **Federal Register**.

This notice constitutes the antidumping duty orders with respect to PRCBs from Indonesia, Taiwan, and Vietnam pursuant to section 736(a) of the Act. Interested parties may contact the Central Records Unit of the main Department of Commerce building, Room 1117, for copies of an updated list of antidumping duty orders currently in effect.

These orders are published in accordance with section 736(a) of the Act and 19 CFR 351.211(b).

Dated: April 27, 2010.

Ronald K. Lorentzen,

Deputy Assistant Secretary for Import Administration.

[FR Doc. 2010–10254 Filed 5–3–10; 8:45 am]

BILLING CODE 3510–DS–S

[3] See *Polyethylene Retail Carrier Bags From Taiwan: Preliminary Determination of Sales at Less Than Fair Value and Postponement of Final Determination*, 74 FR 55183 (October 27, 2009).

[4] See *Polyethylene Retail Carrier Bags from Indonesia: Preliminary Determination of Sales at Less Than Fair Value and Postponement of Final Determination, 74 FR 56807 (November 3, 2009), and Polyethylene Retail Carrier Bags From the Socialist Republic of Vietnam: Preliminary Determination of Sales at Less Than Fair Value and Postponement of Final Determination*, 74 FR 56813 (November 3, 2009).

DEPARTMENT OF COMMERCE

International Trade Administration

Application(s) for Duty–Free Entry of Scientific Instruments

Pursuant to Section 6(c) of the Educational, Scientific and Cultural Materials Importation Act of 1966 (Pub. L. 89–651, as amended by Pub. L. 106–36; 80 Stat. 897; 15 CFR part 301), we invite comments on the question of whether instruments of equivalent scientific value, for the purposes for which the instruments shown below are intended to be used, are being manufactured in the United States. Comments must comply with 15 CFR 301.5(a)(3) and (4) of the regulations and be postmarked on or before May 24, 2010. Address written comments to Statutory Import Programs Staff, Room 3720, U.S. Department of Commerce, Washington, D.C. 20230. Applications may be examined between 8:30 A.M. and 5:00 P.M. at the U.S. Department of Commerce in Room 3720.

Docket Number: 10–008. Applicant: Colorado State University, Department of Biomedical Sciences 200 Westlake St., Campus Delivery 1617, Fort Collins, CO 80523. Instrument: Electron Microscope. Manufacturer: JEOL, Ltd., Japan. Intended Use: This instrument will be used for the tomographic analysis of viruses. Justification for Duty–Free Entry: There are no instruments of the same general category as this instrument being produced in the United States. Application accepted by Commissioner of Customs: April 15, 2010.

Docket Number: 10–009. Applicant: University of Oregon, Purchasing & Contracting Services, 720 E. 13th Ave., Suite 302, Eugene, OR 97401–3753. Instrument: Electron Microscope Manufacturer: FEI Company, Czech

Republic. Intended Use: This instrument will be used to study the size, shape and elemental compositions of nanoparticles to determine the effect on biological interactions at the nano scale. Justification for Duty–Free Entry: There are no instruments of the same general category as this instrument being produced in the United States. Application accepted by Commissioner of Customs: April 15, 2010.

Dated: April 28, 2010.

Gregory W. Campbell,

Acting Director, IA Subsidies Enforcement Office.

[FR Doc. 2010–10487 Filed 5–3–10; 8:45 am]

BILLING CODE 3510–DS–S

DEPARTMENT OF COMMERCE

International Trade Administration

(C–552–805)

Polyethylene Retail Carrier Bags from the Socialist Republic of Vietnam: Countervailing Duty Order

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

SUMMARY: Based on affirmative final determinations by the Department of Commerce (the Department) and the U.S. International Trade Commission (ITC), the Department is issuing a countervailing duty order on polyethylene retail carrier bags (PRCBs) from the Socialist Republic of Vietnam (Vietnam).

EFFECTIVE DATE: May 4, 2010.

FOR FURTHER INFORMATION CONTACT: Gene Calvert or Jun Jack Zhao, AD/CVD Operations, Office 6, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Washington, DC 20230; telephone: (202) 482–3586 and (202) 482–1396, respectively.

SUPPLEMENTARY INFORMATION:

Background

In accordance with section 705(d) of the Tariff Act of 1930, as amended (the Act), on April 1, 2010, the Department published its final determination in the countervailing duty investigation of PRCBs from Vietnam. *See Polyethylene Retail Carrier Bags from the Socialist Republic of Vietnam: Final Affirmative Countervailing Duty Determination*, 75 FR 16428 (April 1, 2010).

On April 26, 2010, the ITC notified the Department of its final determination, pursuant to sections 705(b)(1)(A)(ii) and 705(d) of the Act, that a U.S. industry is threatened with material injury by reason of subsidized imports of subject merchandise from Vietnam. *See Polyethylene Retail Carrier Bags from Indonesia, Taiwan, and Vietnam*, USITC Publication 4144, Investigation Nos. 701–TA–462 and 731–TA–1156–1158 (Final) (April 2010). Pursuant to section 706(a) of the Act, the Department is publishing a countervailing duty order on the subject merchandise.

Scope of the Order

The scope of this order covers polyethylene retail carrier bags, which also may be referred to as t–shirt sacks, merchandise bags, grocery bags, or checkout bags. The subject merchandise is defined as non–sealable sacks and bags with handles (including drawstrings), without zippers or integral extruded closures, with or without gussets, with or without printing, of polyethylene film having a thickness no greater than 0.035 inch (0.889 mm) and no less than 0.00035 inch (0.00889 mm), and with no length or width shorter than 6 inches (15.24 cm) or longer than 40 inches (101.6 cm). The depth of the bag may be shorter than 6 inches but not longer than 40 inches (101.6 cm).

PRCBs are typically provided without any consumer packaging and free of charge by retail establishments, *e.g.*, grocery, drug, convenience, department, specialty retail, discount stores, and restaurants to their customers to package and carry their purchased products. The scope of this order excludes (1) polyethylene bags that are not printed with logos or store names and that are closeable with drawstrings made of polyethylene film and (2) polyethylene bags that are packed in consumer packaging with printing that refers to specific end–uses other than packaging and carrying merchandise from retail establishments, *e.g.*, garbage bags, lawn bags, trash–can liners.

Imports of merchandise included within the scope of this order are currently classifiable under statistical category 3923.21.0085 of the Harmonized Tariff Schedule of the United States (HTSUS). This subheading may also cover products that are outside the scope of this order. Furthermore, although the HTSUS subheading is provided for convenience and customs purposes, the written description of the scope of this order is dispositive.

Countervailing Duty Order

In accordance with section 706(a)(1) of the Act, the Department will direct U.S. Customs and Border Protection (CBP) to assess, upon further instruction by the Department, countervailing duties equal to the amount of the net countervailable subsidy for all relevant entries of PRCBs from Vietnam.

According to section 706(b)(2) of the Act, duties shall be assessed on subject merchandise entered, or withdrawn from warehouse, for consumption on or after the date of the ITC's notice of final determination if that determination is based upon threat of material injury. Section 706(b)(1) of the Act states, "If the Commission, in its final determination under section 705(b), finds material injury or threat of material injury which, but for the suspension of liquidation under section 703(d)(2), would have led to a finding of material injury, then entries of the merchandise subject to the countervailing duty order, the liquidation of which has been suspended under section 703(d)(2), shall be subject to the imposition of countervailing duties under section 701(a)." In addition, section 706(b)(2) of the Act requires CBP to refund any cash deposits or bonds of estimated countervailing duties posted since the Department's preliminary countervailing duty determination, if the ITC's final determination is threat–based. Because the ITC's final determination in this case is based on the threat of material injury and is not accompanied by a finding that injury would have resulted but for the imposition of suspension of liquidation of entries since the Department's *Preliminary Determination*[1] was published in the **Federal Register**, section 706(b)(2) of the Act is applicable.

Therefore, the Department will direct CBP to reinstitute suspension of liquidation,[2] and to assess, upon further instruction from the Department, countervailing duties on all unliquidated entries of PRCBs from Vietnam entered, or withdrawn from warehouse, for consumption on or after the date of publication of the ITC's

[1] See *Polyethylene Retail Carrier Bags from the Socialist Republic of Vietnam: Preliminary Affirmative Countervailing Duty Determination and Alignment of Final Countervailing Duty Determination with Final Antidumping Duty Determination*, 74 FR 45811 (September 4, 2009) (*Preliminary Determination*).

[2] The Department instructed CBP to discontinue the suspension of liquidation on January 2, 2010, in accordance with section 703(d) of the Act. Section 703(d) states that suspension of liquidation pursuant to a preliminary determination may not remain in effect for more than four months. Entries of PRCBs from Vietnam made on or after January 2, 2010, and prior to the date of publication of the ITC's final determination in the **Federal Register**, are not liable for the assessment of countervailing duties because of the Department's discontinuation of the suspension of liquidation, effective January 2, 2010.

notice of final determination of threat of material injury in the **Federal Register**.

Cash Deposit Requirements

Pursuant to section 706(a)(3) of the Act, effective on the date of publication of the ITC's notice of final determination in the **Federal Register**, CBP will require, at the same time as importers would normally deposit estimated duties, cash deposits for the subject merchandise equal to the net subsidy rates listed below, except for subject merchandise entered by Chin Sheng Company, Ltd., whose net subsidy rate is *de minimis* and, hence, is excluded from this order. This exclusion applies only to subject merchandise both produced and exported by Chin Sheng Company, Ltd. The all–others rate applies to all producers and exporters of subject merchandise not specifically listed.

Producer/Exporter	Net Subsidy Rate
Advance Polybag Co., Ltd. ...	52.56%
Chin Sheng Company, Ltd. ..	0.44% (*de minimis*)
Fotai Vietnam Enterprise Corp. And Fotai Enterprise Corporation	5.28%
All Others	5.28%

Termination of the Suspension of Liquidation

Pursuant to the ITC's determination of threat of injury to a U.S. industry, the Department will instruct CBP to terminate the suspension of liquidation for entries of PRCBs from Vietnam entered, or withdrawn from warehouse, for consumption prior to the publication of the ITC's notice of final determination. The Department will also instruct CBP to refund any cash deposits made, and to release any bonds posted between September 4, 2009 (*i.e.*, the date of publication of the Department's *Preliminary Determination*) and on or before January 2, 2010, the date on which the Department discontinued the suspension of liquidation pursuant to section 703(d) of the Act.

This notice constitutes the countervailing duty order with respect to PRCBs from Vietnam, pursuant to section 706(a) of the Act. Interested parties may contact the Department's Central Records Unit, Room 1117 of the main Commerce Building, for copies of an updated list of countervailing duty orders currently in effect.

This order is issued and published in accordance with section 706(a) of the Act, and 19 CFR 351.211(b).

Dated: April 27, 2010.

Ronald K. Lorentzen,

Deputy Assistant Secretary for Import Administration.

[FR Doc. 2010–10245 Filed 5–3–10; 8:45 am]

BILLING CODE 3510–DS–S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

RIN 0648–XW23

Endangered and Threatened Species; Take of Anadromous Fish; Research Permit Applications

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

ACTION: Applications for three new scientific research permits, one permit modification, and one permit renewal.

SUMMARY: Notice is hereby given that NMFS has received five scientific research permit application requests relating to Pacific salmon. The proposed research is intended to increase knowledge of species listed under the Endangered Species Act (ESA) and to help guide management and conservation efforts. The applications may be viewed online at: *https://apps.nmfs.noaa.gov/preview/preview_open_for_comment.cfm*

DATES: Comments or requests for a public hearing on the applications must be received at the appropriate address or fax number (see ADDRESSES) no later than 5 p.m. Pacific standard time on June 3, 2010.

ADDRESSES: Written comments on the applications should be sent to the Protected Resources Division, NMFS, 1201 NE Lloyd Blvd., Suite 1100, Portland, OR 97232–1274. Comments may also be sent via fax to 503–230–5441 or by e-mail to *nmfs.nwr.apps@noaa.gov*.

FOR FURTHER INFORMATION CONTACT: Garth Griffin, Portland, OR (ph.: 503–231–2005, Fax: 503–230–5441, e-mail: *garth.griffin@noaa.gov*. Permit application instructions are available from the address above, or online at *apps.nmfs.noaa.gov*.

SUPPLEMENTARY INFORMATION:

Species Covered in This Notice

The following listed species are covered in this notice:

Chinook salmon (*Oncorhynchus tshawytscha*): threatened lower Columbia River (LCR), threatened upper Willamette River (UWR), endangered upper Columbia River (UCR), threatened Snake River (SR) spring/summer (spr/sum), threatened SR fall, threatened Puget Sound (PS).

Chum salmon (*O. keta*): threatened Columbia River (CR).

Steelhead (*O. mykiss*): threatened LCR, threatened UWR, threatened middle Columbia River (MCR), threatened SR, threatened UCR, threatened PS.

Coho salmon (*O. kisutch*): threatened LCR, threatened Oregon Coast (OC).

Sockeye salmon (*O. nerka*): endangered SR.

Green Sturgeon (*Acipenser medirostris*)

Eulachon: Southern Distinct Population Segment (DPS) (*Thaleichthys pacificus*)

Authority

Scientific research permits are issued in accordance with section 10(a)(1)(A) of the ESA (16 U.S.C. 1531 *et seq.*) and regulations governing listed fish and wildlife permits (50 CFR 222–226). NMFS issues permits based on findings that such permits: (1) are applied for in good faith; (2) if granted and exercised, would not operate to the disadvantage of the listed species that are the subject of the permit; and (3) are consistent with the purposes and policy of section 2 of the ESA. The authority to take listed species is subject to conditions set forth in the permits.

Anyone requesting a hearing on an application listed in this notice should set out the specific reasons why a hearing on that application would be appropriate (see **ADDRESSES**). Such hearings are held at the discretion of the Assistant Administrator for Fisheries, NMFS.

Applications Received

Permit 1548 - 2R

The Yakima Training Center - US Army (YTC) is seeking to renew its permit to annually take listed salmonids while conducting research designed to determine fish abundance and distribution on the YTC lands and describe habitat conditions throughout the 500–square mile reservation. The research will also give regional fish managers previously unavailable data on fish presence. The YTC researchers would capture the fish using backpack electrofishing gear, seines, and minnow traps. Once captured, the fish would be measured, allowed to recover, and released. Some of the steelhead may have scale samples taken. The YTC does not intend to kill any of the fish being taken, but some may die as an unintended result of the activities.

Permit 14457 - 2M

The Columbia River Estuary Study Taskforce (CREST) is seeking to modify its current research permit to add some collection locations and increase the numbers of listed fish that may be taken. Under the modified permit, they would annually capture, handle, and release juvenile fish from all the species covered by this notice. They would also capture, mark, tag, and release adult LCR coho, Chinook, and steelhead and CR chum. The purpose of the research is to evaluate estuarine habitat restoration efforts. Specific objectives are to (1) determine species composition, relative abundance, and residence time of various listed fish by using pre-restored and restoration project habitats and adjacent references sites; (2) determine prey use by juvenile salmon; and (3) determine prey availability. The research would benefit listed salmonids by determining how effectively currently altered habitats support salmonids and using that information to guide future habitat modifications.

The CREST would capture the fish using fyke nets, trap nets, and beach seines. Salmonids would be anesthetized, identified, counted, measured, weighed, checked for tags and hatchery marks, and released. Some of the fish may be tagged with passive integrated transponders, or injected with dye or visible implant elastomers. Fin or scale samples for genetic or age analysis would be taken from a portion of the captured juvenile Chinook salmon. Some of the captured juvenile salmonid would be sampled for stomach contents. The CREST does not propose to kill any of the fish being captured, but a small number may die as an unintended result of the activities.

Permit 15207

The Oregon State University (OSU) is seeking a permit to annually take all the listed fish covered by this notice while conducting research designed to help managers assess the condition of rivers and streams in the 12 conterminous western states and evaluate and develop scientifically and statistically rigorous field protocols for assessing large rivers and their tributaries. The study was previously conducted under Permit 1559 - 4A and will benefit listed species by providing baseline information about water quality in the study areas and helping managers enforce the Clean Water Act in those river systems where listed fish are present. The OSU researchers would capture fish (using raft-mounted electrofishing equipment), sample them for biological information, and release them. The researchers will try to avoid adult salmonids, but some may be handled. The researchers do not intend to kill any fish being captured but some may die as an unintentional result of the research activities.

Permit 15162

The University of Idaho (UI) is seeking a three-year permit to take listed salmonids (UCR Chinook and steelhead, SR spr/sum and fall Chinook, SR steelhead, SR sockeye, and MCR steelhead) while conducting research on pacific lamprey passage at McNary And John Day Dams on the Columbia River. The UI researchers would capture pacific lamprey at temporary traps installed near the bottoms of the fishways at the dams. They would also look for lamprey in the fishways and use dipnets to capture them. If listed fish are captured during the dipnetting, they would be released immediately. If they are caught in the lamprey traps, they may be held for up to 11 hours (from 8:00 p.m. when the traps are lowered into place, to 7:00 a.m. when they are pulled and checked), but any captured fish will be released at the moment the trap is checked. The researchers do not expect to kill any listed fish but a small number may die as an unintended result of the research activities.

Permit 15461

The U.S. Fish and Wildlife Service (FWS) is seeking a five-year permit to annually take juvenile threatened SR steelhead during the course of research on Pacific lamprey in the Snake River basin. The research is designed to assess lamprey numbers and habitat in the basin and gauge the effectiveness of a lamprey translocation program. The research will benefit steelhead by generating information that will be used when conducting habitat restoration activities in the basin. The listed fish would be affected by the use of a low-power electrofishing unit designed to bring lamprey young up out of a stream's substrate. Any affected steelhead would simply be allowed to escape; they would not be collected or sampled in any manner. The FWS does not expect to kill any listed fish, but a small number may die as an unintended result of the activities.

This notice is provided pursuant to section 10(c) of the ESA. NMFS will evaluate the applications, associated documents, and comments submitted to determine whether the applications meet the requirements of section 10(a) of the ESA and Federal regulations. The final permit decisions will not be made until after the end of the 30–day comment period. NMFS will publish notice of its final action in the **Federal Register.**

Dated: April 28, 2010.

Angela Somma,

Chief, Endangered Species Division, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. 2010–10489 Filed 5–3–10; 8:45 am]

BILLING CODE 3510–22–S

DEPARTMENT OF COMMERCE

International Trade Administration

A–533–502

Certain Welded Carbon Steel Standard Pipes and Tubes from India: Extension of Time Limit for Preliminary Results of Antidumping Duty Administrative Review

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

EFFECTIVE DATE: May 4, 2010.

FOR FURTHER INFORMATION CONTACT: Michael A. Romani, AD/CVD Operations, Office 5, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Washington, DC 20230; telephone: (202) 482–0198.

SUPPLEMENTARY INFORMATION:

Background

The Department of Commerce (the Department) published an antidumping duty order on certain welded carbon steel standard pipes and tubes from India on May 12, 1986. *See Antidumping Duty Order; Certain Welded Carbon Steel Standard Pipes and Tubes from India*, 51 FR 17384 (May 12, 1986). On June 24, 2009, the Department published a notice of initiation of an administrative review of the antidumping duty order on certain welded carbon steel standard pipes and tubes from India for the period May 1, 2008, through April 30, 2009. *See Initiation of Antidumping and Countervailing Duty Administrative Reviews and Requests for Revocation in Part*, 74 FR 30052 (June 24, 2009). The period of review is May 1, 2008, through April 30, 2009.

On December 28, 2009, the Department published an extension of the due date for the preliminary results. *See Extension of Time Limit for Certain Welded Carbon Steel Standard Pipes and Tubes from India: Preliminary Results of Antidumping Duty Administrative Review*, 74 FR 68586 (December 28, 2009). In accordance

with section 751(a)(3)(A) of the Tariff Act of 1930, as amended (the Act), the Department extended the due date for issuing the preliminary results by 92 days, from the original date of January 31, 2010, to May 3, 2010.

As explained in the February 12, 2010, memorandum from the Deputy Assistant Secretary for Import Administration, the Department has exercised its discretion to toll Import Administration deadlines for the duration of the closure of the Federal Government from February 5 through February 12, 2010. Thus, all deadlines in this segment of the proceeding have been extended by seven days. The revised deadline for the preliminary results of this review is currently May 10, 2010. See Memorandum to the Record from Ronald Lorentzen, DAS for Import Administration, regarding "Tolling of Administrative Deadlines As a Result of the Government Closure During the Recent Snowstorm," dated February 12, 2010.

Extension of Time Limit for Preliminary Results

Section 751(a)(3)(A) of the Act requires the Department to make a preliminary determination within 245 days after the last day of the anniversary month of an order for which a review is requested and a final determination within 120 days after the date on which the preliminary determination is published in the **Federal Register**. If it is not practicable to complete the review within these time periods, section 751(a)(3)(A) of the Act allows the Department to extend the time limit for the preliminary determination to a maximum of 365 days after the last day of the anniversary month.

We determine that it is not practicable to complete the preliminary results of this review by the current deadline of May 10, 2010, because before issuing the preliminary results of review we intend to verify the sales of a respondent to this review. Also, we have granted several extensions requested by the respondent to respond to our requests for information in this administrative review and, as a result, need additional time to analyze the respondent's submissions. Therefore, in accordance with section 751(a)(3)(A) of the Act and 19 CFR 351.213(h)(2), we are extending the time period for issuing the preliminary results of this review by 28 days from May 10, 2010, to June 7, 2010.

This notice is published in accordance with sections 751(a)(3)(A) and 777(i)(1) of the Act.

Dated: April 27, 2010.

Edward C. Yang,

Acting Deputy Assistant Secretary for Antidumping and Countervailing Duty Operations.

[FR Doc. 2010–10482 Filed 5–3–10; 8:45 am]

BILLING CODE 3510–DS–S

DEPARTMENT OF COMMERCE

International Trade Administration

A–549–821

Polyethylene Retail Carrier Bags from Thailand: Extension of Time Limit for Preliminary Results of Antidumping Duty Administrative Review

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

EFFECTIVE DATE: May 4, 2010.

FOR FURTHER INFORMATION CONTACT: Thomas Schauer or Michael A. Romani, AD/CVD Operations, Office 5, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Washington, DC 20230; telephone: (202) 482–0410 or (202) 482–0198, respectively.

SUPPLEMENTARY INFORMATION:

Background

On August 9, 2004, the Department of Commerce published in the **Federal Register** the antidumping duty order on polyethylene retail carrier bags from Thailand. *See Antidumping Duty Order: Polyethylene Retail Carrier Bags From Thailand*, 69 FR 48204 (August 9, 2004). On September 22, 2009, we published a notice of initiation of an administrative review of six companies. *See Initiation of Antidumping and Countervailing Duty Administrative Reviews and Requests for Revocation in Part*, 74 FR 48224, 48226 (September 22, 2009).[1] The period of review is August 1, 2008 through July 31, 2009.

As explained in the February 12, 2010, memorandum from the Deputy Assistant Secretary for Import Administration, the Department has exercised its discretion to toll Import Administration deadlines for the duration of the closure of the Federal Government from February 5 through February 12, 2010. Thus, the deadline in this segment of the proceeding has been extended by seven days. This revised deadline for the preliminary results of this administrative review is now May 10, 2010. See Memorandum to the Record from Ronald Lorentzen, DAS for Import Administration, regarding "Tolling of Administrative Deadlines As a Result of the Government Closure During the Recent Snowstorm," dated February 12, 2010.

Extension of Time Limit for Preliminary Results

Section 751(a)(3)(A) of the Tariff Act of 1930, as amended (the Act), requires the Department to make a preliminary determination within 245 days after the last day of the anniversary month of an order for which a review is requested and a final determination within 120 days after the date on which the preliminary determination is published in the **Federal Register**. If it is not practicable to complete the review within these time periods, section 751(a)(3)(A) of the Act allows the Department to extend the time limit for the preliminary determination to a maximum of 365 days after the last day of the anniversary month.

We determine that it is not practicable to complete the preliminary results of this review by the current deadline of May 10, 2010, because we require additional time to analyze a number of complex cost–accounting and corporate–affiliation issues relating to this administrative review that have been raised by parties to the proceeding. Therefore, in accordance with section 751(a)(3)(A) of the Act and 19 CFR 351.213(h)(2), we are extending the time period for issuing the preliminary results of this review by 50 days to June 29, 2010.

This notice is published in accordance with sections 751(a)(3)(A) and 777(i)(1) of the Act.

Dated: April 27, 2010.

Edward C. Yang,

Acting Deputy Assistant Secretary for Antidumping and Countervailing Duty Operations.

[FR Doc. 2010–10485 Filed 5–3–10; 8:45 am]

BILLING CODE 3510–DS–S

[1] The review covers the following companies: C.P. Packaging Co., Ltd., Giant Pack Co., Ltd., Landblue (Thailand) Co., Ltd., Sahachit Watana Plastics Ind. Co., Ltd., Thai Plastic Bags Industries Co., Ltd., and Thantawan Industry Public Co., Ltd. *Id.* The Department has determined previously that Thai Plastic Bags Industries Co., Ltd., APEC Film Ltd., and Winner's Pack Co., Ltd., comprise the Thai Plastic Bags Group (TPBG). *See Notice of Final Determination of Sales at Less than Fair Value: Polyethylene Retail Carrier Bags From Thailand*, 69 FR 34122, 34123 (June 18, 2004).

DEPARTMENT OF COMMERCE

International Trade Administration

A–357–812

Honey from Argentina: Final Results of Antidumping Duty Administrative Review and Determination to Revoke Order in Part

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

SUMMARY: On December 28, 2009, the Department of Commerce (the Department) published its preliminary results of the 2007–2008 administrative review of the antidumping duty order on honey from Argentina. *See Honey from Argentina: Preliminary Results of Antidumping Duty Administrative Review and Intent to Revoke Order in Part*, 74 FR 68570 (December 28, 2009) (*Preliminary Results*). This review covers one exporter, Asociacion de Cooperativas Argentinas (ACA). The period of review (POR) is December 1, 2007, through November 30, 2008. We invited interested parties to comment on the *Preliminary Results*, and received no comments. Therefore, our final results remain unchanged from our *Preliminary Results*, and we are revoking the order with respect to ACA.

EFFECTIVE DATE: May 4, 2010.

FOR FURTHER INFORMATION CONTACT: John Drury or Dena Crossland, Office 7, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Washington, DC 20230; telephone: (202) 482–0195 or (202) 482–3362, respectively.

SUPPLEMENTARY INFORMATION:

Background

On December 28, 2009, the Department published in the **Federal Register** the preliminary results of the administrative review of the antidumping duty order on honey from Argentina for the period December 1, 2007, through November 30, 2008. *See Preliminary Results*. We invited parties to comment on the *Preliminary Results*. We received no comments or a request for a hearing.

As explained in the memorandum from the Deputy Assistant Secretary (DAS) for Import Administration, the Department exercised its discretion to toll Import Administration deadlines for the duration of the closure of the Federal Government from February 5, through February 12, 2010. Thus, all deadlines in this segment of the proceeding were extended by seven days. Therefore, the revised deadline for the final results of this review became May 4, 2010. *See* Memorandum to the Record from Ronald Lorentzen, DAS for Import Administration, regarding "Tolling of Administrative Deadlines As a Result of the Government Closure During the Recent Snowstorm," dated February 12, 2010.

Period of Review

The POR is December 1, 2007, through November 30, 2008.

Scope of the Order

The merchandise covered by the order is honey from Argentina. The products covered are natural honey, artificial honey containing more than 50 percent natural honey by weight, preparations of natural honey containing more than 50 percent natural honey by weight, and flavored honey. The subject merchandise includes all grades and colors of honey whether in liquid, creamed, comb, cut comb, or chunk form, and whether packaged for retail or in bulk form. The merchandise is currently classifiable under subheadings 0409.00.00, 1702.90.90, and 2106.90.99 of the *Harmonized Tariff Schedule of the United States (HTSUS)*. Although the HTSUS subheadings are provided for convenience and Customs purposes, the Department's written description of the merchandise under this order is dispositive.

Determination to Revoke Order, in Part

The Department may revoke, in whole or in part, an antidumping duty order upon completion of a review under section 751 of the Tariff Act of 1930, as amended (the Act). While Congress has not specified the procedures that the Department must follow in revoking an order, in whole or in part, the Department has developed a procedure for revocation that is described in 19 CFR 351.222. For exporters or producers requesting revocation from an antidumping duty order, this regulation requires, *inter alia*, that the company submit the following: (1) a certification that the company has sold the subject merchandise at not less than normal value (NV) in the current review period and that the company will not sell subject merchandise at less than NV in the future; (2) a certification that the company sold commercial quantities of the subject merchandise to the United States in each of the three years forming the basis of the request; and (3) an agreement to immediate reinstatement in the order if the Department concludes that the company, subsequent to the revocation, sold subject merchandise at less than NV. *See* 19 CFR 351.222(e)(1). Upon receipt of such a request, the Department will consider: (1) whether the company in question has sold subject merchandise at not less than NV for a period of at least three consecutive years and is not likely to sell the subject merchandise at less than NV in the future; and (2) whether the company has agreed in writing to its immediate reinstatement in the order, as long as any exporter or producer is subject to the order, if the Department concludes that the company, subsequent to the revocation, sold the subject merchandise at less than NV. *See* 19 CFR 351.222(b)(2).

On December 30, 2008, pursuant to section 751(d) of the Act and 19 CFR 351.222(b)(2), ACA requested revocation of the antidumping duty order with respect to its sales of subject merchandise. ACA's request was accompanied by certification that it: (1) sold subject merchandise at not less than NV in the current review period and will not sell subject merchandise at less than NV in the future; (2) sold subject merchandise in commercial quantities during each of the consecutive three years forming the basis for its request for revocation; and (3) agreed to immediate reinstatement of the antidumping duty order if the Department concludes ACA has sold subject merchandise at less than NV subsequent to revocation. *See* 19 CFR 351.222(e)(1).

In the *Preliminary Results*, we determined that ACA's request meets all of the criteria under 19 CFR 351.222(e)(1) and that revocation is warranted pursuant to 19 CFR 351.222(b)(2). *See Preliminary Results*, 74 FR at 68572 and Memorandum to John M. Andersen, Acting Deputy Assistant Secretary for Antidumping and Countervailing Duty Operations, "Request by Asociacion de Cooperativas Argentinas (ACA) for Revocation in the Antidumping Duty Administrative Review of Honey from Argentina," dated December 18, 2009. We have not received any comments or evidence to alter our findings for these final results. Therefore, we find that ACA qualifies for revocation of the antidumping duty order on honey from Argentina under 19 CFR 351.222(b)(2) and, accordingly, we are revoking the order with respect to subject merchandise exported by ACA.[1]

Effective Date of Revocation

The revocation of ACA applies to all entries of subject merchandise that are exported by ACA, and are entered, or withdrawn from warehouse, for

[1] Only exports by ACA in which ACA is the first party with knowledge of the U.S. destination of the merchandise are covered by this revocation.

consumption on or after December 1, 2008. The Department will order the suspension of liquidation ended for all such entries and will instruct U.S. Customs and Border Protection (CBP) to release any cash deposits or bonds. The Department also will instruct CBP to refund with interest any cash deposits on entries made on or after December 1, 2008.

Final Results of Review

We determine that the following dumping margin exists for the period December 1, 2007, through November 30, 2008:

Exporter	Weighted–Average Margin (percentage)
Asociacion de Cooperativas Argentinas	0.00

Assessment Rates

The Department shall determine, and CBP shall assess, antidumping duties on all appropriate entries, in accordance with 19 CFR 351.212(b). Since the importer–specific assessment rate calculated in the final results of this review is 0.00 percent, we will instruct CBP to liquidate without regard to antidumping duties for these entries. *See* 19 CFR 351.106(c)(2). The Department intends to issue appropriate assessment instructions directly to CBP 15 days after publication of these final results of review.

The Department clarified its automatic assessment regulation on May 6, 2003 (68 FR 23954). This clarification will apply to entries of subject merchandise during the POR produced by the company(ies) included in these final results of review for which the reviewed company(ies) did not know their merchandise was destined for the United States. In such instances, we will instruct CBP to liquidate un–reviewed entries at the all–others rate if there is no rate for the intermediate company(ies) involved in the transaction. For a full discussion of this clarification, *see Antidumping and Countervailing Duty Proceedings: Assessment of Antidumping Duties*, 68 FR 23954 (May 6, 2003).

Cash Deposit Requirements

The following cash deposit requirements will be effective upon publication of the final results of this administrative review for all shipments of the subject merchandise entered, or withdrawn from warehouse, for consumption on or after the publication date of these final results, consistent with section 751(a)(1) of the Act: (1) for ACA, which is revoked from the order, no cash deposit will be required; (2) if the exporter is not a firm covered in this review, but was covered in a previous review or the original less than fair value (LTFV) investigation, the cash deposit rate will continue to be the company–specific rate published for the most recent period; (3) if the exporter is not a firm covered in this review, a prior review, or the original 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 (4) if neither the exporter nor the manufacturer is a firm covered in this or any previous review conducted by the Department, the cash deposit rate will continue to be 30.24 percent, which is the all–others rate established in the LTFV investigation. *See Notice of Antidumping Duty Order; Honey From Argentina*, 66 FR 63672 (December 10, 2001). These deposit requirements, when imposed, shall remain in effect until publication of the final results of the next administrative review.

Notifications to Interested Parties

This notice also serves as a final reminder to importers of their responsibility under 19 CFR 351.402(f) to file a certificate regarding the reimbursement of antidumping duties prior to liquidation of the relevant entries during this review period. Failure to comply with this requirement could result in the Secretary's presumption that reimbursement of antidumping duties occurred and the subsequent assessment of doubled antidumping duties.

This notice also serves as a reminder to parties subject to administrative protective orders (APO) of their responsibility concerning the return or destruction of proprietary information disclosed under APO in accordance with 19 CFR 351.305, which continues to govern business proprietary information in this segment of the proceeding. 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 notice in accordance with sections 751(a)(1) and 777(i)(1) of the Act.

Dated: April 22, 2010.

Ronald K. Lorentzen,

Deputy Assistant Secretary for Import Administration.

[FR Doc. 2010–10479 Filed 5–3–10; 8:45 am]

BILLING CODE 3510–DS–S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

RIN: 0648–XW24

Pacific Fishery Management Council; Public Meeting

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

ACTION: Notice of a public meeting.

SUMMARY: The Pacific Fishery Management Council (Council) will hold a meeting of its Ad Hoc Regulatory Deeming Workgroup (Workgroup). The meeting is open to the public.

DATES: The Workgroup meeting will be held Thursday, May 20, 2010, from 8 a.m. until business for the day is completed and Friday, May 21, 2010 from 8 a.m. until business for the day is completed.

ADDRESSES: The Workgroup meeting will be held at a Seattle, WA, location to be determined.

Council address: Pacific Fishery Management Council, 7700 NE Ambassador Place, Suite 101, Portland, OR 97220–1384.

FOR FURTHER INFORMATION CONTACT: Mr. Jim Seger, Staff Officer; telephone: (503) 820–2280.

SUPPLEMENTARY INFORMATION: The purpose of the Workgroup meeting is to review the draft regulations that would implement Amendment 20 (Trawl Rationalization) to the groundfish fishery management plan, if it is approved.

Although non-emergency issues not contained in the meeting agenda may come before the Workgroup for discussion, those issues may not be the subject of formal Workgroup action during this meeting. Workgroup action will be restricted to those issues specifically listed in this notice and any issues arising after publication of this notice that require emergency action under Section 305(a) of the Magnuson-Stevens Fishery Conservation and Management Act, provided the public has been notified of the Workgroup intent to take final action to address the emergency.

Special Accommodations

This meeting is physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to Ms. Carolyn Porter at (503) 820–2280 at least 5 days prior to the meeting date.

Dated: April 28, 2010.

William D. Chappell,

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

[FR Doc. 2010–10292 Filed 5–3–10; 8:45 am]

BILLING CODE 3510–22–S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

RIN: 0648–XW25

Fisheries of the Gulf of Mexico and South Atlantic; Southeast Data, Assessment, and Review (SEDAR); Public Meeting

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

ACTION: Notice of SEDAR Data Workshop for HMS sandbar, dusky, and blacknose sharks.

SUMMARY: The SEDAR assessments of the HMS stocks of sandbar, dusky, and blacknose sharks will consist of a series of workshops and webinars: a Data Workshop, a series of Assessment webinars, and a Review Workshop. See **SUPPLEMENTARY INFORMATION.**

DATES: The Data Workshop will take place June 21–25, 2010. See **SUPPLEMENTARY INFORMATION.**

ADDRESSES: The Data Workshop will be held at Embassy Suites Historic Charleston, 337 Meeting Street, Charleston, SC 29403; telephone: (843) 723–6900

FOR FURTHER INFORMATION CONTACT: Julie Neer, SEDAR Coordinator, 4055 Faber Place Drive, Suite 201, North Charleston, SC 29405; telephone: (843) 571–4366; e-mail: *Julie.neer@safmc.net*

SUPPLEMENTARY INFORMATION: The Gulf of Mexico, South Atlantic, and Caribbean Fishery Management Councils, in conjunction with NOAA Fisheries and the Atlantic and Gulf States Marine Fisheries Commissions have implemented the Southeast Data, Assessment and Review (SEDAR) process, a multi-step method for determining the status of fish stocks in the Southeast Region. SEDAR is a three-step process including: (1) Data Workshop, (2) Assessment Process utilizing webinars and (3) Review Workshop. The product of the Data Workshop is a data report which compiles and evaluates potential datasets and recommends which datasets are appropriate for assessment analyses. The product of the Assessment Process is a stock assessment report which describes the fisheries, evaluates the status of the stock, estimates biological benchmarks, projects future population conditions, and recommends research and monitoring needs. The assessment is independently peer reviewed at the Review Workshop. The product of the Review Workshop is a Summary documenting Panel opinions regarding the strengths and weaknesses of the stock assessment and input data. Participants for SEDAR Workshops are appointed by the Gulf of Mexico, South Atlantic, and Caribbean Fishery Management Councils and NOAA Fisheries Southeast Regional Office and Southeast Fisheries Science Center. Participants include data collectors and database managers; stock assessment scientists, biologists, and researchers; constituency representatives including fishermen, environmentalists, and NGO's; International experts; and staff of Councils, Commissions, and state and federal agencies.

SEDAR 21 Data Workshop Schedule

June 21–25, 2010; SEDAR 21 Data Workshop

June 21, 2010: 1 p.m. - 8 p.m.; June 21–24, 2010: 8 a.m. - 8 p.m.; June 25, 2010: 8 a.m. - 12 p.m.

An assessment data set and associated documentation will be developed during the Data Workshop. Participants will evaluate all available data and select appropriate sources for providing information on life history characteristics, catch statistics, discard estimates, length and age composition, and fishery dependent and fishery independent measures of stock abundance.

Although non-emergency issues not contained in this agenda may come before this group for discussion, those issues may not be the subject of formal action during this meeting. Action will be restricted to those issues specifically listed in this notice and any issues arising after publication of this notice that require emergency action under section 305(c) of the Magnuson-Stevens Fishery Conservation and Management Act, provided the public has been notified of the Council's intent to take final action to address the emergency.

Special Accommodations

These meetings are physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to the Council office (see **ADDRESSES**) at least 10 business days prior to each workshop.

Dated: April 28, 2010.

William D. Chappell,

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

[FR Doc. 2010–10293 Filed 5–3–10; 8:45 am]

BILLING CODE 3510–22–S

DEPARTMENT OF COMMERCE

Economic Development Administration

[Docket No.: 100429201–0201–01]

Solicitation of Applications for the i6 Challenge Under EDA's Economic Adjustment Assistance Program

AGENCY: Economic Development Administration (EDA), Department of Commerce.

ACTION: Notice and request for applications.

SUMMARY: The i6 Challenge is a new, multi-agency innovation competition led by the U.S. Department of Commerce (DOC) and its Economic Development Administration (EDA). EDA intends to fund implementation grants for technical assistance through its Economic Adjustment Assistance Program under the i6 Challenge. The DOC and EDA will coordinate this funding opportunity with the National Institutes of Health (NIH), the National Science Foundation (NSF), and the U.S. Patent and Trademark Office (USPTO) to leverage federal resources and maximize available funding to i6 Challenge winners. The i6 Challenge is designed to encourage and reward innovative, ground-breaking ideas that will accelerate technology commercialization and new venture formation across the United States, for the ultimate purpose of helping to drive economic growth and job creation. To accomplish this, the i6 Challenge targets sections of the research-to-deployment continuum that are in need of additional support, in order to strengthen regional innovation ecosystems. Applicants to the i6 Challenge are expected to propose mechanisms to fill in existing gaps in the continuum or leverage existing infrastructure and institutions, such as economic development organizations, academic institutions, or other non-profit organizations, in new and

innovative ways to achieve the i6 objectives.

DATES: Applicants (defined below) must submit their applications no later than 11:59 p.m. EDT on July 15, 2010 in order to be considered for funding. Letters of intent to participate are strongly encouraged and must be sent to *i6@doc.gov* no later than 11:59 p.m. EDT on June 15, 2010. Winning Applicants should expect to receive grant awards by fall of 2010. EDA will hold an online information session at 2:00 p.m. Eastern time on May 17, 2010 to answer questions about the i6 Challenge. More details on the session will be posted at the i6 Challenge website at *http://www.eda.gov/i6*.

Application Submission Requirements: Applicants are advised to read carefully the instructions contained in section IV of the Federal Funding Opportunity (FFO) announcement for this request for applications. To access the FFO announcement, please see the websites listed below under "Electronic Access."

Applications may be submitted only in electronic form, either (i) in accordance with the procedures provided on *http://www.grants.gov;* or (ii) if Grants.gov produces an error message as an Applicant tries to apply via the Web site, then in PDF format via e-mail to *i6@doc.gov*. EDA will not accept facsimile transmissions of applications. Applicants applying electronically through *http://www.grants.gov* may access the application package by following the instructions provided on *http://www.grants.gov*. See the FFO for more details on how to apply via *http://www.grants.gov*.

The preferred file format for electronic attachments (*e.g.*, the Project Narrative and attachments to Form ED–900) is portable document format (PDF); however, EDA will accept electronic files in Microsoft Word, WordPerfect, or Excel formats.

Applicants should access the following link for assistance in navigating *http://www.grants.gov* and for a list of useful resources: *http://www.grants.gov/help/help.jsp*. If you do not find an answer to your question under "Applicant FAQs," try consulting the "Applicant User Guide." If you still cannot find an answer to your question, contact *http://www.grants.gov* via e-mail at *support@grants.gov* or telephone at 1–800–518–4726.

FOR FURTHER INFORMATION CONTACT: For additional information please send questions via e-mail to *i6@doc.gov*. EDA's Web site at *http://www.eda.gov/i6* also has information on EDA and the i6 Challenge.

SUPPLEMENTARY INFORMATION:

Program Information: EDA's mission is to lead the federal economic development agenda by promoting innovation and competitiveness, preparing American regions for growth and success in the worldwide economy. Under the i6 Challenge, EDA solicits competitive applications to increase and accelerate technology commercialization in regions across the United States. Applicants are expected to leverage regional strengths, capabilities, and competitive advantages. Furthermore, they are expected to identify a real or persistent problem or an unaddressed opportunity with a sense of urgency, cultivate strong public-private partnerships, provide a credible plan to access resources, demonstrate how the effort will be sustained, and bring together a well-qualified team and partners.

EDA encourages the submission of applications that will significantly benefit regions with distressed economies. Distress may exist in a variety of forms, including high levels of unemployment, low income levels, large concentrations of low-income families, and significant declines in per capita income because of large numbers (or high rates) of business failures, sudden major layoffs or plant closures, military base closures, natural or other major disasters, depletion of natural resources or reduced tax bases, and substantial loss of population because of the lack of employment opportunities.

Electronic Access: The FFO announcement for the i6 Challenge is available at *http://www.grants.gov* and at *http://www.eda.gov/InvestmentsGrants/FFON.xml*.

Statutory Authority: EDA's authorizing statute is the Public Works and Economic Development Act of 1965, as amended (42 U.S.C. 3121 *et seq.*) (PWEDA). The specific authority for the Economic Adjustment Assistance Program is section 209 of PWEDA (42 U.S.C. 3149), which authorizes EDA to make grants for economic adjustment assistance. EDA's regulations at 13 CFR parts 300–302 and subpart A of 13 CFR part 307 set out the general and specific regulatory requirements applicable to the Economic Adjustment Assistance Program.

EDA's regulations are codified at 13 CFR chapter III. The regulations and PWEDA are accessible on EDA's Web site at *http://www.eda.gov/InvestmentsGrants/Lawsreg.xml*.

Funding Availability: Funding appropriated under the Consolidated Appropriations Act, 2010 (Pub. L. No. 111–117, 123 Stat. 3034 at 3114 (2009)) is available for the economic development assistance programs authorized by PWEDA and for the Trade Adjustment Assistance for Firms Program under the Trade Act of 1974, as amended (19 U.S.C. 2341 *et seq.*). Funds in the amount of $255,000,000 have been appropriated for FY 2010 and shall remain available until expended. For FY 2010, EDA will allocate a total of $6,000,000 for this competitive solicitation. EDA will make at least six awards of up to $1,000,000, one in each of its six regions. The i6 Challenge awards will be made pursuant to grant agreements. The project period of each award is not to exceed two years. These award funds are anticipated to be available until expended.

The funding periods and funding amounts referenced in this competitive solicitation are subject to the availability of funds at the time of award, as well as to Department of Commerce and EDA priorities at the time of award. The Department of Commerce and EDA will not be held responsible for application preparation costs if the i6 Challenge fails to receive funding or is cancelled because of agency priorities. Publication of this competitive solicitation does not obligate the Department of Commerce or EDA to award any specific grant or cooperative agreement or to obligate all or any part of available funds.

EDA hopes to be able to fund at least one winning Applicant in each EDA region. Subject to the availability of funding at the time of award, the funds allocated to the i6 Challenge are anticipated to be available until expended.

Catalog of Federal Domestic Assistance (CFDA) Number: 11.307, Economic Adjustment Assistance.

Definitions: For purposes of this FFO, the following terms shall have the following meanings:

1. *Applicant* means the party(ies) submitting the application to EDA for funding, who is/are either a (i) non-profit organization formed by a team of more than one individual or entity, or (ii) combination of entities that satisfy the eligibility requirements described in section 3 of PWEDA (42 U.S.C. 3122) and 13 CFR 300.3 and that apply jointly as co-applicants to EDA for a single award.

2. *Matching Share* means the monetary value of the Applicant's committed cash matching funds or in-kind contributions, all of which must be from non-federal sources.

3. *SBIR Grantee* means a recipient of a Small Business Innovation Research grant from the National Institutes of

Health or the National Science Foundation.

4. *Partner* means any individual or entity, working with an Applicant, who has provided a letter of commitment to contribute to the accomplishment of that Applicant's proposed objectives.

Applicant Eligibility: Pursuant to PWEDA, only the following types of entities are eligible to receive funding assistance from EDA:

1. District Organization (as defined in 13 CFR 304.2);

2. Indian Tribe or a consortium of Indian Tribes;

3. State, city, or other political subdivision of a State, including a special purpose unit of a State or local government engaged in economic or infrastructure development activities, or a consortium of political subdivisions;

4. Institution of higher education or a consortium of institutions of higher education; or

5. Public or private non-profit organization or association acting in cooperation with officials of a political subdivision of a State.[1]

See section 3 of PWEDA (42 U.S.C. 3122) and 13 CFR 300.3.

In addition to satisfying these statutory requirements, in order to be eligible for the i6 Challenge (and as stated in the Definitions section), an Applicant must be either:

(i) A non-profit organization that is formed by a team of more than one individual or entity, including, but not limited to, entrepreneurs, universities, SBIR Grantees, foundations, or other private or non-profit organizations, or

(ii) A combination of otherwise eligible entities that apply jointly as co-applicants to EDA for a single award. Applicants (including eligible entities that form part of an Applicant) may submit more than one proposal to EDA in response to this competitive solicitation.

EDA is not authorized to provide grants directly to individuals or to for-profit entities. However, individuals or for-profit entities may form an Applicant or be Partners with Applicants.

Project Period: The project period shall not exceed two years.

Matching Share Requirement: Applicants must demonstrate a Matching Share of at least $500,000, which must be available and committed to the project from non-federal sources. EDA will give preference to applications with higher Matching Shares and to applications with higher levels of cash contributions in their Matching Share. Generally, the amount of an EDA grant may not exceed 50 percent of the total cost of the project. Projects may receive up to 80 percent of total cost, based on the relative needs of the region in which the project will be located, as determined by EDA. *See* section 204(a) of PWEDA (42 U.S.C. 3144) and 13 CFR 301.4(b)(1). In-kind contributions, in the form of space, equipment, or services, or forgiveness or assumptions of debt, may provide the required matching requirement. *See* section 204(b) of PWEDA (42 U.S.C. 3144), 13 CFR 301.4(b)(1), and 15 CFR 14.23 and 24.24. EDA will fairly evaluate all in-kind contributions, which must be used for eligible project costs that meet applicable federal cost principles and uniform administrative requirements. Applicants must provide letters of commitment to demonstrate that the Matching Share is committed to the project for the project period, will be available as needed, and is not conditioned or encumbered in any way that precludes its use consistent with the requirements of EDA investment assistance. *See* 13 CFR 301.5.

Intergovernmental Review: Applications for funding under the i6 Challenge are subject to the State review requirements imposed by Executive Order 12372, "*Intergovernmental Review of Federal Programs*," where applicable.

Evaluation and Selection Procedures: Throughout the review and selection process, EDA reserves the right to seek clarification in writing from Applicants whose applications are being reviewed and considered.

1. Responsiveness Review

EDA will review all applications for responsiveness. Applications that are ineligible for EDA funding or that do not contain all forms and narratives listed in Section IV of the FFO announcement will be deemed non-responsive and excluded from further consideration.

2. Merit Review by EDA Review Panels

EDA will convene a panel of federal employees in each of its six regions to review the merits of each application submitted within that region. Using the evaluation criteria listed in Section V.A. of the FFO announcement, the panels will identify the top five applications in each region.

3. Merit Review by NSF Peer Review Panels

Each region's top five applications will be subject to external peer review by NSF. NSF will convene panels of external peer reviewers to discuss the merits and shortcomings of each application, using the evaluation criteria in this notice and further detailed in Section V.A of the FFO announcement. Applications will be reviewed in a fair, competitive, and in-depth manner pursuant to NSF peer review policies and guidelines set forth at *http://www.nsf.gov/bfa/dias/policy/meritreview*. The peer review panels will summarize and make recommendations to be presented to the Selection Committee (defined below) for discussion and consideration.

4. Joint Selection Committee Review

Upon completion of the NSF peer review, a selection committee ("Selection Committee"), which will be composed of senior officials from the Department of Commerce, NIH, and NSF, will review the findings and recommendations of the EDA review panels and NSF peer review panels. Then it will either (i) rank the top five applications in each region and forward this ranked list to the Selecting Official (defined below), or (ii) identify any deficiencies in the review process and convene a new EDA review panel in the applicable region(s) to restart the selection process in those region(s). If directed by the Selection Committee to re-evaluate the applications in a particular region, a new EDA review panel will perform a merit review and submit the top five applications in the region with new findings and recommendations to a NSF peer review panel and subsequent referral to the Selection Committee.

Selecting Official and Policy factors: EDA expects to fund the highest ranking applications. The Regional Director in each EDA region will be the Selecting Official for the award to be made within his region. The Selecting Official may follow the recommendations of the Selection Committee; however, the Selecting Official retains the discretion not to make a selection in any region, or to select an application out of order in any region for any of the following reasons:

1. Availability of program funding;

2. A determination that the application better meets the overall objectives of section 2 and 209 of PWEDA (42 U.S.C. 3121 and 3149); or

3. The Applicant's performance under previous federal financial assistance awards.

If the Selecting Official makes a selection out of order, he will document the rationale for the decision in writing. Each Selecting Official will submit his decision to EDA headquarters for review before making the final selection.

[1] For projects of significant regional or national scope, EDA may waive the requirement that a non-profit organization demonstrate it is acting in cooperation with officials of a political subdivision of a State. *See* 13 CFR 301.2(b) and 307.5(b).

Evaluation Criteria: Review Panels, convened pursuant to Section V of the FFO announcement, will evaluate applications based on the following criteria, which will be weighted equally:

1. Merit

The extent to which Applicants demonstrate:

- A clear understanding of a real or persistent problem or an unaddressed opportunity and its urgency;
- Creative or even potentially transformative models or solutions and how the proposal is different from those that are funded by other government agencies;
- A clear understanding of the challenges facing the region's entrepreneurs and innovators;
- A "roadmap" for filling the gaps in the research-to-commercialization continuum and eliminating obstacles to commercialization; and
- Alignment with EDA investment priorities, as described at *http://www.eda.gov/InvestmentsGrants/InvestmentPriorities.xml.*

2. Feasibility

The extent to which Applicants demonstrate:

- A coherent plan to leverage regional strengths, mitigate regional weaknesses, and capitalize on strategic opportunities while minimizing short- and long-term threats;
- A sound strategy to support entrepreneurs and innovators at appropriate phase(s) of the process, that could include assessments for commercialization potential, patenting, licensing, venture formation, financing, and marketing;
- Adequate financial resources to ensure robust institutional capacity, as well as access to capital for high-growth firms;
- Strong potential to become self-sustaining, even without significant future federal funding;
- Long-term, broad, and deep commitment from private and public sector leaders throughout the region, and strong participation and buy-in from stakeholders; and
- Qualified personnel that, as a group, demonstrate project management expertise, as well as demonstrated success in protecting, licensing, and commercializing intellectual property.

3. Impact

The extent to which Applicants demonstrate:

- Quantifiable benefits that go beyond the Applicant and benefit the regional economy;
- The extent to which infrastructure for commercialization and enterprise formation will be enhanced; and
- A clear understanding of how the model or solution could be replicated elsewhere.

Information Session: Please be advised that the informational teleconferences may be audio-taped and the actual recordings or a transcript of the actual recording may be made available online or otherwise for the benefit of prospective applicants unable to participate. Prospective applicants who participate on the teleconferences are deemed to consent to the taping.

The Department of Commerce Pre-Award Notification Requirements for Grants and Cooperative Agreements: Administrative and national policy requirements for all Department of Commerce awards are applicable to this competitive solicitation. These requirements may be found in the *Department of Commerce Pre-Award Notification Requirements for Grants and Cooperative Agreements,* which was published in the **Federal Register** on February 11, 2008 (73 FR 7696). This notice may be accessed by entering the **Federal Register** volume and page number provided in the previous sentence at the following Web site: *http://www.gpoaccess.gov/fr/index.html.*

Paperwork Reduction Act: This document contains the following collections of information subject to the Paperwork Reduction Act (PRA) and approved by the Office of Management and Budget (OMB): (i) Form ED–900 (OMB Control No. 0610–0094); (ii) Form SF–424 (OMB Control No. 4040–0004); (iii) Form SF–424A (OMB Control No. 4040–0006); (iv) Form SF–424B (OMB Control No. 4040–0007); (v) Form SF–LLL (OMB Control No. 0348–0046). This document contains the following collections of information subject to the Paperwork Reduction Act (PRA) and approved by the Office of Management and Budget (OMB): (i) Form ED–900 (OMB Control No. 0610–0094); (ii) Form SF–424 (OMB Control No. 4040–0004); (iii) Form SF–424A (OMB Control No. 4040–0006); (iv) Form SF–424B (OMB Control No. 4040–0007); (v) Form SF–LLL (OMB Control No. 0348–0046). The documents that are listed in section IV.B of the FFO announcement have been approved by OMB under the following respective forms/control numbers. Specifically, the Project Narrative, Biographies of Key Individuals and Letter(s) of commitment from any Partner(s) are supplemental information requested by Form SF–424 and approved under OMB Control No. 4040–0004. The Letter(s) of commitment for Matching Share; Budget Narrative; Facilities and Administrative Cost Rate Agreement; and Staffing Plan are supplemental information requested by Form SF–424A and approved under OMB Control No. 4040–0006. The collection of a Comprehensive Economic Development Strategy is requested by ED–900 and approved under OMB Control No. 0610–0094. 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 PRA unless that collection of information displays a currently valid OMB control number.

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

Executive Order 13132 (Federalism): It has been determined that this notice does not contain policies with Federalism implications as that term is defined in Executive Order 13132.

Administrative Procedure Act/Regulatory Flexibility Act: Prior notice and an opportunity for public comments are not required by the Administrative Procedure Act or any other law for rules concerning grants, benefits, and contracts (5 U.S.C. 553(a)(2)). Because notice and opportunity for comment are not required pursuant to 5 U.S.C. 553 or any other law, the analytical requirements of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) are inapplicable. Therefore, a regulatory flexibility analysis has not been prepared.

Dated: April 29, 2010.

John R. Fernandez,

Assistant Secretary of Commerce for Economic Development, Economic Development Administration.

[FR Doc. 2010–10433 Filed 5–3–10; 8:45 am]

BILLING CODE 3510–24–P

COMMODITY FUTURES TRADING COMMISSION

Order Finding That the ICE Malin Financial Basis Contract Traded on the IntercontinentalExchange, Inc., Does Not Perform a Significant Price Discovery Function

AGENCY: Commodity Futures Trading Commission.

ACTION: Final orders.

SUMMARY: On October 9, 2009, the Commodity Futures Trading Commission ("CFTC" or "Commission") published for comment in the **Federal**

Register [1] a notice of its intent to undertake a determination whether the Malin Financial Basis ("MLN") contract, traded on the IntercontinentalExchange, Inc. ("ICE"), an exempt commercial market ("ECM") under sections 2(h)(3)–(5) of the Commodity Exchange Act ("CEA" or the "Act"), performs a significant price discovery function pursuant to section 2(h)(7) of the CEA. The Commission undertook this review based upon an initial evaluation of information and data provided by ICE as well as other available information. The Commission has reviewed the entire record in this matter, including all comments received, and has determined to issue orders finding that the MLN contract does not perform a significant price discovery function. Authority for this action is found in section 2(h)(7) of the CEA and Commission rule 36.3(c) promulgated thereunder.

DATES: *Effective date:* April 28, 2010.

FOR FURTHER INFORMATION CONTACT: Gregory K. Price, Industry Economist, Division of Market Oversight, Commodity Futures Trading Commission, Three Lafayette Centre, 1155 21st Street, NW., Washington, DC 20581. Telephone: (202) 418–5515. E-mail: *gprice@cftc.gov*; or Susan Nathan, Senior Special Counsel, Division of Market Oversight, same address. Telephone: (202) 418–5133. E-mail: *snathan@cftc.gov*.

SUPPLEMENTARY INFORMATION:

I. Introduction

The CFTC Reauthorization Act of 2008 ("Reauthorization Act") [2] significantly broadened the CFTC's regulatory authority with respect to ECMs by creating, in section 2(h)(7) of the CEA, a new regulatory category—ECMs on which significant price discovery contracts ("SPDCs") are traded—and treating ECMs in that category as registered entities under the CEA.[3] The legislation authorizes the CFTC to designate an agreement, contract or transaction as a SPDC if the Commission determines, under criteria established in section 2(h)(7), that it performs a significant price discovery function. When the Commission makes such a determination, the ECM on which the SPDC is traded must assume, with respect to that contract, all the responsibilities and obligations of a registered entity under the Act and Commission regulations, and must comply with nine core principles established by new section 2(h)(7)(C).

On March 16, 2009, the CFTC promulgated final rules implementing the provisions of the Reauthorization Act.[4] As relevant here, rule 36.3 imposes increased information reporting requirements on ECMs to assist the Commission in making prompt assessments whether particular ECM contracts may be SPDCs. In addition to filing quarterly reports of its contracts, an ECM must notify the Commission promptly concerning any contract traded in reliance on the exemption in section 2(h)(3) of the CEA that averaged five trades per day or more over the most recent calendar quarter, and for which the exchange sells its price information regarding the contract to market participants or industry publications, or whose daily closing or settlement prices on 95 percent or more of the days in the most recent quarter were within 2.5 percent of the contemporaneously determined closing, settlement or other daily price of another contract.

Commission rule 36.3(c)(3) established the procedures by which the Commission makes and announces its determination whether a particular ECM contract serves a significant price discovery function. Under those procedures, the Commission will publish notice in the **Federal Register** that it intends to undertake an evaluation whether the specified agreement, contract or transaction performs a significant price discovery function and to receive written views, data and arguments relevant to its determination from the ECM and other interested persons. Upon the close of the comment period, the Commission will consider, among other things, all relevant information regarding the subject contract and issue an order announcing and explaining its determination whether or not the contract is a SPDC. The issuance of an affirmative order signals the effectiveness of the Commission's regulatory authorities over an ECM with respect to a SPDC; at that time such an ECM becomes subject to all provisions of the CEA applicable to registered entities.[5] The issuance of such an order also triggers the obligations, requirements and timetables prescribed in Commission rule 36.3(c)(4).[6]

II. Notice of Intent To Undertake SPDC Determination

On October 9, 2009, the Commission published in the **Federal Register** notice of its intent to undertake a determination whether the MLN contract performs a significant price discovery function and requested comment from interested parties.[7] Comments were received from the Industrial Energy Consumers of America ("IECA"), Working Group of Commercial Energy Firms ("WGCEF"), ICE, Economists Incorporated ("EI"), Natural Gas Suppliers Association ("NGSA"), Federal Energy Regulatory Commission ("FERC"), and Financial Institutions Energy Group ("FIEG").[8] The comment letter from FERC [9] did not directly

[1] 74 FR 52192 (October 9, 2009).

[2] Incorporated as Title XIII of the Food, Conservation and Energy Act of 2008, Public Law 110–246, 122 Stat. 1624 (June 18, 2008).

[3] 7 U.S.C. 1a(29).

[4] 74 FR 12178 (Mar. 23, 2009); these rules became effective on April 22, 2009.

[5] Public Law 110–246 at 13203; *Joint Explanatory Statement of the Committee of Conference*, H.R. Rep. No. 110–627, 110 Cong., 2d Sess. 978, 986 (Conference Committee Report). See also 73 FR 75888, 75894 (Dec. 12, 2008).

[6] For an initial SPDC, ECMs have a grace period of 90 calendar days from the issuance of a SPDC determination order to submit a written demonstration of compliance with the applicable core principles. For subsequent SPDCs, ECMs have a grace period of 30 calendar days to demonstrate core principle compliance.

[7] The Commission's Part 36 rules establish, among other things, procedures by which the Commission makes and announces its determination whether a specific ECM contract serves a significant price discovery function. Under those procedures, the Commission publishes a notice in the **Federal Register** that it intends to undertake a determination whether a specified agreement, contract or transaction performs a significant price discovery function and to receive written data, views and arguments relevant to its determination from the ECM and other interested persons.

[8] IECA describes itself as an "association of leading manufacturing companies" whose membership "represents a diverse set of industries including: plastics, cement, paper, food processing, brick, chemicals, fertilizer, insulation, steel, glass, industrial gases, pharmaceutical, aluminum and brewing." WGCEF describes itself as "a diverse group of commercial firms in the domestic energy industry whose primary business activity is the physical delivery of one or more energy commodities to customers, including industrial, commercial and residential consumers" and whose membership consists of "energy producers, marketers and utilities." ICE is an ECM, as noted above. EI is an economic consulting firm with offices located in Washington, DC, and San Francisco, CA. NGSA is an industry association comprised of natural gas producers and marketers. FERC is an independent federal regulatory agency that, among other things, regulates the interstate transmission of natural gas, oil and electricity. FIEG describes itself as an association of investment and commercial banks who are active participants in various sectors of the natural gas markets, "including acting as marketers, lenders, underwriters of debt and equity securities, and proprietary investors." The comment letters are available on the Commission's Web site: *http://www.cftc.gov/lowondregulotion/federolregister/federalregistercomments/2009/09–020.html*.

[9] FERC stated that the MLN contract is cash settled and does not contemplate actual physical delivery of natural gas. Accordingly, FERC expressed the opinion that a determination by the Commission that a contract performs a significant price discovery function "would not appear to conflict with FERC's exclusive jurisdiction under

address the issue of whether or not the MLN contract is a SPDC; IECA concluded that the MLN contract is a SPDC, but did not provide a basis for its conclusion.[10] The other parties' comments raised substantive issues with respect to the applicability of section 2(h)(7) to the MLN contract, generally asserting that the MLN contract is not a SPDC as it does not meet the material liquidity, material price reference and price linkage criteria for SPDC determination. Those comments are more extensively discussed below, as applicable.

III. Section 2(h)(7) of the CEA

The Commission is directed by section 2(h)(7) of the CEA to consider the following criteria in determining a contract's significant price discovery function:

- *Price Linkage*—the extent to which the agreement, contract or transaction uses or otherwise relies on a daily or final settlement price, or other major price parameter, of a contract or contracts listed for trading on or subject to the rules of a designated contract market ("DCM") or derivatives transaction execution facility ("DTEF"), or a SPDC traded on an electronic trading facility, to value a position, transfer or convert a position, cash or financially settle a position, or close out a position.
- *Arbitrage*—the extent to which the price for the agreement, contract or transaction is sufficiently related to the price of a contract or contracts listed for trading on or subject to the rules of a DCM or DTEF, or a SPDC traded on or subject to the rules of an electronic trading facility, so as to permit market participants to effectively arbitrage between the markets by simultaneously maintaining positions or executing trades in the contracts on a frequent and recurring basis.
- *Material price reference*—the extent to which, on a frequent and recurring basis, bids, offers or transactions in a commodity are directly based on, or are determined by referencing or consulting, the prices generated by agreements, contracts or transactions being traded or executed on the electronic trading facility.
- *Material liquidity*—the extent to which the volume of agreements, contracts or transactions in a commodity being traded on the electronic trading facility is sufficient to have a material effect on other agreements, contracts or transactions listed for trading on or subject to the rules of a DCM, DTEF or electronic trading facility operating in reliance on the exemption in section 2(h)(3).

Not all criteria must be present to support a determination that a particular contract performs a significant price discovery function, and one or more criteria may be inapplicable to a particular contract.[11] Moreover, the statutory language neither prioritizes the criteria nor specifies the degree to which a SPDC must conform to the various criteria. In Guidance issued in connection with the Part 36 rules governing ECMs with SPDCs, the Commission observed that these criteria do not lend themselves to a mechanical checklist or formulaic analysis. Accordingly, the Commission has indicated that in making its determinations it will consider the circumstances under which the presence of a particular criterion, or combination of criteria, would be sufficient to support a SPDC determination.[12] For example, for contracts that are linked to other contracts or that may be arbitraged with other contracts, the Commission will consider whether the price of the potential SPDC moves in such harmony with the other contract that the two markets essentially become interchangeable. This co-movement of prices would be an indication that activity in the contract had reached a level sufficient for the contract to perform a significant price discovery function. In evaluating a contract's price discovery role as a price reference, the Commission will consider the extent to which, on a frequent and recurring basis, bids, offers or transactions are directly based on, or are determined by referencing, the prices established for the contract.

IV. Findings and Conclusions

a. The Malin Financial Basis (MLN) Contract and the SPDC Indicia

The ICE MLN contract is cash settled based on the difference between the bidweek price index of natural gas at the Malin hub for the contract-specified month of delivery, as published in Intelligence Press Inc.'s ("IPI") *Natural Gas Bidweek Survey*, and the final settlement price for New York Mercantile Exchange's ("NYMEX's") Henry Hub physically-delivered natural gas futures contract for the same specified calendar month. The IPI bidweek price, which is published monthly, is based on a survey of cash market traders who voluntarily report to IPI data on their fixed-price transactions for physical delivery of natural gas at the Malin hub conducted during the last five business days of the month; such bidweek transactions specify the delivery of natural gas on a uniform basis throughout the following calendar month at the agreed upon rate. The IPI bidweek index is published on the first business day of the calendar month in which the natural gas is to be delivered. The size of the MLN contract is 2,500 million British thermal units ("mmBtu"), and the unit of trading is any multiple of 2,500 mmBtu. The MLN contract is listed for up to 72 calendar months commencing with the next calendar month.

The Henry Hub,[13] which is located in Erath, Louisiana, is the primary cash market trading and distribution center for natural gas in the United States. It also is the delivery point and pricing basis for the NYMEX's actively traded Henry Hub physically-delivered natural gas futures contract, which is the most important pricing reference for natural gas in the United States. The Henry Hub, which is operated by Sabine Pipe Line, LLC, serves as a juncture for 13 different pipelines. These pipelines bring in natural gas from fields in the Gulf Coast region and move it to major consumption centers along the East Coast and Midwest. The throughput shipping capacity of the Henry Hub is 1.8 trillion mmBtu per day.

In addition to the Henry Hub, there are a number of other locations where natural gas is traded. In 2008, there were 33 natural gas market centers in North America.[14] Some of the major trading centers include Alberta, Northwest Rockies, Southern California border and

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the Natural Gas Act (NGA) over certain sales of natural gas in interstate commerce for resale or with its other regulatory responsibilities under the NGA" and further that, "the FERC staff will continue to monitor for any such conflict * * * [and] advise the CFTC" should any such potential conflict arise. CL 06.

[10] IECA stated that the subject ICE contract should "be required to come into compliance with core principles mandated by Section 2(h)(7) of the Act and with other statutory provisions applicable to registered entities. [This contract] should be subject to the Commission's position limit authority, emergency authority and large trader reporting requirements, among others." CL 01.

[11] In its October 9, 2009, **Federal Register** release, the Commission identified material price reference, price linkage and material liquidity as the possible criteria for SPDC determination of the MLN contract. Arbitrage was not identified as a possible criterion. As a result, arbitrage will not be discussed further in this document and the associated Order.

[12] 17 CFR 36, Appendix A.

[13] The term "hub" refers to a juncture where two or more natural gas pipelines are connected. Hubs also serve as pricing points for natural gas.

[14] See *http://www.eia.doe.gov/pub/oil_gas/natural_gas/feature_articles/2009/ngmarketcenter/ngmarketcenter.pdf.*

the Houston Ship Channel. For locations that are directly connected to the Henry Hub by one or more pipelines and where there typically is adequate shipping capacity, the price at the other locations usually directly tracks the price at the Henry Hub, adjusted for transportation costs. However, at other locations that are not directly connected to the Henry Hub or where shipping capacity is limited, the prices at those locations often diverge from the Henry Hub price. Furthermore, one local price may be significantly different than the price at another location even though the two markets' respective distances from the Henry Hub are the same. The reason for such pricing disparities is that a given location may experience supply and demand factors that are specific to that region, such as differences in pipeline shipping capacity, unusually high or low demand for heating or cooling or supply disruptions caused by severe weather. As a consequence, local natural gas prices can differ from the Henry Hub price by more than the cost of shipping and such price differences can vary in an unpredictable manner.

The Malin hub is the entry point along the California-Oregon border at which natural gas reaches the California market. This trading center connects with the Gas Transmission Northwest interstate pipeline, which carries gas from the Canada/Idaho border through Washington State and Oregon. A connection with the California Gas Transmission Company also exists at the Malin hub. The Malin hub is considered by traders to be an important trading center for natural gas.

The Malin hub is part of the Golden Gate Market Center, which is located in Northern California. The Golden Gate Market Center offers seven different transaction points, which are Malin, Citygate, Kern River Station, High Desert Lateral, Daggett, Southern Trails and Topock. The Golden Gate Market Center had an estimated throughput capacity of two billion cubic feet per day in 2008. Moreover, the number of pipeline interconnections at the Golden Gate Market Center was nine in 2008, up from eight in 2003. Lastly, the pipeline interconnection capacity of the Golden Gate Market Center in 2008 was 6 billion cubic feet per day, which constituted a 32 percent increase over the pipeline interconnection capacity in 2003.[15] The Malin hub is far removed from the Henry Hub and is not directly connected to the Henry Hub by an existing pipeline.

The local price at the Malin hub typically differs from the price at the Henry Hub. Thus, the price of the Henry Hub physically-delivered futures contract is an imperfect proxy for the Malin price. Moreover, exogenous factors, such as adverse weather, can cause the Malin gas price to differ from the Henry Hub price by an amount that is more or less than the cost of shipping, making the NYMEX Henry Hub futures contract even less precise as a hedging tool than desired by market participants. Basis contracts[16] allow traders to more accurately discover prices at alternative locations and hedge price risk that is associated with natural gas at such locations. In this regard, a position at a local price for an alternative location can be established by adding the appropriate basis swap position to a position taken in the NYMEX physically-delivered Henry Hub contract (or in the NYMEX or ICE Henry Hub look-alike contract, which cash settle based on the NYMEX physically-delivered natural gas contract's final settlement price).

In its October 9, 2009, **Federal Register** notice, the Commission identified material price reference, price linkage and material liquidity as the potential SPDC criteria applicable to the MLN contract. Each of these criteria is discussed below.[17]

1. Material Price Reference Criterion

The Commission's October 9, 2009, **Federal Register** notice identified material price reference as a potential basis for a SPDC determination with respect to this contract. The Commission considered the fact that ICE maintains exclusive rights over IPI's bidweek price indices. As a result, no other exchange can offer such a basis contract based on IPI's Malin bidweek index. While other third-party price providers produce natural gas price indices for this and other trading centers, market participants indicate that the IPI Malin bidweek index is highly regarded for this particular location and should market participants wish to establish a hedged position based on this index, they would need to do so by taking a position in the ICE MLN swap since ICE has the right to the IPI index for cash settlement purposes. In addition, ICE sells its price data to market participants in a number of different packages which vary in terms of the hubs covered, time periods, and whether the data are daily only or historical. For example, ICE offers the "West Gas End of Day" and "OTC Gas End of Day"[18] packages with access to all price data or just current prices plus a selected number of months (*i.e.*, 12, 24, 36 or 48 months) of historical data. These two packages include price data for the MLN contract.

The Commission will rely on one of two sources of evidence—direct or indirect—to determine that the price of a contract was being used as a material price reference and therefore, serving a significant price discovery function.[19] With respect to direct evidence, the Commission will consider the extent to which, on a frequent and recurring basis, cash market bids, offers or transactions are directly based on or quoted at a differential to, the prices generated on the ECM in question. Direct evidence may be established when cash market participants are quoting bid or offer prices or entering into transactions at prices that are set either explicitly or implicitly at a differential to prices established for the contract in question. Cash market prices are set explicitly at a differential to the section 2(h)(3) contract when, for instance, they are quoted in dollars and cents above or below the reference contract's price. Cash market prices are set implicitly at a differential to a section 2(h)(3) contract when, for instance, they are arrived at after adding to, or subtracting from the section 2(h)(3) contract, but then quoted or reported at a flat price. With respect to indirect evidence, the Commission will consider the extent to which the price of the contract in question is being routinely disseminated in widely distributed industry publications—or offered by the ECM itself for some form of remuneration—and consulted on a frequent and recurring basis by industry participants in pricing cash market transactions.

Following the issuance of the **Federal Register** release, the Commission further evaluated the ICE's data offerings and their use by industry participants. The Malin hub is a significant trading center for natural gas but is not as important as other hubs, such as the PG&E Citygate, for pricing natural gas in the western half of the U.S. marketplace.

[15] See *http://www.eia.doe.gov/pub/oil_gas/natural_gas/feature_articles/2009/ngmarketcenter/ngmarketcenter.pdf.*

[16] Basis contracts denote the difference in the price of natural gas at a specified location minus the price of natural gas at the Henry Hub. The differential can be either a positive or negative value.

[17] As noted above, the Commission did not find an indication of arbitrage in connection with this contract; accordingly, that criterion is not discussed in reference to the MLN contract.

[18] The OTC Gas End of Day dataset includes daily settlement prices for natural gas contracts listed for all points in North America.

[19] 17 CFR part 36, Appendix A.

Although the Malin hub is a major trading center for natural gas in the United States and, as noted, ICE sells price information for the MLN contract, the Commission has found upon further evaluation that the cash market transactions are not being directly based or quoted as a differential to the MLN contract nor is that contract routinely consulted by industry participants in pricing cash market transactions and thus does not meet the Commission's Guidance for the material price reference criterion. Thus, the MLN contract does not satisfy the direct price reference test for existence of material price reference. Furthermore, the Commission notes that publication of the MLN contract's prices is not indirect evidence material price reference. The MLN contract's prices are published with those of numerous other contracts, which are of more interest to market participants. Due to the less importance of the Malin hub, the Commission has concluded that traders likely do not specifically purchase the ICE data packages for the MLN contract's prices and do not consult such prices on a frequent and recurring basis in pricing cash market transactions.

i. Federal Register Comments

As noted above, WGCEF,[20] ICE,[21] EI,[22] NGSA [23] and FIEG [24] addressed the question of whether the MLN contract met the material price reference criterion for a SPDC.[25] The commenters argued that because the MLN contract is cash-settled, it cannot truly serve as an independent "reference price" for transactions in natural gas at this location. Rather, the commenters argue, the underlying cash price series against which the ICE MLN contract is settled (in this case, the IPI bidweek price for natural gas at this location) is the authentic reference price and not the ICE contract itself. The Commission believes that this interpretation of price reference is too limiting in that it only considers the final index value on which the contract is cash settled after trading ceases. Instead, the Commission believes that a cash-settled derivatives contract could meet the price reference criterion if market participants "consult on a frequent and recurring basis" the derivatives contract when pricing forward, fixed-price commitments or other cash-settled derivatives that seek to "lock in" a fixed price for some future point in time to hedge against adverse price movements. As noted above, the Malin hub is a significant trading center for natural gas in North America. However, traders do not consider the Malin hub to be as important as other natural gas trading points, particularly the nearby PG&E Citygate.

ICE argued that the Commission appeared to base the case that the MLN contract is potentially a SPDC on two disputable assertions. First, in issuing its notice of intent to determine whether the MLN contract is a SPDC, the CFTC cited a general conclusion in its ECM Study "that certain market participants referred to ICE as a price discovery market for certain natural gas contracts." [26] ICE states that CFTC's reason is "hard to quantify as the ECM report does not mention" this contract as a potential SPDC. "It is unknown which market participants made this statement in 2007 or the contracts that were referenced." [27] In response to the above comment, the Commission notes that it cited the ECM study's general finding that some ICE natural gas contracts appear to be regarded as price discovery markets merely as an indicia that an investigation of certain ICE contracts may be warranted, and was not intended to serve as the sole basis for determining whether or not a particular contract meets the material price reference criterion.

Second, ICE argued that the Commission should not base a determination that the MLN contract is a SPDC on the fact that this contract has the exclusive right to base its settlement on the IPI Malin Index price. While the Commission acknowledges that there are other firms that produce price indices for the Malin hub, as it notes above, market participants indicate that the IPI Index is very highly regarded. However, since the Malin hub is not considered the predominant pricing point for natural gas in the upper Northwest, it is likely that cash market participants do not consult the MLN contract's prices on a frequent and recurring basis in pricing cash market transactions.

Both EI [28] and WGCEF [29] stated that publication of price data in a package format is a weak justification for material price reference. These commenters argue that market participants generally do not purchase ICE data sets for one contract's prices, such as those for the MLN contract. Instead, traders are interested in the settlement prices, so the fact that ICE sells the MLN prices as part of a broad package is not conclusive evidence that market participants are buying the ICE data sets because they find the MLN prices have substantial value to them. As mentioned above, the Commission notes that publication of the MLN contract's prices is not indirect evidence of routine dissemination. The MLN contract's prices are published with those of numerous other contracts, which are of more interest to market participants. Due to the lack of importance of the Malin hub, the Commission has concluded that traders likely do not specifically purchase the ICE data packages for the MLN contract's prices and do not consult such prices on a frequent and recurring basis in pricing cash market transactions.

ii. Conclusion Regarding Material Price Reference

Based on the above, the Commission finds that the MLN contract does not meet the material price reference criterion because cash market transactions are not priced on a frequent and recurring basis at a differential to the MLN contract's price (direct evidence). Moreover, while the ECM sells the MLN contract's price data to market participants, market participants likely do not specifically purchase the ICE data packages for the MLN contract's prices and do not consult such prices on a frequent and recurring basis in pricing cash market transactions (indirect evidence).

2. Price Linkage Criterion

In its October 9, 2009, **Federal Register** notice, the Commission identified price linkage as a potential basis for a SPDC determination with respect to the MLN contract. In this regard, the final settlement of the MLN contract is based, in part, on the final settlement price of the NYMEX's Henry Hub physically-delivered natural gas futures contract, where the NYMEX is registered with the Commission as a DCM.

The Commission's Guidance on Significant Price Discovery Contracts [30] notes that a "price-linked contract is a contract that relies on a contract traded on another trading facility to settle, value or otherwise offset the price-linked contract." Furthermore, the Guidance notes that "[f]or a linked contract, the mere fact that a contract is linked to another contract will not be sufficient to support a determination

[20] CL 02.
[21] CL 04.
[22] CL 05.
[23] CL 06.
[24] CL 08.
[25] As noted above, IECA expressed the opinion that the MLN contract met the criteria for SPDC determination but did not provide its reasoning.
[26] CL 03.
[27] CL 03.
[28] CL 05.
[29] CL 02.
[30] Appendix A to the Part 36 rules.

that a contract performs a significant price discovery function. To assess whether such a determination is warranted, the Commission will examine the relationship between transaction prices of the linked contract and the prices of the referenced contract. The Commission believes that where material liquidity exists, prices for the linked contract would be observed to be substantially the same as, or move substantially in conjunction with, the prices of the referenced contract." The Guidance proposes a threshold price relationship such that prices of the ECM linked contract will fall within a 2.5 percent price range for 95 percent of contemporaneously determined closing, settlement or other daily prices over the most recent quarter. Finally, the Commission also stated in the Guidance that it would consider a linked contract that has a trading volume equivalent to 5 percent of the volume of trading in the contract to which it is linked to have sufficient volume potentially to be deemed a SPDC ("minimum threshold").

To assess whether the MLN contract meets the Price Linkage criterion, Commission staff obtained price data from ICE and performed the statistical tests cited above. Staff found that, while the Malin price is determined, in part, by the final settlement price of the NYMEX physically-delivered natural gas futures contract (a DCM contract), the Malin price is not within 2.5 percent of the settlement price of the corresponding NYMEX Henry Hub natural gas futures contract on 95 percent or more of the days. Specifically, during the third quarter of 2009, 10 percent of the Malin hub natural gas prices derived from the ICE basis values were within 2.5 percent of the daily settlement price of the NYMEX Henry Hub futures contract. In addition, staff finds that the MLN contract fails to meet the volume threshold requirement. In particular, the total trading volume in the NYMEX Natural Gas contract during the third quarter of 2009 was 14,022,963 contracts, with 5 percent of that number being 701,148 contracts. The number of trades on the ICE centralized market in the MLN contract during the same period was 54,759 contracts (equivalent to 13,690 NYMEX contracts, given the size difference).[31] Thus, centralized-market trades in the MLN contract amounted to less than the minimum threshold.

i. Federal Register Comments

WGCEF, ICE, EI, NGSA and FIEG addressed the question of whether the MLN contract met the price linkage criterion for a SPDC.[32] Each of the commenters expressed the opinion that the MLN contract did not appear to meet the above-discussed Commission guidance regarding the price relationship and/or the minimum volume threshold relative to the DCM contract to which the MLN is linked. Based on its analysis discussed above, the Commission agrees with this assessment.

ii. Conclusion Regarding the Price Linkage Criterion

The Commission finds that the MLN contract does not meet the price linkage criterion because it fails the volume and price linkage tests provided for in the Commission's Guidance.

3. Material Liquidity Factor

As noted above, in its October 9, 2009, **Federal Register** notice, the Commission identified material price reference, price linkage and material liquidity as potential criteria for SPDC determination of the MLN contract. To assess whether a contract meets the material liquidity criterion, the Commission first examines trading activity as a general measurement of the contract's size and potential importance. If the Commission finds that the contract in question meets a threshold of trading activity that would render it of potential importance, the Commission will then perform a statistical analysis to measure the effect that the prices of the subject contract potentially may have on prices for other contracts listed on an ECM or a DCM.

Based upon on a required quarterly filing made by ICE on July 27, 2009, the total number of MLN trades executed on ICE's electronic trading platform was 664 in the second quarter of 2009, resulting in a daily average of 10.4 trades. During the same period, the MLN contract had a total trading volume on ICE's electronic trading platform of 59,564 contracts and an average daily trading volume of 930.7 contracts. The open interest as of June 30, 2009, was 65,804 contracts, which includes trades executed on ICE's electronic trading platform, as well as trades executed off of ICE's electronic trading platform and then brought to ICE for clearing.

In a subsequent filing dated November 13, 2009, ICE reported that 686 separate trades occurred on its electronic platform in the third quarter of 2009, resulting in a daily average of 10.4 trades. During the same period, the MLN contract had a total trading volume on its electronic platform of 54,759 contracts (which was an average of 830 contracts per day). As of September 30, 2009, open interest in the MLN contract was 57,332 contracts. Reported open interest included positions resulting from trades that were executed on ICE's electronic platform, as well as trades that were executed off of ICE's electronic platform and brought to ICE for clearing.

As indicated above, the average number trades per day in the second and third quarters of 2009 was only slightly above the minimum reporting level (5 trades per day). Moreover, trading activity in the MLN contract, as characterized by total quarterly volume, indicates that the MLN contract experiences trading activity similar to that of other thinly-traded contracts.[33] Thus, the MLN contract does not meets a threshold of trading activity that would render it of potential importance and no additional statistical analysis is warranted.[34]

i. Federal Register Comments

As noted above, WGCEF, ICE, EI, NGSA and FIEG addressed the question of whether the MLN contract met the material liquidity criterion for a SPDC.[35] These commenters stated that the MLN contract does not meet the material liquidity criterion for SPDC determination for a number of reasons.

WGCEF,[36] ICE[37] and EI[38] noted that the Commission's Guidance had posited

[31] The MLN contract is one-quarter the size of the NYMEX Henry Hub physically-delivered futures contract.

[32] As noted above, IECA expressed the opinion that the MLN contract met the criteria for SPDC determination but did not provide its reasoning.

[33] Staff has advised the Commission that in its experience, a thinly-traded contract is, generally, one that has a quarterly trading volume of 100,000 contracts or less. In this regard, in the third quarter of 2009, physical commodity futures contracts with trading volume of 100,000 contracts or fewer constituted less than one percent of total trading volume of all physical commodity futures contracts.

[34] In establishing guidance to illustrate how it will evaluate the various criteria, or combinations of criteria, when determining whether a contract is a SPDC, the Commission made clear that "material liquidity itself would not be sufficient to make a determination that a contract is a [SPDC], * * * but combined with other factors it can serve as a guidepost indicating which contracts are functioning as [SPDCs]." For the reasons discussed above, the Commission has found that the MLN contract does not meet either the price linkage or material price reference criterion. In light of this finding and the Commission's Guidance cited above, there is no need to evaluate further the material liquidity criteria since it cannot be used alone as a basis for a SPDC determination.

[35] As noted above, IECA expressed the opinion that the MLN contract met the criteria for SPDC determination but did not provide its reasoning.

[36] CL 02.

[37] CL 04.

[38] CL 05.

concepts of liquidity that generally assumed a fairly constant stream of prices throughout the trading day, and noted that the relatively low number of trades per day in the MLN contract did not meet this standard of liquidity. The Commission observes that a continuous stream of prices would indeed be an indication of liquidity for certain markets but the Guidance also notes that "quantifying the levels of immediacy and price concession that would define material liquidity may differ from one market or commodity to another."

WGCEF, FIEG [39] and NGSA [40] noted that the MLN contract represents a differential, which does not affect other contracts, including the NYMEX Henry Hub contract and physical gas contracts. FIEG and WGCEF also noted that the MLN contract's trading volume represents only a fraction of natural gas trading.

ICE opined that the Commission "seems to have adopted a five trade-per-day test to determine whether a contract is materially liquid. It is worth noting that ICE originally suggested that the CFTC use a five trades-per-day threshold as the basis for an ECM to *report* trade data to the CFTC." Furthermore, FIEG cautioned the Commission in using a reporting threshold as a measure of liquidity. In this regard, the Commission adopted a five trades-per-day threshold as a reporting requirement to enable it to "independently be aware of ECM contracts that may develop into SPDCs" [41] rather than solely relying upon an ECM on its own to identify any such potential SPDCs to the Commission. Thus, any contract that meets this threshold may be subject to scrutiny as a potential SPDC but this does not mean that the contract will be found to be a SPDC merely because it met the reporting threshold.

ICE and EI proposed that the statistics provided by ICE were misinterpreted and misapplied by the Commission. In particular, ICE stated that the volume figures used in the Commission's analysis (cited above) "include trades made in *all months of each contract*" as well as in strips of contract months, and a "more appropriate method of determining liquidity is to examine the activity in a *single* traded month or strip of a given contract." [42] A similar argument was made by EI, which observed that the five-trades-per-day number "is highly misleading * * * because the contracts can be offered for as long as 120 months, [thus] the average per day for an individual contract may be less than 1 per day."

It is the Commission's opinion that liquidity, as it pertains to the MLN contract, is typically a function of trading activity in particular lead months and, given sufficient liquidity in such months, the ICE MLN contract itself would be considered liquid. In any event, in light of the fact that the Commission has found that the MLN contract does not meet the material price reference or price linkage criteria, according to the Commission's Guidance, it would be unnecessary to evaluate whether the MLN contract meets the material liquidity criterion since it cannot be used alone for SPDC determination.

ii. Conclusion Regarding Material Liquidity

For the reasons discussed above, the Commission does not find evidence that the MLN contract meets the material liquidity criterion.

4. Overall Conclusion Regarding the MLN Contract

After considering the entire record in this matter, including the comments received, the Commission has determined that the MLN contract does not perform a significant price discovery function under the criteria established in section 2(h)(7) of the CEA. Specifically, the Commission has determined that the MLN contract does not meet the material price reference, price linkage and material liquidity criteria at this time. Accordingly, the Commission will issue the attached Order declaring that the MLN contract is not a SPDC. Issuance of this Order indicates that the Commission does not at this time regard ICE as a registered entity in connection with its MLN contract.[43] Accordingly, with respect to its MLN contract, ICE is not required to comply with the obligations, requirements and timetables prescribed in Commission rule 36.3(c)(4) for ECMs with SPDCs. However, ICE must continue to comply with the applicable reporting requirements.

V. Related Matters

a. Paperwork Reduction Act

The Paperwork Reduction Act of 1995 ("PRA") [44] imposes certain requirements on Federal agencies, including the Commission, in connection with their conducting or sponsoring any collection of information as defined by the PRA. Certain provisions of Commission rule 36.3 impose new regulatory and reporting requirements on ECMs, resulting in information collection requirements within the meaning of the PRA. OMB previously has approved and assigned OMB control number 3038–0060 to this collection of information.

b. Cost-Benefit Analysis

Section 15(a) of the CEA [45] requires the Commission to consider the costs and benefits of its actions before issuing an order under the Act. By its terms, section 15(a) does not require the Commission to quantify the costs and benefits of an order or to determine whether the benefits of the order outweigh its costs; rather, it requires that the Commission "consider" the costs and benefits of its actions. Section 15(a) further specifies that the costs and benefits shall be evaluated in light of five broad areas of market and public concern: (1) Protection of market participants and the public; (2) efficiency, competitiveness and financial integrity of futures markets; (3) price discovery; (4) sound risk management practices; and (5) other public interest considerations. The Commission may in its discretion give greater weight to any one of the five enumerated areas and could in its discretion determine that, notwithstanding its costs, a particular order is necessary or appropriate to protect the public interest or to effectuate any of the provisions or accomplish any of the purposes of the Act.

When a futures contract begins to serve a significant price discovery function, that contract, and the ECM on which it is traded, warrants increased oversight to deter and prevent price manipulation or other disruptions to

[39] CL 08.

[40] CL 06.

[41] 73 FR 75892 (December 12, 2008).

[42] In addition, both EI and ICE stated that the trades-per-day statistics that it provided to the Commission in its quarterly filing and which were cited in the Commission's October 9, 2009, **Federal Register** notice includes 2(h)(1) transactions, which were not completed on the electronic trading platform and should not be considered in the SPDC determination process. The Commission staff asked ICE to review the data it sent in its quarterly filings; ICE confirmed that the volume data it provided and which the Commission cited includes only transaction data executed on ICE's electronic trading platform. As noted above, supplemental data supplied by ICE confirmed that block trades are in addition to the trades that were conducted on the electronic platform; block trades comprise about 55 percent of all transactions in the MLN contract. The Commission acknowledges that the open interest information it provided in its October 9, 2009, **Federal Register** notice includes transactions made off the ICE platform. However, once open interest is created, there is no way for ICE to differentiate between "on-exchange" versus "off-exchange" created positions, and all such positions are fungible with one another and may be offset in any way agreeable to the position holder regardless of how the position was initially created.

[43] See 73 FR 75888, 75893 (Dec. 12, 2008).

[44] 44 U.S.C. 3507(d).

[45] 7 U.S.C. 19(a).

market integrity, both on the ECM itself and in any related futures contracts trading on DCMs. An Order finding that a particular contract is a SPDC triggers this increased oversight and imposes obligations on the ECM calculated to accomplish this goal. The increased oversight engendered by the issue of a SPDC Order increases transparency and helps to ensure fair competition among ECMs and DCMs trading similar products and competing for the same business. Moreover, the ECM on which the SPDC is traded must assume, with respect to that contract, all the responsibilities and obligations of a registered entity under the CEA and Commission regulations. Additionally, the ECM must comply with nine core principles established by section 2(h)(7) of the Act—including the obligation to establish position limits and/or accountability standards for the SPDC. Section 4(i) of the CEA authorize the Commission to require reports for SPDCs listed on ECMs. These increased responsibilities, along with the CFTC's increased regulatory authority, subject the ECM's risk management practices to the Commission's supervision and oversight and generally enhance the financial integrity of the markets.

The Commission has concluded that ICE's MLN contract, which is the subject of the attached Order, is not a SPDC; accordingly, the Commission's Order imposes no additional costs and no additional statutorily or regulatory mandated responsibilities on the ECM.

c. Regulatory Flexibility Act

The Regulatory Flexibility Act ("RFA") [46] requires that agencies consider the impact of their rules on small businesses. The requirements of CEA section 2(h)(7) and the Part 36 rules affect ECMs. The Commission previously has determined that ECMs are not small entities for purposes of the RFA.[47] Accordingly, the Chairman, on behalf of the Commission, hereby certifies pursuant to 5 U.S.C. 605(b) that these Orders, taken in connection with section 2(h)(7) of the Act and the Part 36 rules, will not have a significant impact on a substantial number of small entities.

VI. Order

a. Order Relating to the Malin Financial Basis Contract

After considering the complete record in this matter, including the comment letters received in response to its request for comments, the Commission has determined to issue the following Order:

The Commission, pursuant to its authority under section 2(h)(7) of the Act, hereby determines that the Malin Financial Basis contract, traded on the IntercontinentalExchange, Inc., does not at this time satisfy the material price reference, price linkage or material liquidity criteria for significant price discovery contracts. Consistent with this determination, the IntercontinentalExchange, Inc., is not considered a registered entity [48] with respect to the Malin Financial Basis contract and is not subject to the provisions of the Commodity Exchange Act applicable to registered entities. Further, the obligations, requirements and timetables prescribed in Commission rule 36.3(c)(4) governing core principle compliance by the IntercontinentalExchange, Inc., are not applicable to the Malin Financial Basis contract with the issuance of this Order.

This Order is based on the representations made to the Commission by the IntercontinentalExchange, Inc., dated July 27, 2009, and November 13, 2009, and other supporting material. Any material change or omissions in the facts and circumstances pursuant to which this order is granted might require the Commission to reconsider its current determination that the Malin Financial Basis contract is not a significant price discovery contract. Additionally, to the extent that it continues to rely upon the exemption in Section 2(h)(3) of the Act, the IntercontinentalExchange, Inc., must continue to comply with all of the applicable requirements of Section 2(h)(3) and Commission Regulation 36.3.

Issued in Washington, DC on April 28, 2010, by the Commission.

David A. Stawick,

Secretary of the Commission.

[FR Doc. 2010–10306 Filed 5–3–10; 8:45 am]

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[46] 5 U.S.C. 601 *et seq.*

[47] 66 FR 42256, 42268 (Aug. 10, 2001).

[48] 7 U.S.C. 1a(29).

COMMODITY FUTURES TRADING COMMISSION

Order Finding That the Carbon Financial Instrument Contract Offered for Trading on the Chicago Climate Exchange, Inc. Does Not Perform a Significant Price Discovery Function

AGENCY: Commodity Futures Trading Commission.

ACTION: Final order.

SUMMARY: On August 20, 2009, the Commodity Futures Trading Commission ("CFTC" or "Commission") published for comment in the **Federal Register** [1] a notice of its intent to undertake a determination whether the Carbon Financial Instrument ("CFI") contract offered for trading on the Chicago Climate Exchange, Inc. ("CCX"), an exempt commercial market ("ECM") under Section 2(h)(3)–(5) of the Commodity Exchange Act ("CEA" or the "Act"), performs a significant price discovery function pursuant to section 2(h)(7) of the CEA. The Commission undertook this review based upon an initial evaluation of information and data provided by CCX. The Commission has reviewed public comments and the entire record in this matter and has determined to issue an order finding that the CCX CFI contract, at this time, does not perform a significant price discovery function. Authority for this action is found in section 2(h)(7) of the CEA and Commission rule 36.3(c) promulgated thereunder.

DATES: *Effective date:* April 28, 2010.

FOR FURTHER INFORMATION CONTACT: Irina Leonova, Financial Economist, Division of Market Oversight, Commodity Futures Trading Commission, Three Lafayette Centre, 1155 21st Street, NW., Washington, DC 20581. Telephone: (202) 418–5646. Email: *ileonova@cftc.gov,* or Gregory K. Price, Industry Economist, Division of Market Oversight, same address. Telephone: (202) 418–5515. E-mail: *gprice@cftc.gov,* or Susan Nathan, Senior Special Counsel, Division of Market Oversight, same address. Telephone: (202) 418–5133. E-mail: *snathan@cftc.gov.*

SUPPLEMENTARY INFORMATION:

I. Introduction

The CFTC Reauthorization Act of 2008 ("Reauthorization Act") [2] significantly broadened the CFTC's regulatory authority with respect to ECMs by creating, in section 2(h)(7) of the CEA, a new regulatory category—ECMs on which significant price discovery contracts ("SPDCs") are traded—and treating ECMs in that category as registered entities under the CEA. The legislation authorizes the CFTC to designate an agreement, contract or transaction traded on an ECM as a SPDC if the Commission determines, under criteria established in section 2(h)(7), that it performs a significant price discovery function. When the Commission makes such a

[1] 74 FR 42052 (August 20, 2009).

[2] Incorporated as Title XIII of the Food, Conservation and Energy Act of 2008, Public Law 110–246, 122 Stat. 1624 (June 18, 2008).

determination, the ECM on which the SPDC is traded must assume, with respect to that contract, all the responsibilities and obligations of a registered entity under the Act and Commission regulations, and must comply with nine core principles established by new section 2(h)(7)(C).

On March 16, 2009, the CFTC promulgated final rules implementing the provisions of the Reauthorization Act.[3] As relevant here, Rule 36.3 imposes increased information reporting requirements on ECMs to assist the Commission in making prompt assessments whether particular ECM contracts may be SPDCs. In addition to filing quarterly reports regarding its contracts, an ECM must notify the Commission promptly concerning any contract traded in reliance on the exemption in section 2(h)(3) of the CEA that averaged five trades per day or more over the most recent calendar quarter, and that either: (1) had its price information sold by the exchange to market participants or industry publications or (2) had daily closing or settlement prices which were within 2.5% of the contemporaneously determined closing, settlement or other daily price of another contract on 95 percent or more of the days in the most recent quarter.

Commission Rule 36.3(c)(3) established the procedures by which the Commission makes and announces its determination whether a particular ECM contract serves a significant price discovery function. Under those procedures, the Commission publishes notice in the **Federal Register** that it intends to undertake a determination whether the specified agreement, contract or transaction performs a significant price discovery function and receives written views, data and arguments relevant to its determination from the ECM and other interested persons. The Commission, within a reasonable period of time after the close of the comment period, considers all relevant information and issues an order announcing and explaining its determination. The issuance of an affirmative order subjects an ECM with a SPDC to the full application of the Commission's regulatory authorities; at that time, such an ECM becomes subject to all provisions of the CEA applicable to registered entities.[4] The issuance of such an order also triggers the obligations, requirements and timetables prescribed in Commission Rule 36.3(c)(4).[5]

II. Notice of Intent To Undertake SPDC Determination

On August 20, 2009, the Commission published in the **Federal Register** a notice of its intent to undertake a determination whether the CCX's CFI contract performs a significant price discovery function, and requested comment from interested parties.[6] Comments were received from the IntercontinentalExchange, Inc. ("ICE"); Jeremy D. Weinstein, Esq. ("Weinstein"); the California Forestry Association ("CFA"); and Scott DeMonte ("DeMonte").[7] The comments are more extensively discussed below in the Analysis Section.

III. Section 2(h)(7) of the CEA

The Commission is directed by section 2(h)(7) of the CEA to consider, as appropriate, the following factors in determining whether a contract performs a significant price discovery function:

- *Price Linkage*—the extent to which the agreement, contract or transaction uses or otherwise relies on a daily or final settlement price, or other major price parameter, of a contract or contracts listed for trading on or subject to the rules of a designated contract market ("DCM") or derivatives transaction execution facility ("DTEF"), or a SPDC traded on an electronic trading facility, to value a position, transfer or convert a position, cash or financially settle a position, or close out a position.
- *Arbitrage*—the extent to which the price for the agreement, contract or transaction is sufficiently related to the price of a contract or contracts listed for trading on or subject to the rules of a DCM or DTEF, or a SPDC traded on or subject to the rules of an electronic trading facility, so as to permit market participants to effectively arbitrage between the markets by simultaneously maintaining positions or executing trades in the contracts on a frequent and recurring basis.
- *Material price reference*—the extent to which, on a frequent and recurring basis, bids, offers or transactions in a commodity are directly based on, or are determined by referencing, the prices generated by agreements, contracts or transactions being traded or executed on the electronic trading facility.
- *Material liquidity*—the extent to which the volume of agreements, contracts or transactions in the commodity being traded on the electronic trading facility is sufficient to have a material effect on other agreements, contracts or transactions listed for trading on or subject to the rules of a DCM, DTEF or electronic trading facility operating in reliance on the exemption in section 2(h)(3).

Not all factors must be present to support a determination that a particular contract performs a significant price discovery function. Moreover, the statutory language neither prioritizes the factors nor specifies the degrees to which a SPDC must conform to the various factors. In Guidance issued in connection with the Part 36 rules governing ECMs with SPDCs, the Commission observed that these factors do not lend themselves to a mechanical checklist or formulaic analysis.[8]

Accordingly, the Commission has indicated that in making its determination it will consider the circumstances under which the presence of a particular factor, or combination of factors, would be sufficient to support a SPDC determination.[9] For example, for contracts that are linked to other contracts or that may be arbitraged with other contracts, the Commission will consider whether the price of the potential SPDC moves in such harmony with the other contract that the two markets essentially become interchangeable.[10] This co-movement of prices would be an indication that activity in the contract had reached a level sufficient for the contract to perform a significant price discovery function.

IV. The CCX CFI Contract

CCX, launched in 2003, operates the only North American voluntary, legally

[3] 74 FR 12178 (Mar. 23, 2009); these rules became effective on April 22, 2009.

[4] Public Law 110–246 at 13203; *Joint Explanatory Statement of the Committee of Conference*, H.R. Rep. No. 110–627, 110 Cong., 2d Sess. 978, 986 (Conference Committee Report). *See also* 73 FR 75888, 75894 (Dec. 12, 2008).

[5] For an initial SPDC determination, ECMs have a grace period of 90 calendar days from the issuance of a SPDC determination order to submit a written demonstration of compliance with the applicable core principles. For subsequent SPDC determinations, ECMs have a grace period of 30 calendar days to demonstrate core principle compliance.

[6] The Commission's Part 36 Rules establish, among other things, procedures by which the Commission makes and announces its determination whether a specific ECM contract serves a significant price discovery function. Under those procedures, the Commission publishes a notice in the **Federal Register** that it intends to undertake a determination whether a specified agreement, contract or transaction performs a significant price discovery function and to receive written data, views and arguments relevant to its determination from the ECM and other interested persons.

[7] The comment letters are available on the Commission's Web site: *http://www.cftc.gov/lawandregulation/federalregister/federalregistercomments/2009/09-010.html.*

[8] Appendix A to Part 36, 17 CFR part 36 (2009).

[9] 17 CFR part 36, appendix A.

[10] Appendix A to Part 36, 17 CFR 36 (2009).

binding integrated trading system to reduce emissions of six major greenhouse gases, with offset projects worldwide. CCX offers a cap and trade system whose members [11] make a legally binding emission reduction commitment. Members are allocated annual emission allowances in accordance with their emissions baseline and the CCX emission reduction schedule. Members who reduce beyond their targets have surplus allowances to sell or bank; those who do not meet the targets must comply by purchasing CCX CFIs. The CCX CFI contract is a cash market instrument and not a derivatives contract. The Chicago Climate Futures Exchange (CCFE), a subsidiary of CCX that operates as a DCM, lists derivatives (futures and option contracts) on CCX CFIs.

The size of the CCX CFI contract is 100 metric tons (MT) of CO_2-equivalent emissions. A CCX CFI contract involves the immediate delivery of, and payment for, vintage specific CCX carbon dioxide (CO_2) emission allowances called CFIs. Earlier dated vintages may be delivered against later vintage trades. Transactions (with exception of bilateral agreements) are cleared on trade day. Full contract value settlement occurs on the next business day. CCX substitutes as a counterparty to all transactions and guarantees performance until settlement is completed.

[11] CCX membership categories:

Members: Entities with direct greenhouse gas (GHG) emissions. Members make a legally binding commitment to the CCX Emission Reduction Schedule and are subject to annual emissions verification by FINRA. Indirect emissions are an opt-in.

Registry Participant Members: Entities with direct GHG emissions that establish a CCX Registry account of their emissions and undergo data verification. Standardized independent third-party data verification is provided by FINRA on an annual or multi-annual basis.

Associate Members: Office-based businesses or institutions with negligible direct GHG emissions. Associate Members commit to report and fully offset 100 percent of indirect emissions associated with energy purchases and business travel from year of entry through 2010 and emissions data are verified by FINRA.

Offset Providers: Owners of title to qualifying offset projects that sequester, destroy or reduce GHG emissions. Offset Providers register and sell offsets directly on the CCX.

Offset Aggregators: Entities that serve as the administrative representative, on behalf of offset project owners, of multiple offset-generating projects. Offset projects involving less than 10,000 metric tons of carbon dioxide equivalent per year should be registered and sold through an Offset Aggregator.

Liquidity Providers: Entities or individuals who trade on CCX for purposes other than complying with the CCX Emission Reduction Schedule, such as market makers and proprietary trading groups.

Exchange Participants: Entities or individuals who purchase CFI contracts and retire them to offset emissions associated with special events or other specified activities.

Based upon a required quarterly notification filed on October 15, 2009, (mandatory under Rule 36.3(c)(2)), the CCX reported that, with respect to its CFI contract, an average of 8 trades per day occurred in the third quarter of 2009. During the same period, the CFI had an average daily trading volume of 1,141 contracts. In the second quarter of 2009, market participants traded the CFI contract on average 15 times per day with an average daily trading volume of 1,235 contracts. Because the CCX CFI is a cash market instrument, open interest figures are not applicable.

V. Analysis

A. The Statutory Criteria

In its notice of intent to undertake a determination whether the CCX CFI contract performs a significant price discovery function, the Commission indicated that the CCX CFI contract might satisfy the material price reference and material liquidity criteria for SPDC determination.[12] Further analysis reveals that the CCX CFI contract does not meet either criterion.

Material Price Reference Criterion

The Commission has concluded that the CCX CFI contract does not meet the material price reference criterion for SPDC determination. As noted in the original **Federal Register** notice, the CFI market is solely a CCX-created entity.[13] The CCX designed all of the parameters of this carbon emission reduction program, and it established the rules for membership in the ECM, allowance trading, and the creation of offsets. Based on these attributes, staff considered whether traders look to the CCX as a source of price information and price discovery for the CFI or the U.S. carbon market in general that would either be a direct or an indirect source of evidence of the material price reference. Staff concluded that it appears that CCX CFI prices are not used as a price reference to the U.S. carbon market due to the relatively small market share of the CCX CFI program in the overall U.S. carbon market, the limited potential for the CFI program to be folded into a national carbon reduction program, and significant price volatility of the CCX CFI instrument. As part of its material price reference analysis, Commission staff considered comments filed pursuant to the request for comment and all other relevant information.[14]

[12] 74 FR 42054 (Aug. 20, 2009). The Commission did not identify either price linkage or arbitrage as the possible criteria for the CCX CFI contact to be a SPDC. Accordingly, those criteria will not be discussed further in this Order.

[13] 74 FR 42054 (Aug. 20, 2009).

Material Liquidity Criterion

The Commission's decision to undertake a review to determine whether the CCX CFI contract performs a significant price discovery function was based on CCX's required initial quarterly notification filed on July 1, 2009. At that time, CCX reported that, with respect to all CFI trades combined (aggregate of vintages 2003–2010), an average of 15 separate trades per day occurred in the second quarter of 2009. Subsequent to the publication of the Commission's **Federal Register** notice announcing its intent to undertake a SPDC review, however, CCX amended its filing to show the number of trades per day for each vintage, and clarified that the exchange lists and trades CFI contract vintages individually and provides a vintage-specific closing price for each CFI vintage contract. In these circumstances, the Commission recognizes that the CCX CFI vintage-specific contracts should not be aggregated, but rather should be treated individually for the purpose of a SPDC analysis. Accordingly, the Commission has analyzed each individual vintage of the CCX CFIs to determine whether any of them are SPDCs.[15]

The Commission's evaluation of the supplemental data indicates that the CCX CFI vintage specific contracts (2003–2010 vintages) do not meet the material liquidity criterion for a SPDC; the average number of trades per day per vintage was only one contract, well below the five trades per day reporting threshold established by the Commission.

B. Comments Received

The Commission received four responses to its request for comments. Two of the comment letters addressed issues beyond the scope of the instant matter;[16] two raised substantive issues

[14] The Commission will rely on one of two sources of evidence—direct or indirect—to determine a SPDC. Direct evidence can be cash market transactions that are frequently based on or quoted as a differential to the potential SPDC. Indirect evidence includes contracts whose price series are routinely disseminated in industry publications or are sold to market participants by the ECM.

[15] Because this shift in focus did not alter either the analysis or conclusion or otherwise suggest the need for further comment, the Commission did not republish its original notice of intent to make a SPDC determination with respect to the CCX CFI contract.

[16] *See* supra note 7. Specifically, the California Forestry Association offered the opinion that all the over-the-counter voluntary carbon trading occurring now serves a significant price discovery function. CL 02. Scott DeMonte advises the Commission to "fix the manipulation" in [its] exchanges" and

with respect to the applicability of section 2(h)(7) to the CFI contract.[17]

Weinstein opines that the CCX offset project protocols "do not conform to the stringent additionality [18] and leakage standards [19] that are in the carbon offset contracts * * * accepted by the broader market." Consequently, Mr. Weinstein asserts that "the absence from the CCX CFI contract of the most essential requirements for commonality with other carbon offset contract prevents market participants from using the CFI contracts for material price reference, arbitrage, and settlement and execution of transactions." The environmental requirements of the CCX offset protocols are beyond the scope of the Commission authority, and this inquiry was limited to an evaluation whether the CCX CFI contract might satisfy the material liquidity and material price reference statutory criterion for a SPDC determination.

ICE expressed an opinion that "the CFI does not serve a significant price discovery function and the Commission may exceed its jurisdiction if it determines that the CFI serves as a significant price discovery contract." ICE observed that the CCX CFI contract fails the threshold for material liquidity because "each [CCX CFI contract] vintage may trade less than twice a day." Consequently, ICE concluded that "a trade every couple of hours does not equate to the "ability to transact immediately" or "a more or less continuous stream of prices." As noted above, after a thorough review of supplemental data provided for the CCX CFI contract, Commission staff concluded that different CCX CFI vintages should be considered as separate CCX contracts. When analyzed in this manner, the CCX CFI contracts do not meet the material liquidity criterion for SPDC determination.

When analyzing the material price reference factor for a CCX CFI SPDC determination, ICE commented that "under the Commission's theory, any spot contract automatically serves as a material price reference, simply because the *contract references itself*" (emphasis in original). Additionally, ICE expresses an opinion that "by making this determination [the CCX CFI contract is a SPDC], the Commission is broadly asserting jurisdiction over the spot market if the spot contract is electronically traded." In response, the Commission notes that Section 2(h)(7), refers to "any agreement, contract or transaction conducted in reliance on the exemption" in Section 2(h)(3) and does not require that the Commission find that a potential SPDC contract is a commodity futures or options contract. The determination to list particular instruments in reliance on the Section 2(h)(3) exemption is made by the ECM, not the Commission, when the ECM files notice with the Commission, under Section 2(h)(5), of its reliance on such exemption. Section 2(i) of the CEA reinforces the view that instruments traded on 2(h)(3) markets may include non-futures products; that section states that there is no presumption that an agreement, contract or transaction exempted under section 2(h)(3) "is or would otherwise be subject to this chapter."

VI. Findings and Conclusion

In consideration of the initial and supplemental information provided by CCX, the comments received in connection with the **Federal Register** notice and all other relevant information, the Commission has determined that the CCX CFI contract does not, at this time, perform a significant price discovery function. Accordingly, as set forth in the Commission's Order, CCX is not required to comply with Commission Rule 36.3(c)(4) applicable to ECMs with SPDCs, or otherwise to assume the statutory and regulatory responsibilities of a registered entity with respect to the CFI contract. The Reauthorization Act amended the CEA to require that the Commission evaluate not less than annually all agreements, contracts and transactions conducted on an ECM in reliance on the exemption in section 2(h)(3) to determine whether they serve a significant price discovery function.[20] In addition, the Commission routinely monitors contracts traded or executed in reliance on section 2(h)(3) and reviews all ECM submissions on an ongoing basis for the presence of SPDCs. Accordingly, like all ECMs, CCX remains responsible for compliance with the reporting requirements described in Rule 36.3(a) and (b).

VII. Related Matters

A. Paperwork Reduction Act

The Paperwork Reduction Act of 1995 ("PRA") [21] imposes certain requirements on federal agencies, including the Commission, in connection with their conducting or sponsoring any collection of information, as defined by the PRA. Certain provisions of final Commission Rule 36.3 impose new regulatory and reporting requirements on ECMs, resulting in information collection requirements within the meaning of the PRA; OMB previously has approved and assigned OMB control number 3038–0060 to this collection of information.

B. Cost-Benefit Analysis

Section 15(a) of the CEA [22] requires the Commission to consider the costs and benefits of its actions before issuing an order under the Act. By its terms, section 15(a) does not require the Commission to quantify the costs and benefits of an order or to determine whether the benefits of the order outweigh its costs; rather, it requires that the Commission "consider" the costs and benefits of its action. Section 15(a) further specifies that the costs and benefits shall be evaluated in light of five broad areas of market and public concern: (1) Protection of market participants and the public; (2) efficiency, competitiveness, and financial integrity of futures markets; (3) price discovery; (4) sound risk management practices; and (5) other public interest considerations. The Commission may in its discretion give greater weight to any of the five enumerated areas and could in its discretion determine that, notwithstanding its costs, a particular order is necessary or appropriate to protect the public interest or to effectuate any provisions or accomplish any of the purposes of the Act.

When a futures contract begins to serve a significant price discovery function, that contract, and the ECM on which it is traded, warrants increased oversight to deter and prevent price manipulation and other disruptions to market integrity, both on the ECM itself and in any related futures contracts trading on DCMs. An Order finding that a particular contract is a SPDC triggers

requests that firms be required to have collateral in excess of two times their average end of daily trade value in order to participate in this market. CL 01.

[17] *See* supra note 7. The commenters who raised substantive issues with respect to the applicability of section 2(h)(7) to the CFI contract are Jeremy D. Weinstein, Esq., owner of the law offices of Jeremy D. Weinstein, a professional corporation located in Walnut Creek, California and IntercontinentalExchange, Inc., operator of regulated exchanges, trading platforms and clearing houses serving the global markets for agricultural, credit, currency, emissions, energy and equity index markets headquartered in Atlanta, Georgia, U.S.

[18] There are a number of interpretations of the additionality concept in application to the environmental offset projects. The most popular interpretations are "environmental additionality" where a project is additional if the emissions from the project are lower than the baseline, and "project additionality" where the project must not have happened without the Clean Development Mechanism (CDM).

[19] Leakage generally refers to the increase in emissions outside the project boundary that occurs as a consequence of the project activity's implementation.

[20] Section 2(h)(7)(D)(ii), 7 U.S.C. 2(h)(7)(D)(ii).

[21] 44 U.S.C. 3507(d).

[22] 7 U.S.C.19(a).

this increased oversight and imposes obligations on the ECM calculated to accomplish this goal. The increased oversight engendered by the issuance of a SPDC Order increases transparency and helps to ensure fair competition among ECMs and DCMs trading similar products and competing for the same business. Moreover, the ECM on which the SPDC is traded must assume, with respect to that contract, all the responsibilities and obligations of a registered entity under the CEA and Commission regulations. Additionally, the ECM must comply with nine core principles established by section 2(h)(7) of the Act—including the obligation to establish position limits and/or accountability standards for the SPDC. Amendments to section 4(i) of the CEA authorize the Commission to require large trader reports for SPDCs listed on ECMs. These increased ECM responsibilities, along with the CFTC's increased regulatory authority, subject the ECM's risk management practices to the Commission's supervision and oversight and generally enhance the financial integrity of the markets.

The Commission has concluded that the Chicago Climate Exchange's Carbon Financial Instrument contract that is the subject of the attached Order is not a SPDC; accordingly, the Commission's Order impose no additional costs and no additional statutorily or regulatory mandated responsibilities on the ECM.

VIII. Order

Order Relating to the CCX CFI Contract

After considering the complete record in this matter, including the comment letters received in response to its request for comments, the Commission has determined to issue the following:

The Commission, pursuant to its authority under section 2(h)(7) of the Act, hereby determines that the Chicago Climate Exchange's Carbon Financial Instrument contract that was submitted to the Commission by the Chicago Climate Exchange for review on July 1, 2009 and October 15, 2009 does not, at this time, satisfy the statutory or regulatory requirements of a significant price discovery contract. Consistent with this determination, the Chicago Climate Exchange is not required at this time to comply with section 2(h)(7)(C) in connection with the Carbon Financial Instrument contract or the Part 36 regulations applicable to exempt commercial markets with significant price discovery contracts, and is not required to assume the statutory or regulatory responsibilities required of registered entities with respect to the Carbon Financial Instrument contract.

This order is based upon the representations made to the Commission by the Chicago Climate Exchange in filings dated July 1, 2009 and October 15, 2009, and other supporting material. Any material change or omissions in the facts and circumstances pursuant to which this order is granted might require the Commission to reconsider its current determination that the Carbon Financial Instrument contract is not a significant price discovery contract.

The Commission may, based upon information regarding the Carbon Financial Instrument contract reviewed under this Order that is submitted in required reports and filings, issue another notice of intent to undertake a significant price discovery contract determination for these contracts. Further, issuance of this Order does not affect the Chicago Climate Exchange's continuing obligation to comply with all statutory and regulatory requirements applicable to 2(h)(3) markets, including all reporting requirements found in Commission Regulation 36.3.

Issued in Washington, DC on April 28, 2010 by the Commission.

David A. Stawick,

Secretary of the Commission.

[FR Doc. 2010–10311 Filed 5–3–10; 8:45 am]

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COMMODITY FUTURES TRADING COMMISSION

Order Finding That the NGPL TxOk Financial Basis Contract Traded on the IntercontinentalExchange, Inc., Does Not Perform a Significant Price Discovery Function

AGENCY: Commodity Futures Trading Commission

ACTION: Final Order.

SUMMARY: On October 9, 2009, the Commodity Futures Trading Commission ("CFTC" or "Commission") published for comment in the **Federal Register** [1] a notice of its intent to undertake a determination whether the NGPL TxOk Financial Basis ("NTO") contract traded on the IntercontinentalExchange, Inc. ("ICE"), an exempt commercial market ("ECM") under sections 2(h)(3)–(5) of the Commodity Exchange Act ("CEA" or the "Act"), performs a significant price discovery function pursuant to section 2(h)(7) of the CEA. The Commission undertook this review based upon an initial evaluation of information and data provided by ICE as well as other available information. The Commission has reviewed the entire record in this matter, including all comments received, and has determined to issue an order finding that the NTO contract does not perform a significant price discovery function. Authority for this action is found in section 2(h)(7) of the CEA and Commission rule 36.3(c) promulgated thereunder.

DATES: *Effective date:* April 28, 2010.

FOR FURTHER INFORMATION CONTACT: Gregory K. Price, Industry Economist, Division of Market Oversight, Commodity Futures Trading Commission, Three Lafayette Centre, 1155 21st Street, NW., Washington, DC 20581. Telephone: (202) 418–5515. E-mail: *gprice@cftc.gov*; or Susan Nathan, Senior Special Counsel, Division of Market Oversight, same address. Telephone: (202) 418–5133. E-mail: *snathan@cftc.gov*.

SUPPLEMENTARY INFORMATION:

I. Introduction

The CFTC Reauthorization Act of 2008 ("Reauthorization Act") [2] significantly broadened the CFTC's regulatory authority with respect to ECMs by creating, in section 2(h)(7) of the CEA, a new regulatory category—ECMs on which significant price discovery contracts ("SPDCs") are traded—and treating ECMs in that category as registered entities under the CEA.[3] The legislation authorizes the CFTC to designate an agreement, contract or transaction as a SPDC if the Commission determines, under criteria established in section 2(h)(7), that it performs a significant price discovery function. When the Commission makes such a determination, the ECM on which the SPDC is traded must assume, with respect to that contract, all the responsibilities and obligations of a registered entity under the Act and Commission regulations, and must comply with nine core principles established by new section 2(h)(7)(C).

On March 16, 2009, the CFTC promulgated final rules implementing the provisions of the Reauthorization Act.[4] As relevant here, rule 36.3 imposes increased information reporting requirements on ECMs to assist the Commission in making prompt assessments whether particular ECM contracts may be SPDCs. In addition to filing quarterly reports of its contracts, an ECM must notify the Commission

[1] 74 FR 52208 (October 9, 2009).

[2] Incorporated as Title XIII of the Food, Conservation and Energy Act of 2008, Public Law 110–246, 122 Stat. 1624 (June 18, 2008).

[3] 7 U.S.C. 1a(29).

[4] 74 FR 12178 (Mar. 23, 2009); these rules became effective on April 22, 2009.

promptly concerning any contract traded in reliance on the exemption in section 2(h)(3) of the CEA that averaged five trades per day or more over the most recent calendar quarter, and for which the exchange sells its price information regarding the contract to market participants or industry publications, or whose daily closing or settlement prices on 95 percent or more of the days in the most recent quarter were within 2.5 percent of the contemporaneously determined closing, settlement or other daily price of another contract.

Commission rule 36.3(c)(3) established the procedures by which the Commission makes and announces its determination whether a particular ECM contract serves a significant price discovery function. Under those procedures, the Commission will publish notice in the **Federal Register** that it intends to undertake an evaluation whether the specified agreement, contract or transaction performs a significant price discovery function and to receive written views, data and arguments relevant to its determination from the ECM and other interested persons. Upon the close of the comment period, the Commission will consider, among other things, all relevant information regarding the subject contract and issue an order announcing and explaining its determination whether or not the contract is a SPDC. The issuance of an affirmative order signals the effectiveness of the Commission's regulatory authorities over an ECM with respect to a SPDC; at that time such an ECM becomes subject to all provisions of the CEA applicable to registered entities.[5] The issuance of such an order also triggers the obligations, requirements and timetables prescribed in Commission rule 36.3(c)(4).[6]

II. Notice of Intent To Undertake SPDC Determination

On October 9, 2009, the Commission published in the **Federal Register** notice of its intent to undertake a determination whether the NTO contract performs a significant price discovery function and requested comment from interested parties.[7] Comments were received from Industrial Energy Consumers of America ("IECA"), Working Group of Commercial Energy Firms ("WGCEF"), Platts, ICE, Economists Incorporated ("EI"), Natural Gas Supply Association ("NGSA"), Federal Energy Regulatory Commission ("FERC") and Financial Institutions Energy Group ("FIEG").[8] The comment letters from FERC[9] and Platts did not directly address the issue of whether or not the NTO contract is a SPDC; IECA expressed the opinion that the NTO contract did perform a significant price discovery function; and thus, should be subject to the requirements of the core principles enumerated in Section 2(h)(7) of the Act, but did not elaborate on its reasons for saying so or directly address any of the criteria. The remaining comment letters raised substantive issues with respect to the applicability of section 2(h)(7) to the NTO contract and generally expressed the opinion that the NTO contract is not a SPDC because it does not meet the material price reference, price reference and material liquidity criteria for SPDC determination. These comments are more extensively discussed below, as applicable.

III. Section 2(h)(7) of the CEA

The Commission is directed by section 2(h)(7) of the CEA to consider the following criteria in determining a contract's significant price discovery function:

- *Price Linkage*—the extent to which the agreement, contract or transaction uses or otherwise relies on a daily or final settlement price, or other major price parameter, of a contract or contracts listed for trading on or subject to the rules of a designated contract market ("DCM") or derivatives transaction execution facility ("DTEF"), or a SPDC traded on an electronic trading facility, to value a position, transfer or convert a position, cash or financially settle a position, or close out a position.
- *Arbitrage*—the extent to which the price for the agreement, contract or transaction is sufficiently related to the price of a contract or contracts listed for trading on or subject to the rules of a designated DCM or DTEF, or a SPDC traded on or subject to the rules of an electronic trading facility, so as to permit market participants to effectively arbitrage between the markets by simultaneously maintaining positions or executing trades in the contracts on a frequent and recurring basis.
- *Material price reference*—the extent to which, on a frequent and recurring basis, bids, offers or transactions in a commodity are directly based on, or are determined by referencing or consulting, the prices generated by agreements, contracts or transactions being traded or executed on the electronic trading facility.
- *Material liquidity*—the extent to which the volume of agreements, contracts or transactions in a commodity being traded on the electronic trading facility is sufficient to have a material effect on other agreements, contracts or transactions listed for trading on or subject to the rules of a DCM, DTEF or electronic trading facility operating in reliance on the exemption in section 2(h)(3).

[5] Public Law 110–246 at 13203; *Joint Explanatory Statement of the Committee of Conference*, H.R. Rep. No. 110–627, 110 Cong., 2d Sess. 978, 986 (Conference Committee Report). See also 73 FR 75888, 75894 (Dec. 12, 2008).

[6] For an initial SPDC, ECMs have a grace period of 90 calendar days from the issuance of a SPDC determination order to submit a written demonstration of compliance with the applicable core principles. For subsequent SPDCs, ECMs have a grace period of 30 calendar days to demonstrate core principle compliance.

[7] The Commission's Part 36 rules establish, among other things, procedures by which the Commission makes and announces its determination whether a specific ECM contract serves a significant price discovery function. Under those procedures, the Commission publishes a notice in the **Federal Register** that it intends to undertake a determination whether a specified agreement, contract or transaction performs a significant price discovery function and to receive written data, views and arguments relevant to its determination from the ECM and other interested persons.

[8] IECA describes itself as an "association of leading manufacturing companies" whose membership "represents a diverse set of industries including: plastics, cement, paper, food processing, brick, chemicals, fertilizer, insulation, steel, glass, industrial gases, pharmaceutical, aluminum and brewing." WGCEF describes itself as "a diverse group of commercial firms in the domestic energy industry whose primary business activity is the physical delivery of one or more energy commodities to customers, including industrial, commercial and residential consumers" and whose membership consists of "energy producers, marketers and utilities." McGraw-Hill, through its division Platts, compiles and calculates monthly natural gas price indices from natural gas trade data submitted to Platts by energy marketers. Platts includes those price indices in its monthly *Inside FERC's Gas Market Report* ("Inside FERC"). ICE is an exempt commercial market, as noted above. EI is an economic consulting firm with offices located in Washington, DC, and San Francisco, CA. NGSA is an industry association comprised of natural gas producers and marketers. FERC is an independent federal regulatory agency that, among other things, regulates the interstate transmission of natural gas, oil and electricity. FIEG describes itself as an association of investment and commercial banks who are active participants in various sectors of the natural gas markets, "including acting as marketers, lenders, underwriters of debt and equity securities, and proprietary investors." The comment letters are available on the Commission's Web site: *http://www.cftc.gov/lawandregulation/federalregister/federalregistercomments/2009/09-021.html.*

[9] FERC stated that the NTO contract is cash settled and does not contemplate the actual physical delivery of natural gas. Accordingly, FERC expressed the opinion that a determination by the Commission that a contract performs a significant price discovery function "would not appear to conflict with FERC's exclusive jurisdiction under the Natural Gas Act (NGA) over certain sales of natural gas in interstate commerce for resale or with its other regulatory responsibilities under the NGA" and further that, "FERC staff will continue to monitor for any such conflict * * * [and] advise the CFTC" should any such potential conflict arise. CL 07.

Not all criteria must be present to support a determination that a particular contract performs a significant price discovery function, and one or more criteria may be inapplicable to a particular contract.[10] Moreover, the statutory language neither prioritizes the criteria nor specifies the degree to which a SPDC must conform to the various criteria. In Guidance issued in connection with the Part 36 rules governing ECMs with SPDCs, the Commission observed that these criteria do not lend themselves to a mechanical checklist or formulaic analysis. Accordingly, the Commission has indicated that in making its determinations it will consider the circumstances under which the presence of a particular criterion, or combination of criteria, would be sufficient to support a SPDC determination.[11] For example, for contracts that are linked to other contracts or that may be arbitraged with other contracts, the Commission will consider whether the price of the potential SPDC moves in such harmony with the other contract that the two markets essentially become interchangeable. This co-movement of prices would be an indication that activity in the contract had reached a level sufficient for the contract to perform a significant price discovery function. In evaluating a contract's price discovery role as a price reference, the Commission will consider the extent to which, on a frequent and recurring basis, bids, offers or transactions are directly based on, or are determined by referencing, the prices established for the contract.

IV. Findings and Conclusions

The NGPL TxOk Financial Basis (NTO) Contract and the SPDC Indicia

The NTO contract is cash settled based on the difference between the bidweek price index for a particular calendar month at the Natural Gas Pipeline Co. of America's ("NGPL's") TxOk [12] hub, as published in Platts' *Inside FERC's Gas Market Report*, and the final settlement price of the New York Mercantile Exchange's ("NYMEX's") physically-delivered Henry Hub natural gas futures contract for the same calendar month. The Platts bidweek price, which is published monthly, is based on a survey of cash market traders who voluntarily report to Platts data on their fixed-price transactions conducted during the last five business days of the month for physical delivery of natural gas at the TxOk hub; such bidweek transactions specify the delivery of natural gas on a uniform basis throughout the following calendar month at the agreed upon rate. The Platts bidweek index is published on the first business day of the calendar month in which the natural gas is to be delivered. The size of the TxOk contract is 2,500 million British thermal units ("mmBtu"), and the unit of trading is any multiple of 2,500 mmBtu. The TxOk contract is listed for up to 72 consecutive calendar months.

The Henry Hub,[13] which is located in Erath, Louisiana, is the primary cash market trading and distribution center for natural gas in the United States. It also is the delivery point and pricing basis for the NYMEX's actively traded, physically-delivered natural gas futures contract, which is the most important pricing reference for natural gas in the United States. The Henry Hub, which is operated by Sabine Pipe Line, LLC, serves as a juncture for 13 different pipelines. These pipelines bring in natural gas from fields in the Gulf Coast region and ship it to major consumption centers along the East Coast and Midwest. The throughput shipping capacity of the Henry Hub is 1.8 trillion mmBtu per day.

In addition to the Henry Hub, there are a number of other locations where natural gas is traded. In 2008, there were 33 natural gas market centers in North America.[14] Some of the major trading centers include Alberta, Northwest Rockies, Southern California border and the Houston Ship Channel. For locations that are directly connected to the Henry Hub by one or more pipelines and where there typically is adequate shipping capacity, the price at the other locations usually directly tracks the price at the Henry Hub, adjusted for transportation costs. However, at other locations that are not directly connected to the Henry Hub or where shipping capacity is limited, the prices at those locations often diverge from the Henry Hub price. Furthermore, one local price may be significantly different than the price at another location even though the two markets' respective distances from the Henry Hub are the same. The reason for such pricing disparities is that a given location may experience supply and demand factors that are specific to that region, such as differences in pipeline shipping capacity, unusually high or low demand for heating or cooling or supply disruptions caused by severe weather. As a consequence, local natural gas prices can differ from the Henry Hub price by more than the cost of shipping and such price differences can vary in an unpredictable manner.

NGPL transports natural gas from production areas in the Permian Basin in Texas and the Gulf of Mexico to various demand points northward through the Midwest up to Chicago. NGPL is one of the largest natural gas transportation systems in the United States, with over 9,800 miles of pipeline. Moreover, NGPL is the largest provider of natural gas to the Chicago market.[15] The TxOk section of the NGPL pipeline network is located in Sayre, Oklahoma (on the border with Texas), and has a large underground natural gas storage facility. The NGPL TxOk hub is a major natural gas trading center in the Gulf region of the U.S.

As noted, the NTO contract prices trading activity at the NGPL TxOk hub. The Carthage hub, a natural gas market center located in east Texas includes the NGPL TxOk hub. The Carthage natural gas market center had an estimated throughput capacity of 600 million cubic feet per day in 2008. Additionally, the number of pipeline interconnection capacity at the Carthage hub was 11 in 2008, up from 9 in 2003. The interconnection capacity of these pipelines in 2008 was 1.7 billion cubic feet per day, an increase of 12 percent from 2003.[16] Finally, as noted, the NGPL has an extensive network of about 9,800 miles of interstate pipelines. The NTO hub is far removed from the Henry Hub but is directly connected to the Henry Hub through interstate pipeline connections.

The local price at the TxOk hub typically differs from the price at the Henry Hub. Thus, the price of the Henry Hub physically-delivered futures contract is an imperfect proxy for the NTO price. Moreover, exogenous factors, such as adverse weather, can cause the NTO gas price to differ from the Henry Hub price by an amount that is more or less than the cost of shipping, making the NYMEX Henry Hub futures

[10] In its October 9, 2009, **Federal Register** release, the Commission identified material price reference, price linkage and material liquidity as the possible criteria for SPDC determination of the NTO contract. Arbitrage was not identified as a possible criterion. As a result, arbitrage will not be discussed further in this document and the associated Order.

[11] 17 CFR part 36, Appendix A.

[12] Refers to Texas/Oklahoma.

[13] The term "hub" refers to a juncture where two or more natural gas pipelines are connected. Hubs also serve as pricing points for natural gas at the particular locations.

[14] *See http://www.eia.doe.gov/pub/oil_gas/natural_gas/feature_articles/2009/ngmarketcenter/ngmarketcenter.pdf.*

[15] Kinder Morgan, Inc., is the operator and co-owner (20 percent) of NGPL. (Myria Holdings, Inc., owns 80 percent of NGPL). *See http://www.kne.com/business/gas_pipelines/NGPL//.*

[16] *See http://www.eia.doe.gov/pub/oil_gas/natural_gas/feature_articles/2009/ngmarketcenter/ngmarketcenter.pdf.*

contract even less precise as a hedging tool than desired by market participants. Basis contracts [17] allow traders to more accurately discover prices at alternative locations and hedge price risk that is associated with natural gas at such locations. In this regard, a position at a local price for an alternative location can be established by adding the appropriate basis swap position to a position taken in the NYMEX physically-delivered Henry Hub contract (or in the NYMEX or ICE Henry Hub look-alike contract, which cash settle based on the NYMEX physically-delivered natural gas contract's final settlement price).

In its October 9, 2009, **Federal Register** notice, the Commission identified material price reference, price linkage and material liquidity as the potential SPDC criteria applicable to the NTO contract. Each of these criteria is discussed below.[18]

1. Material Price Reference Criterion

The Commission's October 9, 2009, **Federal Register** notice identified material price reference as a potential basis for a SPDC determination with respect to this contract. The Commission considered the fact that ICE sells its price data to market participants in a number of different packages which vary in terms of the hubs covered, time periods, and whether the data are daily only or historical. For example, ICE offers the "Micontient Gas End of Day" and "OTC Gas End of Day" [19] packages with access to all price data or just current prices plus a selected number of months (i.e., 12, 24, 36 or 48 months) of historical data. These two packages include price data for the NTO contract.

The Commission also noted that its October 2007 *Report on the Oversight of Trading on Regulated Futures Exchanges and Exempt Commercial Markets* ("ECM Study") [20] found that in general, market participants view the ICE as a price discovery market for certain natural gas contracts. The study did not specify which markets performed this function; nevertheless, the Commission determined that the NTO contract, while not mentioned by name in the ECM Study, might warrant further analysis.

The Commission will rely on one of two sources of evidence—direct or indirect—to determine that the price of a contract was being used as a material price reference and therefore, serving a significant price discovery function.[21] With respect to direct evidence, the Commission will consider the extent to which, on a frequent and recurring basis, cash market bids, offers or transactions are directly based on or quoted at a differential to, the prices generated on the ECM in question. Direct evidence may be established when cash market participants are quoting bid or offer prices or entering into transactions at prices that are set either explicitly or implicitly at a differential to prices established for the contract in question. Cash market prices are set explicitly at a differential to the section 2(h)(3) contract when, for instance, they are quoted in dollars and cents above or below the reference contract's price. Cash market prices are set implicitly at a differential to a section 2(h)(3) contract when, for instance, they are arrived at after adding to, or subtracting from the section 2(h)(3) contract, but then quoted or reported at a flat price. With respect to indirect evidence, the Commission will consider the extent to which the price of the contract in question is being routinely disseminated in widely distributed industry publications—or offered by the ECM itself for some form of remuneration—and consulted on a frequent and recurring basis by industry participants in pricing cash market transactions.

Following the issuance of the **Federal Register** release, the Commission further evaluated the ICE's data offerings and their use by industry participants. Although the TxOk hub is a major trading center for natural gas in the United States and, as noted, ICE sells price information for the NTO contract, the Commission has found upon further evaluation that cash market transactions are not being directly based on or quoted as a differential to the NTO contract nor is that contract routinely consulted by industry participants in pricing cash market transactions and thus does not meet the Commission's Guidance for the material price reference criterion. In this regard, the NYMEX Henry Hub physically delivered natural gas futures contract is routinely consulted by industry participants in pricing cash market transactions at this location. Because the TxOk hub is directly connected to the Henry Hub, it is not necessary for market participants to independently refer to the NTO contract for pricing natural gas at this location. Thus, the NTO contract does not satisfy the direct price reference test for existence of material price reference. Furthermore, the Commission notes that publication of the NTO contract's prices is not indirect evidence material price reference. The NTO contract's prices are published with those of numerous other contracts, which are of more interest to market participants. Due to the lack of importance of the TxOk hub, the Commission has concluded that traders likely do not specifically purchase the ICE data packages for the NTO contract's prices and do not consult such prices on a frequent and recurring basis in pricing cash market transactions.

i. Federal Register Comments

As noted above, WGCEF, ICE, EI, NGSA and FIEG addressed the question of whether the NTO contract met the material price reference criterion for a SPDC.[22] The commenters argued that because the NTO contract is cash-settled, it cannot truly serve as an independent "reference price" for transactions in natural gas at this location. Rather, the commenters argue, the underlying cash price series against which the ICE NTO contract is settled (in this case, the differential between the NYMEX last settlement price for a particular month and the NGPL's price for the same month for natural gas at this location) is the authentic reference price and not the ICE contract itself. The Commission believes that this interpretation of price reference is too limiting and believes that a cash-settled derivatives contract could meet the price reference criterion if market participants "consult on a frequent and recurring basis" the derivatives contract when pricing forward, fixed-price commitments or other cash-settled derivatives that seek to "lock in" a fixed price for some future point in time to hedge against adverse price movements.

ICE also argued that the Commission appeared to base the case that the NTO contract is potentially a SPDC on a disputable assertion. In issuing its notice of intent to determine whether the NTO contract is a SPDC, the CFTC cited a general conclusion in its ECM Study "that certain market participants referred to ICE as a price discovery market for certain natural gas contracts."

[17] Basis contracts denote the difference in the price of natural gas at a specified location minus the price of natural gas at the Henry Hub. The differential can be either a positive or negative value.

[18] As noted above, the Commission did not find an indication of arbitrage in connection with this contract; accordingly, that criterion was not discussed in reference to the NTO contract.

[19] The OTC Gas End of Day dataset includes daily settlement prices for natural gas contracts listed for all points in North America.

[20] *http://www.cftc.gov/ucm/groups/public/@newsroom/documents/file/pr5403-07_ecmreport.pdf.*

[21] 17 CFR part 36, Appendix A.

[22] As noted above, IECA expressed the opinion that the PER contract met the criteria for SPDC determination but did not provide its reasoning.

ICE states that CFTC's conclusion is "hard to quantify as the ECM report does not mention" this contract as a potential SPDC. "It is unknown which market participants made this statement in 2007 or the contracts that were referenced." In response to the above comment, the Commission notes that it cited the ECM study's general finding that some ICE natural gas contracts appear to be regarded as price discovery markets merely as indicia that an investigation of certain ICE contracts may be warranted. The ECM Study was not intended to serve as the sole basis for determining whether or not a particular contract meets the material price reference criterion.

Both EI [23] and WGCEF [24] stated that publication of price data in a package format is a weak justification for material price reference. These commenters argue that market participants generally do not purchase ICE data sets for one contract's prices, such as those for the NTO contract. Instead, traders are interested in the settlement prices, so the fact that ICE sells the NTO prices as part of a broad package is not conclusive evidence that market participants are buying the ICE data sets because they find the NTO prices have substantial value to them. As noted above, the Commission notes that publication of the NTO contract's prices is not indirect evidence of routine dissemination. The NTO contract's prices are published with those of numerous other contracts, which are of more interest to market participants. Due to the lack of importance of the TxOk hub, the Commission has concluded that traders likely do not specifically purchase the ICE data packages for the NTO contract's prices and do not consult such prices on a frequent and recurring basis in pricing cash market transactions.

ii. Conclusion Regarding Material Price Reference

Based on the above, the Commission finds that the NTO contract does not meet the material price reference criterion because cash market transactions are not priced either explicitly or implicitly on a frequent and recurring basis at a differential to the NTO contract's price (direct evidence). Moreover, while the ECM sells the NTO contract's price data to market participants, market participants likely do not specifically purchase the ICE data packages for the NTO contract's prices and do not consult such prices on a frequent and recurring basis in pricing cash market transactions (indirect evidence).

2. Price Linkage Criterion

In its October 9, 2009, **Federal Register** notice, the Commission identified price linkage as a potential basis for a SPDC determination with respect to the NTO contract. In this regard, the final settlement of the NTO contract is based, in part, on the final settlement price of the NYMEX's physically-delivered natural gas futures contract, where the NYMEX is registered with the Commission as a DCM.

The Commission's Guidance on Significant Price Discovery Contracts [25] notes that a "price-linked contract is a contract that relies on a contract traded on another trading facility to settle, value or otherwise offset the price-linked contract." Furthermore, the Guidance notes that, "[f]or a linked contract, the mere fact that a contract is linked to another contract will not be sufficient to support a determination that a contract performs a significant price discovery function. To assess whether such a determination is warranted, the Commission will examine the relationship between transaction prices of the linked contract and the prices of the referenced contract. The Commission believes that where material liquidity exists, prices for the linked contract would be observed to be substantially the same as or move substantially in conjunction with the prices of the referenced contract." Furthermore, the Guidance proposes a threshold price relationship such that prices of the ECM linked contract will fall within a 2.5 percent price range for 95 percent of contemporaneously determined closing, settlement or other daily prices over the most recent quarter. Finally, in Guidance the Commission stated that it would consider a linked contract that has a trading volume equivalent to 5 percent of the volume of trading in the contract to which it is linked to have sufficient volume to be deemed a SPDC ("minimum threshold").

To assess whether the NTO contract meets the price linkage criterion, Commission staff obtained price data from ICE and performed the statistical tests cited above. Staff found that, while the NTO contract price is determined, in part, by the final settlement price of the NYMEX physically-delivered natural gas futures contract (a DCM contract), the imputed TxOk location price (derived by adding the NYMEX Henry Hub Natural Gas price to the ICE NTO basis price) is not within 2.5 percent of the settlement price of the corresponding NYMEX Henry Hub natural gas futures contract on 95 percent or more of the days. Specifically, during the third quarter of 2009, only 3.3 percent of the NTO natural gas prices derived from the ICE basis values were within 2.5 percent of the daily settlement price of the NYMEX Henry Hub futures contract. In addition, staff found that the NTO contract fails to meet the volume threshold requirement. In particular, the total trading volume in the NYMEX Natural Gas contract during the third quarter of 2009 was 14,022,963 contracts, with 5 percent of that number being 701,148 contracts. Trades on the ICE centralized market in the NTO contract during the same period were 68,792 contracts (equivalent to 17,198 NYMEX contracts. given the size difference).[26] Thus, centralized-market trades in the NTO contract amounted to less than the minimum volume threshold.[27]

i. Federal Register Comments

As noted above, WGCEF, ICE, EI, NGSA and FIEG addressed the question of whether the NTO contract met the price linkage criterion for a SPDC.[28] Each of the commenters expressed the opinion that the NTO contract did not appear to meet the above-discussed Commission guidance regarding the price relationship and/or the minimum volume threshold relative to the DCM contract to which the NTO is linked. Based on its analysis discussed above, the Commission agrees with this assessment.

ii. Conclusion Regarding the Price Linkage Criterion

Based on the above, the Commission finds that the NTO contract does not meet the price linkage criterion because it fails the price relationship and volume tests provided for in the Commission's Guidance.

3. Material Liquidity Criterion

As noted above, in its October 9, 2009, **Federal Register** notice, the Commission identified price linkage, material price reference, and material liquidity as potential criteria for SPDC

[23] CL 05.

[24] CL 02.

[25] Appendix A to the Part 36 rules.

[26] The size of the NYMEX Henry Hub physically-delivered natural gas futures contract is 10,000 mmBtu. The NTO contract has a trading unit of 2,500 mmBtu, which is one-quarter the size of the NYMEX Henry Hub contract.

[27] Supplemental data subsequently submitted by the ICE indicated that block trades are included in the on-exchange trades; block trades comprise 59 percent of all transactions in the NTO contract.

[28] As noted above, IECA expressed the opinion that the NTO contract met the criteria for SPDC determination but did not provide its reasoning.

determination of the NTO contract. To assess whether a contract meets the material liquidity criterion, the Commission first examines trading activity as a general measurement of the contract's size and potential importance. If the Commission finds that the contract in question meets a threshold of trading activity that would render it of potential importance, the Commission will then perform a statistical analysis to measure the effect that the prices of the subject contract potentially may have on prices for other contracts listed on an ECM or a DCM.

The total number of transactions executed on ICE's electronic platform in the NTO contract was 1,083 in the second quarter of 2009, resulting in a daily average of 16.9 trades. During the same period, the NTO contract had a total trading volume of 84,432 contracts and an average daily trading volume of 1,319.3 contracts. Moreover, open interest as of June 30, 2009, was 70,557 contracts, which included trades executed on ICE's electronic trading platform, as well as trades executed off of ICE's electronic trading platform and then brought to ICE for clearing. In this regard, ICE does not differentiate between open interest created by a transaction executed on its trading platform and that created by a transaction executed off its trading platform.[29]

In a subsequent filing dated November 13, 2009, ICE reported that total trading volume in the third quarter of 2009 was 68,792 contracts (or 1,042 contracts on a daily basis). In terms of number of transactions, 688 trades occurred in the third quarter of 2009 (10.4 trades per day). As of September 30, 2009, open interest in the NTO contract was 97,786 contracts, which included trades executed on ICE's electronic trading platform, as well as trades executed off of ICE's electronic trading platform and then brought to ICE for clearing.

As indicated above, the average number of trades per day in the second and third quarters of 2009 was only marginally above the minimum reporting level (5 trades per day). Moreover, trading activity in the NTO contract, as characterized by total quarterly volume, indicates that the NTO contract experiences trading activity similar to that of other thinly-traded contracts.[30] Thus, the NTO contract does not meet a threshold of trading activity that would render it of potential importance and no additional statistical analysis is warranted.[31]

i. Federal Register Comments

As noted above, WGCEF, ICE, EI, NGSA and FIEG addressed the question of whether the NTO contract met the material liquidity criterion for a SPDC.[32] These commenters stated that the NTO contract does not meet the material liquidity criterion for SPDC determination for a number of reasons.

WGCEF,[33] ICE[34] and EI[35] noted that the Commission's Guidance had posited concepts of liquidity that generally assumed a fairly constant stream of prices throughout the trading day, and noted that the relatively low number of trades per day in the NTO contract did not meet this standard of liquidity. The Commission observes that a continuous stream of prices would indeed be an indication of liquidity for certain markets, but the Guidance also notes that "quantifying the levels of immediacy and price concession that would define material liquidity may differ from one market or commodity to another."[36]

WGCEF, FIEG[37] and NGSA[38] noted that the NTO contract represents a differential, which does not affect other contracts, including the NYMEX Henry Hub contract and physical gas contracts. FIEG and WGCEF also noted that the NTO contract's trading volume represents only a fraction of natural gas trading.

ICE opined that the Commission "seems to have adopted a five trade-per-day test to determine whether a contract is materially liquid. It is worth noting that ICE originally suggested that the CFTC use a five trades-per-day threshold as the basis for an ECM to *report* trade data to the CFTC." Furthermore, FIEG cautioned the Commission in using a reporting threshold as a measure of liquidity. In this regard, the Commission adopted a five trades-per-day threshold as a reporting requirement to enable it to "independently be aware of ECM contracts that may develop into SPDCs"[39] rather than solely relying upon an ECM on its own to identify any such potential SPDCs to the Commission. Thus, any contract that meets this threshold may be subject to scrutiny as a potential SPDC but this does not mean that the contract will be found to be a SPDC merely because it met the reporting threshold.

ICE and EI proposed that the statistics provided by ICE were misinterpreted and misapplied by the Commission. In particular, ICE stated that the volume figures used in the Commission's analysis (cited above) "include trades made in *all months of each contract*" as well as in strips of contract months, and a "more appropriate method of determining liquidity is to examine the activity in a single traded month or strip of a given contract."[40] A similar argument was made by EI, which observed that the five-trades-per-day number "is highly misleading * * * because the contracts can be offered for as long as 120 months, [thus] the average per day for an individual contract may be less than 1 per day."

It is the Commission's opinion that liquidity, as it pertains to the NTO contract, is typically a function of trading activity in particular lead months and, given sufficient liquidity in such months, the ICE NTO contract

[29] 74 FR 52208 (October 9, 2009).

[30] Staff has advised the Commission that in its experience, a thinly-traded contract is, generally, one that has a quarterly trading volume of 100,000 contracts or less. In this regard, in the third quarter of 2009, physical commodity futures contracts with trading volume of 100,000 contracts or fewer constituted less than one percent of total trading volume of all physical commodity futures contracts.

[31] In establishing guidance to illustrate how it will evaluate the various criteria, or combinations of criteria, when determining whether a contract is a SPDC, the Commission made clear that "material liquidity itself would not be sufficient to make a determination that a contract is a [SPDC], * * * but combined with other factors it can serve as a guidepost indicating which contracts are functioning as [SPDCs]." For the reasons discussed above, the Commission has found that the NTO contract does not meet either the price linkage or material price reference criterion. In light of this finding and the Commission's Guidance cited above, there is no need to evaluate further the material liquidity criteria since it cannot be used alone as a basis for a SPDC determination.

[32] As noted above, IECA expressed the opinion that the NTO contract met the criteria for SPDC determination but did not provide its reasoning.

[33] CL 02.

[34] CL 04.

[35] CL 05.

[36] 17 CFR 36, Appendix A.

[37] CL 08.

[38] CL 06.

[39] 73 FR 75892 (December 12, 2008).

[40] In addition, both EI and ICE stated that the trades-per-day statistics that it provided to the Commission in its quarterly filing and which were cited in the Commission's October 9, 2009, **Federal Register** notice includes 2(h)(1) transactions, which were not completed on the electronic trading platform and should not be considered in the SPDC determination process. The Commission staff asked ICE to review the data it sent in its quarterly filings; ICE confirmed that the volume data it provided and which the Commission cited includes only transaction data executed on ICE's electronic trading platform. As noted above, supplemental data supplied by ICE confirmed that block trades are in addition to the trades that were conducted on the electronic platform; block trades comprise 59 percent of all transactions in the NTO contract. The Commission acknowledges that the open interest information it provided in its October 9, 2009, **Federal Register** notice includes transactions made off the ICE platform. However, once open interest is created, there is no way for ICE to differentiate between "on-exchange" versus "off-exchange" created positions, and all such positions are fungible with one another and may be offset in any way agreeable to the position holder regardless of how the position was initially created.

itself would be considered liquid. In any event, in light of the fact that the Commission has found that the NTO contract does not meet the material price reference or price linkage criteria, according to the Commission's Guidance, it would be unnecessary to evaluate whether the NTO contract meets the material liquidity criterion since it cannot be used alone for SPDC determination.

ii. Conclusion Regarding Material Liquidity

For the reasons discussed above, the Commission has found that the NTO contract does not meet the material liquidity criterion.

4. Overall Conclusion

After considering the entire record in this matter, including the comments received, the Commission has determined that the NTO contract does not meet the material price criterion, price linkage and material liquidity criteria. Thus, the NTO contract does not perform a significant price discovery function under the criteria established in section 2(h)(7) of the CEA. Accordingly, the Commission will issue the attached Order declaring that the NTO contract is not a SPDC.

Issuance of this Order indicates that the Commission does not at this time regard ICE as a registered entity in connection with its NTO contract.[41] Accordingly, with respect to its NTO contract, ICE is not required to comply with the obligations, requirements and timetables prescribed in Commission rule 36.3(c)(4) for ECMs with SPDCs. However, ICE must continue to comply with the applicable reporting requirements.

IV. Related Matters

a. Paperwork Reduction Act

The Paperwork Reduction Act of 1995 ("PRA")[42] imposes certain requirements on Federal agencies, including the Commission, in connection with their conducting or sponsoring any collection of information as defined by the PRA. Certain provisions of Commission rule 36.3 impose new regulatory and reporting requirements on ECMs, resulting in information collection requirements within the meaning of the PRA. OMB previously has approved and assigned OMB control number 3038–0060 to this collection of information.

b. Cost-Benefit Analysis

Section 15(a) of the CEA[43] requires the Commission to consider the costs and benefits of its actions before issuing an order under the Act. By its terms, section 15(a) does not require the Commission to quantify the costs and benefits of an order or to determine whether the benefits of the order outweigh its costs; rather, it requires that the Commission "consider" the costs and benefits of its actions. Section 15(a) further specifies that the costs and benefits shall be evaluated in light of five broad areas of market and public concern: (1) Protection of market participants and the public; (2) efficiency, competitiveness and financial integrity of futures markets; (3) price discovery; (4) sound risk management practices; and (5) other public interest considerations. The Commission may in its discretion give greater weight to any one of the five enumerated areas and could in its discretion determine that, notwithstanding its costs, a particular order is necessary or appropriate to protect the public interest or to effectuate any of the provisions or accomplish any of the purposes of the Act. The Commission has considered the costs and benefits in light of the specific provisions of section 15(a) of the Act and has concluded that the Order, required by Congress to strengthen federal oversight of exempt commercial markets and to prevent market manipulation, is necessary and appropriate to accomplish the purposes of section 2(h)(7) of the Act.

When a futures contract begins to serve a significant price discovery function, that contract, and the ECM on which it is traded, warrants increased oversight to deter and prevent price manipulation or other disruptions to market integrity, both on the ECM itself and in any related futures contracts trading on DCMs. An Order fining that a particular contract is a SPDC triggers this increased oversight and imposes obligations on the ECM calculated to accomplish this goal. The increased oversight engendered by the issue of a SPDC Order increases transparency and helps to ensure fair competition among ECMs and DCMs trading similar products and competing for the same business. Moreover, the ECM on which the SPDC is traded must assume, with respect to that contract, all the responsibilities and obligations of a registered entity under the CEA and Commission regulations. Additionally, the ECM must comply with nine core principles established by section 2(h)(7) of the Act—including the obligation to establish position limits and/or accountability standards for the SPDC. Amendments to section 4(i) of the CEA authorize the Commission to require reports for SPDCs listed on ECMs. These increased responsibilities, along with the CFTC's increased regulatory authority, subject the ECM's risk management practices to the Commission's supervision and oversight and generally enhance the financial integrity of the markets.

The Commission has concluded that ICE's NTO contract, which is the subject of the attached Order, is not a SPDC; accordingly, the Commission's Order imposes no additional costs and no additional statutorily or regulatory mandated responsibilities on the ECM.

c. Regulatory Flexibility Act

The Regulatory Flexibility Act ("RFA")[44] requires that agencies consider the impact of their rules on small businesses. The requirements of CEA section 2(h)(7) and the Part 36 rules affect exempt commercial markets. The Commission previously has determined that exempt commercial markets are not small entities for purposes of the RFA.[45] Accordingly, the Chairman, on behalf of the Commission, hereby certifies pursuant to 5 U.S.C. 605(b) that this Order, taken in connection with section 2(h)(7) of the Act and the Part 36 rules, will not have a significant impact on a substantial number of small entities.

V. Order

Order Relating to the NGPL TxOk Financial Basis Contract

After considering the complete record in this matter, including the comment letters received in response to its request for comments, the Commission has determined to issue the following Order:

The Commission, pursuant to its authority under section 2(h)(7) of the Act, hereby determines that the NGPL TxOk Financial Basis contract, traded on the IntercontinentalExchange, Inc., does not at this time satisfy the material price reference, price linkage and material liquidity criteria for significant price discovery contracts. Consistent with this determination, the IntercontinentalExchange, Inc., is not considered a registered entity[46] with respect to the NTO Financial Basis contract and is not subject to the provisions of the Commodity Exchange

[41] *See* 73 FR 75888, 75893 (Dec. 12, 2008).

[42] 44 U.S.C. 3507(d).

[43] 7 U.S.C. 19(a).

[44] 5 U.S.C. 601 *et seq.*

[45] 66 FR 42256, 42268 (Aug. 10, 2001).

[46] 7 U.S.C. 1a(29).

Act applicable to registered entities. Further, the obligations, requirements and timetables prescribed in Commission rule 36.3(c)(4) governing core principle compliance by the IntercontinentalExchange, Inc., are not applicable to the NGPL TxOk Financial Basis contract with the issuance of this Order.

This Order is based on the representations made to the Commission by the IntercontinentalExchange, Inc., dated July 27, 2009, and November 13, 2009, and other supporting material. Any material change or omissions in the facts and circumstances pursuant to which this order is granted might require the Commission to reconsider its current determination that the NGPL TxOk Financial Basis contract is not a significant price discovery contract. Additionally, to the extent that it continues to rely upon the exemption in Section 2(h)(3) of the Act, the IntercontinentalExchange, Inc., must continue to comply with all of the applicable requirements of Section 2(h)(3) and Commission Regulation 36.3.

Issued in Washington, DC on April 28, 2010, by the Commission.

David A. Stawick,

Secretary of the Commission.

[FR Doc. 2010–10308 Filed 5–3–10; 8:45 am]

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COMMODITY FUTURES TRADING COMMISSION

Order Finding That the AECO Financial Basis Contract Traded on the IntercontinentalExchange, Inc., Performs a Significant Price Discovery Function

AGENCY: Commodity Futures Trading Commission.

ACTION: Final order.

SUMMARY: On October 9, 2009, the Commodity Futures Trading Commission ("CFTC" or "Commission") published for comment in the **Federal Register** [1] a notice of its intent to undertake a determination whether the AECO Financial Basis ("AEC") contract traded on the IntercontinentalExchange, Inc. ("ICE"), an exempt commercial market ("ECM") under sections 2(h)(3)–(5) of the Commodity Exchange Act ("CEA" or the "Act"), performs a significant price discovery function pursuant to section 2(h)(7) of the CEA. The Commission undertook this review based upon an initial evaluation of information and data provided by ICE as well as other available information. The Commission has reviewed the entire record in this matter, including all comments received, and has determined to issue an order finding that the AEC contract performs a significant price discovery function. Authority for this action is found in section 2(h)(7) of the CEA and Commission rule 36.3(c) promulgated thereunder.

DATES: *Effective date:* April 28, 2010.

FOR FURTHER INFORMATION CONTACT: Gregory K. Price, Industry Economist, Division of Market Oversight, Commodity Futures Trading Commission, Three Lafayette Centre, 1155 21st Street, NW., Washington, DC 20581. Telephone: (202) 418–5515. E-mail: *gprice@cftc.gov;* or Susan Nathan, Senior Special Counsel, Division of Market Oversight, same address. Telephone: (202) 418–5133. E-mail: *snathan@cftc.gov.*

SUPPLEMENTARY INFORMATION:

I. Introduction

The CFTC Reauthorization Act of 2008 ("Reauthorization Act") [2] significantly broadened the CFTC's regulatory authority with respect to ECMs by creating, in section 2(h)(7) of the CEA, a new regulatory category—ECMs on which significant price discovery contracts ("SPDCs") are traded—and treating ECMs in that category as registered entities under the CEA.[3] The legislation authorizes the CFTC to designate an agreement, contract or transaction as a SPDC if the Commission determines, under criteria established in section 2(h)(7), that it performs a significant price discovery function. When the Commission makes such a determination, the ECM on which the SPDC is traded must assume, with respect to that contract, all the responsibilities and obligations of a registered entity under the Act and Commission regulations, and must comply with nine core principles established by new section 2(h)(7)(C).

On March 16, 2009, the CFTC promulgated final rules implementing the provisions of the Reauthorization Act.[4] As relevant here, rule 36.3 imposes increased information reporting requirements on ECMs to assist the Commission in making prompt assessments whether particular ECM contracts may be SPDCs. In addition to filing quarterly reports of its contracts, an ECM must notify the Commission promptly concerning any contract traded in reliance on the exemption in section 2(h)(3) of the CEA that averaged five trades per day or more over the most recent calendar quarter, and for which the exchange sells its price information regarding the contract to market participants or industry publications, or whose daily closing or settlement prices on 95 percent or more of the days in the most recent quarter were within 2.5 percent of the contemporaneously determined closing, settlement or other daily prices of another contract.

Commission rule 36.3(c)(3) established the procedures by which the Commission makes and announces its determination whether a particular ECM contract serves a significant price discovery function. Under those procedures, the Commission will publish notice in the **Federal Register** that it intends to undertake an evaluation whether the specified agreement, contract or transaction performs a significant price discovery function and to receive written views, data and arguments relevant to its determination from the ECM and other interested persons. Upon the close of the comment period, the Commission will consider, among other things, all relevant information regarding the subject contract and issue an order announcing and explaining its determination whether or not the contract is a SPDC. The issuance of an affirmative order signals the effectiveness of the Commission's regulatory authorities over an ECM with respect to a SPDC; at that time such an ECM becomes subject to all provisions of the CEA applicable to registered entities.[5] The issuance of such an order also triggers the obligations, requirements and timetables prescribed in Commission rule 36.3(c)(4).[6]

II. Notice of Intent To Undertake SPDC Determination

On October 9, 2009, the Commission published in the **Federal Register** notice of its intent to undertake a determination whether the AEC contract performs a significant price discovery function and requested comment from

[1] 74 FR 52196 (October 9, 2009).

[2] Incorporated as Title XIII of the Food, Conservation and Energy Act of 2008, Public Law 110–246, 122 Stat. 1624 (June 18, 2008).

[3] 7 U.S.C. 1a(29).

[4] 74 FR 12178 (Mar. 23, 2009); these rules became effective on April 22, 2009.

[5] Public Law 110–246 at 13203; *Joint Explonotory Stotement of the Committee of Conference,* H.R. Rep. No. 110–627, 110 Cong., 2d Sess. 978, 986 (Conference Committee Report). See also 73 FR 75888, 75894 (Dec. 12, 2008).

[6] For an initial SPDC, ECMs have a grace period of 90 calendar days from the issuance of a SPDC determination order to submit a written demonstration of compliance with the applicable core principles. For subsequent SPDCs, ECMs have a grace period of 30 calendar days to demonstrate core principle compliance.

interested parties.[7] Comments were received from the Industrial Energy Consumers of America ("IECA"), Working Group of Commercial Energy Firms ("WGCEF"), ICE, Economists Incorporated ("EI"), Natural Gas Supply Association ("NGSA"), Federal Energy Regulatory Commission ("FERC"), Financial Institutions Energy Group ("FIEG") and an anonymous individual.[8] The comment letter from FERC[9] did not directly address the issue of whether or not the AEC contract is a SPDC; IECA[10] and the anonymous commenter[11] concluded that the AEC contract is a SPDC, but did not provide a basis for their conclusions.[12] The other parties' comments raised substantive issues with respect to the applicability of section 2(h)(7) to the AEC contract, generally asserting that the AEC contract is not a SPDC as it does not meet the material liquidity, material price reference and price linkage criteria for SPDC determination. Those comments are more extensively discussed below, as applicable.

III. Section 2(h)(7) of the CEA

The Commission is directed by section 2(h)(7) of the CEA to consider the following criteria in determining a contract's significant price discovery function:

- *Price Linkage*—the extent to which the agreement, contract or transaction uses or otherwise relies on a daily or final settlement price, or other major price parameter, of a contract or contracts listed for trading on or subject to the rules of a designated contract market ("DCM") or derivatives transaction execution facility ("DTEF"), or a SPDC traded on an electronic trading facility, to value a position, transfer or convert a position, cash or financially settle a position, or close out a position.
- *Arbitrage*—the extent to which the price for the agreement, contract or transaction is sufficiently related to the price of a contract or contracts listed for trading on or subject to the rules of a DCM or DTEF, or a SPDC traded on or subject to the rules of an electronic trading facility, so as to permit market participants to effectively arbitrage between the markets by simultaneously maintaining positions or executing trades in the contracts on a frequent and recurring basis.
- *Material price reference*—the extent to which, on a frequent and recurring basis, bids, offers or transactions in a commodity are directly based on, or are determined by referencing, the prices generated by agreements, contracts or transactions being traded or executed on the electronic trading facility.
- *Material liquidity*—the extent to which the volume of agreements, contracts or transactions in a commodity being traded on the electronic trading facility is sufficient to have a material effect on other agreements, contracts or transactions listed for trading on or subject to the rules of a DCM, DTEF or electronic trading facility operating in reliance on the exemption in section 2(h)(3).

Not all criteria must be present to support a determination that a particular contract performs a significant price discovery function, and one or more criteria may be inapplicable to a particular contract.[13] Moreover, the statutory language neither prioritizes the criteria nor specifies the degree to which a SPDC must conform to the various criteria. In Guidance issued in connection with the Part 36 rules governing ECMs with SPDCs, the Commission observed that these criteria do not lend themselves to a mechanical checklist or formulaic analysis. Accordingly, the Commission has indicated that in making its determinations it will consider the circumstances under which the presence of a particular criterion, or combination of criteria, would be sufficient to support a SPDC determination.[14] For example, for contracts that are linked to other contracts or that may be arbitraged with other contracts, the Commission will consider whether the price of the potential SPDC moves in such harmony with the other contract that the two markets essentially become interchangeable. This co-movement of prices would be an indication that activity in the contract had reached a level sufficient for the contract to perform a significant price discovery function. In evaluating a contract's price discovery role as a price reference, the Commission will consider whether cash market participants are quoting bid or offer prices or entering into transactions at prices that are set either explicitly or implicitly at a differential to prices established for the contract.

IV. Findings and Conclusions

a. The AECO Financial Basis (AEC) Contract and the SPDC Indicia

The AEC contract is cash settled based on the difference between the AECO–C & Nova Inventory Transfer (Alberta) price index for natural gas in the month of production, as reported in the first publication of the month of Canadian Enerdata, Ltd.'s *Canadian Gas Price Reporter* ("CGPR") and the final settlement price for the New York Mercantile Exchange's ("NYMEX's") Henry Hub physically-delivered natural gas futures contract for the same specified calendar month. The transactions used to calculate the

[7] The Commission's Part 36 rules establish, among other things, procedures by which the Commission makes and announces its determination whether a specific ECM contract serves a significant price discovery function. Under those procedures, the Commission publishes a notice in the **Federal Register** that it intends to undertake a determination whether a specified agreement, contract or transaction performs a significant price discovery function and to receive written data, views and arguments relevant to its determination from the ECM and other interested persons.

[8] IECA describes itself as an "association of leading manufacturing companies" whose membership "represents a diverse set of industries including: plastics, cement, paper, food processing, brick, chemicals, fertilizer, insulation, steel, glass, industrial gases, pharmaceutical, aluminum and brewing." WGCEF describes itself as "a diverse group of commercial firms in the domestic energy industry whose primary business activity is the physical delivery of one or more energy commodities to customers, including industrial, commercial and residential consumers" and whose membership consists of "energy producers, marketers and utilities." ICE is an ECM, as noted above. EI is an economic consulting firm with offices located in Washington, DC, and San Francisco, CA. NGSA is an industry association comprised of natural gas producers and marketers. FERC is an independent federal regulatory agency that, among other things, regulates the interstate transmission of natural gas, oil and electricity. FIEG describes itself as an association of investment and commercial banks who are active participants in various sectors of the natural gas markets, "including acting as marketers, lenders, underwriters of debt and equity securities, and proprietary investors." The comment letters are available on the Commission's Web site: *http://www.cftc.gov/lawandregulation/federalregister/federalregistercomments/2009/09-016.html.*

[9] FERC stated that the AEC contract is cash settled and does not contemplate actual physical delivery of natural gas. Accordingly, FERC expressed the opinion that a determination by the Commission that a contract performs a significant price discovery function "would not appear to conflict with FERC's exclusive jurisdiction under the Natural Gas Act (NGA) over certain sales of natural gas in interstate commerce for resale or with its other regulatory responsibilities under the NGA" and further that "FERC staff will continue to monitor for any such conflict . . . [and] advise the CFTC should any such potential conflict arise. CL 06.

[10] CL 01.

[11] CL 08.

[12] IECA stated that the subject ICE contract should "be required to come into compliance with core principles mandated by Section 2(h)(7) of the Act and with other statutory provisions applicable to registered entities. [This contract] should be subject to the Commission's position limit authority, emergency authority and large trader reporting requirements, among others." CL 01.

[13] In its October 9, 2009, **Federal Register** release, the Commission identified material price reference, price linkage and material liquidity as the possible criteria for SPDC determination of the AEC contract. Arbitrage was not identified as a possible criterion and will not be discussed further in this document or the associated Order.

[14] 17 CFR part 36, appendix A.

monthly Alberta price index are those that are conducted on the Natural Gas Exchange ("NGX") in a given month and specify the delivery of natural gas at the Alberta hub in the following month. The Alberta price index is computed as the volume-weighted average of the applicable natural gas transactions. The size of the AEC contract is 2,500 million British thermal units ("mmBtu"), and the unit of trading is any multiple of 2,500 mmBtu. The AEC contract is listed for up to 120 calendar months commencing with the next calendar month.

The Henry Hub,[15] which is located in Erath, Louisiana, is the primary cash market trading and distribution center for natural gas in the United States. It also is the delivery point and pricing basis for the NYMEX's actively traded, physically-delivered natural gas futures contract, which is the most important pricing reference for natural gas in the United States. The Henry Hub, which is operated by Sabine Pipe Line, LLC, serves as a juncture for 13 different pipelines. These pipelines bring in natural gas from fields in the Gulf Coast region and ship it to major consumption centers along the East Coast and Midwest. The throughput shipping capacity of the Henry Hub is 1.8 trillion mmBtu per day.

In addition to the Henry Hub, there are a number of other locations where natural gas is traded. In 2008, there were 33 natural gas market centers in North America.[16] Some of the major trading centers include Alberta, Northwest Rockies, Southern California border and the Houston Ship Channel. For locations that are directly connected to the Henry Hub by one or more pipelines and where there typically is adequate shipping capacity, the price at the other locations usually directly tracks the price at the Henry Hub, adjusted for transportation costs. However, at other locations that are not directly connected to the Henry Hub or where shipping capacity is limited, the prices at those locations often diverge from the Henry Hub price. Furthermore, one local price may be significantly different than the price at another location even though the two markets' respective distances from the Henry Hub are the same. The reason for such pricing disparities is that a given location may experience supply and demand factors that are specific to that region, such as differences in pipeline shipping capacity, unusually high or low demand for heating or cooling or supply disruptions caused by severe weather. As a consequence, local natural gas prices can differ from the Henry Hub price by more than the cost of shipping and such price differences can vary in an unpredictable manner.

The Alberta hub is far removed from the Henry Hub and is not directly connected to the Henry Hub by an existing pipeline. Located in the Canadian province of Alberta, the Alberta natural gas market is a major connection point for long-distance transmission systems that ship natural gas to points throughout Canada and the United States. The Alberta province is Canada's dominant natural gas producing region; six of the nine Canadian market centers are located in the Alberta province. The throughput capacity at the AECO–C hub is ten billion cubic feet per day. Moreover, the number of pipeline interconnections at that hub was four in 2008. Lastly, the AECO–C hub's capacity is 20.4 billion cubic feet per day.[17]

The local price at the Alberta hub typically differs from the price at the Henry Hub. Thus, the price of the Henry Hub physically-delivered futures contract is an imperfect proxy for the Alberta price. Moreover, exogenous factors, such as adverse weather, can cause the Alberta gas price to differ from the Henry Hub price by an amount that is more or less than the cost of shipping, making the NYMEX Henry Hub futures contract even less precise as a hedging tool than desired by market participants. Basis contracts[18] allow traders to more accurately discover prices at alternative locations and hedge price risk that is associated with natural gas at such locations. In this regard, a position at a local price for an alternative location can be established by adding the appropriate basis swap position to a position taken in the NYMEX physically-delivered Henry Hub contract (or in the NYMEX or ICE Henry Hub look-alike contract, which cash settle based on the NYMEX contract's final settlement price).

In its October 9, 2009, **Federal Register** notice, the Commission identified material price reference, price linkage and material liquidity as the potential SPDC criteria applicable to the AEC contract. Each of these criteria is discussed below.[19]

1. Material Price Reference Criterion.

The Commission's October 9, 2009, **Federal Register** notice identified material price reference as a potential basis for a SPDC determination with respect to this contract. The Commission considered the fact that ICE maintains exclusive rights over using CGPR's Alberta price index for cash settlement purposes. As a result, no other exchange can offer such a basis contract based on CGPR's Alberta price index. While other third-party price providers produce natural gas price indices for this and other trading centers, market participants indicate that the CGPR price index is highly regarded for this particular location and should market participants wish to establish a hedged position based on this index, they would need to do so by taking a position in the ICE AEC contract since ICE has the right to the CGPR index for cash settlement purposes. In addition, ICE sells its price data to market participants in a number of different packages which vary in terms of the hubs covered, time periods, and whether the data are daily only or historical. For example, ICE offers the "West Gas End of Day" and OTC Gas End of Day"[20] packages with access to all price data or just current prices plus a selected number of months (i.e., 12, 24, 36 or 48 months) of historical data. These two packages include price data for the AEC contract.

The Alberta hub is a major trading center for natural gas in North America. Traders, including producers, keep abreast of the prices of the AEC contract when conducting cash deals. These traders look to a competitively determined price as an indication of expected values of natural gas at the Alberta hub when entering into cash market transactions for natural gas, especially those trades providing for physical delivery in the future. Traders use the ICE AEC contract, as well as other ICE basis swap contracts, to hedge cash market positions and transactions—activities which enhance the AEC contract's price discovery utility. The substantial volume of trading and open interest in the AEC contract appears to attest to its use for this purpose. While the AEC contract's settlement prices may not be the only

[15] The term "hub" refers to a juncture where two or more natural gas pipelines are connected. Hubs also serve as pricing points for natural gas at the particular locations.

[16] See *http://www.eia.doe.gov/pub/oil_gas/natural_gas/feature_articles/2009/ngmarketcenter/ngmarketcenter.pdf.*

[17] See *http://www.eia.doe.gov/pub/oil_gas/natural_gas/feature_articles/2009/ngmarketcenter/ngmarketcenter.pdf.*

[18] Basis contracts denote the difference in the price of natural gas at a specified location minus the price of natural gas at the Henry Hub. The differential can be either a positive or negative value.

[19] As noted above, the Commission did not find an indication of arbitrage in connection with this contract; accordingly, that criterion is not discussed in reference to the AEC contract.

[20] The OTC Gas End of Day dataset includes daily settlement prices for natural gas contracts listed for all points in North America.

factor influencing spot and forward transactions, natural gas traders consider the ICE price to be a critical factor in conducting OTC transactions.[21]

Lastly, the fact that the AEC contract does not meet the price linkage criterion (discussed below) bolsters the argument for material price reference. As noted above, the Henry Hub is the pricing reference for natural gas in the United States. However, regional market conditions may cause the price of natural gas in another area of the country to diverge by more than the cost of transportation, thus making the Henry Hub price an imperfect proxy for the local gas price. The more variable the local natural gas price is, the more traders need to accurately hedge their price risk. Basis swap contracts provide a means of more accurately pricing natural gas at a location other than the Henry Hub. An analysis of Alberta natural gas prices showed that 98 percent of the observations were more than 2.5 percent different than the contemporaneous Henry Hub prices. Specifically, the average Alberta basis value between January 2008 and September 2009 was −$0.87 per mmBtu with a variance of $0.21 per mmBtu.

i. Federal Register Comments

ICE stated in its comment letter that the AEC contract does not meet the material price reference criterion for SPDC determination. ICE argued that the Commission appeared to base the case that the AEC contract is potentially a SPDC on two disputable assertions. First, in issuing its notice of intent to determine whether the AEC contract is a SPDC, the CFTC cited a general conclusion in its ECM study "that certain market participants referred to ICE as a price discovery market for certain natural gas contracts." ICE states that CFTC's reason is "hard to quantify as the ECM report does not mention" this contract as a potential SPDC. "It is unknown which market participants made this statement *in 2007* or the contracts that were referenced." In response to the above comment, the Commission notes that it cited the ECM study's general finding that some ICE natural gas contracts appear to be regarded as price discovery markets merely as an indicia that an investigation of certain ICE contracts may be warranted, and was not intended to serve as the sole basis for determining whether or not a particular contract meets the material price reference criterion.

Second, ICE argued that the Commission should not base a determination that the AEC contract is a SPDC merely because this contract has the exclusive right to base its settlement on the CGPR Alberta price index. While the Commission acknowledges that there are other firms that produce price indices for the Alberta hub, market participants indicate that the CGPR index is very highly regarded and should they wish to establish a hedged position based on this index, they would need to do so by taking a position in the ICE AEC swap since ICE has the exclusive right to use the CGPR index.[22]

WGCEF, NGSA, EI and FIEG all stated that the AEC contract does not satisfy the material price reference criterion. The commenters argued that other contracts (physical or financial) are not indexed basis the ICE AEC contract price, but rather are indexed based on the underlying cash price series against which the ICE AEC contract is settled. Thus, they contend that the underlying cash price series is the authentic reference price and not the ICE contract itself. The Commission believes that this interpretation of price reference is too limiting in that it only considers the final index value on which the contract is cash settled after trading ceases. Instead, the Commission believes that a cash-settled derivatives contract could meet the price reference criteria if market participants "consult on a frequent and recurring basis" the derivatives contract when pricing forward, fixed-price commitments or other cash-settled derivatives that seek to "lock in" a fixed price for some future point in time to hedge against adverse price movements.

As noted above, the Alberta hub is a major trading center for natural gas in North America. Traders, including producers, keep abreast of the prices of the AEC contract when conducting cash deals. These traders look to a competitively determined price as an indication of expected values of natural gas at the Alberta hub when entering into cash market transaction for natural gas, especially those trades that provide for physical delivery in the future. Traders use the ICE AEC contract to hedge cash market positions and transactions, which enhances the AEC contract's price discovery utility. While the AEC contract's settlement prices may not be the only factor influencing spot and forward transactions, natural gas traders consider the ICE price to be a crucial factor in conducting OTC transactions.

Both EI and WGCEF stated that publication of price data in a package format is a weak justification for material price reference. These commenters argue that market participants generally do not purchase ICE data sets for one contract's prices, such as those for the AEC contract. Instead, traders are interested in the settlement prices, so the fact that ICE sells the AEC prices as part of a broad package is not conclusive evidence that market participants are buying the ICE data sets because they find the AEC prices have substantial value to them. The Commission notes that the Alberta hub is a major natural gas trading point, and the AEC contract's prices are well regarded in the industry as indicative of the value of natural gas at the Alberta hub. Accordingly, the Commission believes that it is reasonable to conclude that market participants are purchasing the data packages that include the AEC contract's prices in substantial part because the AEC contract prices have particular value to them.

ii. Conclusion Regarding Material Price Reference

Based on the above, the Commission finds that the AEC contract meets the material price reference criterion because it is referenced on a frequent and recurring basis by cash market participants when pricing transactions (direct evidence). Moreover, the ECM sells the AEC contract's price data to market participants (indirect evidence).

2. Price Linkage Criterion

In its October 9, 2009 **Federal Register** notice, the Commission identified price linkage as a potential basis for a SPDC determination with respect to the AEC contract. In this regard, the final settlement of the AEC contract is based, in part, on the final settlement price of the NYMEX's physically-delivered natural gas futures contract, where the NYMEX is registered with the Commission as a DCM.

The Commission's Guidance on Significant Price Discovery Contracts[23] notes that a "price-linked contract is a

[21] In addition to referencing ICE prices, natural gas market firms participating in the Alberta market may rely on other cash market quotes as well as industry publications and price indices that are published by third-party price reporting firms when entering into natural gas transactions.

[22] Futures and swaps based on other Alberta indices have not met with the same market acceptance as the ICE AEC contract. For example, NYMEX previously listed a basis swap contract that was comparable to the AEC contract. However, ICE's exclusive agreement with Enerdata forced NYMEX to delist its contract because NYMEX could not find a suitable alternative price index. Up until the point of being delisted, there was no centralized-market trading in the NYMEX version of the AEC contract, so it never served as a source of price discovery for cash market traders with natural gas at the Alberta hub.

[23] Appendix A to the Part 36 rules.

contract that relies on a contract traded on another trading facility to settle, value or otherwise offset the price-linked contract." Furthermore, the Guidance notes that, "[f]or a linked contract, the mere fact that a contract is linked to another contract will not be sufficient to support a determination that a contract performs a significant price discovery function. To assess whether such a determination is warranted, the Commission will examine the relationship between transaction prices of the linked contract and the prices of the referenced contract. The Commission believes that where material liquidity exists, prices for the linked contract would be observed to be substantially the same as or move substantially in conjunction with the prices of the referenced contract." Furthermore, the Guidance proposes a threshold price relationship such that prices of the ECM linked contract will fall within a 2.5 percent price range for 95 percent of contemporaneously determined closing, settlement or other daily prices over the most recent quarter. Finally, the Commission also stated in the Guidance that it would consider a linked contract which has a trading volume equivalent to 5 percent of the volume of trading in the contract to which it is linked to have sufficient volume potentially to be deemed a SPDC ("minimum threshold").

To assess whether the AEC contract meets the price linkage criterion, Commission staff obtained price data from ICE and performed the statistical tests cited above. Staff found that, while the Alberta price is determined, in part, by the final settlement price of the NYMEX physically-delivered natural gas futures contract (a DCM contract), the Alberta hub price is not within 2.5 percent of the settlement price of the corresponding NYMEX Henry Hub natural gas futures contract on 95 percent or more of the days. Specifically, during the third quarter of 2009, only 2.4 percent of the Alberta natural gas prices derived from the ICE basis values were within 2.5 percent of the daily settlement price of the NYMEX Henry Hub futures contract. In addition, staff found that the AEC contract fails to meet the volume threshold requirement. In particular, the total trading volume in the NYMEX physically delivered natural gas contract during the third quarter of 2009 was 14,022,963 contracts, with 5 percent of that number being 701,148 contracts. Trades on the ICE centralized market in the AEC contract during the same period was 736,412 contracts (equivalent to 184,103 NYMEX contracts, given the size difference).[24] Thus, centralized-market trades in the AEC contract amounted to less than the minimum threshold.

Due to the specific criteria that a given ECM contract must meet to fulfill the price linkage criterion, the requirements, for all intents and purposes, exclude ECM contracts that are not near facsimiles of DCM contracts even though the ECM contract may specifically use the settlement price to value a position, which is the case of the AEC contract. In this regard, an ECM contract that is priced and traded as if it is a functional equivalent of a DCM contract likely will have a price series that mirrors that of the corresponding DCM contract. In contrast, for contracts that are not look-alikes of DCM contracts, it is reasonable to expect that the two price series would be divergent. The Alberta hub and the Henry Hub are located in two different areas of North America. Moreover, both hubs are supply centers, where the Alberta hub handles a throughput volume that is ten times that of the Henry Hub. These differences contribute to the divergence between the two price series and, as discussed above, increase the likelihood that the "basis" contract is used for material price reference.

i. Federal Register Comments

NGSA stated that the AEC contract does not meet the price linkage criterion because basis contracts, including the AEC contract, are not equivalent to the NYMEX physically-delivered Henry Hub contract. EI also noted that the AEC and NYMEX natural gas contracts are not economically equivalent and that the AEC contract's volume is too low to affect the NYMEX natural gas futures contract. WGCEF stated that the Alberta price is determined, in part, by the final settlement price of the NYMEX Henry Hub futures contract. However, WCEF goes on to state that the AEC contract "(a) is not substantially the same as the NYMEX [natural gas futures contract] * * * nor (b) does it move substantially in conjunction" with the NYMEX natural gas futures contract. ICE opined that the AEC contract's trading volume is too low to affect the price discovery process for the NYMEX natural gas futures contract. In addition, ICE states that the AEC contract simply reflects a price differential between Alberta and the Henry Hub; "there is no price linkage as contemplated by Congress or the CFTC in its rulemaking." FIEG acknowledged that the AEC contract is a locational spread that is based in part on the NYMEX natural gas futures price, but also questioned the significance of this fact relative to the price linkage criterion since the key component of the spread is the price at the Alberta location and not the NYMEX physically-delivered natural gas futures price.

ii. Conclusion Regarding the Price Linkage Criterion

Based on the above, the Commission finds that the AEC contract does not meet the price linkage criterion because it fails the price relationship and volume tests provided for in the Commission's Guidance.

3. Material Liquidity Criterion

To assess whether the AEC contract meets the material liquidity criterion, the Commission first examined volume and open interest data provided to it by ICE as a general measurement of the AEC market's size and potential importance, and second performed a statistical analysis to measure the effect that changes to AEC prices potentially may have on prices for the NYMEX Henry Hub Natural Gas (a DCM contract), the ICE Socal Border Financial Basis ("SCL") contract (an ECM contract) and the ICE HSC[25] Financial Basis contract (an ECM contract).[26]

The Commission's Guidance (Appendix A to Part 36) notes that "[t]raditionally, objective measures of trading such as volume or open interest have been used as measures of liquidity." In this regard, the Commission in its October 9, 2009, **Federal Register** notice referred to second quarter 2009 trading statistics that ICE had submitted for its AEC contract. Based upon on a required quarterly filing made by ICE on July 27, 2009, the total number of AEC trades executed on ICE's electronic trading platform was 7,263 in the second quarter of 2009, resulting in a daily average of 113.5 trades. During the same period, the AEC contract had a total trading volume on ICE's electronic trading platform of 806,438 contracts and an average daily trading volume of 12,601 contracts. Moreover, the open interest as of June 30, 2009, was 443,402 contracts, which includes trades executed on ICE's electronic trading platform, as well as trades executed off

[24] The AEC contract is one-quarter the size of the NYMEX Henry Hub physically-delivered futures contract.

[25] The acronym stands for Houston Ship Channel.

[26] As noted above, the material liquidity criterion speaks to the effect that transactions in the potential SPDC may have on trading in "agreements, contracts and transactions listed for trading on or subject to the rules of a designated contract market, a derivatives transaction execution facility, or an electronic trading facility operating in reliance on the exemption in section 2(h)(3) of the Act.

of ICE's electronic trading platform and then brought to ICE for clearing.[27]

Subsequent to the October 9, 2009, **Federal Register** notice, ICE submitted another quarterly notification filed on November 13, 2009,[28] with updated trading statistics. Specifically, with respect to its AEC contract, 6,320 separate trades occurred on its electronic platform in the third quarter of 2009, resulting in a daily average of 95.8 trades. During the same period, the AEC contract had a total trading volume on its electronic platform of 736,412 contracts (which was an average of 11,158 contracts per day).[29] As of September 30. 2009, open interest in the AEC contract was 483,561[30] contracts. Reported open interest included positions resulting from trades that were executed on ICE's electronic platform, as well as trades that were executed off of ICE's electronic platform and brought to ICE for clearing.

In Appendix A to Part 36, the material liquidity criterion for SPDC determination specifies that an ECM contract should have a material effect on another contract. To measure the effect that the AEC contract has on a DCM contract, or on another ECM contract, Commission staff performed a statistical analysis[31] of ICE and NYMEX price data using daily settlement prices (between January 2, 2008, and September 30, 2009) for the NYMEX Henry Hub natural gas contract (a DCM contract) and the ICE Socal Border Financial Basis and HSC Financial Basis contracts (ECM contracts).[32] The simulation results suggest that, on average over the sample period, a one percent rise in the AEC contract's price elicited a 0.8 percent to 0.9 percent increase in each of the NYMEX Henry Hub, ICE SCL and ICE HSC contracts' prices.

i. Federal Register Comments

As noted above, comments were received from eight individuals and organizations, with five comments being directly applicable to the SPDC determination of the ICE AEC contract. WGCEF, EI, FIEG, ICE and NGSA generally agreed that the AEC contract does not meet the material liquidity criterion.

WGCEF[33] and NGSA[34] both stated that the AEC contract does not materially affect other contracts that are listed for trading on DCMs or ECMs, as well as other over-the-counter contracts. Instead, the AEC contract is influenced by the underlying Alberta cash price index and the final settlement price of the NYMEX Henry Hub natural gas futures contract, not vice versa. FIEG[35] stated that the AEC contract cannot have a material effect on NYMEX contract because the AEC contract trades on a differential and represents "one leg (and not the relevant leg) of the locational spread." The Commission's statistical analysis shows that changes in the ICE AEC contract's price significantly influences the prices of other contracts that are traded on DCMs and ECMs.

ICE[36] opined that the Commission "seems to have adopted a five trade-per-day test to determine whether a contract is materially liquid. It is worth noting that ICE originally suggested that the CFTC use a five trades-per-day threshold as the basis for an ECM to report trade data to the CFTC." In this regard, the Commission adopted a five trades-per-day threshold as a reporting requirement to enable it to "independently be aware of ECM contracts that may develop into SPDCs"[37] rather than solely relying upon an ECM on its own to identify any such potential SPDCs to the Commission. Thus, any contract that meets this threshold may be subject to scrutiny as a potential SPDC; the threshold is not intended to define liquidity in a broader sense. As noted above, the Division is basing a finding of material liquidity for the ICE AEC contract in part on the fact that there have been around 100 trades per day on average in the AEC contract during the second and third quarters of 2009, which is far more than the five trades-per-day that is cited in the ICE comment.

ICE implied that the statistics provided by ICE were misinterpreted and misapplied by the Commission. In particular, ICE stated that the volume figures used in the Commission's analysis (cited above) "include trades made in *all months of each contract*" as well as in strips of contract months, and the "more appropriate method of determining liquidity is to examine the activity in a *single* traded month or strip of a given contract." Furthermore, ICE noted that for the AEC contract (and other basis swap contracts), "about 25–40% of the trades * * * occurred in the single most liquid, usually prompt, month of * * * [the] contract." EI,[38] and FIEG also noted that contract months should be considered separately rather than on an aggregated basis. When done so, none of the contract months meet the material liquidity criterion.

It is the Commission's opinion that liquidity, as it pertains to the AEC contract, is typically a function of trading activity in particular lead months and, given sufficient liquidity in such months, the AEC contract itself would be considered liquid. ICE's analysis of its own trade data confirms this to be the case for the AEC contract, and thus, the Commission believes that it applied the statistical data cited above in an appropriate manner for gauging material liquidity.

In addition, EI and ICE stated that the trades-per-day statistics that it provided to the Commission in its quarterly filing and which are cited above includes 2(h)(1) transactions, which were not completed on the electronic trading platform and should not be considered in the SPDC determination process. The Commission staff asked ICE to review the data it sent in its quarterly filings. In response, ICE confirmed that the volume data it provided and which the Commission cited in its October 9, 2009, **Federal Register** notice, as well as the additional volume information it cites above, includes only transaction data

[27] ICE does not differentiate between open interest created by a transaction executed on its trading platform versus that created by a transaction executed off its trading platform. 74 FR 52196 (October 9, 2009).

[28] See Commission Rule 36.3(c)(2), 17 CFR 36.3(c)(2).

[29] By way of comparison, the number of contracts traded in the AEC contract is similar to that exhibited on a liquid futures market and is roughly equivalent to the volume of trading for the ICE US Coffee "C" and Cocoa contracts during this period.

[30] By way of comparison, open interest in the AEC contract is similar to that exhibited on a liquid futures market and is roughly equivalent to that in the Commodity Exchange's Gold contract and the Chicago Board of Trade's soybean contract.

[31] Specifically, Commission staff econometrically estimated a vector autoregression model using daily natural gas price levels. A vector autoregression model is an econometric model used to capture the dependencies and interrelationships among multiple time series, generalizing the univariate autoregression model. The estimated model displays strong diagnostic evidence of statistical adequacy. In particular, the model's impulse response function was shocked with a one-time rise in Alberta price. The simulation results suggest that, on average over the sample period, a one percent rise in the Alberta natural gas price elicited a 0.9 percent increase in the NYMEX Henry Hub price and the Southern California border gas price, as well as a 0.8 percent increase in HSC gas prices. These multipliers of response emerge with noticeable statistical strength or significance. Based on such long run sample patterns, if the Alberta price rises by 10 percent, then the price of NYMEX Henry Hub natural gas futures contract and the Sothern California gas price each would rise by about 9 percent; a 10 percent rise in the Alberta gas price would lead to a rise in the HSC contract's price by about 9 percent.

[32] Natural gas prices at the Alberta, HSC, and Socal trading centers were obtained by adding the daily settlement prices of ICE's AECO Financial Basis, HSC Financial Basis and Socal Border Financial Basis contracts, respectively, to the contemporaneous daily settlement prices of the NYMEX Henry Hub physically-delivered natural gas futures contract.

[33] CL 02.

[34] CL 05.

[35] CL 07.

[36] CL 03.

[37] 73 FR 75892 (December 12, 2008).

[38] CL 04.

executed on ICE's electronic trading platform.[39] The Commission acknowledges that the open interest information it cites above includes transactions made off the ICE platform. However, once open interest is created, there is no way for ICE to differentiate between "on-exchange" versus "off-exchange" created positions, and all such positions are fungible with one another and may be offset in any way agreeable to the position holder regardless of how the position was initially created.

ii. Conclusion Regarding Material Liquidity

Based on the above, the Commission concludes that the AEC contract meets the material liquidity criterion in that there is sufficient trading activity in the AEC contract to have a material effect on "other agreements, contracts or transactions listed for trading on or subject to the rules of a designated contract market * * * or an electronic trading facility operating in reliance on the exemption in section 2(h)(3) of the Act" (that is, an ECM).

4. Overall Conclusion

After considering the entire record in this matter, including the comments received, the Commission has determined that the AEC contract performs a significant price discovery function under two of the four criteria established in section 2(h)(7) of the CEA. Although the Commission has determined that the AEC contract does not meet the price linkage criterion at this time, the Commission has determined that the AEC contract does meet both the material liquidity and material price reference criteria. Accordingly, the Commission will issue the attached Order declaring that the AEC contract is a SPDC.

Issuance of this Order signals the immediate effectiveness of the Commission's authorities with respect to ICE as a registered entity in connection with its AEC contract,[40] and triggers the obligations, requirements—both procedural and substantive—and timetables prescribed in Commission rule 36.3(c)(4) for ECMs.

[39] Supplemental data supplied by the ICE confirmed that block trades in the third quarter of 2009 were in addition to the trades that were conducted on the electronic platform; block trades comprised 32.4 percent of all transactions in the AEC contract.

[40] See 73 FR 75888, 75893 (Dec. 12, 2008).

IV. Related Matters

a. Paperwork Reduction Act

The Paperwork Reduction Act of 1995 ("PRA")[41] imposes certain requirements on Federal agencies, including the Commission, in connection with their conducting or sponsoring any collection of information as defined by the PRA. Certain provisions of Commission rule 36.3 impose new regulatory and reporting requirements on ECMs, resulting in information collection requirements within the meaning of the PRA. OMB previously has approved and assigned OMB control number 3038–0060 to this collection of information.

b. Cost-Benefit Analysis

Section 15(a) of the CEA[42] requires the Commission to consider the costs and benefits of its actions before issuing an order under the Act. By its terms, section 15(a) does not require the Commission to quantify the costs and benefits of an order or to determine whether the benefits of the order outweigh its costs; rather, it requires that the Commission "consider" the costs and benefits of its actions. Section 15(a) further specifies that the costs and benefits shall be evaluated in light of five broad areas of market and public concern: (1) Protection of market participants and the public; (2) efficiency, competitiveness and financial integrity of futures markets; (3) price discovery; (4) sound risk management practices; and (5) other public interest considerations. The Commission may in its discretion give greater weight to any one of the five enumerated areas and could in its discretion determine that, notwithstanding its costs, a particular order is necessary or appropriate to protect the public interest or to effectuate any of the provisions or accomplish any of the purposes of the Act. The Commission has considered the costs and benefits in light of the specific provisions of section 15(a) of the Act and has concluded that the Order, required by Congress to strengthen Federal oversight of exempt commercial markets and to prevent market manipulation, is necessary and appropriate to accomplish the purposes of section 2(h)(7) of the Act.

When a futures contract begins to serve a significant price discovery function, that contract, and the ECM on which it is traded, warrants increased oversight to deter and prevent price manipulation or other disruptions to market integrity, both on the ECM itself and in any related futures contracts trading on DCMs. An Order finding that a particular contract is a SPDC triggers this increased oversight and imposes obligations on the ECM calculated to accomplish this goal. The increased oversight engendered by the issue of a SPDC Order increases transparency and helps to ensure fair competition among ECMs and DCMs trading similar products and competing for the same business. Moreover, the ECM on which the SPDC is traded must assume, with respect to that contract, all the responsibilities and obligations of a registered entity under the CEA and Commission regulations. Additionally, the ECM must comply with nine core principles established by section 2(h)(7) of the Act—including the obligation to establish position limits and/or accountability standards for the SPDC. Section 4(i) of the CEA authorizes the Commission to require reports for SPDCs listed on ECMs. These increased responsibilities, along with the CFTC's increased regulatory authority, subject the ECM's risk management practices to the Commission's supervision and oversight and generally enhance the financial integrity of the markets.

c. Regulatory Flexibility Act

The Regulatory Flexibility Act ("RFA")[43] requires that agencies consider the impact of their rules on small businesses. The requirements of CEA section 2(h)(7) and the Part 36 rules affect ECMs. The Commission previously has determined that ECMs are not small entities for purposes of the RFA.[44] Accordingly, the Chairman, on behalf of the Commission, hereby certifies pursuant to 5 U.S.C. 605(b) that this Order, taken in connection with section 2(h)(7) of the Act and the Part 36 rules, will not have a significant impact on a substantial number of small entities.

V. Order

a. Order Relating to the ICE AECO Financial Basis Contract

After considering the complete record in this matter, including the comment letters received in response to its request for comments, the Commission has determined to issue the following:

The Commission, pursuant to its authority under section 2(h)(7) of the Act, hereby determines that the AECO Financial Basis contract, traded on the IntercontinentalExchange, Inc., must comply with, with respect to the AECO Financial Basis contract, the nine core principles established by new section

[41] 44 U.S.C. 3507(d).

[42] 7 U.S.C. 19(a).

[43] 5 U.S.C. 601 *et seq.*

[44] 66 FR 42256, 42268 (Aug. 10, 2001).

2(h)(7)(C). Additionally, the IntercontinentalExchange, Inc., satisfies the statutory material liquidity and material price reference criteria for significant price discovery contracts. Consistent with this determination, and effective immediately, the IntercontinentalExchange, Inc., shall be and is considered a registered entity [45] with respect to the AECO Financial Basis contract and is subject to all the provisions of the Commodity Exchange Act applicable to registered entities. Further, the obligations, requirements and timetables prescribed in Commission rule 36.3(c)(4) governing core principle compliance by the IntercontinentalExchange, Inc. commence with the issuance of this Order.[46]

Issued in Washington, DC on April 28, 2010, by the Commission.

David A. Stawick,

Secretary of the Commission.

[FR Doc. 2010–10299 Filed 5–3–10; 8:45 am]

BILLING CODE P

COMMODITY FUTURES TRADING COMMISSION

Order Finding That the NWP Rockies Financial Basis Contract Traded on the IntercontinentalExchange, Inc., Performs a Significant Price Discovery Function

AGENCY: Commodity Futures Trading Commission.

ACTION: Final order.

SUMMARY: On October 22, 2009, the Commodity Futures Trading Commission ("CFTC" or "Commission") published for comment in the **Federal Register** [1] a notice of its intent to undertake a determination whether the NWP [2] Rockies Financial Basis ("NWR") contract traded on the IntercontinentalExchange, Inc. ("ICE"), an exempt commercial market ("ECM") under sections 2(h)(3)–(5) of the Commodity Exchange Act ("CEA" or the "Act"), performs a significant price discovery function pursuant to section 2(h)(7) of the CEA. The Commission undertook this review based upon an initial evaluation of information and data provided by ICE as well as other available information. The Commission has reviewed the entire record in this matter, including all comments received, and has determined to issue an order finding that the NWR contract performs a significant price discovery function. Authority for this action is found in section 2(h)(7) of the CEA and Commission rule 36.3(c) promulgated thereunder.

DATES: *Effective date:* April 28, 2010.

FOR FURTHER INFORMATION CONTACT: Gregory K. Price, Industry Economist, Division of Market Oversight, Commodity Futures Trading Commission, Three Lafayette Centre, 1155 21st Street, NW., Washington, DC 20581. Telephone: (202) 418–5515. E-mail: *gprice@cftc.gov;* Christa Lachenmayr, Economist, Division of Market Oversight, same address. Telephone: (202) 418–5252. E-mail: *clachenmayr@cftc.gov;* or Susan Nathan, Senior Special Counsel, Division of Market Oversight, same address. Telephone: (202) 418–5133. E-mail: *snathan@cftc.gov.*

SUPPLEMENTARY INFORMATION:

I. Introduction

The CFTC Reauthorization Act of 2008 ("Reauthorization Act") [3] significantly broadened the CFTC's regulatory authority with respect to ECMs by creating, in section 2(h)(7) of the CEA, a new regulatory category—ECMs on which significant price discovery contracts ("SPDCs") are traded—and treating ECMs in that category as registered entities under the CEA.[4] The legislation authorizes the CFTC to designate an agreement, contract or transaction as a SPDC if the Commission determines, under criteria established in section 2(h)(7), that it performs a significant price discovery function. When the Commission makes such a determination, the ECM on which the SPDC is traded must assume, with respect to that contract, all the responsibilities and obligations of a registered entity under the Act and Commission regulations, and must comply with nine core principles established by new section 2(h)(7)(C).

On March 16, 2009, the CFTC promulgated final rules implementing the provisions of the Reauthorization Act.[5] As relevant here, rule 36.3 imposes increased information reporting requirements on ECMs to assist the Commission in making prompt assessments whether particular ECM contracts may be SPDCs. In addition to filing quarterly reports of its contracts, an ECM must notify the Commission promptly concerning any contract traded in reliance on the exemption in section 2(h)(3) of the CEA that averaged five trades per day or more over the most recent calendar quarter, and for which the exchange sells its price information regarding the contract to market participants or industry publications, or whose daily closing or settlement prices on 95 percent or more of the days in the most recent quarter were within 2.5 percent of the contemporaneously determined closing, settlement or other daily prices of another contract.

Commission rule 36.3(c)(3) established the procedures by which the Commission makes and announces its determination whether a particular ECM contract serves a significant price discovery function. Under those procedures, the Commission will publish notice in the **Federal Register** that it intends to undertake an evaluation whether the specified agreement, contract or transaction performs a significant price discovery function and to receive written views, data and arguments relevant to its determination from the ECM and other interested persons. Upon the close of the comment period, the Commission will consider, among other things, all relevant information regarding the subject contract and issue an order announcing and explaining its determination whether or not the contract is a SPDC. The issuance of an affirmative order signals the effectiveness of the Commission's regulatory authorities over an ECM with respect to a SPDC; at that time such an ECM becomes subject to all provisions of the CEA applicable to registered entities.[6] The issuance of such an order also triggers the obligations, requirements and timetables prescribed in Commission rule 36.3(c)(4).[7]

II. Notice of Intent To Undertake SPDC Determination

On October 22, 2009, the Commission published in the **Federal Register** notice of its intent to undertake a

[45] 7 U.S.C. 1a(29).

[46] Because ICE already lists for trading a contract (i.e., the Henry Financial LD1 Fixed Price contract) that was previously declared by the Commission to be a SPDC, ICE must submit a written demonstration of compliance with the Core Principles within 30 calendar days of the date of this Order. 17 CFR 36.3(c)(4).

[1] 74 FR 54550 (October 22, 2009).

[2] The acronym "NWP" indicates the Northwest Pipeline.

[3] Incorporated as Title XIII of the Food, Conservation and Energy Act of 2008, Public Law 110–246, 122 Stat. 1624 (June 18, 2008).

[4] 7 U.S.C. 1a(29).

[5] 74 FR 12178 (Mar. 23, 2009); these rules became effective on April 22, 2009.

[6] Pub. L. 110–246 at 13203; *Joint Explanatory Statement of the Committee of Conference,* H.R. Rep. No. 110–627, 110 Cong., 2d Sess. 978, 986 (Conference Committee Report). See also 73 FR 75888, 75894 (Dec. 12, 2008).

[7] For an initial SPDC, ECMs have a grace period of 90 calendar days from the issuance of a SPDC determination order to submit a written demonstration of compliance with the applicable core principles. For subsequent SPDCs, ECMs have a grace period of 30 calendar days to demonstrate core principle compliance.

determination whether the NWR contract performs a significant price discovery function and requested comment from interested parties.[8] Comments were received from the Federal Energy Regulatory Commission ("FERC"), Platts, Economists Incorporated ("EI") and ICE.[9] The comment letters from FERC[10] and Platts did not directly address the issue of whether or not the NWR contract is a SPDC; ICE's and EI's comments raised substantive issues with respect to the applicability of section 2(h)(7) the NWR contract, generally asserting that the NWR contract is not a SPDC as it does not meet the material liquidity, material price reference and price linkage criteria for SPDC determination. ICE's and EI's comments are more extensively discussed below, as applicable.

III. Section 2(h)(7) of the CEA

The Commission is directed by section 2(h)(7) of the CEA to consider the following criteria in determining a contract's significant price discovery function:

- *Price Linkage*—the extent to which the agreement, contract or transaction uses or otherwise relies on a daily or final settlement price, or other major price parameter, of a contract or contracts listed for trading on or subject to the rules of a designated contract market ("DCM") or derivatives transaction execution facility ("DTEF"), or a SPDC traded on an electronic trading facility, to value a position, transfer or convert a position, cash or financially settle a position, or close out a position.
- *Arbitrage*—the extent to which the price for the agreement, contract or transaction is sufficiently related to the price of a contract or contracts listed for trading on or subject to the rules of a DCM or DTEF, or a SPDC traded on or subject to the rules of an electronic trading facility, so as to permit market participants to effectively arbitrage between the markets by simultaneously maintaining positions or executing trades in the contracts on a frequent and recurring basis.
- *Material price reference*—the extent to which, on a frequent and recurring basis, bids, offers or transactions in a commodity are directly based on, or are determined by referencing or consulting, the prices generated by agreements, contracts or transactions being traded or executed on the electronic trading facility.
- *Material liquidity*—the extent to which the volume of agreements, contracts or transactions in a commodity being traded on the electronic trading facility is sufficient to have a material effect on other agreements, contracts or transactions listed for trading on or subject to the rules of a DCM, DTEF or electronic trading facility operating in reliance on the exemption in section 2(h)(3).

Not all criteria must be present to support a determination that a particular contract performs a significant price discovery function, and one or more criteria may be inapplicable to a particular contract.[11] Moreover, the statutory language neither prioritizes the criteria nor specifies the degree to which a SPDC must conform to the various criteria. In Guidance issued in connection with the Part 36 rules governing ECMs with SPDCs, the Commission observed that these criteria do not lend themselves to a mechanical checklist or formulaic analysis. Accordingly, the Commission has indicated that in making its determinations it will consider the circumstances under which the presence of a particular criterion, or combination of criteria, would be sufficient to support a SPDC determination.[12] For example, for contracts that are linked to other contracts or that may be arbitraged with other contracts, the Commission will consider whether the price of the potential SPDC moves in such harmony with the other contract that the two markets essentially become interchangeable. This co-movement of prices would be an indication that activity in the contract had reached a level sufficient for the contract to perform a significant price discovery function. In evaluating a contract's price discovery role as a price reference, the Commission will consider whether cash market participants are quoting bid or offer prices or entering into transactions at prices that are set either explicitly or implicitly at a differential to prices established for the contract.

IV. Findings and Conclusions

a. The NWP Rockies Financial Basis (NWR) Contract and the SPDC Indicia

The ICE NWR contract is cash settled based on the difference between the bidweek price of natural gas at the Northwest Pipeline's Rockies hub for the month of delivery, as published in Platts' *Inside FERC's Gas Market Report*, and the final settlement price for the New York Mercantile Exchange's ("NYMEX's") Henry Hub physically-delivered natural gas futures contract for the same specified calendar month. The Platts bidweek price, which is published monthly, is based on a survey of cash market traders who voluntarily report to Platts data on fixed-price transactions for physical delivery of natural gas at the Rockies hub conducted during the last five business days of the month; such bidweek transactions specify the delivery of natural gas on a uniform basis throughout the following calendar month at the agreed upon rate. The Platts bidweek index is published on the first business day of the calendar month in which the natural gas is to be delivered. The size of the NWR contract is 2,500 million British thermal units ("mmBtu"), and the unit of trading is any multiple of 2,500 mmBtu. The NWR contract is listed for up to 120 calendar months commencing with the next calendar month.

The Henry Hub,[13] which is located in Erath, Louisiana, is the primary cash market trading and distribution center for natural gas in the United States. It

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[8] The Commission's Part 36 rules establish, among other things, procedures by which the Commission makes and announces its determination whether a specific ECM contract serves a significant price discovery function. Under those procedures, the Commission publishes a notice in the **Federal Register** that it intends to undertake a determination whether a specified agreement, contract or transaction performs a significant price discovery function and to receive written data, views and arguments relevant to its determination from the ECM and other interested persons.

[9] FERC is an independent Federal regulatory agency that, among other things, regulates the interstate transmission of natural gas, oil and electricity. McGraw-Hill, through its division Platts, compiles and calculates monthly natural gas price indices from natural gas trade data submitted to Platts by energy marketers. Platts includes those price indices in its monthly *Inside FERC's Gas Market Report* ("Inside FERC"). ICE is an ECM, as noted above. EI is an economic consulting firm with offices located in Washington, DC, and San Francisco, CA. The comment letters are available on the Commission's Web site: *http://www.cftc.gov/lawandregulation/federalregister/federalregistercomments/2009/09-031.html.*

[10] FERC stated that the NWR contract is cash settled and does not contemplate the actual physical delivery of natural gas. Acccordingly, FERC expressed the opinion that a determination by the Commission that a contract performs a significant price discovery function "would not appear to conflict with FERC's exclusive jurisdiction under the Natural Gas Act (NGA) over certain sales of natural gas in interstate commerce for resale or with its other regulatory responsibilities under the NGA" and further that "FERC staff will continue to monitor for any such conflict * * * [and] advise the CFTC" should any such potential conflict arise. CL 01.

[11] In its October 22, 2009, **Federal Register** release, the Commission identified material price reference, price linkage and material liquidity as the possible criteria for SPDC determination of the NWR contract. Arbitrage was not identified as a possible criterion and will not be discussed further in this document or the associated Order.

[12] 17 CFR Part 36, Appendix A.

[13] The term "hub" refers to a juncture where two or more natural gas pipelines are connected. Hubs also serve as pricing points for natural gas at the particular locations.

also is the delivery point and pricing basis for the NYMEX's actively traded, physically-delivered natural gas futures contract, which is the most important pricing reference for natural gas in the United States. The Henry Hub, which is operated by Sabine Pipe Line, LLC, serves as a juncture for 13 different pipelines. These pipelines bring in natural gas from fields in the Gulf Coast region and ship it to major consumption centers along the East Coast and Midwest. The throughput shipping capacity of the Henry Hub is 1.8 trillion mmBtu per day.

In addition to the Henry Hub, there are a number of other locations where natural gas is traded. In 2008, there were 33 natural gas market centers in North America.[14] Some of the major trading centers include Alberta, Northwest Rockies, Southern California border region and the Houston Ship Channel. For locations that are directly connected to the Henry Hub by one or more pipelines and where there typically is adequate shipping capacity, the price at the other locations usually directly tracks the price at the Henry Hub, adjusted for transportation costs. However, at other locations that are not directly connected to the Henry Hub or where shipping capacity is limited, the prices at those locations often diverge from the Henry Hub price. Furthermore, one local price may be significantly different than the price at another location even though the two markets' respective distances from the Henry Hub are the same. The reason for such pricing disparities is that a given location may experience supply and demand factors that are specific to that region, such as differences in pipeline shipping capacity, unusually high or low demand for heating or cooling or supply disruptions caused by severe weather. As a consequence, local natural gas prices can differ from the Henry Hub price by more than the cost of shipping and such price differences can vary in an unpredictable manner.

The Northwest Pipeline's Rockies hub is located in Wyoming, Utah and Colorado.[15] The Northwest Pipeline draws natural gas supplies from the Rocky Mountain region and ships it along a 3,900-mile, bi-directional transmission system to markets throughout the Rockies and Pacific Northwest. The Opal market center, a trading region that includes the Rockies hub, had an estimated throughput capacity of 1.5 billion cubic feet per day in 2008. Moreover, the number of pipeline interconnections at the Opal market center was eight in 2008, up from four interconnections in 2003. Lastly, the pipeline interconnection capacity of the Opal market center in 2008 was six billion cubic feet per day, which constituted an 86 percent increase over the pipeline interconnection capacity in 2003.[16] The Rockies hub is far removed from the Henry Hub and is not directly connected to the Henry Hub by an existing pipeline.

The local price at the Rockies hub typically differs from the price at the Henry Hub. Thus, the price of the Henry Hub physically-delivered futures contract is an imperfect proxy for the Rockies price. Moreover, exogenous factors, such as adverse weather, can cause the Rockies gas price to differ from the Henry Hub price by an amount that is more or less than the cost of shipping, making the NYMEX Henry Hub futures contract even less precise as a hedging tool than desired by market participants. Basis contracts[17] allow traders to more accurately discover prices at alternative locations and hedge price risk that is associated with natural gas at such locations.[18] In this regard, a position at a local price for an alternative location can be established by adding the appropriate basis swap position to a position taken in the NYMEX physically-delivered Henry Hub contract (or in the NYMEX or ICE Henry Hub look-alike contract, which cash settle based on the NYMEX physically-delivered natural gas contract's final settlement price).

In its October 22, 2009, **Federal Register** notice, the Commission identified material price reference, price linkage and material liquidity as the potential SPDC criteria applicable to the NWR contract. Each of these criteria is discussed below.[19]

1. Material Price Reference Criterion

The Commission's October 22, 2009, **Federal Register** notice identified material price reference as a potential basis for a SPDC determination with respect to this contract. The Commission considered the fact that ICE sells its price data to market participants in a number of different packages which vary in terms of the hubs covered, time periods, and whether the data are daily only or historical. For example, ICE offers the "West Gas End of Day" and "OTC Gas End of Day"[20] packages with access to all price data or just current prices plus a selected number of months (i.e., 12, 24, 36 or 48 months) of historical data. These two packages include price data for the NWR contract.

The Rockies hub is a major trading center for natural gas in the United States. Traders, including producers, keep abreast of the prices of the NWR contract when conducting cash deals. These traders look to a competitively determined price as an indication of expected values of natural gas at the Rockies hub when entering into cash market transactions for natural gas, especially those trades that provide for physical delivery in the future. Traders use the ICE NWR contract, as well as other ICE basis swap contracts, to hedge cash market positions and transactions—activities which enhance the NWR contract's price discovery utility. The substantial volume of trading and open interest in the NWR contract appears to attest to its use for this purpose. While the NWR contract's settlement prices may not be the only factor influencing spot and forward transactions, natural gas traders consider the ICE price to be a critical factor in conducting OTC transactions.[21]

NYMEX lists a futures contract that is comparable to the ICE NWR contract on its ClearPort platform. However, unlike the ICE contract, none of the trades in the NYMEX Rockies Basis Swap (Platts IFERC) futures contract are executed in NYMEX's centralized marketplace; instead, all of the transactions originate as bilateral swaps that are submitted to

[14] See *http://www.eia.doe.gov/pub/oil_gas/natural_gas/feature_articles/2009/ngmarketcenter/ngmarketcenter.pdf.*

[15] The Rockies hub includes fixed-price gas delivered into Northwest Pipeline's mainline in Wyoming, Utah and Colorado between the Kemmerer and Moab stations. Deliveries at Ignacio, CO, and elsewhere in zone MO (the area South of Moab, UT, into the San Juan Mountains) are excluded. Transactions done at Opal, WY, and the Muddy Creek compressor station (where the Northwest Pipeline connects with Kern River Gas Transmission, Questar Pipeline and Colorado Interstate Gas) are used because gas traded at those two points often is not nominated into a specific pipeline.

[16] See *http://www.eia.doe.gov/pub/oil_gas/natural_gas/feature_articles/2009/ngmarketcenter/ngmarketcenter.pdf.*

[17] Basis contracts denote the difference in the price of natural gas at a specified location minus the price of natural gas at the Henry Hub. The differential can be either a positive or negative value.

[18] Commercial activity in natural gas basis swap contracts is evidenced by large positions held by energy trading firms in the comparable NYMEX ClearPort basis swap contract for the Rockies hub.

[19] As noted above, the Commission did not find an indication of arbitrage in connection with this contract; accordingly, that criterion was not discussed in reference to the NWR contract.

[20] The OTC Gas End of Day dataset includes daily settlement prices for natural gas contracts listed for all points in North America.

[21] In addition to referencing ICE prices, natural gas market firms participating in the Rockies market may rely on other cash market quotes as well as industry publications and price indices that are published by third-party price reporting firms when entering into natural gas transactions.

NYMEX for clearing. The daily settlement prices of the NYMEX Rockies Basis Swap contract are influenced, in part, by the daily settlement prices of the ICE NWR contract. This is because NYMEX determines the daily settlement prices for its natural gas basis swap contracts through a survey of cash market voice brokers. Voice brokers, in turn, refer to the ICE NWR price, among other information, as an important indicator as to where the market is trading. Therefore, the ICE NWR price influences the settlement price for the NYMEX Rockies Basis Swap contract. This is supported by an analysis of the daily settlement prices for the NYMEX and ICE Rockies basis swap contracts. In this regard, 98 percent of the daily settlement prices for the NYMEX Rockies Basis Swap contract are within one standard deviation of the NWR contract's settlement prices.

Lastly, the fact that the NWR contract does not meet the price linkage criterion (discussed below) bolsters the argument for material price reference. As noted above, the Henry Hub is the pricing reference for natural gas in the United States. However, regional market conditions may cause the price of natural gas in another area of the country to diverge by more than the cost of transportation, thus making the Henry Hub price an imperfect proxy for the local gas price. The more variable the local natural gas price is, the more traders need to accurately hedge their price risk. Basis swap contracts provide a means of more accurately pricing natural gas at a location other than the Henry Hub. An analysis of Rockies natural gas prices showed that all of the observations were more than 2.5 percent different than the contemporaneous Henry Hub prices. Specifically, the average Rockies basis value between January 2008 and September 2009 was −$1.94 per mmBtu with a variance of $1.88 per mmBtu.

i. Federal Register Comments

Both EI and ICE stated in their comment letters that the NWR contract does not meet the material price reference criterion for SPDC determination. ICE argued that the Commission appeared to base the case that the NWR contract is potentially a SPDC on a disputable assertion. In issuing its notice of intent to determine whether the NWR contract is a SPDC, the CFTC cited a general conclusion in its ECM study "that certain market participants referred to ICE as a price discovery market for certain natural gas contracts." ICE stated that, "Basing a material price reference determination on general statements made in a two year old study does not seem to meet Congress' intent that the CFTC use its considerable expertise to study the OTC markets." In response to the above comment, the Commission notes that it cited the ECM study's general finding that some ICE natural gas contracts appear to be regarded as price discovery markets merely as an indicia that an investigation of certain ICE contracts may be warranted, and was not intended to serve as the sole basis for determining whether or not a particular contract meets the material price reference criterion.

EI also stated that the NWR contract does not satisfy the material price reference criterion. The commenter argued that other contracts (physical or financial) are not indexed based on the ICE NWR contract price, but rather are indexed based on the underlying cash price series against which the NWR contract is settled. Thus, EI contends that the underlying cash price series is the authentic reference price and not the ICE contract itself. The Commission believes that this interpretation of price reference is too limiting in that it only considers the final index value on which the contract is cash settled after trading ceases. Instead, the Commission believes that a cash-settled derivatives contract could meet the price reference criteria if market participants "consult on a frequent and recurring basis" the derivatives contract when pricing forward, fixed-price commitments or other cash-settled derivatives that seek to "lock in" a fixed price for some future point in time to hedge against adverse price movements.

EI also argued that publication of price data in a package format is a weak justification for material price reference. According to the commenter, market participants generally do not purchase ICE data sets for one contract's prices, so the fact that ICE sells the NWR prices as part of a broad package is not conclusive evidence that market participants are buying the ICE data sets because they find the NWR prices have substantial value to them. The Commission notes that the Rockies hub is a major natural gas trading point, and the NWR contract's prices are well regarded in the industry as indicative of the value of natural gas at the Rockies hub. Accordingly, the Commission believes that it is reasonable to conclude that market participants are purchasing the data packages that include the NWR contract's prices in substantial part because the NWR contract prices have particular value to them.

ii. Conclusion Regarding Material Price Reference

Based on the above, the Commission finds that the NWR contract meets the material price reference criterion because it is referenced and consulted on a frequent and recurring basis by cash market participants when pricing transactions (direct evidence). Moreover, the ECM sells the NWR contract's price data to market participants (indirect evidence).

2. Price Linkage Criterion

In its October 22, 2009, **Federal Register** notice, the Commission identified price linkage as a potential basis for a SPDC determination with respect to the NWR contract. In this regard, the final settlement of the NWR contract is based, in part, on the final settlement price of the NYMEX's physically-delivered natural gas futures contract, where the NYMEX is registered with the Commission as a DCM.

The Commission's Guidance on Significant Price Discovery Contracts [22] notes that a "price-linked contract is a contract that relies on a contract traded on another trading facility to settle, value or otherwise offset the price-linked contract." Furthermore, the Guidance notes that, "[f]or a linked contract, the mere fact that a contract is linked to another contract will not be sufficient to support a determination that a contract performs a significant price discovery function. To assess whether such a determination is warranted, the Commission will examine the relationship between transaction prices of the linked contract and the prices of the referenced contract. The Commission believes that where material liquidity exists, prices for the linked contract would be observed to be substantially the same as or move substantially in conjunction with the prices of the referenced contract." Furthermore, the Guidance proposes a threshold price relationship such that prices of the ECM linked contract will fall within a 2.5 percent price range for 95 percent of contemporaneously determined closing, settlement or other daily prices over the most recent quarter. Finally, the Commission also stated in the Guidance that it would consider a linked contract that has a trading volume equivalent to 5 percent of the volume of trading in the contract to which it is linked to have sufficient volume potentially to be deemed a SPDC ("minimum threshold").

[22] Appendix A to the Part 36 rules.

To assess whether the NWR contract meets the price linkage criterion, Commission staff obtained price data from ICE and performed the statistical tests cited above. Staff found that, while the Rockies price is determined, in part, by the final settlement price of the NYMEX physically-delivered natural gas futures contract (a DCM contract), the Rockies hub price is not within 2.5 percent of the settlement price of the corresponding NYMEX Henry Hub natural gas futures contract on 95 percent or more of the days. Specifically, during the third quarter of 2009, only 2.4 percent of the Rockies natural gas prices derived from the ICE basis values were within 2.5 percent of the daily settlement price of the NYMEX Henry Hub futures contract. In addition, staff found that the NWR contract fails to meet the volume threshold requirement. In particular, the total trading volume in the NYMEX physically-delivered natural gas contract during the third quarter of 2009 was 14,022,963 contracts, with 5 percent of that number being 701,148 contracts. The number of trades on the ICE centralized market in the NWR contract during the same period was 279,905 contracts (equivalent to 69,976 NYMEX contracts, given the size difference).[23] Thus, centralized-market trades in the NWR contract amounted to less than the minimum threshold.

Due to the specific criteria that a given ECM contract must meet to fulfill the price linkage criterion, the requirements, for all intents and purposes, exclude ECM contracts that are not near facsimiles of DCM contracts even though the ECM contract may specifically use the settlement price to value a position, which is the case of the NWR contract. In this regard, an ECM contract that is priced and traded as if it is a functional equivalent of a DCM contract likely will have a price series that mirrors that of the corresponding DCM contract. In contrast, for contracts that are not look-alikes of DCM contracts, it is reasonable to expect that the two price series would be divergent. While the Rockies hub and the Henry Hub are both supply centers, they are located in two different areas of the United States. Moreover, the Rockies hub is somewhat isolated and the two hubs are not directly connected to each other. These differences contribute to the divergence between the two price series and, as discussed above, increase the likelihood that the "basis" contract is used for material price reference.

[23] The NWR contract is one-quarter the size of the NYMEX Henry Hub physically-delivered futures contract.

i. Federal Register Comments

As noted above, ICE and EI addressed the question of whether the NWR contract is a SPDC. EI noted that the NWR and NYMEX natural gas contracts are not economically equivalent and that the NWR contract's volume is too low to affect the NYMEX natural gas futures contract. ICE opined that the NWR contract's trading volume is too low to affect the price discovery process for the NYMEX natural gas futures contract. In addition, ICE states that the NWR contract simply reflects a price differential between the Rockies and the Henry Hub; "there is no price linkage as contemplated by Congress or the CFTC in its rulemaking."

ii. Conclusion Regarding the Price Linkage Criterion

Based on the above, the Commission finds that the NWR contract does not meet the price linkage criterion because it fails the price relationship and volume tests provided for in the Commission's Guidance.

3. Material Liquidity Criterion

To assess whether the NWR contract meets the material liquidity criterion, the Commission first examined volume and open interest data provided to it by ICE as a general measurement of the NWR market's size and potential importance, and second performed a statistical analysis to measure the effect that changes to NWR prices potentially may have on prices for the NYMEX Henry Hub Natural Gas (a DCM contract), the ICE PG&E Citygate Financial Basis contract (an ECM contract) and the Malin Financial Basis contract (an ECM contract).[24]

The Commission's Guidance (Appendix A to Part 36) notes that "[t]raditionally, objective measures of trading such as volume or open interest have been used as measures of liquidity." In this regard, the Commission in its October 22, 2009, **Federal Register** notice referred to second quarter 2009 trading statistics that ICE had submitted for its NWR contract. Based upon on a required quarterly filing made by ICE on July 27, 2009, the total number of NWR trades executed on ICE's electronic trading platform was 3,013 in the second quarter of 2009, resulting in a daily average of 47.1 trades. During the same period, the NWR contract had a total trading volume on ICE's electronic trading platform of 276,187 contracts and an average daily trading volume of 4,315 contracts. Moreover, the open interest as of June 30, 2009, was 349,931 contracts, which included trades executed on ICE's electronic trading platform, as well as trades executed off of ICE's electronic trading platform and then brought to ICE for clearing.[25]

Subsequent to the October 22, 2009, **Federal Register** notice, ICE submitted another quarterly notification filed on November 13, 2009,[26] with updated trading statistics. Specifically, with respect to its NWR contract, 2,950 separate trades occurred on its electronic platform in the third quarter of 2009, resulting in a daily average of 44.7 trades. During the same period, the NWR contract had a total trading volume on its electronic platform of 279,905 contracts (which was an average of 4,241 contracts per day).[27] As of September 30, 2009, open interest in the NWR contract was 345,683 contracts.[28] Reported open interest included positions resulting from trades that were executed on ICE's electronic platform, as well as trades that were executed off of ICE's electronic platform and brought to ICE for clearing.

In Appendix A to Part 36, the material liquidity criterion for SPDC determination specifies that an ECM contract should have a material effect on another contract. To measure the effect that the NWR contract potentially could have on a DCM contract, or on another ECM contract, Commission staff performed a statistical analysis[29] using

[24] As noted above, the material liquidity criterion speaks to the effect that transactions in the potential SPDC may have on trading in "agreements, contracts and transactions listed for trading on or subject to the rules of a designated contract market, a derivatives transaction execution facility, or an electronic trading facility operating in reliance on the exemption in section 2(h)(3) of the Act."

[25] ICE does not differentiate between open interest created by a transaction executed on its trading platform versus that created by a transaction executed off its trading platform. 74 FR 54550 (October 22, 2009).

[26] See Commission Rule 36.3(c)(2), 17 CFR 36.3(c)(2).

[27] By way of comparison, the number of contracts traded in the NWR contract is similar to that exhibited on a liquid futures market and is roughly equivalent to the volume of trading for the Chicago Mercantile Exchange Feeder Cattle futures contract during this period.

[28] By way of comparison, open interest in the NWR contract is roughly equivalent to that in the Chicago Board of Trade's wheat contract.

[29] Specifically, Commission staff econometrically estimated a vector autoregression model using daily natural gas price levels. A vector autoregression model is an econometric model used to capture the dependencies and interrelationships among multiple time series, generalizing the univariate autoregression model. The estimated model displays strong diagnostic evidence of statistical adequacy. In particular, the model's impulse response function was shocked with a one-time rise in Rockies price. The simulation results suggest that, on average over the sample period, a one percent rise in the Rockies natural gas price elicited a 0.176 percent increase in the NYMEX Henry Hub price, as well as a 0.254 percent to 0.276 percent

daily settlement prices (between January 2, 2008, and September 30, 2009) for the NYMEX Henry Hub natural gas contract (a DCM contract) and price levels for the Rockies, PG&E Citygate and Malin market centers.[30] The simulation results suggest that, on average over the sample period, a one percent rise in the Rockies natural gas price elicited a 0.254 percent to 0.276 percent increase in the PG&E Citygate and Malin hub natural gas prices, and a 0.176 percent increase in the NYMEX Henry Hub natural gas price.

i. Federal Register Comments

As noted above, ICE and EI addressed the question of whether the NWR contract is a SPDC. ICE stated in its comment letter that the NWR contract does not meet the material liquidity criterion for SPDC determination for a number of reasons.

First, ICE opined that the Commission "seems to have adopted a five trade-per-day test to determine whether a contract is materially liquid. It is worth noting that ICE originally suggested that the CFTC use a five trades-per-day threshold as the basis for an ECM to report trade data to the CFTC." In this regard, the Commission adopted a five trades-per-day threshold as a reporting requirement to enable it to "independently be aware of ECM contracts that may develop into SPDCs" [31] rather than solely relying upon an ECM on its own to identify any such potential SPDCs to the Commission. Thus, any contract that meets this threshold may be subject to scrutiny as a potential SPDC; the threshold is not intended to define liquidity in a broader sense. As noted above, the Commission is basing a finding of material liquidity for the ICE NWR contract, in part, on the fact that there were nearly 45 trades per day on average in the NWR contract during the third quarter of 2009, which was far more than the five trades-per-day threshold that is cited in the ICE comment. In addition, the Commission notes that the number of contracts per transaction in the NWR contract is high (approximately 95 contracts per transaction) and thus, as noted, trading volume (measured in contract units) is substantial. The NWR contract also has substantial open interest.

ICE also stated that "the statistics [provided by ICE] have been misinterpreted and misapplied." In particular, ICE stated that the volume figures used in the Commission's analysis (cited above) "include trades made in all 120 months of each contract" as well as in strips of contract months, and a "more appropriate method of determining liquidity is to examine the activity in a single traded month or strip of a given contract." Furthermore, ICE noted that for the NWR contract, "28% of the trades actually executed in the ICE platform occurred in the single most liquid, usually prompt, month of the contract." EI also expressed its belief that the contract months should be evaluated individually.

It is the Commission's opinion that liquidity, as it pertains to the NWR contract, is typically a function of trading activity in particular lead months and, given sufficient liquidity in such months, the NWR contract itself would be considered liquid. ICE's analysis of its own trade data confirms this to be the case for the NWR contract, and thus, the Commission believes that it applied the statistical data cited above in an appropriate manner for gauging material liquidity.

In addition, ICE and EI both stated that the trades-per-day statistics that it provided to the Commission in its quarterly filing and which are cited above includes 2(h)(1) transactions, which were not completed on the electronic trading platform and should not be considered in the SPDC determination process. The Commission staff asked ICE to review the data it sent in its quarterly filings. In response, ICE confirmed that the volume data it provided and which the Commission cited in its October 22, 2009, **Federal Register** notice, as well as the additional volume information it cites above, includes only transaction data executed on ICE's electronic trading platform.[32] The Commission acknowledges that the open interest information it cites above includes transactions made off the ICE platform. However, once open interest is created, there is no way for ICE to differentiate between "on-exchange" versus "off-exchange" created positions, and all such positions are fungible with one another and may be offset in any way agreeable to the position holder regardless of how the position was initially created.

ii. Conclusion Regarding Material Liquidity

Based on the above, the Commission concludes that the NWR contract meets the material liquidity criterion in that there is sufficient trading activity in the NWR contract to have a material effect on "other agreements, contracts or transactions listed for trading on or subject to the rules of a designated contract market * * * or an electronic trading facility operating in reliance on the exemption in section 2(h)(3) of the Act" (that is, an ECM).

4. Overall Conclusion

After considering the entire record in this matter, including the comments received, the Commission has determined that the NWR contract performs a significant price discovery function under two of the four criteria established in section 2(h)(7) of the CEA. Although the Commission has determined that the NWR contract does not meet the price linkage criterion at this time, the Commission has determined that the NWR contract does meet both the material liquidity and material price reference criteria. Accordingly, the Commission will issue the attached Order declaring that the NWR contract is a SPDC.

Issuance of this Order signals the immediate effectiveness of the Commission's authorities with respect to ICE as a registered entity in connection with its NWR contract,[33] and triggers the obligations, requirements—both procedural and substantive—and timetables prescribed in Commission rule 36.3(c)(4) for ECMs.

V. Related Matters

a. Paperwork Reduction Act

The Paperwork Reduction Act of 1995 ("PRA") [34] imposes certain requirements on Federal agencies, including the Commission, in connection with their conducting or sponsoring any collection of information as defined by the PRA. Certain provisions of Commission rule 36.3 impose new regulatory and reporting requirements on ECMs, resulting in information collection requirements within the meaning of the PRA. OMB previously has approved and

increase in the other two modeled natural gas prices. These multipliers of response emerge with noticeable statistical strength or significance. Based on such long run sample patterns, if the Rockies price rises by 10 percent, then the price of NYMEX Henry Hub natural gas futures contract, as well as those for the Alberta and HSC hubs, each would rise by about 1.5 percent to 2.5 percent. The relatively small magnitude of the multipliers likely reflects the fact that the Rockies hub is isolated and not directly connected to the Henry Hub.

[30] Natural gas prices at the Rockies, PG&E Citygate and Malin trading centers were obtained by adding the daily settlement prices of ICE's NWP Rockies Financial Basis, PG&E Citygate Financial Basis and Malin Financial Basis contracts, respectively, to the contemporaneous daily settlement prices of the NYMEX Henry Hub physically-delivered natural gas futures contract.

[31] 73 FR 75892 (December 12, 2008).

[32] Supplemental data supplied by ICE confirmed that block trades in the third quarter of 2009 were in addition to the trades that were conducted on the electronic platform; block trades comprised 44.4 percent of all transactions in the NWR contract.

[33] See 73 FR 75888, 75893 (Dec. 12, 2008).

[34] 44 U.S.C. 3507(d).

assigned OMB control number 3038–0060 to this collection of information.

b. Cost-Benefit Analysis

Section 15(a) of the CEA [35] requires the Commission to consider the costs and benefits of its actions before issuing an order under the Act. By its terms, section 15(a) does not require the Commission to quantify the costs and benefits of an order or to determine whether the benefits of the order outweigh its costs; rather, it requires that the Commission "consider" the costs and benefits of its actions. Section 15(a) further specifies that the costs and benefits shall be evaluated in light of five broad areas of market and public concern: (1) Protection of market participants and the public; (2) efficiency, competitiveness and financial integrity of futures markets; (3) price discovery; (4) sound risk management practices; and (5) other public interest considerations. The Commission may in its discretion give greater weight to any one of the five enumerated areas and could in its discretion determine that, notwithstanding its costs, a particular order is necessary or appropriate to protect the public interest or to effectuate any of the provisions or accomplish any of the purposes of the Act. The Commission has considered the costs and benefits in light of the specific provisions of section 15(a) of the Act and has concluded that the Order, required by Congress to strengthen federal oversight of exempt commercial markets and to prevent market manipulation, is necessary and appropriate to accomplish the purposes of section 2(h)(7) of the Act.

When a futures contract begins to serve a significant price discovery function, that contract, and the ECM on which it is traded, warrants increased oversight to deter and prevent price manipulation or other disruptions to market integrity, both on the ECM itself and in any related futures contracts trading on DCMs. An Order finding that a particular contract is a SPDC triggers this increased oversight and imposes obligations on the ECM calculated to accomplish this goal. The increased oversight engendered by the issue of a SPDC Order increases transparency and helps to ensure fair competition among ECMs and DCMs trading similar products and competing for the same business. Moreover, the ECM on which the SPDC is traded must assume, with respect to that contract, all the responsibilities and obligations of a registered entity under the CEA and Commission regulations. Additionally, the ECM must comply with nine core principles established by section 2(h)(7) of the Act—including the obligation to establish position limits and/or accountability standards for the SPDC. Section 4(i) of the CEA authorizes the Commission to require reports for SPDCs listed on ECMs. These increased responsibilities, along with the CFTC's increased regulatory authority, subject the ECM's risk management practices to the Commission's supervision and oversight and generally enhance the financial integrity of the markets.

c. Regulatory Flexibility Act

The Regulatory Flexibility Act ("RFA") [36] requires that agencies consider the impact of their rules on small businesses. The requirements of CEA section 2(h)(7) and the Part 36 rules affect ECMs. The Commission previously has determined that ECMs are not small entities for purposes of the RFA.[37] Accordingly, the Chairman, on behalf of the Commission, hereby certifies pursuant to 5 U.S.C. 605(b) that this Order, taken in connection with section 2(h)(7) of the Act and the Part 36 rules, will not have a significant impact on a substantial number of small entities.

VI. Order

a. Order Relating to the ICE NWP Rockies Financial Basis Contract

After considering the complete record in this matter, including the comment letters received in response to its request for comments, the Commission has determined to issue the following:

The Commission, pursuant to its authority under section 2(h)(7) of the Act, hereby determines that the NWP Rockies Financial Basis contract, traded on the IntercontinentalExchange, Inc., satisfies the statutory material liquidity and material price reference criteria for significant price discovery contracts. Consistent with this determination, and effective immediately, the IntercontinentalExchange, Inc., must comply with, with respect to the NWP Rockies Financial Basis contract, the nine core principles established by new section 2(h)(7)(C). Additionally, the IntercontinentalExchange, Inc., shall be and is considered a registered entity [38] with respect to the NWP Rockies Financial Basis contract and is subject to all the provisions of the Commodity Exchange Act applicable to registered entities.

Further, the obligations, requirements and timetables prescribed in Commission rule 36.3(c)(4) governing core principle compliance by the IntercontinentalExchange, Inc., commence with the issuance of this Order.[39]

Issued in Washington, DC on April 28, 2010, by the Commission.

David A. Stawick,

Secretary of the Commission.

[FR Doc. 2010–10304 Filed 5–3–10; 8:45 am]

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[35] 7 U.S.C. 19(a).

[36] 5 U.S.C. 601 *et seq.*

[37] 66 FR 42256, 42268 (Aug. 10, 2001).

[38] 7 U.S.C. 1a(29).

[39] Because ICE already lists for trading a contract (i.e., the Henry Financial LD1 Fixed Price contract) that was previously declared by the Commission to be a SPDC, ICE must submit a written demonstration of compliance with the Core Principles within 30 calendar days of the date of this Order. 17 CFR 36.3(c)(4).

COMMODITY FUTURES TRADING COMMISSION

Order Finding That the ICE PG&E Citygate Financial Basis Contract Traded on the IntercontinentalExchange, Inc., Performs a Significant Price Discovery Function

AGENCY: Commodity Futures Trading Commission.

ACTION: Final order.

SUMMARY: On October 9, 2009, the Commodity Futures Trading Commission ("CFTC" or "Commission") published for comment in the **Federal Register** [1] a notice of its intent to undertake a determination whether the PG&E Citygate Financial Basis ("PGE") contract, traded on the IntercontinentalExchange, Inc. ("ICE"), an exempt commercial market ("ECM") under sections 2(h)(3)–(5) of the Commodity Exchange Act ("CEA" or the "Act"), performs a significant price discovery function pursuant to section 2(h)(7) of the CEA. The Commission undertook this review based upon an initial evaluation of information and data provided by ICE as well as other available information. The Commission has reviewed the entire record in this matter, including all comments received, and has determined to issue an order finding that the PGE contract performs a significant price discovery function. Authority for this action is found in section 2(h)(7) of the CEA and Commission rule 36.3(c) promulgated thereunder.

DATES: *Effective date:* April 28, 2010.

FOR FURTHER INFORMATION CONTACT: Gregory K. Price, Industry Economist, Division of Market Oversight,

[1] 74 FR 52210 (October 9, 2009).

Commodity Futures Trading Commission, Three Lafayette Centre, 1155 21st Street, NW., Washington, DC 20581. Telephone: (202) 418–5515. E-mail: *gprice@cftc.gov*; or Susan Nathan, Senior Special Counsel, Division of Market Oversight, same address. Telephone: (202) 418–5133. E-mail: *snathan@cftc.gov*.

SUPPLEMENTARY INFORMATION:

I. Introduction

The CFTC Reauthorization Act of 2008 ("Reauthorization Act")[2] significantly broadened the CFTC's regulatory authority with respect to ECMs by creating, in section 2(h)(7) of the CEA, a new regulatory category—ECMs on which significant price discovery contracts ("SPDCs") are traded—and treating ECMs in that category as registered entities under the CEA.[3] The legislation authorizes the CFTC to designate an agreement, contract or transaction as a SPDC if the Commission determines, under criteria established in section 2(h)(7), that it performs a significant price discovery function. When the Commission makes such a determination, the ECM on which the SPDC is traded must assume, with respect to that contract, all the responsibilities and obligations of a registered entity under the Act and Commission regulations, and must comply with nine core principles established by new section 2(h)(7)(C).

On March 16, 2009, the CFTC promulgated final rules implementing the provisions of the Reauthorization Act.[4] As relevant here, rule 36.3 imposes increased information reporting requirements on ECMs to assist the Commission in making prompt assessments whether particular ECM contracts may be SPDCs. In addition to filing quarterly reports of its contracts, an ECM must notify the Commission promptly concerning any contract traded in reliance on the exemption in section 2(h)(3) of the CEA that averaged five trades per day or more over the most recent calendar quarter, and for which the exchange sells its price information regarding the contract to market participants or industry publications, or whose daily closing or settlement prices on 95 percent or more of the days in the most recent quarter were within 2.5 percent of the contemporaneously determined closing, settlement or other daily prices of another contract.

Commission rule 36.3(c)(3) established the procedures by which the Commission makes and announces its determination whether a particular ECM contract serves a significant price discovery function. Under those procedures, the Commission will publish notice in the **Federal Register** that it intends to undertake an evaluation whether the specified agreement, contract or transaction performs a significant price discovery function and to receive written views, data and arguments relevant to its determination from the ECM and other interested persons. Upon the close of the comment period, the Commission will consider, among other things, all relevant information regarding the subject contract and issue an order announcing and explaining its determination whether or not the contract is a SPDC. The issuance of an affirmative order signals the effectiveness of the Commission's regulatory authorities over an ECM with respect to a SPDC; at that time such an ECM becomes subject to all provisions of the CEA applicable to registered entities.[5] The issuance of such an order also triggers the obligations, requirements and timetables prescribed in Commission rule 36.3(c)(4).[6]

II. Notice of Intent To Undertake SPDC Determination

On October 9, 2009, the Commission published in the **Federal Register** notice of its intent to undertake a determination whether the PGE contract performs a significant price discovery function, and requested comment from interested parties.[7] Comments were received from the Industrial Energy Consumers of America ("IECA"), Working Group of Commercial Energy Firms ("WGCEF"), ICE, Economists Incorporated ("EI"), Natural Gas Supply Association ("NGSA"), Federal Energy Regulatory Commission ("FERC"), and Financial Institutions Energy Group ("FIEG").[8] The comment letter from FERC[9] did not directly address the issue of whether or not the PGE contract is a SPDC; IECA concluded that the PGE contract is a SPDC, but did not provide a basis for its conclusion.[10] The other parties' comments raised substantive issues with respect to the applicability of section 2(h)(7) to the PGE contract, generally asserting that the PGE contract is not a SPDC as it does not meet the material liquidity, material price reference and price linkage criteria for SPDC determination. Those comments are more extensively discussed below, as applicable.

III. Section 2(h)(7) of the CEA

The Commission is directed by section 2(h)(7) of the CEA to consider

[2] Incorporated as Title XIII of the Food, Conservation and Energy Act of 2008, Pub. L. 110–246, 122 Stat. 1624 (June 18, 2008).

[3] 7 U.S.C. 1a(29).

[4] 74 FR 12178 (Mar. 23, 2009); these rules became effective on April 22, 2009.

[5] Public Law 110–246 at 13203; *Joint Explanatory Statement of the Committee of Conference*, H.R. Rep. No. 110–627, 110 Cong., 2d Sess. 978, 986 (Conference Committee Report). See also 73 FR 75888, 75894 (Dec. 12, 2008).

[6] For an initial SPDC, ECMs have a grace period of 90 calendar days from the issuance of a SPDC determination order to submit a written demonstration of compliance with the applicable core principles. For subsequent SPDCs, ECMs have a grace period of 30 calendar days to demonstrate core principle compliance.

[7] The Commission's Part 36 rules establish, among other things, procedures by which the Commission makes and announces its determination whether a specific ECM contract serves a significant price discovery function. Under those procedures, the Commission publishes a notice in the **Federal Register** that it intends to undertake a determination whether a specified agreement, contract or transaction performs a significant price discovery function and to receive written data, views and arguments relevant to its determination from the ECM and other interested persons.

[8] IECA describes itself as an "association of leading manufacturing companies" whose membership "represents a diverse set of industries including: plastics, cement, paper, food processing, brick, chemicals, fertilizer, insulation, steel, glass, industrial gases, pharmaceutical, aluminum and brewing." WGCEF describes itself as "a diverse group of commercial firms in the domestic energy industry whose primary business activity is the physical delivery of one or more energy commodities to customers, including industrial, commercial and residential consumers" and whose membership consists of "energy producers, marketers and utilities." ICE is an ECM, as noted above. EI is an economic consulting firm with offices located in Washington, DC, and San Francisco, CA. NGSA is an industry association comprised of natural gas producers and marketers. FERC is an independent federal regulatory agency that, among other things, regulates the interstate transmission of natural gas, oil and electricity. FIEG describes itself as an association of investment and commercial banks who are active participants in various sectors of the natural gas markets, "including acting as marketers, lenders, underwriters of debt and equity securities, and proprietary investors." The comment letters are available on the Commission's Web site: *http://www.cftc.gov/lawandregulation/federalregister/federalregistercomments/2009/09-023.html*.

[9] FERC stated that the PGE contract is cash settled and does not contemplate actual physical delivery of natural gas. Accordingly, FERC expressed the opinion that a determination by the Commission that a contract performs a significant price discovery function "would not appear to conflict with FERC's exclusive jurisdiction under the Natural Gas Act (NGA) over certain sales of natural gas in interstate commerce for resale or with its other regulatory responsibilities under the NGA" and further that, "the FERC staff will continue to monitor for any such conflict * * * [and] advise the CFTC" should any such potential conflict arise. CL 06 (references the number of the comment letter ("CL") in the public record).

[10] IECA stated that the subject ICE contract should "be required to come into compliance with core principles mandated by Section 2(h)(7) of the Act and with other statutory provisions applicable to registered entities. [This contract] should be subject to the Commission's position limit authority, emergency authority and large trader reporting requirements, among others." CL 01.

the following criteria in determining a contract's significant price discovery function:

- *Price Linkage*—the extent to which the agreement, contract or transaction uses or otherwise relies on a daily or final settlement price, or other major price parameter, of a contract or contracts listed for trading on or subject to the rules of a designated contract market ("DCM") or derivatives transaction execution facility ("DTEF"), or a SPDC traded on an electronic trading facility, to value a position, transfer or convert a position, cash or financially settle a position, or close out a position.
- *Arbitrage*—the extent to which the price for the agreement, contract or transaction is sufficiently related to the price of a contract or contracts listed for trading on or subject to the rules of a DCM or DTEF, or a SPDC traded on or subject to the rules of an electronic trading facility, so as to permit market participants to effectively arbitrage between the markets by simultaneously maintaining positions or executing trades in the contracts on a frequent and recurring basis.
- *Material price reference*—the extent to which, on a frequent and recurring basis, bids, offers or transactions in a commodity are directly based on, or are determined by referencing or consulting, the prices generated by agreements, contracts or transactions being traded or executed on the electronic trading facility.
- *Material liquidity*—the extent to which the volume of agreements, contracts or transactions in a commodity being traded on the electronic trading facility is sufficient to have a material effect on other agreements, contracts or transactions listed for trading on or subject to the rules of a DCM, DTEF or electronic trading facility operating in reliance on the exemption in section 2(h)(3).

Not all criteria must be present to support a determination that a particular contract performs a significant price discovery function, and one or more criteria may be inapplicable to a particular contract.[11] Moreover, the statutory language neither prioritizes the criteria nor specifies the degree to which a SPDC must conform to the various criteria. In Guidance issued in connection with the Part 36 rules governing ECMs with SPDCs, the Commission observed that these criteria do not lend themselves to a mechanical checklist or formulaic analysis. Accordingly, the Commission has indicated that in making its determinations it will consider the circumstances under which the presence of a particular criterion, or combination of criteria, would be sufficient to support a SPDC determination.[12] For example, for contracts that are linked to other contracts or that may be arbitraged with other contracts, the Commission will consider whether the price of the potential SPDC moves in such harmony with the other contract that the two markets essentially become interchangeable. This co-movement of prices would be an indication that activity in the contract had reached a level sufficient for the contract to perform a significant price discovery function. In evaluating a contract's price discovery role as a price reference, the Commission will consider the extent to which, on a frequent and recurring basis, bids, offers or transactions are directly based on, or are determined by referencing, the prices established for the contract.

IV. Findings and Conclusions

a. The PG&E Citygate (PGE) Financial Basis Contract and the SPDC Indicia

The PGE contract is cash settled based on the difference between the bidweek price index for the price of natural gas at the PG&E Citygate for the month of delivery, as published in Intelligence Press Inc.'s ("IPI's") *Natural Gas Bidweek Survey*, and the final settlement price of the New York Mercantile Exchange's ("NYMEX's") physically-delivered Henry Hub natural gas futures contract for the same calendar month. The IPI bidweek price, which is published monthly, is based on a survey of cash market traders who voluntarily report to IPI data on fixed-price transactions for physical delivery of natural gas at the PG&E Citygate conducted during the last five business days of the month; such bidweek transactions specify the delivery of natural gas on a uniform basis throughout the following calendar month at the agreed upon rate. The IPI bidweek index is published on the first business day of the calendar month in which the natural gas is to be delivered. The size of the PGE contract is 2,500 million British thermal units ("mmBtu"), and the unit of trading is any multiple of 2,500 mmBtu. The PGE contract is listed for up to 72 calendar months commencing with the next calendar month.

The Henry Hub,[13] which is located in Erath, Louisiana, is the primary cash market trading and distribution center for natural gas in the United States. It also is the delivery point and pricing basis for the NYMEX's actively traded, physically-delivered natural gas futures contract, which is the most important pricing reference for natural gas in the United States. The Henry Hub, which is operated by Sabine Pipe Line, LLC, serves as a juncture for 13 different pipelines. These pipelines bring in natural gas from fields in the Gulf Coast region and ship it to major consumption centers along the East Coast and Midwest. The throughput shipping capacity of the Henry Hub is 1.8 trillion mmBtu per day.

In addition to the Henry Hub, there are a number of other locations where natural gas is traded. In 2008, there were 33 natural gas market centers in North America.[14] Some of the major trading centers include Alberta, Northwest Rockies, Southern California border and the Houston Ship Channel. For locations that are directly connected to the Henry Hub by one or more pipelines and where there typically is adequate shipping capacity, the price at the other locations usually directly tracks the price at the Henry Hub, adjusted for transportation costs. However, at other locations that are not directly connected to the Henry Hub or where shipping capacity is limited, the prices at those locations often diverge from the Henry Hub price. Furthermore, one local price may be significantly different than the price at another location even though the two markets' respective distances from the Henry Hub are the same. The reason for such pricing disparities is that a given location may experience supply and demand factors that are specific to that region, such as differences in pipeline shipping capacity, unusually high or low demand for heating or cooling or supply disruptions caused by severe weather. As a consequence, local natural gas prices can differ from the Henry Hub price by more than the cost of shipping and such price differences can vary in an unpredictable manner.

The PG&E Citygate is part of the Golden Gate Market Center, which is located in Northern California. The Golden Gate Market Center offers seven

[11] In its October 9, 2009, **Federal Register** release, the Commission identified material price reference, price linkage and material liquidity as the possible criteria for SPDC determination of the PGE contract. Arbitrage was not identified as a possible criterion and will not be discussed further in this document or the associated Order.

[12] 17 CFR 36, Appendix A.

[13] The term "hub" refers to a juncture where two or more natural gas pipelines are connected. Hubs also serve as pricing points for natural gas at the particular locations.

[14] See *http://www.eia.doe.gov/pub/oil_gas/natural_gas/feature_articles/2009/ngmarketcenter/ngmarketcenter.pdf.*

different transaction points, which are Malin, Citygate, Kern River Station, High Desert Lateral, Daggett, Southern Trails and Topock. Citygate serves as interconnection between the backbone pipeline system and the local transmission and distribution lines.[15] The Golden Gate Market Center had an estimated throughput capacity of two billion cubic feet per day in 2008. Moreover, the number of pipeline interconnections at the Golden Gate Market Center was nine in 2008, up from eight in 2003. Lastly, the pipeline interconnection capacity of the Golden Gate Market Center in 2008 was 6 billion cubic feet per day, which constituted a 32 percent increase over the pipeline interconnection capacity in 2003.[16] The PG&E Citygate is far removed from the Henry Hub and is not directly connected to the Henry Hub by an existing pipeline.

The local price at the PG&E Citygate typically differs from the price at the Henry Hub. Thus, the price of the Henry Hub physically-delivered futures contract is an imperfect proxy for the PG&E Citygate price. Moreover, exogenous factors, such as adverse weather, can cause the PG&E Citygate gas price to differ from the Henry Hub price by an amount that is more or less than the cost of shipping, making the NYMEX Henry Hub futures contract even less precise as a hedging tool than desired by market participants. Basis contracts[17] allow traders to more accurately discover prices at alternative locations and hedge price risk that is associated with natural gas at such locations. In this regard, a position at a local price for an alternative location can be established by adding the appropriate basis swap position to a position taken in the NYMEX physically-delivered Henry Hub contract (or in the NYMEX or ICE Henry Hub look-alike contract, which cash settle based on the NYMEX physically-delivered natural gas contract's final settlement price).

In its October 9, 2009, **Federal Register** notice, the Commission identified material price reference, price linkage and material liquidity as the potential SPDC criteria applicable to the PGE contract. Each of these criteria is discussed below.[18]

1. Material Price Reference Criterion

The Commission's October 9, 2009, **Federal Register** notice identified material price reference as a potential basis for a SPDC determination with respect to this contract. The Commission considered the fact that ICE maintains exclusive rights over IPI's bidweek price indices. As a result, no other exchange can offer such a basis contract based on IPI's PG&E Citygate bidweek index. While other third-party price providers produce natural gas price indices for this and other trading centers, market participants indicate that the IPI PG&E Citygate bidweek index is highly regarded for this particular location and should market participants wish to establish a hedged position based on this index, they would need to do so by taking a position in the ICE PGE swap since ICE has the right to the IPI index for cash settlement purposes. In addition, ICE sells its price data to market participants in a number of different packages which vary in terms of the hubs covered, time periods, and whether the data are daily only or historical. For example, ICE offers "West Gas End of Day" and "OTC Gas End of Day"[19] with access to all price data or just current prices plus a selected number of months (i.e., 12, 24, 36 or 48 months) of historical data. These two packages include price data for the PGE contract.

The Commission will rely on one of two sources of evidence—direct or indirect—to determine that the price of a contract was being used as a material price reference and therefore, serving a significant price discovery function.[20] With respect to direct evidence, the Commission will consider the extent to which, on a frequent and recurring basis, cash market bids, offers or transactions are directly based on or quoted at a differential to, the prices generated on the ECM in question. Direct evidence may be established when cash market participants are quoting bid or offer prices or entering into transactions at prices that are set either explicitly or implicitly at a differential to prices established for the contract in question. Cash market prices are set explicitly at a differential to the section 2(h)(3) contract when, for instance, they are quoted in dollars and cents above or below the reference contract's price. Cash market prices are set implicitly at a differential to a section 2(h)(3) contract when, for instance, they are arrived at after adding to, or subtracting from the section 2(h)(3) contract, but then quoted or reported at a flat price. With respect to indirect evidence, the Commission will consider the extent to which the price of the contract in question is being routinely disseminated in widely distributed industry publications—or offered by the ECM itself for some form of remuneration—and consulted on a frequent and recurring basis by industry participants in pricing cash market transactions.

The PG&E Citygate is a major trading center for natural gas in the United States. Traders, including producers, keep abreast of the prices of the PGE contract when conducting cash deals. These traders look to a competitively determined price as an indication of expected values of natural gas at the PG&E Citygate when entering into cash market transaction for natural gas, especially those trades providing for physical delivery in the future. Traders use the ICE PGE contract, as well as other ICE basis swap contracts, to hedge cash market positions and transactions—activities which enhance the PGE contract's price discovery utility. The substantial volume of trading and open interest in the PGE contract appears to attest to its use for this purpose. While the PGE contract's settlement prices may not be the only factor influencing spot and forward transactions, natural gas traders consider the ICE price to be a critical factor in conducting OTC transactions.[21] As a result, the PGE contract satisfies the direct price reference test.

In terms of indirect price reference, ICE sells the PGE contract's prices as part of a broad package. The Commission notes that the PG&E Citygate is a major natural gas trading point, and the PGE contract's prices are well regarded in the industry as indicative of the value of natural gas at the PG&E Citygate. Accordingly, the Commission believes that it is reasonable to conclude that market participants are purchasing the data packages that include the PGE contract's prices in substantial part because the PGE contract prices have particular value to them. Moreover, such prices are

[15] The cash market transactions included in the comparable Platts index are those fixed-price gas deliveries from Pacific Gas and Electric's intrastate transmission system to citygates on PG&E's local distribution system in Northern California.

[16] See *http://www.eia.doe.gov/pub/oil_gas/natural_gas/feature_articles/2009/ngmarketcenter/ngmarketcenter.pdf*

[17] Basis contracts denote the difference in the price of natural gas at a specified location minus the price of natural gas at the Henry Hub. The differential can be either a positive or negative value.

[18] As noted above, the Commission did not find an indication of arbitrage in connection with this contract; accordingly, that criterion was not discussed in reference to the PGE contract.

[19] The OTC Gas End of Day dataset includes daily settlement prices for natural gas contracts listed for all points in North America.

[20] 17 CFR part 36, appendix A.

[21] In addition to referencing ICE prices, natural gas market firms participating in the PG&E Citygate market may rely on other cash market quotes as well as industry publications and price indices that are published by third-party price reporting firms when entering into natural gas transactions.

consulted on a frequent and reoccurring basis by industry participants in pricing cash market transactions. In light of the above, the PGE contract meets the indirect price reference test.

NYMEX lists a futures contract that is comparable to the ICE PGE contract on its ClearPort platform. However, unlike the ICE contract, none of the trades in the NYMEX, PG&E Citygate Basis Swap (Platts IFERC) futures contract are executed in NYMEX's centralized marketplace; instead, all of the transactions originate as bilateral swaps that are submitted to NYMEX for clearing. The daily settlement prices of the NYMEX PG&E Citygate Basis Swap futures contract are influenced, in part, by the daily settlement prices of the ICE PGE contract. This is because NYMEX determines the daily settlement prices for its natural gas basis swap contracts through a survey of cash market voice brokers. Voice brokers, in turn, refer to the ICE PGE price, among other information, as an important indicator as to where the market is trading. Therefore, the ICE PGE price influences the settlement price for the NYMEX PG&E Citygate Basis Swap futures contract. This is supported by an analysis of the daily settlement prices for the NYMEX and ICE PG&E Citygate contracts. In this regard, 97 percent of the daily settlement prices for the NYMEX PG&E Citygate Basis Swap futures contract are within one standard deviation of the PGE contract's price settlement prices.

Lastly, the fact that the PGE contract does not meet the price linkage criterion (discussed below) bolsters the argument for material price reference. As noted above, the Henry Hub is the pricing reference for natural gas in the United States. However, regional market conditions may cause the price of natural gas in another area of the country to diverge by more than the cost of transportation, thus making the Henry Hub price an imperfect proxy for the local gas price. The more variable the local natural gas price is, the more traders need to accurately hedge their price risk. Basis swap contracts provide a means of more accurately pricing natural gas at a location other than the Henry Hub. An analysis of PG&E Citygate natural gas prices showed that 55 percent of the observations were more than 2.5 percent different than the contemporaneous Henry Hub prices. The average PG&E Citygate basis value between January 2008 and September 2009 was −$0.16 per mmBtu with a variance of $0.10 per mmBtu.

i. Federal Register Comments

ICE stated in its comment letter that the PGE contract does not meet the material price reference criterion for SPDC determination. ICE argued that the Commission appeared to base the case that the PGE contract is potentially a SPDC on two disputable assertions. First, in issuing its notice of intent to determine whether the PGE contract is a SPDC, the CFTC cited a general conclusion in its ECM study "that certain market participants referred to ICE as a price discovery market for certain natural gas contracts." [22] ICE states that CFTC's reason is "hard to quantify as the ECM report does not mention" this contract as a potential SPDC. "It is unknown which market participants made this statement in 2007 or the contracts that were referenced." [23] In response to the above comment, the Commission notes that it cited the ECM study's general finding that some ICE natural gas contracts appear to be regarded as price discovery markets merely as an indicia that an investigation of certain ICE contracts may be warranted, and was not intended to serve as the sole basis for determining whether or not a particular contract meets the material price reference criterion.

Second, ICE argued that the Commission should not base a determination that the PGE contract is a SPDC on the fact that this contract has the exclusive right to base its settlement on the IPI PG&E Citygate Index price. While the Commission acknowledges that there are other firms that produce price indices for the PG&E Citygate, as it notes above, market participants indicate that the IPI Index is very highly regarded and should they wish to establish a hedged position based on this index, they would need to do so by taking a position in the ICE PGE swap since ICE has the exclusive right to use the IPI index.[24]

WGCEF, NGSA, EI and FIEG all stated that the PGE contract does not satisfy the material price reference criterion. The commenters argued that other contracts (physical or financial) are not indexed based on the ICE PGE contract price, but rather are indexed based on the underlying cash price series against which the ICE PGE contract is settled. Thus, they contend that the underlying cash price series is the authentic reference price and not the ICE contract itself. The Commission believes that this interpretation of price reference is too limiting in that it only considers the final index value on which the contract is cash settled after trading ceases. Instead, the Commission believes that a cash-settled derivatives contract could meet the price reference criteria if market participants "consult on a frequent and recurring basis" the derivatives contract when pricing forward, fixed-price commitments or other cash-settled derivatives that seek to "lock in" a fixed price for some future point in time to hedge against adverse price movements.

As noted above, the PG&E Citygate is a major trading center for natural gas in North America. Traders, including producers, keep abreast of the prices of the PGE contract when conducting cash deals. These traders look to a competitively determined price as an indication of expected values of natural gas at the PG&E Citygate when entering into cash market transaction for natural gas, especially those trades that provide for physical delivery in the future. Traders use the ICE PGE contract to hedge cash market positions and transactions, which enhances the PGE contract's price discovery utility. While the PGE contract's settlement prices may not be the only factor influencing spot and forward transactions, natural gas traders consider the ICE price to be a crucial factor in conducting OTC transactions.

Both EI and WGCEF stated that publication of price data in a package format is a weak justification for material price reference. These commenters argue that market participants generally do not purchase ICE data sets for one contract's prices, such as those for the PGE contract. Instead, traders are interested in the settlement prices, so the fact that ICE sells the PGE prices as part of a broad package is not conclusive evidence that market participants are buying the ICE data sets because they find the PGE prices have substantial value to them. The Commission notes that the PG&E Citygate is a major natural gas trading point, and the PGE contract's prices are well regarded in the industry as indicative of the value of natural gas at the PG&E Citygate. Accordingly, the Commission believes that it is

[22] CL 03.

[23] CL 03.

[24] Futures and swaps based on other PG&E Citygate indices have not met with the same market acceptance as the PGE contract. For example, NYMEX lists a basis swap contract that is comparable to the PGE contract with the exception that it uses a different price index for cash settlement. Open interest as of September 30, 2009, was approximately 19,000 contracts in the NYMEX PG&E Citygate Basis Swap contract versus about 167,000 contracts in ICE's PGE contract. Moreover, there has been no centralized-market trading in the NYMEX PG&E Citygate Basis Swap contract, so that contract does not serve as a source of price discovery for cash market traders with natural gas at that location.

reasonable to conclude that market participants are purchasing the data packages that include the PGE contract's prices in substantial part because the PGE contract prices have particular value to them.

ii. Conclusion Regarding Material Price Reference

Based on the above, the Commission finds that the PGE contract meets the material price reference criterion because cash market transactions are being priced on a frequent and recurring basis at a differential to the PGE contract's price (direct evidence). Moreover, the ECM sells the PGE contract's price data to market participants and it is reasonable to conclude that market participants are purchasing the data packages that include the PGE contract's prices in substantial part because the PGE contract prices have particular value to them. Furthermore, such prices are consulted on a frequent and reoccurring basis by industry participants in pricing cash market transactions (indirect evidence).

2. Price Linkage Criterion

In its October 9, 2009, **Federal Register** notice, the Commission identified price linkage as a potential basis for a SPDC determination with respect to the PGE contract. In this regard, the final settlement of the PGE contract is based, in part, on the final settlement price of the NYMEX's physically-delivered natural gas futures contract, where the NYMEX is registered with the Commission as a DCM.

The Commission's Guidance on Significant Price Discovery Contracts [25] notes that a "price-linked contract is a contract that relies on a contract traded on another trading facility to settle, value or otherwise offset the price-linked contract." Furthermore, the Guidance notes that, "[f]or a linked contract, the mere fact that a contract is linked to another contract will not be sufficient to support a determination that a contract performs a significant price discovery function. To assess whether such a determination is warranted, the Commission will examine the relationship between transaction prices of the linked contract and the prices of the referenced contract. The Commission believes that where material liquidity exists, prices for the linked contract would be observed to be substantially the same as or move substantially in conjunction with the prices of the referenced contract." Furthermore, the Guidance proposes a threshold price relationship such that prices of the ECM linked contract will fall within a 2.5 percent price range for 95 percent of contemporaneously determined closing, settlement or other daily prices over the most recent quarter. Finally, the Commission also stated in the Guidance that it would consider a linked contract that has a trading volume equivalent to 5 percent of the volume of trading in the contract to which it is linked to have sufficient volume potentially to be deemed a SPDC ("minimum threshold").

To assess whether the PGE contract meets the price linkage criterion, Commission staff obtained price data from ICE and performed the statistical tests cited above. Staff found that while the PG&E Citygate price is determined, in part, by the final settlement price of the NYMEX physically-delivered natural gas futures contract (a DCM contract), the PG&E Citygate price is not within 2.5 percent of the settlement price of the corresponding NYMEX Henry Hub natural gas futures contract on 95 percent of the days. Specifically, during the third quarter of 2009, 45 percent of the PG&E Citygate natural gas prices derived from the ICE basis values were within 2.5 percent of the daily settlement price of the NYMEX Henry Hub futures contract. In addition, staff finds that the PGE contract fails to meet the volume threshold requirement. In particular, the total trading volume in the NYMEX Natural Gas contract during the third quarter of 2009 was 14,022,963 contracts, with 5 percent of that number being 701,148 contracts. The number of trades on the ICE centralized market in the PGE contract during the same period was 108,468 contracts (equivalent to 27,117 NYMEX contracts, given the size difference).[26] Thus, centralized-market trades in the PGE contract amounted to less than the minimum threshold.

Due to the specific criteria that a given ECM contract must meet to fulfill the price linkage criterion, the requirements, for all intents and purposes, exclude ECM contracts that are not near facsimiles of DCM contracts. That is, even though an ECM contract may specifically use a DCM contract's settlement price to value a position, which is the case of the PGE contract, a substantive difference between the two price series would rule out the presence of price linkage. In this regard, an ECM contract that is priced and traded as if it is a functional equivalent of a DCM contract likely will have a price series that mirrors that of the corresponding DCM contract. In contrast, for contracts that are not look-alikes of DCM contracts, it is reasonable to expect that the two price series would be divergent. The PG&E Citygate and the Henry Hub are located in two different areas of the United States. The Henry Hub primarily is a supply center while the PG&E Citygate primarily is a demand center. These differences contribute to the divergence between the two price series and, as discussed below, increase the likelihood that the "basis" contract is used for material price reference.

i. Federal Register Comments

NGSA [27] stated that the PGE contract does not meet the price linkage criterion because basis contracts, including the PGE contract, are not equivalent to the NYMEX physically-delivered Henry Hub contract. EI [28] also noted that the PGE and NYMEX natural gas contracts are not economically equivalent and that the PGE contract's volume is too low to affect the NYMEX natural gas futures contract. WGCEF [29] stated that the PG&E Citygate price is determined, in part, by the final settlement price of the NYMEX Henry Hub futures contract. However, WGCEF goes on to state that the PGE contract "(a) is not substantially the same as the NYMEX [natural gas futures contract] * * * nor (b) does it move substantially in conjunction" with the NYMEX natural gas futures contract. ICE [30] opined that the PGE contract's trading volume is too low to affect the price discovery process for the NYMEX natural gas futures contract. In addition, ICE states that the PGE contract simply reflects a price differential between PG&E Citygate and the Henry Hub; "there is no price linkage as contemplated by Congress or the CFTC in its rulemaking." FIEG [31] acknowledged that the PGE contract is a locational spread that is based in part on the NYMEX natural gas futures price, but also questioned the significance of this fact relative to the price linkage criterion since the key component of the spread is the price at the PG&E Citygate location and not the NYMEX physically-delivered natural gas futures price.

ii. Conclusion Regarding the Price Linkage Criterion

Based on the above, the Commission finds that the PGE contract does not meet the price linkage criterion because

[25] Appendix A to the Part 36 rules.

[26] The PGE contract is one-quarter the size of the NYMEX Henry Hub physically-delivered futures contract.

[27] CL 05.

[28] CL 04.

[29] CL 02.

[30] CL 03.

[31] CL 07.

it fails the price relationship and volume tests provided for in the Commission's Guidance.

3. Material Liquidity Criterion

To assess whether the PGE contract meets the material liquidity criterion, the Commission first examined volume and open interest data provided to it by ICE as a general measurement of the PGE market's size and potential importance, and second performed a statistical analysis to measure the effect that changes to PGE prices potentially may have on prices for the NYMEX Henry Hub Natural Gas (a DCM contract), the ICE NWP Financial Basis contract (an ECM contract) and the ICE Malin Financial Basis contract (an ECM contract).[32]

The Commission's Guidance (Appendix A to Part 36) notes that "[t]raditionally, objective measures of trading such as volume or open interest have been used as measures of liquidity." In this regard, the Commission in its October 9, 2009, **Federal Register** notice referred to second quarter 2009 trading statistics that ICE had submitted for its PGE contract. Based upon on a required quarterly filing made by ICE on July 27, 2009, the total number of PGE trades executed on ICE's electronic trading platform was 1,142 in the second quarter of 2009, resulting in a daily average of 17.8 trades. During the same period, the PGE contract had a total trading volume on ICE's electronic trading platform of 99,418 contracts and an average daily trading volume of 1,553.4 contracts. Moreover, the open interest as of June 30, 2009, was 150,299 contracts, which includes trades executed on ICE's electronic trading platform, as well as trades executed off of ICE's electronic trading platform and then brought to ICE for clearing.[33]

Subsequent to the October 9, 2009, **Federal Register** notice, ICE submitted another quarterly notification filed on November 13, 2009,[34] with updated trading statistics. Specifically, with respect to its PGE contract, 1,514 separate trades occurred on its electronic platform in the third quarter of 2009, resulting in a daily average of 22.9 trades. During the same period, the PGE contract had a total trading volume on its electronic platform of 108,468 contracts (which was an average of 1,643 contracts per day).[35] As of September 30, 2009, open interest in the PGE contract was 166,981[36] contracts. Reported open interest included positions resulting from trades that were executed on ICE's electronic platform, as well as trades that were executed off of ICE's electronic platform and brought to ICE for clearing.

In the Guidance, the Commission stated that material liquidity can be identified by the impact liquidity exhibits through observed prices. Thus, to make a determination whether the PGE contract has such material impact, the Commission reviewed the relevant trading statistics (noted above). In this regard, the average number trades per day in the second and third quarters of 2009 were above the minimum reporting level (5 trades per day). Moreover, trading activity in the PGE contract, as characterized by total quarterly volume, indicates that the PGE contract experiences trading activity that generally exceeds that found in thinly-traded markets.[37] Thus, it is reasonable to infer that the PGE contract could have a material effect on other ECM contracts or on DCM contracts.

To measure the effect that the PGE contract potentially could have on a DCM contract, or on another ECM contract, Commission staff performed a statistical analysis[38] using daily settlement prices (between January 2, 2008, and September 30, 2009) for the PGE contract, as well as for the NYMEX Henry Hub natural gas contract (a DCM contract) and the ICE NWP Rockies Financial Basis and ICE Malin Financial Basis contracts (ECM contracts). The simulation results suggest that, on average over the sample period, a one percent rise in the PGE contract's price elicited a 1.1 percent increase in each of the NYMEX Henry Hub and ICE Malin prices, as well as a 1 percent increase in the Rockies price.

i. Federal Register Comments

As noted above, comments were received from seven individuals and organizations, with five comments being directly applicable to the SPDC determination of the ICE-PGE contract. WGCEF, EI, FIEG, ICE and NGSA generally agreed that the PGE contract does not meet the material liquidity criterion.

WGCEF[39] and NGSA[40] both stated that the PGE contract does not materially affect other contracts that are listed for trading on DCMs or ECMs, as well as other over-the-counter contracts. Instead, the PGE contract is influenced by the underlying PG&E Citygate cash price index and the final settlement price of the NYMEX Henry Hub natural gas futures contract, not vice versa. FIEG[41] stated that the PGE contract cannot have a material effect on NYMEX contract because the PGE contract trades on a differential and represents "one leg (and not the relevant leg) of the locational spread." The Commission's statistical analysis shows that changes in the ICE PGE contract's price significantly influences the prices of other contracts that are traded on DCMs and ECMs.

First, ICE opined that the Commission "seems to have adopted a five trade-per-day test to determine whether a contract is materially liquid. It is worth noting that ICE originally suggested that the CFTC use a five trades-per-day threshold as the basis for an ECM to report trade data to the CFTC." In this regard, the Commission adopted a five trades-per-day threshold as a reporting requirement to enable it to "independently be aware of ECM contracts that may develop into SPDCs"

[32] As noted above, the material liquidity criterion speaks to the effect that transactions in the potential SPDC may have on trading in "agreements, contracts and transactions listed for trading on or subject to the rules of a designated contract market, a derivatives transaction execution facility, or an electronic trading facility operating in reliance on the exemption in section 2(h)(3) of the Act."

[33] ICE does not differentiate between open interest created by a transaction executed on its trading platform versus that created by a transaction executed off its trading platform.

[34] See Commission Rule 36.3(c)(2), 17 CFR 36.3(c)(2).

[35] By way of comparison, the number of contracts traded in the PGE contract is similar to that exhibited on a liquid futures market and is roughly equivalent to the volume of trading for the NYMEX Palladium futures contract during this period.

[36] By way of comparison, open interest in the PGE contract is similar to that exhibited on a liquid futures market and is roughly equivalent to that in the Chicago Board of Trade's soybean meal futures contract.

[37] Staff has advised the Commission that in its experience, a thinly-traded contract is, generally, one that has a quarterly trading volume of 100,000 contracts or less. In this regard, in the third quarter of 2009, physical commodity futures contracts with trading volume of 100,000 contracts or fewer constituted less than one percent of total trading volume of all physical commodity futures contracts.

[38] Specifically, Commission staff econometrically estimated a vector autoregression (VAR) model using daily settlement prices. A vector autoregression model is an econometric model used to capture the evolution and the interdependencies between multiple time series, generalizing the univariate autoregression models. The estimated model displays strong diagnostic evidence of statistical adequacy. In particular, the model's impulse response function was shocked with a one-time rise in PGE contract's price. The simulation results suggest that, on average over the sample period, a one-percent rise in the PGE contract's price elicited a 1.1 percent increase in the NYMEX Henry Hub and Malin prices, as well as a one percent increase in the Rockies contract's price. These multipliers of response emerge with noticeable statistical strength or significance. Based on such long run sample patterns, if the PGE contract's price rises by 10 percent, then the price of NYMEX Henry Hub natural gas futures contract, as well as those for the ICE basis swap contracts based on the Rockies and Malin hubs, each would rise by about 10 percent to 11 percent.

[39] CL 02.

[40] CL 05.

[41] CL 07.

rather than solely relying upon an ECM on its own to identify any such potential SPDCs to the Commission. Thus, any contract that meets this threshold may be subject to scrutiny as a potential SPDC. As noted above, the Commission is basing a finding of material liquidity for the ICE PGE contract, in part, on the fact that there have been more than 20 trades per day on average in the PGE contract during the third quarter of 2009, which is quadruple the five trades-per-day that is cited in the ICE comment. In addition, the Commission notes that the number of contracts per transaction in the PGE contract is high (approximately 72 contracts per transaction) and thus, as noted, trading volume (measured in contract units) is substantial. The PGE contract also has significant open interest.

ICE implied that the statistics provided by ICE were misinterpreted and misapplied by the Commission. In particular, ICE stated that the volume figures used in the Commission's analysis (cited above) "include trades made in all [72] months of * * * [the] contract" as well as in strips of contract months, and a "more appropriate method of determining liquidity is to examine the activity in a single traded month or strip of a given contract." ICE stated that only about 25 to 40 percent of the trades occurred in the single most liquid, usually prompt, month of the contract.

It is the Commission's opinion that liquidity, as it pertains to the PGE contract, is typically a function of trading activity in particular lead months and, given sufficient liquidity in such months, the PGE contract itself would be considered liquid. ICE's analysis of its own trade data confirms this to be the case for the PGE contract, and thus, the Commission believes that it applied the statistical data cited above in an appropriate manner for gauging material liquidity.

In addition, EI and ICE stated that the trades-per-day statistics that it provided to the Commission in its quarterly filing and which are cited above includes 2(h)(1) transactions, which were not completed on the electronic trading platform and should not be considered in the SPDC determination process. Commission staff asked ICE to review the data it sent in its quarterly filings. In response, ICE confirmed that the volume data it provided and which the Commission cited in its October 9, 2009, **Federal Register** notice, as well as the additional volume information it cites above, includes only transaction data executed on ICE's electronic trading platform. The Commission acknowledges that the open interest information it cites above includes transactions made off the ICE platform.[42] However, once open interest is created, there is no way for ICE to differentiate between "on-exchange" versus "off-exchange" created positions, and all such positions are fungible with one another and may be offset in any way agreeable to the position holder regardless of how the position was initially created.

ii. Conclusion Regarding Material Liquidity

Based on the above, the Commission concludes that the PGE contract meets the material liquidity criterion in that there is sufficient trading activity in the PGE contract to have a material effect on "other agreements, contracts or transactions listed for trading on or subject to the rules of a designated contract market * * * or an electronic trading facility operating in reliance on the exemption in section 2(h)(3) of the Act" (that is, an ECM).

4. Overall Conclusion

After considering the entire record in this matter, including the comments received, the Commission has determined that the PGE contract performs a significant price discovery function under two of the four criteria established in section 2(h)(7) of the CEA. Although the Commission has determined that the PGE contract does not meet the price linkage criterion at this time, the Commission has concluded that the PGE contract does meet both the material liquidity and material price reference criteria. Accordingly, the Commission is issuing the attached Order declaring that the PGE contract is a SPDC.

Issuance of this Order signals the immediate effectiveness of the Commission's authorities with respect to ICE as a registered entity in connection with its PGE contract,[43] and triggers the obligations, requirements—both procedural and substantive—and timetables prescribed in Commission rule 36.3(c)(4) for ECMs.

V. Related Matters

a. Paperwork Reduction Act

The Paperwork Reduction Act of 1995 ("PRA")[44] imposes certain requirements on Federal agencies, including the Commission, in connection with their conducting or sponsoring any collection of information as defined by the PRA. Certain provisions of Commission rule 36.3 impose new regulatory and reporting requirements on ECMs, resulting in information collection requirements within the meaning of the PRA. OMB previously has approved and assigned OMB control number 3038–0060 to this collection of information.

b. Cost-Benefit Analysis

Section 15(a) of the CEA[45] requires the Commission to consider the costs and benefits of its actions before issuing an order under the Act. By its terms, section 15(a) does not require the Commission to quantify the costs and benefits of an order or to determine whether the benefits of the order outweigh its costs; rather, it requires that the Commission "consider" the costs and benefits of its actions. Section 15(a) further specifies that the costs and benefits shall be evaluated in light of five broad areas of market and public concern: (1) Protection of market participants and the public; (2) efficiency, competitiveness and financial integrity of futures markets; (3) price discovery; (4) sound risk management practices; and (5) other public interest considerations. The Commission may in its discretion give greater weight to any one of the five enumerated areas and could in its discretion determine that, notwithstanding its costs, a particular order is necessary or appropriate to protect the public interest or to effectuate any of the provisions or accomplish any of the purposes of the Act. The Commission has considered the costs and benefits in light of the specific provisions of section 15(a) of the Act and has concluded that the Order, required by Congress to strengthen federal oversight of exempt commercial markets and to prevent market manipulation, is necessary and appropriate to accomplish the purposes of section 2(h)(7) of the Act.

When a futures contract begins to serve a significant price discovery function, that contract, and the ECM on which it is traded, warrants increased oversight to deter and prevent price manipulation or other disruptions to market integrity, both on the ECM itself and in any related futures contracts trading on DCMs. An Order finding that a particular contract is a SPDC triggers this increased oversight and imposes obligations on the ECM calculated to accomplish this goal. The increased oversight engendered by the issue of a SPDC Order increases transparency and

[42] Supplemental data supplied by the ICE confirmed that block trades in the third quarter of 2009 were in addition to the trades that were conducted on the electronic platform; block trades comprised 63.4 percent of all transactions in the PGE contract.

[43] See 73 FR 75888, 75893 (Dec. 12, 2008).

[44] 44 U.S.C. 3507(d).

[45] 7 U.S.C. 19(a).

helps to ensure fair competition among ECMs and DCMs trading similar products and competing for the same business. Moreover, the ECM on which the SPDC is traded must assume, with respect to that contract, all the responsibilities and obligations of a registered entity under the CEA and Commission regulations. Additionally, the ECM must comply with nine core principles established by section 2(h)(7) of the Act—including the obligation to establish position limits and/or accountability standards for the SPDC. Section 4(i) of the CEA authorizes the Commission to require reports for SPDCs listed on ECMs. These increased responsibilities, along with the CFTC's increased regulatory authority, subject the ECM's risk management practices to the Commission's supervision and oversight and generally enhance the financial integrity of the markets.

c. Regulatory Flexibility Act

The Regulatory Flexibility Act ("RFA")[46] requires that agencies consider the impact of their rules on small businesses. The requirements of CEA section 2(h)(7) and the Part 36 rules affect ECMs. The Commission previously has determined that ECMs are not small entities for purposes of the RFA.[47] Accordingly, the Chairman, on behalf of the Commission, hereby certifies pursuant to 5 U.S.C. 605(b) that this Order, taken in connection with section 2(h)(7) of the Act and the Part 36 rules, will not have a significant impact on a substantial number of small entities.

VI. Order

a. Order Relating to the ICE PG&E Citygate Financial Basis Contract

After considering the complete record in this matter, including the comment letters received in response to its request for comments, the Commission has determined to issue the following Order:

The Commission, pursuant to its authority under section 2(h)(7) of the Act, hereby determines that the PG&E Citygate Financial Basis contract, traded on the IntercontinentalExchange, Inc., satisfies the statutory material liquidity and material price reference criteria for significant price discovery contracts. Consistent with this determination, and effective immediately, the IntercontinentalExchange, Inc., must comply with, with respect to the PG&E Citygate Financial Basis contract, the nine core principles established by new section 2(h)(7)(C). Additionally, the IntercontinentalExchange, Inc., shall be and is considered a registered entity[48] with respect to the PG&E Citygate Financial Basis contract and is subject to all the provisions of the Commodity Exchange Act applicable to registered entities. Further, the obligations, requirements and timetables prescribed in Commission rule 36.3(c)(4) governing core principle compliance by the IntercontinentalExchange, Inc., commence with the issuance of this Order.[49]

Issued in Washington, DC on April 28, 2010, by the Commission.

David A. Stawick,

Secretary of the Commission.

[FR Doc. 2010–10305 Filed 5–3–10; 8:45 am]

BILLING CODE P

[46] 5 U.S.C. 601 *et seq.*

[47] 66 FR 42256, 42268 (Aug. 10, 2001).

[48] 7 U.S.C. 1a(29).

[49] Because ICE already lists for trading a contract (i.e., the Henry Financial LD1 Fixed Price contract) that was previously declared by the Commission to be a SPDC, ICE must submit a written demonstration of compliance with the Core Principles within 30 calendar days of the date of this Order. 17 CFR 36.3(c)(4).

COMMODITY FUTURES TRADING COMMISSION

Orders Finding That the Henry Financial Basis Contract, Henry Financial Index Contract and Henry Financial Swing Contract Traded on the IntercontinentalExchange, Inc., Do Not Perform a Significant Price Discovery Function

AGENCY: Commodity Futures Trading Commission.

ACTION: Final orders.

SUMMARY: On October 20, 2009, the Commodity Futures Trading Commission ("CFTC" or "Commission") published for comment in the **Federal Register**[1] a notice of its intent to undertake a determination whether the Henry Financial Basis ("HEN") contract, Henry Financial Index ("HIS") contract and Henry Financial Swing ("HHD") contract traded on the IntercontinentalExchange, Inc. ("ICE"), an exempt commercial market ("ECM") under sections 2(h)(3)–(5) of the Commodity Exchange Act ("CEA" or the "Act"), perform a significant price discovery function pursuant to section 2(h)(7) of the CEA. The Commission undertook this review based upon an initial evaluation of information and data provided by ICE as well as other available information. The Commission has reviewed the entire record in this matter, including all comments received, and has determined to issue orders finding that the HEN, HIS and HHD contracts do not perform a significant price discovery function. Authority for this action is found in section 2(h)(7) of the CEA and Commission rule 36.3(c) promulgated thereunder.

DATES: *Effective date:* April 28, 2010.

FOR FURTHER INFORMATION CONTACT: Gregory K. Price, Industry Economist, Division of Market Oversight, Commodity Futures Trading Commission, Three Lafayette Centre, 1155 21st Street, NW., Washington, DC 20581. Telephone: (202) 418–5515. E-mail: *gprice@cftc.gov*; or Susan Nathan, Senior Special Counsel, Division of Market Oversight, same address. Telephone: (202) 418–5133. E-mail: *snathan@cftc.gov*.

SUPPLEMENTARY INFORMATION:

I. Introduction

The CFTC Reauthorization Act of 2008 ("Reauthorization Act")[2] significantly broadened the CFTC's regulatory authority with respect to ECMs by creating, in section 2(h)(7) of the CEA, a new regulatory category—ECMs on which significant price discovery contracts ("SPDCs") are traded—and treating ECMs in that category as registered entities under the CEA.[3] The legislation authorizes the CFTC to designate an agreement, contract or transaction as a SPDC if the Commission determines, under criteria established in section 2(h)(7), that it performs a significant price discovery function. When the Commission makes such a determination, the ECM on which the SPDC is traded must assume, with respect to that contract, all the responsibilities and obligations of a registered entity under the Act and Commission regulations, and must comply with nine core principles established by new section 2(h)(7)(C).

On March 16, 2009, the CFTC promulgated final rules implementing the provisions of the Reauthorization Act.[4] As relevant here, rule 36.3 imposes increased information reporting requirements on ECMs to assist the Commission in making prompt assessments whether particular ECM contracts may be SPDCs. In addition to filing quarterly reports of its contracts, an ECM must notify the Commission promptly concerning any contract traded in reliance on the exemption in section 2(h)(3) of the CEA that averaged

[1] 74 FR 53720 (October 20, 2009).

[2] Incorporated as Title XIII of the Food, Conservation and Energy Act of 2008, Pub. L. 110–246, 122 Stat. 1624 (June 18, 2008).

[3] 7 U.S.C. 1a(29).

[4] 74 FR 12178 (Mar. 23, 2009); these rules became effective on April 22, 2009.

five trades per day or more over the most recent calendar quarter, and for which the exchange sells its price information regarding the contract to market participants or industry publications, or whose daily closing or settlement prices on 95 percent or more of the days in the most recent quarter were within 2.5 percent of the contemporaneously determined closing, settlement or other daily price of another contract.

Commission rule 36.3(c)(3) established the procedures by which the Commission makes and announces its determination whether a particular ECM contract serves a significant price discovery function. Under those procedures, the Commission will publish notice in the **Federal Register** that it intends to undertake an evaluation whether the specified agreement, contract or transaction performs a significant price discovery function and to receive written views, data and arguments relevant to its determination from the ECM and other interested persons. Upon the close of the comment period, the Commission will consider, among other things, all relevant information regarding the subject contract and issue an order announcing and explaining its determination whether or not the contract is a SPDC. The issuance of an affirmative order signals the effectiveness of the Commission's regulatory authorities over an ECM with respect to a SPDC; at that time such an ECM becomes subject to all provisions of the CEA applicable to registered entities.[5] The issuance of such an order also triggers the obligations, requirements and timetables prescribed in Commission rule 36.3(c)(4).[6]

II. Notice of Intent To Undertake SPDC Determination

On October 20, 2009, the Commission published in the **Federal Register** notice of its intent to undertake a determination whether the HEN, HIS and HHD contracts performs a significant price discovery function and requested comment from interested parties.[7] Comments[8] were received from the Federal Energy Regulatory Commission ("FERC"), Platts,[9] Public Utility Commission of Texas ("PUCT") and ICE. The comment letters from FERC,[10] Platts and PUCT[11] did not directly address the issue of whether or not the HEN, HIS and HHD contracts are SPDCs; ICE's comments raised substantive issues with respect to the applicability of section 2(h)(7) to the subject contracts. Generally, ICE asserted that its HEN, HIS and HHD contracts are not SPDCs as they do not meet any of the criteria for SPDC determination (CL 03). ICE's comments are more extensively discussed below, as applicable.

III. Section 2(h)(7) of the CEA

The Commission is directed by section 2(h)(7) of the CEA to consider the following criteria in determining a contract's significant price discovery function:

- *Price Linkage*—the extent to which the agreement, contract or transaction uses or otherwise relies on a daily or final settlement price, or other major price parameter, of a contract or contracts listed for trading on or subject to the rules of a designated contract market ("DCM") or derivatives transaction execution facility ("DTEF"), or a SPDC traded on an electronic trading facility, to value a position, transfer or convert a position, cash or financially settle a position, or close out a position.
- *Arbitrage*—the extent to which the price for the agreement, contract or transaction is sufficiently related to the price of a contract or contracts listed for trading on or subject to the rules of a DCM or DTEF, or a SPDC traded on or subject to the rules of an electronic trading facility, so as to permit market participants to effectively arbitrage between the markets by simultaneously maintaining positions or executing trades in the contracts on a frequent and recurring basis.
- *Material price reference*—the extent to which, on a frequent and recurring basis, bids, offers or transactions in a commodity are directly based on, or are determined by referencing or consulting, the prices generated by agreements, contracts or transactions being traded or executed on the electronic trading facility.
- *Material liquidity*—the extent to which the volume of agreements, contracts or transactions in a commodity being traded on the electronic trading facility is sufficient to have a material effect on other agreements, contracts or transactions listed for trading on or subject to the rules of a DCM, DTEF or electronic trading facility operating in reliance on the exemption in section 2(h)(3).

Not all criteria must be present to support a determination that a particular contract performs a significant price discovery function, and one or more criteria may be inapplicable to a particular contract.[12] Moreover, the statutory language neither prioritizes the criteria nor specifies the degree to which a SPDC must conform to the various criteria. In Guidance issued in connection with the Part 36 rules governing ECMs with SPDCs, the

[5] Public Law 110–246 at 13203; *Joint Explanatary Statement of the Committee of Conference*, H.R. Rep. No. 110–627, 110 Cong., 2d Sess. 978, 986 (Conference Committee Report). See also 73 FR 75888, 75894 (Dec. 12, 2008).

[6] For an initial SPDC, ECMs have a grace period of 90 calendar days from the issuance of a SPDC determination order to submit a written demonstration of compliance with the applicable core principles. For subsequent SPDCs, ECMs have a grace period of 30 calendar days to demonstrate core principle compliance.

[7] The Commission's Part 36 rules establish, among other things, procedures by which the Commission makes and announces its determination whether a specific ECM contract serves a significant price discovery function. Under those procedures, the Commission publishes a notice in the **Federal Register** that it intends to undertake a determination whether a specified agreement, contract or transaction performs a significant price discovery function and to receive written data, views and arguments relevant to its determination from the ECM and other interested persons.

[8] The comment letters are available on the Commission's Web site: *http://www.cftc.gov/lawandregulation/federalregister/federalregistercamments/2009/09-027.html.*

[9] McGraw-Hill, through its division Platts, compiles and calculates monthly natural gas price indices from natural gas trade data submitted to Platts by energy marketers. Platts includes those price indices in its monthly *Inside FERC's Gas Market Report* ("Inside FERC").

[10] FERC stated that the HEN, HIS and HHD contracts are cash-settled and that none of them contemplates the actual physical delivery of natural gas. Accordingly, FERC expressed the opinion that a determination by the Commission that a contract performs a significant price discovery function "would not appear to conflict with FERC's exclusive jurisdiction under the Natural Gas Act (NGA) over certain sales of natural gas in interstate commerce for resale or with its other regulatory responsibilities under the NGA" and further that "FERC staff will continue to monitor for any such conflict * * * [and] advise the CFTC" should any such potential conflict arise. CL 01.

[11] PUCT noted that it oversees the Electric Reliability Council of Texas, much like FERC oversees independent system operators. The mission of PUCT is "to ensure nondiscriminatory access to the [electricity] transmission and distribution systems, to ensure the reliability and adequacy of the regional electrical network and to perform other essential market functions." CL 04.

[12] In its October 20, 2009, **Federal Register** release, the Commission identified material liquidity, material price reference and price linkage as the possible criteria for SPDC determination of the HEN contract (arbitrage was not identified as a possible criterion). With respect to the HIS contract, the **Federal Register** release identified material liquidity and material price reference as possible criteria for SPDC determination (price linkage and arbitrage were not identified as possible criteria). With respect to the HHD contract, the **Federal Register** release identified material liquidity, arbitrage and material price reference as possible criteria for SPDC determination (price linkage was not identified as a possible criterion). The criteria not indentified in the initial release will not be discussed further in this document or the associated Orders.

Commission observed that these criteria do not lend themselves to a mechanical checklist or formulaic analysis. Accordingly, the Commission has indicated that in making its determinations it will consider the circumstances under which the presence of a particular criterion, or combination of criteria, would be sufficient to support a SPDC determination.[13] For example, for contracts that are linked to other contracts or that may be arbitraged with other contracts, the Commission will consider whether the price of the potential SPDC moves in such harmony with the other contract that the two markets essentially become interchangeable. This co-movement of prices would be an indication that activity in the contract had reached a level sufficient for the contract to perform a significant price discovery function. In evaluating a contract's price discovery role as a price reference, the Commission will consider whether cash market participants are quoting bid or offer prices or entering into transactions at prices that are set either explicitly or implicitly at a differential to prices established for the contract.

IV. Findings and Conclusions

The Commission's findings and conclusions with respect to the Henry Financial Basis (HEN) contract, the Henry Financial Index (HIS) contract and the Henry Financial Swing (HHD) contract are discussed separately below.

a. The Henry Financial Basis (HEN) Contract and the SPDC Indicia

The ICE HEN contract is cash settled based on the difference between the bidweek price of natural gas at the Henry Hub for the contract-specified month of delivery, as reported in Platts' *Inside FERC's Gas Market Report*, and the final settlement price for New York Mercantile Exchange's ("NYMEX's") Henry Hub physically-delivered natural gas futures contract for the same specified calendar month. The Platts bidweek price, which is published monthly, is based on a survey of cash market traders who voluntarily report to Platts data on their fixed-price transactions conducted during the last five business days of the month for physical delivery of natural gas at the Henry Hub; such bidweek transactions specify the delivery of natural gas on a uniform basis throughout the following calendar month at the agreed upon rate. The Platts bidweek index is published on the first business day of the calendar month in which the natural gas is to be delivered. The size of the HEN contract is 2,500 million British thermal units ("mmBtu"), and the unit of trading is any multiple of 2,500 mmBtu. The HEN contract is listed for up to 72 calendar months commencing with the next calendar month.

The Henry Hub,[14] which is located in Erath, Louisiana, is the primary cash market trading and distribution center for natural gas in the United States. It also is the delivery point and pricing basis for the NYMEX's actively traded Henry Hub physically-delivered natural gas futures contract, which is the most important pricing reference for natural gas in the United States. The Henry Hub, which is operated by Sabine Pipe Line, LLC, serves as a juncture for 13 different pipelines. These pipelines bring in natural gas from fields in the Gulf Coast region and move it to major consumption centers along the East Coast and Midwest. The throughput shipping capacity of the Henry Hub is 1.8 trillion mmBtu per day.

The HEN contract price measures the discrepancy between two Henry Hub-related prices, where one price is a futures price and the other is a forward cash price. Traders may make commitments to buy or sell natural gas at the Henry Hub using the NYMEX Henry Hub natural gas futures contract, which specifies physical delivery. Because the NYMEX futures contract is listed for at least twelve years, market participants can make such decisions a long time before delivery actually occurs, since they can have an effective hedge in place to offset price risk associated with long-dated cash market commitments. While the futures price and the bidweek price both reflect the price of natural gas during the following month, the two values may not be equal. This is because the NYMEX futures contract stops trading three business days prior to first business day of the delivery month. In contrast, the bidweek price is derived from cash market deals consummated during the last five business days of the month that specify physical delivery during the following calendar month. Thus, it is possible that the bidweek price could include two additional days of market information, which could result in a price that is significantly higher or lower than the futures price. The ICE HEN contract can be used to more accurately price natural gas in the delivery month. For example, a firm may lock in its November 2009 needs by taking a long position in the November 2009 contract. Assume that the futures position is established at $4.00 per mmBtu. This means that the gas was purchased at $4, which may be higher or lower than the spot price during the delivery month. During the final few days in October, the November 2009 natural gas contract stops trading and the November bidweek price is determined. Assume that the weather forecast calls for warmer than normal temperatures in the area, causing the futures price to fall and settle on October 27 at $3.90 per mmBtu, resulting in a loss of $0.10 per mmBtu on the futures side. Market sentiment of a strong downward pressure on gas prices may persist, leading spot transactions for next-month delivery to be priced even lower than the futures settlement price. In this regard, the bidweek price is determined as a volume weighted average of fixed-price transactions for November 2009 delivery that were conducted between October 25, 2009, and October 29, 2009. If the bidweek price ends up being at $3.75 per mmBtu, the firm will incur an additional loss of $0.15 per mmBtu because of falling spot prices. By taking a position in the ICE HEN contract, the firm can mitigate some of the losses by accounting for the difference between the final settlement price and the bidweek price.[15]

In its October 20, 2009, **Federal Register** notice, the Commission identified material liquidity, price linkage and material price reference as the potential SPDC criteria applicable to the HEN contract. Each of these criteria is discussed below.[16]

1. Material Price Reference Criterion

The Commission's October 20, 2009, **Federal Register** notice identified material price reference as a potential basis for a SPDC determination with respect to this contract. The Commission noted that ICE sells its price data to market participants in a number of different packages which vary in terms of the hubs covered, time periods and whether the data are daily only or historical. For example, ICE offers the "Gulf Gas End of Day" and "OTC Gas End of Day"[17] packages with access to all price data or just current prices plus a selected number of months (i.e., 12, 24, 36 or 48 months) of

[13] 17 CFR part 36, Appendix A.

[14] The term "hub" refers to a juncture where two or more natural gas pipelines are connected. Hubs also serve as pricing points for natural gas.

[15] If the firm simultaneously takes positions involving the NYMEX futures contract and the ICE HEN basis contract, the firm will be able to price the natural gas at the bidweek price.

[16] As noted above, the Commission did not find an indication of arbitrage in connection with this contract; accordingly, that criterion is not discussed in reference to the HEN contract.

[17] The OTC Gas End of Day dataset includes daily settlement prices for natural gas contracts listed for all points in North America.

historical data. These two packages include price data for the HEN contract.

Although the Henry Hub is a major trading center for natural gas in the United States and, as noted, ICE sells price information for the HEN contract, the Commission has found upon further evaluation that the HEN contract is not routinely consulted by industry participants in pricing cash market transactions and thus does not meet the Commission's Guidance for the material price reference criterion. In this regard, the NYMEX Henry Hub physically delivered natural gas futures contract is routinely consulted by industry participants in pricing cash market transactions at this location. Because both the HEN and the NYMEX contracts basically price the same commodity at the same location and time and the NYMEX contract has significantly higher trading volume and open interest,[18] it is not necessary for market participants to independently refer to the HEN contract for pricing natural gas at this location. Furthermore, the Commission notes that publication of the HEN contract's prices is not indirect evidence of routine dissemination. The HEN contract's prices are published with those of numerous other contracts, which are of more interest to market participants.[19] The Commission cannot surmise whether or not traders specifically purchase the ICE data packages for the HEN contract's prices.

i. Federal Register Comments

As noted above, ICE was the sole respondent which addressed the question of whether the HEN contract is a SPDC. ICE stated in its comment letter that the HEN contract does not meet the material price reference criterion for SPDC determination. ICE stated that the Commission appeared to base the case that the HEN contract is potentially a SPDC on a disputable assertion. In issuing its notice of intent to determine whether the HEN contract is a SPDC, the CFTC cited a general conclusion in its ECM study "that certain market participants referred to ICE as a price discovery market for certain natural gas contracts." ICE states that "[b]asing a material price reference determination on general statements made in a two year old study does not seem to meet Congress' intent that the CFTC use its considerable expertise to study the OTC markets." The Commission cited the ECM study's general finding that some ICE natural gas contracts appear to be regarded as price discovery markets as an indication that an investigation of certain ICE contracts may be warranted; the ECM study was not intended to serve as the sole basis for determining whether or not a particular contract meets the material price reference criterion.

ii. Conclusion Regarding Material Price Reference

The Commission finds that the HEN contract does not meet the material price reference criterion because it is not routinely consulted by cash market participants when pricing transactions at the Henry Hub (direct evidence is not supported). Moreover, the ECM sells the HEN contract's price data along with those of other contracts, which are of more interest to market participants (indirect evidence is not supported).

2. Price Linkage Criterion

In its October 20, 2009, **Federal Register** notice, the Commission identified price linkage as a potential basis for a SPDC determination with respect to the HEN contract. In this regard, the final settlement of the HEN contract is based, in part, on the final settlement price of the NYMEX's Henry Hub physically-delivered natural gas futures contract, where the NYMEX is registered with the Commission as a DCM.

The Commission's Guidance on Significant Price Discovery Contracts[20] notes that a "price-linked contract is a contract that relies on a contract traded on another trading facility to settle, value or otherwise offset the price-linked contract." Furthermore, the Guidance notes that "[f]or a linked contract, the mere fact that a contract is linked to another contract will not be sufficient to support a determination that a contract performs a significant price discovery function. To assess whether such a determination is warranted, the Commission will examine the relationship between transaction prices of the linked contract and the prices of the referenced contract. The Commission believes that where material liquidity exists, prices for the linked contract would be observed to be substantially the same as, or move substantially in conjunction with, the prices of the referenced contract." The Guidance proposes a threshold price relationship such that prices of the ECM linked contract will fall within a 2.5 percent price range for 95 percent of contemporaneously determined closing, settlement or other daily prices over the most recent quarter. Finally, the Commission also stated in the Guidance that it would consider a linked contract that has a trading volume equivalent to 5 percent of the volume of trading in the contract to which it is linked to have sufficient volume potentially to be deemed a SPDC ("minimum threshold").

To assess whether the HEN contract meets the price linkage criterion, Commission staff obtained price data from ICE and performed the statistical tests cited above. Staff found that the Henry Hub futures/cash price differential is determined in part by the final settlement price of the NYMEX Henry Hub physically-delivered natural gas futures contract (a DCM contract) and that the derived Henry Hub prices (using the NYMEX Henry Hub natural gas futures contract's settlement prices and the Henry Hub cash price differentials) are within 2.5 percent of the settlement prices of the corresponding NYMEX Henry Hub natural gas futures contract on 95 percent or more of the days. Specifically, during the third quarter of 2009, 100 percent of the Henry Hub natural gas prices derived from the HEN values were within 2.5 percent of the daily settlement price of NYMEX Henry Hub natural gas futures contract. However, staff found that the HEN contract fails to meet the volume threshold requirement. In particular, the total trading volume in the NYMEX Henry Hub natural gas futures contract during the third quarter of 2009 was 14,022,963 contracts, with 5 percent of that number being 701,148 contracts. The number of trades on the ICE centralized market in the HEN contract during the same period totaled 173,973 contracts (equivalent to 43,493 NYMEX futures contracts, given the size difference).[21] Thus, total amount of centralized-market trades in the HEN contract was significantly below the minimum threshold.

i. Federal Register Comments

ICE was the sole respondent which addressed the question of whether the HEN contract is a SPDC. ICE stated in its comment letter that the HEN contract does not meet the price linkage criterion for SPDC determination because it fails the volume test provided in the Commission's Guidance.

[18] Trading data was obtained by the Commission using the Integrated Surveillance System.

[19] The Commission will rely on one of two sources of evidence—direct or indirect—to determine a SPDC. Direct evidence can be cash market transactions that are frequently based on or quoted as a differential to the potential SPDC. Indirect evidence includes contracts whose price series are routinely disseminated in industry publications or are sold to market participants by the ECM.

[20] Appendix A to the Part 36 rules.

[21] The HEN contract is one-quarter the size of the NYMEX Henry Hub physically-delivered futures contract.

ii. Conclusion Regarding the Price Linkage Criterion

The Commission finds that the HEN contract does not meet the price linkage criterion because it fails the volume test provided for in the Commission's Guidance.

3. Material Liquidity Criterion

As noted above, in its October 20, 2009, **Federal Register** notice, the Commission identified material liquidity, price linkage and material price reference as potential criteria for SPDC determination of the HEN contract. With respect to the material liquidity criterion, the Commission noted that the total number of transactions executed on ICE's electronic platform in the HEN contract was 538 in the second quarter of 2009, resulting in a daily average of 8.4 trades. During the same period, the HEN contract had a total trading volume of 78,780 contracts and an average daily trading volume of 1,232 contracts. Moreover, open interest as of June 30, 2009, was 128,504 contracts, which included trades executed on ICE's electronic trading platform, as well as trades executed off of ICE's electronic trading platform and then brought to ICE for clearing. In this regard, ICE does not differentiate between open interest created by a transaction executed on its trading platform and that created by a transaction executed off its trading platform.[22] In a subsequent filing dated November 13, 2009, ICE reported that total trading volume in the third quarter of 2009 was 173,973 contracts (or 2,636 contracts on a daily basis). In term of number of transactions, 1,174 trades occurred in the third quarter of 2009 (17.8 trades per day). As of September 30, 2009, open interest in the HEN contract was 160,804 contracts, which included trades executed on ICE's electronic trading platform, as well as trades executed off of ICE's electronic trading platform and then brought to ICE for clearing.

The Commission notes that trading activity in the HEN contract increased between the second and third quarters of 2009. However, the number of trades per day remained relatively low and only slightly more than the reporting level of five trades per day. Moreover, the Commission notes that the number of contracts traded is comparable to that experienced in a relatively small futures market, such as the NYMEX Platinum and ICE US Frozen Concentrated Orange Juice contracts. Accordingly, the data at best provides weak evidence that the HEN contract meets the material liquidity criterion.[23]

i. Federal Register Comments

As noted above, ICE was the sole respondent which addressed the question of whether the HEN contract is a SPDC. ICE stated in its comment letter that the HEN contract does not meet the material liquidity criterion for SPDC determination for a number of reasons.

First, ICE opined that the Commission "seems to have adopted a five trade-per-day test to determine whether a contract is materially liquid. It is worth noting that ICE originally suggested that the CFTC use a five trades-per-day threshold as the basis for an ECM to report trade data to the CFTC." On the contrary, the Commission adopted a five trades-per-day threshold as a reporting requirement to enable it to "independently be aware of ECM contracts that may develop into SPDCs"[24] rather than solely relying upon an ECM on its own to identify any such potential SPDCs to the Commission. While a contract that meets this threshold may be subject to scrutiny as a potential SPDC, the threshold is not a test for material liquidity. As noted above, the Commission has not reached a decision regarding material liquidity because, regardless of the relatively large quarterly trading volume in the HEN contract, material liquidity alone is not sufficient to support a SPDC determination.

ICE also stated that "the statistics [provided by ICE] have been misinterpreted and misapplied." In particular, ICE stated that the volume figures used in the Commission's analysis (cited above) "include trades made in all 120 months of each contract" as well as in strips of contract months, and a "more appropriate method of determining liquidity is to examine the activity in a single traded month or strip of a given contract." Furthermore, ICE noted that for the HEN contract, "98% of the trades and volume actually executed on the ICE platform occurred in the single most liquid, usually prompt, month of the contract."

It is the Commission's opinion that liquidity, as it relates to the HEN contract, is typically a function of trading activity in particular lead months and, given sufficient liquidity in such months, the HEN contract itself would be considered liquid. ICE's analysis of its own trade data confirms this to be the case for the HEN contract, and thus, the Commission believes that it applied the statistical data cited above in an appropriate manner for gauging material liquidity.

In addition, ICE stated that the trades-per-day statistics that it provided to the Commission in its quarterly filing and which are cited above includes 2(h)(1) transactions, which were not completed on the electronic trading platform and should not be considered in the SPDC determination process. Commission staff asked ICE to review the data it sent in its quarterly filings. In response, ICE confirmed that the volume data it provided and which the Commission cited in its October 20, 2009, **Federal Register** notice, as well as the additional volume information it cites above, includes only transaction data executed on ICE's electronic trading platform.[25] The Commission acknowledges that the open interest information it cites above includes transactions made off the ICE platform. However, once open interest is created, there is no way for ICE to differentiate between "on-exchange" versus "off-exchange" created positions, and all such positions are fungible with one another and may be offset in any way agreeable to the position holder regardless of how the position was initially created.

ii. Conclusion Regarding Material Liquidity

For the reasons discussed above, the Commission finds at best weak evidence that the HEN contract meets the material liquidity criterion. However, because the HEN contract does not meet either the price linkage or material price reference criterion, it is not possible to declare the HEN contract a SPDC since material liquidity cannot be used alone as a basis for a SPDC determination.

4. Overall Conclusion the HEN Contract

After considering the entire record in this matter, including the comments received, the Commission has determined that the HEN contract does not perform a significant price discovery

[22] 74 FR 53720 (October 20, 2009).

[23] In establishing guidance to illustrate how it will evaluate the various criteria, or combinations of criteria, when determining whether a contract is a SPDC, the Commission made clear that "material liquidity itself would not be sufficient to make a determination that a contract is a [SPDC], * * * but combined with other factors it can serve as a guidepost indicating which contracts are functioning as [SPDCs]." For the reasons discussed above, the Commission has found that the HEN contract does not meet either the price linkage or material price reference criterion. In light of this finding and the Commission's Guidance cited above, there is no need to evaluate further the material liquidity criteria since it cannot be used alone as a basis for a SPDC determination.

[24] 73 FR 75892 (December 12, 2008).

[25] Supplemental data supplied by ICE confirmed that block trades in the third quarter of 2009 were in addition to the trades that were conducted on the electronic platform; block trades comprised 62.2 percent of all transactions in the HEN contract.

function under the criteria established in section 2(h)(7) of the CEA. Specifically, the Commission has determined that the HEN contract does not meet the material price reference and price linkage criteria at this time, and there is at best weak evidence that it meets the material liquidity criterion, which is not sufficient by itself to support a SPDC determination. Accordingly, the Commission will issue the attached Order declaring that the HEN contract is not a SPDC.

Issuance of this Order indicates that the Commission does not at this time regard ICE as a registered entity in connection with its HEN contract.[26] Accordingly, with respect to its HEN contract, ICE is not required to comply with the obligations, requirements and timetables prescribed in Commission rule 36.3(c)(4) for ECMs with SPDCs.

b. The Henry Financial Index (HIS) Contract and the SPDC Indicia

The ICE HIS contract is cash settled based on the arithmetic average of the daily natural gas prices at the Henry Hub, as quoted in the "Daily Price Survey" table of Platts' *Gas Daily* during the specified month, less the Platts bidweek price that is reported in the first issue of *Inside FERC's Gas Market Report* in which the natural gas is delivered. The Platts prices are based on the fixed-price cash market transactions that are voluntarily reported by traders. As noted above, the Platts bidweek price is based on a survey of cash market traders who voluntarily report data on their fixed-price transactions conducted during the last five business days of the month for physical delivery of natural gas at the Henry Hub on a uniform basis throughout the following calendar month. The Platts bidweek index is published on the first business day of the calendar month in which the natural gas is to be delivered. The Gas Daily price is for next-day delivery of natural gas at the Henry Hub. The size of the HIS contract is 2,500 mmBtu, and the unit of trading is any multiple of 2,500 mmBtu. The HIS contract is listed for 36 calendar months.

The index used to settle the HIS contract measures the discrepancy between two cash market prices for natural gas, where one (the Platts bidweek price) is a fixed forward price that locks in the price paid for gas deliveries made on each calendar day of the following month. The other price (the Platts Daily Price Survey) is a calendar month average of the daily spot price for gas deliveries made during the same month. The forward and average spot prices may differ from each other as new market conditions unfold during the month in which deliveries are made.

For example, assume that a firm prices natural gas that is going to be delivered at the Henry Hub in November 2009 at the bidweek price. The NYMEX Henry Hub futures can be used to procure the physical gas, and HEN contract can be overlayed in order to achieve the bidweek price. If there is a potential that the average daily price during the delivery month may differ from the bidweek price, the firm can add the HIS contract to the NYMEX futures/ICE HEN combination to achieve a price that is based on actual daily prices rather than a forward spot price that applies to all business days in the delivery month. As a result, the HIS contract allows commercial participants to price natural gas more accurately during the delivery period.

In its October 20, 2009, **Federal Register** notice, the Commission identified material liquidity and material price reference as the potential SPDC criteria applicable to the HIS contract. Each of these factors is discussed below.[27]

1. Material Price Reference Criterion

The Commission's October 20, 2009, **Federal Register** notice identified material price reference as a potential basis for a SPDC determination with respect to this contract. The Commission noted that ICE sells its price data to market participants in a number of different packages which vary in terms of the hubs covered, time periods, and whether the data are daily only or historical. For example, ICE offers "Gulf Gas End of Day" and "OTC Gas End of Day"[28] with access to all price data or just current prices plus a selected number of months (i.e., 12, 24, 36 or 48 months) of historical data. These two packages include price data for the HIS contract.

Although the Henry Hub is a major trading center for natural gas in the United States, and as noted ICE does sell price information for the HIS contract, the Commission has found upon further evaluation that the HIS contract is not "routinely consulted by industry participants in pricing cash market transactions" and thus does not meet the Commission's guidance for the material price reference criterion. In this regard, the NYMEX Henry Hub natural gas futures contract is routinely consulted by industry participants in pricing cash market transactions at this location. Because both the HIS and the NYMEX contracts basically price the same commodity at the same location and time and the NYMEX futures contract has significantly higher trading volume and open interest, it is not necessary for market participants to independently refer to the HIS contract for pricing natural gas at this location. Furthermore, the Commission notes that publication of the HIS contract's prices is not indirect evidence of routine dissemination. The HIS contract's prices are published with those of numerous other contracts, which are of more interest to market participants.[29] The Commission cannot surmise whether or not traders specifically purchase the ICE data packages for the HIS contract's prices.

i. Federal Register Comments

As noted above, ICE was the sole respondent which addressed the question of whether the HIS contract is a SPDC. ICE stated in its comment letter that the HIS contract does not meet the material price reference criterion for SPDC determination and, further, that the Commission's identification of the HIS contract as a potential SPDC is based on a disputable assertion. In issuing its notice of intent to determine whether the HIS contract is a SPDC, the CFTC cited a general conclusion in its ECM study "that certain market participants referred to ICE as a price discovery market for certain natural gas contracts." ICE states that "[b]asing a material price reference determination on general statements made in a two year old study does not seem to meet Congress' intent that the CFTC use its considerable expertise to study the OTC markets." The Commission cited the ECM study's general finding that some ICE natural gas contracts appear to be regarded as price discovery markets as an indication that an investigation of certain ICE contracts may be warranted; the ECM study was not intended to serve as the sole basis for determining whether or not a particular contract meets the material price reference criterion.

[26] *See* 73 FR 75888, 75893 (Dec. 12, 2008).

[27] As noted above, the Commission did not find an indication of arbitrage and price linkage in connection with this contract; accordingly, those criteria are not discussed in reference to the HIS contract.

[28] The OTC Gas End of Day dataset includes daily settlement prices for natural gas contracts listed for all points in North America.

[29] The Commission will rely on one of two sources of evidence—direct or indirect—to determine a SPDC. Direct evidence can be cash market transactions that are frequently based on or quoted as a differential to the potential SPDC. Indirect evidence includes contracts whose price series are routinely disseminated in industry publications or are sold to market participants by the ECM.

ii. Conclusion Regarding Material Price Reference

The Commission finds that the HIS contract does not meet the material price reference criterion because it is not routinely consulted by cash market participants when pricing transactions at the Henry Hub (direct evidence is not supported). Moreover, the ECM sells the HIS contract's price data along with those of other contracts, which are of more interest to market participants (indirect evidence is not supported).

2. Material Liquidity Criterion

As noted above, in its October 20, 2009, **Federal Register** notice, the Commission identified material liquidity and material price reference as potential criteria for SPDC determination of the HIS contract. With respect to the material liquidity criterion, the Commission noted that the total number of transactions executed on ICE's electronic platform in the HIS contract was 550 in the second quarter of 2009, resulting in a daily average of 8.6 trades. During the same period, the HIS contract had a total trading volume of 79,330 contracts and an average daily trading volume of 1,239 contracts. Moreover, open interest as of June 30, 2009, was 127,346 contracts, which included trades executed on ICE's electronic trading platform, as well as trades executed off of ICE's electronic trading platform and then brought to ICE for clearing. In this regard, ICE does not differentiate between open interest created by a transaction executed on its trading platform and that created by a transaction executed off its trading platform.[30] In a subsequent filing dated November 13, 2009, ICE reported that total trading volume in the third quarter of 2009 was 178,649 contracts (or 2,707 contracts on a daily basis). In term of number of transactions, 1,250 trades occurred in the third quarter of 2009 (18.9 trades per day). As of September 30, 2009, open interest in the HIS contract was 255,496 contracts, which included trades executed on ICE's electronic trading platform, as well as trades executed off of ICE's electronic trading platform and then brought to ICE for clearing.

The Commission notes that trading activity in the HIS contract increased between the second and third quarters of 2009. However, the number of trades per day remained relatively low and only slightly more than the reporting level of five trades per day. Moreover, the Commission notes that the number of contracts traded is comparable to that experienced in a relatively small futures market, such as the NYMEX Platinum and ICE U.S. Frozen Concentrated Orange Juice contracts. Accordingly, the data at best provides weak evidence that the HIS contract meets the material liquidity criterion.[31]

i. Federal Register Comments

As noted above, ICE was the sole respondent which addressed the question of whether the HIS contract is a SPDC. ICE stated in its comment letter that the HIS contract does not meet the material liquidity criterion for SPDC determination for a number of reasons.

First, ICE opined that the Commission "seems to have adopted a five trade-per-day test to determine whether a contract is materially liquid. It is worth noting that ICE originally suggested that the CFTC use a five trades-per-day threshold as the basis for an ECM to report trade data to the CFTC." On the contrary, the Commission adopted a five trades-per-day threshold as a reporting requirement to enable it to "independently be aware of ECM contracts that may develop into SPDCs"[32] rather than solely relying upon an ECM on its own to identify any such potential SPDCs to the Commission. While a contract that meets this threshold may be subject to scrutiny as a potential SPDC, the threshold is not a test for material liquidity. As noted above, the Commission has not reached a decision regarding material liquidity because, regardless of the relatively large quarterly trading volume in the HIS contract, material liquidity alone is not sufficient to support a SPDC determination.

ICE also stated that "the statistics [provided by ICE] have been misinterpreted and misapplied." In particular, ICE stated that the volume figures used in the Commission's analysis (cited above) "include trades made in all 120 months of each contract" as well as in strips of contract months, and a "more appropriate method of determining liquidity is to examine the activity in a single traded month or strip of a given contract." Furthermore, ICE noted that for the HIS contract, "98% of the trades and volume actually executed on the ICE platform occurred in the single most liquid, usually prompt, month of the contract."

It is the Commission's opinion that liquidity, with regard to the HIS contract, is typically a function of trading activity in particular lead months and, given sufficient liquidity in such months, the HIS contract itself would be considered liquid. ICE's analysis of its own trade data confirms this to be the case for the HIS contract, and thus, the Commission believes that it applied the statistical data cited above in an appropriate manner for gauging material liquidity.

In addition, ICE stated that the trades-per-day statistics that it provided to the Commission in its quarterly filing and which are cited above includes 2(h)(1) transactions, which were not completed on the electronic trading platform and should not be considered in the SPDC determination process. Commission staff asked ICE to review the data it sent in its quarterly filings. In response, ICE confirmed that the volume data it provided and which the Commission cited in its October 20, 2009, **Federal Register** notice as well as the additional volume information it cites above includes only transaction data executed on ICE's electronic trading platform.[33] The Commission acknowledges that the open interest information it cites above includes transactions made off the ICE platform. However, once open interest is created, there is no way for ICE to differentiate between "on-exchange" versus "off-exchange" created positions, and all such positions are fungible with one another and may be offset in any way agreeable to the position holder regardless of how the position was initially created.

ii. Conclusion Regarding Material Liquidity

For the reasons discussed above, the Commission finds weak evidence at best that the HIS contract meets the material liquidity criterion. However, because the HIS contract does not meet the material price reference criterion, it is not possible to declare the HIS contract a SPDC since material liquidity cannot be used alone as a basis for a SPDC determination.

[30] 74 FR 53720 (October 20, 2009).

[31] In establishing guidance to illustrate how it will evaluate the various criteria, or combinations of criteria, when determining whether a contract is a SPDC, the Commission made clear that "material liquidity itself would not be sufficient to make a determination that a contract is a [SPDC], * * * but combined with other factors it can serve as a guidepost indicating which contracts are functioning as [SPDCs]." For the reasons discussed above, the Commission has found that the HIS contract does not meet either the price linkage or material price reference criterion. In light of this finding and the Commission's Guidance cited above, there is no need to evaluate further the material liquidity criteria since it cannot be used alone as a basis for a SPDC determination.

[32] 73 FR 75892 (December 12, 2008).

[33] Supplemental data supplied by ICE confirmed that block trades in the third quarter of 2009 were in addition to the trades that were conducted on the electronic platform; block trades comprised 59.7 percent of all transactions in the HIS contract.

3. Overall Conclusion

After considering the entire record in this matter, including the comments received, the Commission has determined that the HIS contract does not perform a significant price discovery function under the criteria established in section 2(h)(7) of the CEA. Specifically, the Commission has determined that the HIS contract does not meet the material price reference criterion at this time, and there is weak evidence at best that it meets the material liquidity criterion, which is not sufficient by itself to support a SPDC determination. Accordingly, the Commission will issue the attached Order declaring that the HIS contract is not a SPDC.

Issuance of this Order indicates that the Commission does not at this time regard ICE as a registered entity in connection with its HIS contract.[34] Accordingly, with respect to its HIS contract ICE is not required to comply with the obligations, requirements and timetables prescribed in Commission rule 36.3(c)(4) for ECMs with SPDCs.

c. The Henry Financial Swing (HHD) Contract and the SPDC Indicia

The ICE HHD contract is cash settled based on the spot index price for natural gas at the Henry Hub on a specified day, as reported in the "Daily Price Survey" table of Platts' *Gas Daily*. The Platts index price is based on fixed-price cash market transactions that are voluntarily reported by traders. The size of the HHD contract is 2,500 mmBtu, and the unit of trading is any multiple of 2,500 mmBtu. The HHD contract is listed for 65 consecutive calendar days.

Swing contracts are cash-settled natural gas contracts that specify 2,500 mmBtu of gas at a particular location on a specific day and is settled using a price index published by a third-party price reporter. The ICE HHD swing contract represents the spot price of natural gas at the Henry Hub on a particular day. Swing contracts allow traders to refine or lift hedges during the delivery month that were previously established using the NYMEX Henry Hub natural gas futures contract. Swing contracts are most useful after the NYMEX futures contract has stopped trading, which is just prior to the beginning of the delivery month. Physically-delivered and cash-settled transactions based on the NYMEX Henry Hub price involves natural gas that is delivered over the entire delivery month. If, for example, a firm's needs change and it no longer needs all of the natural gas for which it hedged (say it now requires only half of the originally hedged natural gas in the final week of the delivery month), then the HHD contract can be used to offset the part of the original hedge even though NYMEX futures contract has ceased trading.

In its October 20, 2009, **Federal Register** notice, the Commission identified material liquidity, arbitrage and material price reference as the potential SPDC criteria applicable to the HHD contract. Each of these criteria is discussed below.[35]

1. Material Price Reference Criterion

The Commission's October 20, 2009, **Federal Register** notice identified material price reference as a potential basis for a SPDC determination with respect to this contract. The Commission noted that ICE sells its price data to market participants in a number of different packages which vary in terms of the hubs covered, time periods, and whether the data are daily only or historical. For example, ICE offers "Gulf Gas End of Day" and "OTC Gas End of Day"[36] with access to all price data or just current prices plus a selected number of months (*i.e.*, 12, 24, 36 or 48 months) of historical data. These two packages include price data for the HHD contract.

Although the Henry Hub is a major trading center for natural gas in the United States and, as noted, ICE sells price information for the HHD contract, the Commission has found upon further evaluation that the HHD contract is not "routinely consulted by industry participants in pricing cash market transactions" and thus does not meet the Commission's guidance for the Material Price Reference criteria. In this regard, the NYMEX Henry Hub futures contract is routinely consulted by industry participants in pricing cash market transactions at this location, because both the HHD and the NYMEX contracts basically price the same commodity at the same location and the NYMEX contract has significantly higher trading volume and open interest, it is not necessary for market participants to independently refer to the HHD contract for pricing natural gas at this location. Furthermore, the Commission notes that publication of the HHD contract's prices is not indirect evidence of routine dissemination. The HHD contract's prices are published with those of numerous other contracts, which are of more interest to market participants.[37] The Commission cannot surmise whether or not traders specifically purchase the ICE data packages for the HHD contract's prices.

i. Federal Register Comments

As noted above, ICE was the sole respondent which addressed the question of whether the HHD contract is a SPDC. ICE stated in its comment letter that the HHD contract does not meet the material price reference criterion for SPDC determination. ICE stated that the Commission appeared to base the case that the HHD contract is potentially a SPDC on a disputable assertion. First, in issuing its notice of intent to determine whether the HHD contract is a SPDC, the CFTC cited a general conclusion in its ECM study "that certain market participants referred to ICE as a price discovery market for certain natural gas contracts." ICE states that "[b]asing a material price reference determination on general statements made in a two year old study does not seem to meet Congress' intent that the CFTC use its considerable expertise to study the OTC markets." The Commission cited the ECM study's general finding that some ICE natural gas contracts appear to be regarded as price discovery markets as an indication that an investigation of certain ICE contracts may be warranted; the ECM study was not intended to serve as the sole basis for determining whether or not a particular contract meets the material price reference criterion.

ii. Conclusion Regarding Material Price Reference

The Commission finds that the HHD contract does not meet the material price reference criterion because it is not routinely consulted by cash market participants when pricing transactions at the Henry Hub (direct evidence is not supported). Moreover, the ECM sells the HHD contract's price data along with those of other contracts, which are of more interest to market participants (indirect evidence is not supported).

2. Arbitrage Criterion

In its October 20, 2009, **Federal Register** notice, the Commission identified arbitrage as a potential basis

[34] See 73 FR 75888, 75893 (Dec. 12, 2008).

[35] As noted above, the Commission did not find an indication of price linkage in connection with this contract; accordingly, that criterion is not discussed in reference to the HHD contract.

[36] The OTC Gas End of Day dataset includes daily settlement prices for natural gas contracts listed for all points in North America.

[37] The Commission will rely on one of two sources of evidence—direct or indirect—to determine a SPDC. Direct evidence can be cash market transactions that are frequently based on or quoted as a differential to the potential SPDC. Indirect evidence includes contracts whose price series are routinely disseminated in industry publications or are sold to market participants by the ECM.

for a SPDC determination with respect to the HHD contract.

The Commission's Guidance (Appendix A to Part 36) notes that "the Commission will consider an arbitrage contract potentially to be a [SPDC] * * * if, over the most recent quarter, greater than 95 percent of the closing or settlement prices of the contract, which have been calculated using transaction prices, fall within 2.5 percent of the closing or settlement price of the contract or contracts which it could be arbitraged." As noted above, the HHD contract is a daily contract that reflects the spot price of natural gas at the Henry Hub and is listed for 65 calendar days. In contrast, the NYMEX Henry Hub natural gas futures contract is a pricing mechanism for natural gas in the future. The NYMEX Henry Hub natural gas futures contract is available for trading many months prior to the delivery period.

Arbitrage between the ICE HHD and NYMEX Henry Hub physically-delivered natural gas futures contract potentially is possible. However, the ability to arbitrage likely would be limited based on a number of factors. First, the HHD contract prices the value of natural gas on a single day while the NYMEX futures contract prices the value of gas over a calendar month. Second, the futures contract and the HHD contract are not always trading simultaneously. For example, the NYMEX futures contract trades many years before delivery while the HHD contract is listed out only 65 consecutive calendar days. Moreover, the HHD contract trades into the delivery month while the NYMEX futures contract stops trading three business days before the first business day of the delivery month. Even during the times where the two contracts are simultaneously traded, arbitrage between the two contracts likely would involve multiple HHD contract to cover a period of several days or weeks against a single NYMEX position, which would be rather cumbersome and probably not practicable. Due to the heterogeneous attributes of the two contracts, the test noted above to determine the similarity of the two price series was not performed.

i. Federal Register Comments

As noted above, ICE was the sole respondent which addressed the question of whether the HHD contract is a SPDC. ICE stated in its comment letter that the HHD contract does not meet the arbitrage criterion because it is a "'decaying' product that expires daily throughout its contract term. The HHD [contract] typically trades 'balance of month' therefore using multiple daily settlement prices. In fact, the majority of HHD trades are intra-month after the * * * [NYMEX Henry Hub natural gas futures contract] has already been priced."

ii. Conclusion Regarding the Arbitrage Criterion

The HHD contract does not meet the arbitrage criterion because it prices natural gas on a daily basis while the NYMEX futures contract prices gas on a monthly basis. Moreover, the futures contract is used to discover prices while the HHD contract is used to modify or lift preexisting hedges.

3. Material Liquidity Criterion

As noted above, in its October 20, 2009, **Federal Register** notice, the Commission identified material liquidity, arbitrage and material price reference as potential criteria for SPDC determination of the HHD contract. With respect to the material liquidity criterion, the Commission noted that the total number of transactions executed on ICE's electronic platform in the HHD contract was 5,246 in the second quarter of 2009, resulting in a daily average of 82 trades. During the same period, the HHD contract had a total trading volume of 242,968 contracts and an average daily trading volume of 3,796 contracts. Moreover, open interest as of June 30, 2009, was 20,173 contracts, which included trades executed on ICE's electronic trading platform, as well as trades executed off of ICE's electronic trading platform and then brought to ICE for clearing. In this regard, ICE does not differentiate between open interest created by a transaction executed on its trading platform and that created by a transaction executed off its trading platform.[38] In a subsequent filing dated November 13, 2009, ICE reported that total trading volume in the third quarter of 2009 was 407,037 contracts (or 6,167 contracts on a daily basis). In term of number of transactions, 10,376 trades occurred in the third quarter of 2009 (157.2 trades per day). As of September 30, 2009, open interest in the HHD contract was 25,418 contracts, which included trades executed on ICE's electronic trading platform, as well as trades executed off of ICE's electronic trading platform and then brought to ICE for clearing.

The Commission notes that trading activity in the HHD contract increased between the second and third quarters of 2009. Moreover, the number of trades per day was quite large and was significantly greater than the reporting level of five trades per day. Furthermore, the number of contracts traded is comparable to the levels experienced in a moderately active futures market, such as the ICE US Cotton No. 2 contract. Accordingly, the transaction data provide evidence that the HHD contract may meet the material liquidity criterion.[39]

i. Federal Register Comments

As noted above, ICE was the sole respondent which addressed the question of whether the HHD contract is a SPDC. ICE stated in its comment letter that the HHD contract does not meet the material liquidity criterion for SPDC determination for a number of reasons.

First, ICE opined that the Commission "seems to have adopted a five trade-per-day test to determine whether a contract is materially liquid. It is worth noting that ICE originally suggested that the CFTC use a five trades-per-day threshold as the basis for an ECM to report trade data to the CFTC." On the contrary, the Commission adopted a five trades-per-day threshold as a reporting requirement to enable it to "independently be aware of ECM contracts that may develop into SPDCs"[40] rather than solely relying upon an ECM on its own to identify any such potential SPDCs to the Commission. While a contract that meets this threshold may be subject to scrutiny as a potential SPDC, the threshold is not a test for material liquidity. As noted above, the Commission has not reached a decision regarding material liquidity because, regardless of the relatively large number of trades per day and the large quarterly trading volume in the HHD contract, material liquidity alone is not sufficient to support a SPDC determination.

ICE also stated that "the statistics [provided by ICE] have been misinterpreted and misapplied." In particular, ICE stated that the volume figures used in the Commission's analysis (cited above) "include trades made in all 120 months of each contract" as well as in strips of contract

[38] 74 FR 53720 (October 20, 2009).

[39] In establishing guidance to illustrate how it will evaluate the various criteria, or combinations of criteria, when determining whether a contract is a SPDC, the Commission made clear that "material liquidity itself would not be sufficient to make a determination that a contract is a [SPDC], * * * but combined with other factors it can serve as a guidepost indicating which contracts are functioning as [SPDCs]." For the reasons discussed above, the Commission has found that the HEN contract does not meet either the price linkage or material price reference criterion. In light of this finding and the Commission's Guidance cited above, there is no need to evaluate further the material liquidity criteria since it cannot be used alone as a basis for a SPDC determination.

[40] 73 FR 75892 (December 12, 2008).

months, and a "more appropriate method of determining liquidity is to examine the activity in a single traded month or strip of a given contract." Furthermore, ICE noted that for the HHD contract, "78% of the total volume was actually executed on the ICE platform in the single most liquid, usually prompt, month of the contract."

It is the Commission's opinion that liquidity, with regard to the HHD contract, is typically a function of trading activity in particular lead months and, given sufficient liquidity in such months, the HHD contract itself would be considered liquid. ICE's analysis of its own trade data confirms this to be the case for the HHD contract, and thus, the Commission believes that it applied the statistical data cited above in an appropriate manner for gauging material liquidity.

In addition, ICE stated that the trades-per-day statistics that it provided to the Commission in its quarterly filing and which are cited above includes 2(h)(1) transactions, which were not completed on the electronic trading platform and should not be considered in the SPDC determination process. Commission staff asked ICE to review the data it sent in its quarterly filings and ICE confirmed that the volume data it provided and which the Commission cited in its October 20, 2009, **Federal Register** notice as well as the additional volume information it cites above includes only transaction data executed on ICE's electronic trading platform.[41] The Commission acknowledges that the open interest information it cites above includes transactions made off the ICE platform. However, once open interest is created, there is no way for ICE to differentiate between "on-exchange" versus "off-exchange" created positions, and all such positions are fungible with one another and may be offset in any way agreeable to the position holder regardless of how the position was initially created.

ii. Conclusion Regarding Material Liquidity

For the reasons discussed above, the Commission finds that the HHD contract may meet the material liquidity criterion. However, because the HHD contract does not meet the material price reference or the arbitrage criterion, it is not possible to declare the HHD contract a SPDC since material liquidity cannot be used alone as a basis for SPDC determination.

4. Overall Conclusion

After considering the entire record in this matter, including the comments received, the Commission has determined that the HHD contract does not perform a significant price discovery function under the criteria established in section 2(h)(7) of the CEA. Specifically, the Commission has determined that the HHD contract does not meet the material price reference and arbitrage criteria at this time nor is material liquidity sufficient by itself to support a SPDC determination. Accordingly, the Commission will issue the attached Order declaring that the HHD contract is not a SPDC.

Issuance of this Order indicates that the Commission does not at this time regard ICE as a registered entity in connection with its HHD contract.[42] Accordingly, with respect to its HHD contract ICE is not required to comply with the obligations, requirements and timetables prescribed in Commission rule 36.3(c)(4) for ECMs with SPDCs.

V. Related Matters

a. Paperwork Reduction Act

The Paperwork Reduction Act of 1995 ("PRA")[43] imposes certain requirements on Federal agencies, including the Commission, in connection with their conducting or sponsoring any collection of information as defined by the PRA. Certain provisions of Commission rule 36.3 impose new regulatory and reporting requirements on ECMs, resulting in information collection requirements within the meaning of the PRA. OMB previously has approved and assigned OMB control number 3038–0060 to this collection of information.

b. Cost-Benefit Analysis

Section 15(a) of the CEA[44] requires the Commission to consider the costs and benefits of its actions before issuing an order under the Act. By its terms, section 15(a) does not require the Commission to quantify the costs and benefits of an order or to determine whether the benefits of the order outweigh its costs; rather, it requires that the Commission "consider" the costs and benefits of its actions. Section 15(a) further specifies that the costs and benefits shall be evaluated in light of five broad areas of market and public concern: (1) Protection of market participants and the public; (2) efficiency, competitiveness and financial integrity of futures markets; (3) price discovery; (4) sound risk management practices; and (5) other public interest considerations. The Commission may in its discretion give greater weight to any one of the five enumerated areas and could in its discretion determine that, notwithstanding its costs, a particular order is necessary or appropriate to protect the public interest or to effectuate any of the provisions or accomplish any of the purposes of the Act.

When a futures contract begins to serve a significant price discovery function, that contract, and the ECM on which it is traded, warrants increased oversight to deter and prevent price manipulation or other disruptions to market integrity, both on the ECM itself and in any related futures contracts trading on DCMs. An Order finding that a particular contract is a SPDC triggers this increased oversight and imposes obligations on the ECM calculated to accomplish this goal. The increased oversight engendered by the issue of a SPDC Order increases transparency and helps to ensure fair competition among ECMs and DCMs trading similar products and competing for the same business. Moreover, the ECM on which the SPDC is traded must assume, with respect to that contract, all the responsibilities and obligations of a registered entity under the CEA and Commission regulations. Additionally, the ECM must comply with nine core principles established by section 2(h)(7) of the Act—including the obligation to establish position limits and/or accountability standards for the SPDC. Section 4(i) of the CEA authorize the Commission to require reports for SPDCs listed on ECMs. These increased responsibilities, along with the CFTC's increased regulatory authority, subject the ECM's risk management practices to the Commission's supervision and oversight and generally enhance the financial integrity of the markets.

The Commission has concluded that ICE's HEN, HIS and HHD contracts that are the subject of the attached Orders are not SPDCs; accordingly, the Commission's Orders impose no additional costs and no additional statutorily or regulatory mandated responsibilities on the ECM.

c. Regulatory Flexibility Act

The Regulatory Flexibility Act ("RFA")[45] requires that agencies consider the impact of their rules on small businesses. The requirements of CEA section 2(h)(7) and the Part 36 rules affect ECMs. The Commission previously has determined that ECMs

[41] Supplemental data supplied by ICE confirmed that block trades in the third quarter of 2009 were in addition to the trades that were conducted on the electronic platform; block trades comprised 1.2 percent of all transactions in the HHD contract.

[42] *See* 73 FR 75888, 75893 (Dec. 12, 2008).

[43] 44 U.S.C. 3507(d).

[44] 7 U.S.C. 19(a).

[45] 5 U.S.C. 601 *et seq.*

are not small entities for purposes of the RFA.[46] Accordingly, the Chairman, on behalf of the Commission, hereby certifies pursuant to 5 U.S.C. 605(b) that these Orders, taken in connection with section 2(h)(7) of the Act and the Part 36 rules, will not have a significant impact on a substantial number of small entities.

VI. Orders

a. Order Relating to the ICE Henry Financial Basis Contract

After considering the complete record in this matter, including the comment letters received in response to its request for comments, the Commission has determined to issue the following:

The Commission, pursuant to its authority under section 2(h)(7) of the Act, hereby determines that the Henry Financial Basis contract, traded on the IntercontinentalExchange, Inc., does not at this time satisfy the material price reference and price linkage criteria for significant price discovery contracts. Moreover, under Commission Guidance material liquidity alone cannot support a significant price discovery finding for the Henry Financial Basis contract. Consistent with this determination, the IntercontinentalExchange, Inc., is not considered a registered entity[47] with respect to the Henry Financial Basis contract and is not subject to the provisions of the Commodity Exchange Act applicable to registered entities. Further, the obligations, requirements and timetables prescribed in Commission rule 36.3(c)(4) governing core principle compliance by the IntercontinentalExchange, Inc., are not applicable to the Henry Financial Basis contract with the issuance of this Order.

This Order is based on the representations made to the Commission by the IntercontinentalExchange, Inc., dated July 27, 2009, and November 13, 2009, and other supporting material. Any material change or omissions in the facts and circumstances pursuant to which this order is granted might require the Commission to reconsider its current determination that the Henry Financial Basis contract is not a significant price discovery contract. Additionally, to the extent that it continues to rely upon the exemption in Section 2(h)(3) of the Act, the IntercontinentalExchange, Inc., must continue to comply with all of the applicable requirements of Section 2(h)(3) and Commission Regulation 36.3.

b. Order Relating to the ICE Henry Financial Index Contract

After considering the complete record in this matter, including the comment letters received in response to its request for comments, the Commission has determined to issue the following:

The Commission, pursuant to its authority under section 2(h)(7) of the Act, hereby determines that the Henry Financial Index contract, traded on the IntercontinentalExchange, Inc., does not at this time satisfy the material price reference criterion for significant price discovery contracts. Moreover, under Commission Guidance material liquidity alone cannot support a significant price discovery finding for the Henry Financial Index contract. Consistent with this determination, the IntercontinentalExchange, Inc., is not considered a registered entity[48] with respect to the Henry Financial Index contract and is not subject to the provisions of the Commodity Exchange Act applicable to registered entities. Further, the obligations, requirements and timetables prescribed in Commission rule 36.3(c)(4) governing core principle compliance by the IntercontinentalExchange, Inc., are not applicable to the Henry Financial Index contract with the issuance of this Order.

This Order is based on the representations made to the Commission by the IntercontinentalExchange, Inc., dated July 27, 2009, and November 13, 2009, and other supporting material. Any material change or omissions in the facts and circumstances pursuant to which this order is granted might require the Commission to reconsider its current determination that the Henry Financial Index contract is not a significant price discovery contract. Additionally, to the extent that it continues to rely upon the exemption in Section 2(h)(3) of the Act, the IntercontinentalExchange, Inc., must continue to comply with all of the applicable requirements of Section 2(h)(3) and Commission Regulation 36.3.

c. Order Relating to the ICE Henry Financial Swing Contract

After considering the complete record in this matter, including the comment letters received in response to its request for comments, the Commission has determined to issue the following:

The Commission, pursuant to its authority under section 2(h)(7) of the Act, hereby determines that the Henry Financial Swing contract, traded on the IntercontinentalExchange, Inc., does not at this time satisfy the material price reference and arbitrage criteria for significant price discovery contracts. Moreover, under Commission Guidance material liquidity alone cannot support a significant price discovery finding for the Henry Financial Swing contract. Consistent with this determination, the IntercontinentalExchange, Inc., is not considered a registered entity[49] with respect to the Henry Financial Swing contract and is not subject to the provisions of the Commodity Exchange Act applicable to registered entities. Further, the obligations, requirements and timetables prescribed in Commission rule 36.3(c)(4) governing core principle compliance by the IntercontinentalExchange, Inc., are not applicable to the Henry Financial Swing contract with the issuance of this Order.

This Order is based on the representations made to the Commission by the IntercontinentalExchange, Inc., dated July 27, 2009, and November 13, 2009, and other supporting material. Any material change or omissions in the facts and circumstances pursuant to which this order is granted might require the Commission to reconsider its current determination that the Henry Financial Swing contract is not a significant price discovery contract. Additionally, to the extent that it continues to rely upon the exemption in Section 2(h)(3) of the Act, the IntercontinentalExchange, Inc., must continue to comply with all of the applicable requirements of Section 2(h)(3) and Commission Regulation 36.3.

Issued in Washington, DC on April 28, 2010, by the Commission.

David A. Stawick,

Secretary of the Commission.

[FR Doc. 2010–10313 Filed 5–3–10; 8:45 am]

BILLING CODE P

[46] 66 FR 42256, 42268 (Aug. 10, 2001).

[47] 7 U.S.C. 1a(29).

[48] 7 U.S.C. 1a(29).

[49] 7 U.S.C. 1a(29).

COMMODITY FUTURES TRADING COMMISSION

Orders Finding that the (1) Phys,[1] BS,[2] LD1[3] (US/MM), AB–NIT;[4] (2) Phys, BS, LD1 (US/MM), Union-Dawn;[5] (3) Phys, FP,[6] (CA/GJ),[7] AB–NIT; (4) Phys, FP, (US/MM), Union-Dawn; and (5) Phys, ID,[8] 7a[9] (CA/GJ), AB–NIT Contracts, Offered for Trading on the Natural Gas Exchange, Inc., Do Not Perform a Significant Price Discovery Function

AGENCY: Commodity Futures Trading Commission.

ACTION: Final orders.

SUMMARY: On October 20, 2009, the Commodity Futures Trading Commission ("CFTC" or "Commission") published for comment in the **Federal Register**[10] a notice of its intent to undertake a determination whether the (1) Phys, BS, LD1 (US/MM), AB–NIT ("Alberta Basis"); (2) Phys, BS, LD1 (US/MM), Union-Dawn ("Union-Dawn Basis"); (3) Phys, FP, (CA/GJ), AB–NIT ("Alberta Fixed-Price"); (4) Phys, FP, (US/MM), Union-Dawn ("Union-Dawn Fixed-Price"); and (5) Phys, ID, 7a (CA/GJ), AB–NIT ("7a Index") contracts, which are listed for trading on the Natural Gas Exchange, Inc. ("NGX"), an exempt commercial market ("ECM") under sections 2(h)(3)–(5) of the Commodity Exchange Act ("CEA" or the "Act"), perform a significant price discovery function pursuant to section 2(h)(7) of the CEA. The Commission undertook this review based upon an initial evaluation of information and data provided by NGX as well as other available information. The Commission has reviewed the entire record in this matter, including all comments received, and has determined to issue orders finding that the Alberta Basis, Union-Dawn Basis, Alberta Fixed-Price, Union-Dawn Fixed-Price and 7a Index contracts do not perform a significant price discovery function. Authority for this action is found in section 2(h)(7) of the CEA and Commission rule 36.3(c) promulgated thereunder.

DATES: *Effective Date:* April 28, 2010.

FOR FURTHER INFORMATION CONTACT: Gregory K. Price, Industry Economist, Division of Market Oversight, Commodity Futures Trading Commission, Three Lafayette Centre, 1155 21st Street, NW., Washington, DC 20581. Telephone: (202) 418–5515. E-mail: *gprice@cftc.gov*; or Susan Nathan, Senior Special Counsel, Division of Market Oversight, same address. Telephone: (202) 418–5133. E-mail: *snathan@cftc.gov*.

SUPPLEMENTARY INFORMATION:

I. Introduction

The CFTC Reauthorization Act of 2008 ("Reauthorization Act")[11] significantly broadened the CFTC's regulatory authority with respect to ECMs by creating, in section 2(h)(7) of the CEA, a new regulatory category—ECMs on which significant price discovery contracts ("SPDCs") are traded—and treating ECMs in that category as registered entities under the CEA.[12] The legislation authorizes the CFTC to designate an agreement, contract or transaction as a SPDC if the Commission determines, under criteria established in section 2(h)(7), that it performs a significant price discovery function. When the Commission makes such a determination, the ECM on which the SPDC is traded must assume, with respect to that contract, all the responsibilities and obligations of a registered entity under the Act and Commission regulations, and must comply with nine core principles established by new section 2(h)(7)(C).

On March 16, 2009, the CFTC promulgated final rules implementing the provisions of the Reauthorization Act.[13] As relevant here, rule 36.3 imposes increased information reporting requirements on ECMs to assist the Commission in making prompt assessments whether particular ECM contracts may be SPDCs. In addition to filing quarterly reports of its contracts, an ECM must notify the Commission promptly concerning any contract traded in reliance on the exemption in section 2(h)(3) of the CEA that averaged five trades per day or more over the most recent calendar quarter, and for which the exchange sells its price information regarding the contract to market participants or industry publications, or whose daily closing or settlement prices on 95 percent or more of the days in the most recent quarter were within 2.5 percent of the contemporaneously determined closing, settlement or other daily price of another contract.

Commission rule 36.3(c)(3) established the procedures by which the Commission makes and announces its determination whether a particular ECM contract serves a significant price discovery function. Under those procedures, the Commission will publish notice in the **Federal Register** that it intends to undertake an evaluation whether the specified agreement, contract or transaction performs a significant price discovery function and to receive written views, data and arguments relevant to its determination from the ECM and other interested persons. Upon the close of the comment period, the Commission will consider, among other things, all relevant information regarding the subject contract and issue an order announcing and explaining its determination whether or not the contract is a SPDC. The issuance of an affirmative order signals the effectiveness of the Commission's regulatory authorities over an ECM with respect to a SPDC; at that time such an ECM becomes subject to all provisions of the CEA applicable to registered entities.[14] The issuance of such an order also triggers the obligations, requirements and timetables prescribed in Commission rule 36.3(c)(4).[15]

II. Notice of Intent To Undertake SPDC Determination

On October 20, 2009, the Commission published in the **Federal Register** notice of its intent to undertake a determination whether the Alberta Basis, Union-Dawn Basis, Alberta Fixed-

[1] The acronym "Phys" indicates physical delivery of natural gas.

[2] The acronym "BS" indicates that the contract is a cash-settled basis swap.

[3] The acronym "LD1" indicates the final settlement price of the New York Mercantile Exchange's ("NYMEX's") physically-delivered Henry Hub Natural Gas futures contract for the corresponding contract month, which is expressed in U.S. dollars and cents per million British thermal units (mmBtu).

[4] The acronym "AB–NIT" refers to the Alberta, Canada, market center and Nova Inventory Transfer hub.

[5] "Union-Dawn" refers to the Union Gas, Ltd.'s, Dawn hub, which is located in Canada across the U.S. border from Detroit, Michigan.

[6] The acronym "FP" refers to a fixed-price contract.

[7] The abbreviation CA/GJ refers the Canadian dollars per gigajoule, which is a unit of measure for energy. One GJ is equal to 0.9478 mmBtu.

[8] The acronym "ID" refers to an index contract.

[9] The term "7a" refers to a price index that is computed as a volume-weighted average of transactions that occur on the Natural Gas Exchange's trading platform during a particular calendar month. Such transactions specify the physical delivery of natural gas at the AB–NIT hub in the following calendar month.

[10] 74 FR 53724 (October 20, 2009).

[11] Incorporated as Title XIII of the Food, Conservation and Energy Act of 2008, Public Law 110–246, 122 Stat. 1624 (June 18, 2008).

[12] 7 U.S.C. 1a(29).

[13] 74 FR 12178 (Mar. 23, 2009); these rules became effective on April 22, 2009.

[14] Public Law 110–246 at 13203; *Joint Explanatory Statement of the Committee of Conference*, H.R. Rep. No. 110–627, 110 Cong., 2d Sess. 978, 986 (Conference Committee Report). *See* also 73 FR 75888, 75894 (Dec. 12, 2008).

[15] For an initial SPDC, ECMs have a grace period of 90 calendar days from the issuance of a SPDC determination order to submit a written demonstration of compliance with the applicable core principles. For subsequent SPDCs, ECMs have a grace period of 30 calendar days to demonstrate core principle compliance.

Price, Union-Dawn Fixed Price and 7a Index contracts perform a significant price discovery function and requested comment from interested parties.[16] Comments were received from the Federal Energy Regulatory Commission ("FERC"), NGX and Working Group of Commercial Energy Firms ("WGCEF").[17] The comment letter from FERC[18] did not directly address the issue of whether or not the subject contracts are SPDCs. NGX stated that the subject contracts lack sufficient liquidity to perform a significant price discovery function. WGCEF argued that the Alberta Basis and Union-Dawn Basis contracts fail to meet the material price reference, price linkage and material liquidity criteria for SPDC determination. Similarly, the 7a Index contracts lack sufficient liquidity to perform a significant price discovery function.[19] NGX's and the Working Group's comments are more extensively discussed below, as applicable.

III. Section 2(h)(7) of the CEA

The Commission is directed by section 2(h)(7) of the CEA to consider the following criteria in determining a contract's significant price discovery function:

- *Price Linkage*—the extent to which the agreement, contract or transaction uses or otherwise relies on a daily or final settlement price, or other major price parameter, of a contract or contracts listed for trading on or subject to the rules of a designated contract market ("DCM") or derivatives transaction execution facility ("DTEF"), or a SPDC traded on an electronic trading facility, to value a position, transfer or convert a position, cash or financially settle a position, or close out a position.
- *Arbitrage*—the extent to which the price for the agreement, contract or transaction is sufficiently related to the price of a contract or contracts listed for trading on or subject to the rules of a DCM or DTEF, or a SPDC traded on or subject to the rules of an electronic trading facility, so as to permit market participants to effectively arbitrage between the markets by simultaneously maintaining positions or executing trades in the contracts on a frequent and recurring basis.
- *Material price reference*—the extent to which, on a frequent and recurring basis, bids, offers or transactions in a commodity are directly based on, or are determined by referencing or consulting, the prices generated by agreements, contracts or transactions being traded or executed on the electronic trading facility.
- *Material liquidity*—the extent to which the volume of agreements, contracts or transactions in a commodity being traded on the electronic trading facility is sufficient to have a material effect on other agreements, contracts or transactions listed for trading on or subject to the rules of a DCM, DTEF or electronic trading facility operating in reliance on the exemption in section 2(h)(3).

Not all criteria must be present to support a determination that a particular contract performs a significant price discovery function, and one or more criteria may be inapplicable to a particular contract.[20] Moreover, the statutory language neither prioritizes the criteria nor specifies the degree to which a SPDC must conform to the various criteria. In Guidance issued in connection with the Part 36 rules governing ECMs with SPDCs, the Commission observed that these criteria do not lend themselves to a mechanical checklist or formulaic analysis. Accordingly, the Commission has indicated that in making its determinations it will consider the circumstances under which the presence of a particular criterion, or combination of criteria, would be sufficient to support a SPDC determination.[21] For example, for contracts that are linked to other contracts or that may be arbitraged with other contracts, the Commission will consider whether the price of the potential SPDC moves in such harmony with the other contract that the two markets essentially become interchangeable. This co-movement of prices would be an indication that activity in the contract had reached a level sufficient for the contract to perform a significant price discovery function. In evaluating a contract's price discovery role as a price reference, the Commission the extent to which, on a frequent and recurring basis, bids, offers or transactions are directly based on, or are determined by referencing, the prices established for the contract.

IV. Findings and Conclusions

The Commission's findings and conclusions with respect to the Alberta Basis, Union-Dawn Basis, Alberta Fixed-Price, Union-Dawn Fixed-Price and 7a Index contracts are discussed separately below.

a. The Phys, BS, LD1 (US/MM), AB–NIT (Alberta Basis Contract) and the SPDC Indicia

The Alberta Basis contract calls for the physical delivery of natural gas based on the final settlement price for New York Mercantile Exchange's ("NYMEX's") Henry Hub physically-delivered Natural Gas ("NG") futures contract for the specified calendar month, plus or minus the price differential (basis) between the Alberta delivery point and the Henry Hub. There is no standard size for the Alberta Basis contract, although a minimum

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[16] The Commission's Part 36 rules establish, among other things, procedures by which the Commission makes and announces its determination whether a specific ECM contract serves a significant price discovery function. Under those procedures, the Commission publishes a notice in the **Federal Register** that it intends to undertake a determination whether a specified agreement, contract or transaction performs a significant price discovery function and to receive written data, views and arguments relevant to its determination from the ECM and other interested persons.

[17] FERC is an independent Federal regulatory agency that, among other things, regulates the interstate transmission of natural gas, oil and electricity. NGX is Canada's leading energy exchange and North America's largest physical clearing and settlement facility; NGX is wholly owned by the TMX Group, Inc. WGCEF describes itself as "a diverse group of commercial firms in the domestic energy industry whose primary business activity is the physical delivery of one or more energy commodities to customers, including industrial, commercial and residential consumers" and whose membership consists of "energy producers, marketers and utilities." FIEG describes itself as an association of investment and commercial banks who are active participants in various sectors of the natural gas markets, "including acting as marketers, lenders, underwriters of debt and equity securities, and proprietary investors." The comment letters are available on the Commission's website: comment letters are available on the Commission's Web site: *http://www.cftc.gov/lawandregulation/federalregister/federalregistercomments/2009/09-029.html.*

[18] FERC stated that the subject contracts call for physical delivery of natural gas in Canada, and thus do not appear to be interstate commerce under the Natural Gas Act ("NGA"). Accordingly, FERC expressed the opinion that a determination by the Commission that any of the contracts performs a significant price discovery function "would not appear to conflict with FERC's exclusive jurisdiction under NGA over certain sales of natural gas in interstate commerce for resale or with its other regulatory responsibilities under the NGA" and further that "FERC staff will continue to monitor for any such conflict * * * [and] advise the CFTC" should any such potential conflict arise. CL01.

[19] WGCEF did not address whether the Alberta Fixed Price or Union-Dawn Fixed Price contracts are SPDCs.

[20] In its October 20, 2009, **Federal Register** release, the Commission identified material price reference, price linkage and material liquidity as the possible criteria for SPDC determination of the Alberta Basis and Union-Dawn Basis contracts (arbitrage was not identified as a possible criterion). With respect to the Alberta Fixed-Price, Union-Dawn Fixed-Price and 7a Index contracts, the **Federal Register** release identified material price reference and material liquidity as the possible criteria for SPDC determination (price linkage and arbitrage were not identified as possible criteria). The criteria not indentified in the initial release will not be discussed further in this document or the associated Orders.

[21] 17 CFR part 36, Appendix A.

volume of 100 million British thermal units ("mmBtu") is required in increments of 100 units per day. The Alberta Basis contract is listed for 60 consecutive calendar months.

The Henry Hub,[22] which is located in Erath, Louisiana, is the primary cash market trading and distribution center for natural gas in the United States. It also is the delivery point and pricing basis for the NYMEX's actively traded, physically-delivered natural gas futures contract, which is the most important pricing reference for natural gas in the United States. The Henry Hub, which is operated by Sabine Pipe Line, LLC, serves as a juncture for 13 different pipelines. These pipelines bring in natural gas from fields in the Gulf Coast region and ship it to major consumption centers along the East Coast and Midwest. The throughput shipping capacity of the Henry Hub is 1.8 trillion mmBtu per day.

In addition to the Henry Hub, there are a number of other locations where natural gas is traded. In 2008, there were 33 natural gas market centers in North America.[23] Some of the major trading centers include Alberta, Northwest Rockies, Southern California border and the Houston Ship Channel. For locations that are directly connected to the Henry Hub by one or more pipelines and where there typically is adequate shipping capacity, the price at the other locations usually directly tracks the price at the Henry Hub, adjusted for transportation costs. However, at other locations that are not directly connected to the Henry Hub or where shipping capacity is limited, the prices at those locations often diverge from the Henry Hub price. Furthermore, one local price may be significantly different than the price at another location even though the two markets' respective distances from the Henry Hub are the same. The reason for such pricing disparities is that a given location may experience supply and demand factors that are specific to that region, such as differences in pipeline shipping capacity, unusually high or low demand for heating or cooling or supply disruptions caused by severe weather. As a consequence, local natural gas prices can differ from the Henry Hub price by more than the cost of shipping and such price differences can vary in an unpredictable manner.

[22] The term "hub" refers to a juncture where two or more natural gas pipelines are connected. Hubs also serve as pricing points for natural gas at the particular locations.

[23] See *http://www.eia.doe.gov/pub/oil_gas/natural_gas/feature_articles/2009/ngmarketcenter/ngmarketcenter.pdf.*

The Alberta hub is far removed from the Henry Hub and is not directly connected to the Henry Hub by an existing pipeline. Located in the Canadian province of Alberta, the Alberta natural gas market is a major connection point for long-distance transmission systems that ship natural gas to points throughout Canada and the United States. The Alberta province is Canada's dominant natural gas producing region; six of the nine Canadian market centers are located in the Alberta province. The throughput capacity at the AECO–C hub is ten billion cubic feet per day. Moreover, the number of pipeline interconnections at that hub was four in 2008. Lastly, the AECO–C hub's capacity is 20.4 billion cubic feet per day.[24]

The local price at the Alberta hub typically differs from the price at the Henry Hub. Thus, the price of the Henry Hub physically-delivered futures contract is an imperfect proxy for the Alberta price. Moreover, exogenous factors, such as adverse weather, can cause the Alberta gas price to differ from the Henry Hub price by an amount that is more or less than the cost of shipping, making the NYMEX Henry Hub futures contract even less precise as a hedging tool than desired by market participants. Basis contracts[25] allow traders to more accurately discover prices at alternative locations and hedge price risk that is associated with natural gas at such locations. In this regard, a position at a local price for an alternative location can be established by adding the appropriate basis swap position to a position taken in the NYMEX physically-delivered Henry Hub contract (or in the NYMEX or ICE Henry Hub look-alike contract, which cash settle based on the NYMEX physically-delivered NG contract's final settlement price).

In its October 20, 2009, **Federal Register** notice, the Commission identified material price reference, price linkage and material liquidity as the potential SPDC criteria applicable to the Alberta Basis contract.[26] Each of these criteria is discussed below.

[24] See *http://www.eia.doe.gov/pub/oil_gas/natural_gas/feature_articles/2009/ngmarketcenter/ngmarketcenter.pdf*

[25] Basis contracts denote the difference in the price of natural gas at a specified location minus the price of natural gas at the Henry Hub. The differential can be either a positive or negative value.

[26] As noted above, the Commission did not find an indication of arbitrage in connection with this contract; accordingly, that criterion is not discussed in reference to the Alberta Basis contract.

1. Material Price Reference Criterion

The Commission's October 20, 2009, **Federal Register** notice identified material price reference as a potential basis for a SPDC determination with respect to the Alberta Basis contract. The Commission noted that NGX forged an alliance with the IntercontinentalExchange, Inc., ("ICE") to use the ICE's matching engine to complete transactions in physical natural gas contracts traded on NGX. In return, NGX agreed to provide clearing services for such transactions. As part of the agreement, NGX provides ICE with transaction data, which are then made available to market participants on a paid basis. ICE offers NGX's price data in several packages, which vary in terms of the amount of available historical data. For example, the ICE offers the "OTC Gas End of Day" data package with access to all price data, or just current prices plus a selected number of months (i.e., 12, 24, 36, or 48 months) of historical data.

The Commission will rely on one of two sources of evidence—direct or indirect—to determine that the price of a contract was being used as a material price reference and therefore, serving a significant price discovery function.[27] With respect to direct evidence, the Commission will consider the extent to which, on a frequent and recurring basis, cash market bids, offers or transactions are directly based on or quoted at a differential to, the prices generated on the ECM in question. Direct evidence may be established when cash market participants are quoting bid or offer prices or entering into transactions at prices that are set either explicitly or implicitly at a differential to prices established for the contract in question. Cash market prices are set explicitly at a differential to the section 2(h)(3) contract when, for instance, they are quoted in dollars and cents above or below the reference contract's price. Cash market prices are set implicitly at a differential to a section 2(h)(3) contract when, for instance, they are arrived at after adding to, or subtracting from the section 2(h)(3) contract, but then quoted or reported at a flat price. With respect to indirect evidence, the Commission will consider the extent to which the price of the contract in question is being routinely disseminated in widely distributed industry publications—or offered by the ECM itself for some form of remuneration—and consulted on a frequent and recurring basis by industry

[27] 17 CFR part 36, Appendix A.

participants in pricing cash market transactions.

The Alberta hub is a major trading center for natural gas in North America. Traders, including producers, keep abreast of the prices of the Alberta market center when conducting cash deals. However, ICE's cash-settled AECO Financial Basis contract is used more widely as a price reference than the NGX Alberta Basis contract. Traders look to ICE contract's competitively determined price as an indication of expected values of natural gas at the Alberta hub when entering into cash market transactions for natural gas, especially those trades providing for physical delivery in the future. Moreover, traders use ICE's AECO Financial Basis contract, as well as other basis contracts, to hedge cash market positions and transactions. The substantial volume of trading and open interest in the ICE contract attests to its use for this purpose.[28] In contrast, trading volume in the NGX Alberta Basis contract is much smaller than in ICE's cash-settled version of the contract. In this regard, total trading volume in the NGX Alberta Basis contract in the third quarter of 2009 was equivalent to 52,158 NYMEX physically-delivered natural gas contracts, which has a size of 10,000 mmBtu.

Accordingly, although the Alberta Hub is a major trading center for natural gas and, as noted, NGX provides price information for the Alberta Basis contract to ICE which sells it, the Commission has found upon further evaluation that the Alberta Basis contract is not routinely consulted by industry participants in pricing cash market transactions and thus does not meet the Commission's Guidance for the material price reference criterion. In this regard, the ICE AECO natural gas futures contract is routinely consulted by industry participants in pricing cash market transactions at this location. Because both the NGX and the ICE contracts basically price the same commodity at the same location and time and the ICE contract has significantly higher trading volume and open interest, it is not necessary for market participants to independently refer to the NGX Alberta Basis contract for pricing natural gas at this location. Thus, the Alberta Basis contract does not satisfy the direct price reference test for existence of material price reference. Furthermore, the Commission notes that publication of the Alberta Basis contract's prices is not indirect evidence of material price reference. The Alberta Basis contract's prices are published with those of numerous other contracts, including ICE's AECO Financial Basis contract, which are of more interest to market participants. Thus, the Commission has concluded that traders likely do not specifically purchase ICE data packages for the NGX Alberta Basis contract's prices and do not consult such prices on a frequent and recurring basis in pricing cash market transactions.

i. **Federal Register** Comments

NGX states its opinion that the Alberta Basis contract does not satisfy the material price reference criteria because the contract lacks sufficient liquidity, and "the consideration of liquidity is implicitly understood to be a relevant, if not fundamental factor, where material price reference is being considered."[29] Furthermore, NGX opined that the Commission purported "to adopt a threshold as low as 5, 10 or 20 trades per day as sufficiently material to attract a SPDC designation."[30] In this regard, the Commission adopted a five trades-per-day threshold as a reporting requirement to enable it to "independently be aware of ECM contracts that may develop into SPDCs"[31] rather than solely relying upon an ECM on its own to identify any such potential SPDCs to the Commission. Thus, any contract that meets this threshold may be subject to scrutiny as a potential SPDC. However, this does not mean that the contract will be found to be a SPDC merely because it met the reporting threshold. WGCEF states that there is no direct evidence that any contracts on any market settle to or reference the NGX Alberta Basis price. Moreover, WGCEF "does not believe the fact that ICE publishes the settlement prices of NGX physical transactions constitutes sufficient evidence of a Material Price Reference necessary to satisfy the requirements of CEA Section 2(h)(7)(B)(iii)." It notes that the publication of NGX price data by ICE is the result of a unique arrangement between ICE and NGX, whereby ICE serves as the exclusive trading platform for NGX contracts and NGX does not publish any trade data on its own website. "Given this unique arrangement," WGCEF asserts, "it is only logical that ICE publishes transaction data regarding the NGX physical deals in its "OTC Gas End of Day" publication." As noted above, the Commission believes that publication of the Alberta Basis contract's prices is not indirect evidence of material price reference. The Alberta Basis contract's prices are published with those of numerous other contracts, including ICE's AECO Financial Basis contract, which are of more interest to market participants. As a result, the Commission has concluded that traders likely do not specifically purchase ICE data packages for the NGX Alberta Basis contract's prices and do not consult such prices on a frequent and recurring basis in pricing cash market transactions.

ii. Conclusion Regarding Material Price Reference

Based on the above, the Commission finds that the NGX Alberta Basis contract does not meet the material price reference criterion because cash market transactions are not priced either explicitly or implicitly on a frequent and recurring basis at a differential to the Alberta Basis contract's price (direct evidence). Moreover, while the Alberta Basis contract's price data is sold to market participants, market participants likely do not specifically purchase the ICE data packages for the Alberta contract's prices and do not consult such prices on a frequent and recurring basis in pricing cash market transactions (indirect evidence).

2. Price Linkage Criterion

In its October 20, 2009, **Federal Register** notice, the Commission identified price linkage as a potential basis for a SPDC determination with respect to the Alberta Basis contract. In this regard, the final settlement of the Alberta Basis contract is based, in part, on the final settlement price of NYMEX's Henry Hub physically delivered NG futures contract, where NYMEX is registered with the Commission as a DCM.

The Commission's Guidance on Significant Price Discovery Contracts notes that a "price-linked contract is a contract that relies on a contract traded on another trading facility to settle, value or otherwise offset the price-linked contract."[32] Furthermore, the Guidance notes that "[f]or a linked contract, the mere fact that a contract is linked to another contract will not be sufficient to support a determination that a contract performs a significant

[28] In the third quarter of 2009, 6,320 separate trades occurred on ICE's electronic platform in its AECO Financial Basis contract, resulting in a daily average of 95.8 trades. During the same period, the ICE contract had a total trading volume on its electronic platform of 736,412 contracts (which was an average of 11,158 contracts per day). As of September 30, 2009, open interest in the ICE AECO Financial Basis contract was 483,561 contracts.

[29] CL 02.

[30] *Id.*

[31] 73 FR 75892 (December 12, 2008)

[32] Appendix A to the Part 36 rules.

price discovery function. To assess whether such a determination is warranted, the Commission will examine the relationship between transaction prices of the linked contract and the prices of the referenced contract. The Commission believes that where material liquidity exists, prices for the linked contract would be observed to be substantially the same as, or move substantially in conjunction with, the prices of the referenced contract." The Guidance proposes a threshold price relationship such that prices of the ECM linked contract will fall within a 2.5 percent price range for 95 percent of contemporaneously determined closing, settlement or other daily prices over the most recent quarter. Finally, the Commission also stated in the Guidance that it would consider a linked contract that has a trading volume equivalent to 5 percent of the volume of trading in the contract to which it is linked to have sufficient volume potentially to be deemed SPDC ("minimum threshold").

To assess whether the Alberta Basis contract meets the price linkage criterion, Commission staff obtained price data from NGX and performed the statistical tests cited above. Staff found that, while the Alberta Basis contract price is determined, in part, by the final settlement price of the NYMEX physically delivered natural gas futures contract (a DCM contract), the imputed Alberta price (derived by adding the NYMEX Henry Hub Natural Gas price to the Alberta Basis price) is not within 2.5 percent of the settlement price of the corresponding NYMEX Henry Hub natural gas futures contract on 95 percent or more of the days. Specifically, during the third quarter of 2009, none of the Alberta Basis natural gas prices derived from the NGX basis values were within 2.5 percent of the daily settlement price of the NYMEX Henry Hub futures contract. In addition, staff found that the Alberta Basis contract fails to meet the volume threshold requirement. In particular, the total trading volume in the NYMEX NG contract during the third quarter of 2009 was 14,022,963 contracts, with 5 percent of that number being 701,148 contracts. Trades on the NGX centralized market in the Alberta Basis contract during the same period was 52,168 NYMEX-equivalent contracts. Thus, centralized-market trades in the Alberta Basis contract amounted to less than the minimum threshold.

i. Federal Register Comments

NGX states its belief that the Alberta Basis contract does not meet the price linkage factor because there is insufficient trading activity in this contract.

WGCEF acknowledges that the Alberta Basis contract is technically linked to the NYMEX Henry Hub NG contract. However, WGCEF contends that a comparison of the Alberta Basis contract price with NYMEX NG settlement prices from July 21, 2009 through November 2, 2009 clearly establishes that prices for these contracts are not substantially the same and do not move substantially in conjunction with one another.

ii. Conclusion Regarding the Price Linkage Criterion

The Commission finds that the NGX Alberta Basis contract does not meet the price linkage criterion because it fails the price relationship and volume test provided for in the Commission's Guidance.

3. Material Liquidity Criterion

As noted above, in its October 20, 2009, **Federal Register** notice, the Commission identified material liquidity, price linkage and material price reference as potential criteria for SPDC determination of the AB contract. To assess whether a contract meets the material liquidity criterion, the Commission first examines trading activity as a general measurement of the contract's size and potential importance. If the Commission finds that the contract in question meets a threshold of trading activity that would render it of potential importance, the Commission will then perform a statistical analysis to measure the effect that changes to the subject-contract's prices potentially may have on prices for other contracts listed on an ECM or a DCM.

With respect to the material liquidity criterion, the Commission noted that the average number of transactions in the Alberta Basis nearby month contract was 23.2 trades per day in the second quarter of 2009. During the same period, the Alberta Basis contract had an average daily trading volume of 5,869,000 mmBtu (or 587 NYMEX-equivalent contracts of 10,000 mmBtu size). Moreover, open interest as of June 30, 2009, was 150,213,600 mmBtu in the nearby month (15,021 NYMEX equivalents) and 10,112,200 mmBtu (1,011 NYMEX equivalents) for delivery two months out.[33]

In a subsequent filing, NGX reported that in the third quarter of 2009 the total number of transactions was 2,640 trades (an average of 40 trades per day). Trading volume in the third quarter of 2009 was 521,580,000 mmBtu (52,158 NYMEX-equivalent contracts) or an average of 7,900,000 mmBtu (790 NYMEX-equivalent contracts) on a daily basis. As of September 30, 2009, open interest in the Alberta Basis contract was 6,440,000 mmBtu (644 NYMEX-equivalent contracts).

The number of trades per day remained relatively low from the second to third quarters of 2009, and averaged only slightly more than the reporting level of five trades per day. Moreover, trading activity in the Alberta Basis contract, as characterized by total quarterly volume, indicates that the Alberta Basis contract experiences trading activity that is similar to that of minor futures markets.[34] Thus, the Alberta Basis contract does not meet a threshold of trading activity that would render it of potential importance and no additional statistical analysis is warranted.[35]

i. **Federal Register** Comments

NGX stated in its comment letter that the Alberta Basis contract does not meet the material liquidity criterion for SPDC determination for a number of reasons.

First, NGX opined that the Commission "seems to have applied a threshold for 'material liquidity' that is extremely low, and in general insufficient to support a determination that these contracts are no longer emerging markets but in fact serve a significant price discovery function." NGX also noted that the Commission's Guidance states that material liquidity was intended to be a "broad concept that captures the ability to transact immediately with little or no price concession." The Guidance also states that where "material liquidity exists, a more or less continuous stream of prices can be observed and the prices should be similar," such as "where trades occur multiple times per minute." NGX then opined that "[t]he levels of liquidity

[33] Second quarter 2009 data was submitted to the Commission in a different format than in later filings. In this regard total trading volume and total number of trades per quarter were not identified.

[34] Based on the Commission's experience, a minor futures contract is, generally, one that has a quarterly trading volume of 100,000 contracts or less.

[35] In establishing guidance to illustrate how it will evaluate the various criteria, or combinations of criteria, when determining whether a contract is an SPDC, the Commission made clear that "material liquidity itself would not be sufficient to make a determination that a contract is a [SPDC], * * * but combined with other factors it can serve as a guidepost indicating which contracts are functioning as [SPDCs]." For the reasons discussed above, the Commission has found that the Union-Dawn Basis contract does not meet either the price linkage or material price reference criterion. In light of this finding and the Commission's Guidance cited above, there is no need to evaluate further the material liquidity criteria since it cannot be used alone as a basis for an SPDC determination.

outlined above for the Proposed Contracts cannot be what Congress intended in establishing the dividing line between contracts ripe for regulation and those still emerging and in need of further incubation."

WGCEF used arguments similar to those of NGX in opining that the Alberta Basis contract does not meet the material liquidity criterion. For example, WGCEF stated that the Alberta Basis contract does not have an effect on other contracts that are listed for trading, particularly the NYMEX NG contract. WGCEF pointed out the Commission's Guidance which states that a "continuous stream of prices" should be observed in markets with material liquidity. In addition, WGCEF indicated that in liquid markets observed prices should be similar to each other and that transactions should occur multiple times per minute; "the trade frequency of the Alberta Basis Contract in terms of multiple trades per minute is very low." In this regard, the Commission notes that it adopted a five trades-per-day threshold as a reporting requirement to enable it to "independently be aware of ECM contracts that may develop into SPDCs" [36] rather than solely relying upon an ECM on its own to identify any such potential SPDCs to the Commission. Thus, any contract that meets this threshold may be subject to scrutiny as a potential SPDC but this does not mean that the contract will be found to be a SPDC merely because it met the reporting threshold. Furthermore, the Commission observes that a continuous stream of prices would indeed be an indication of liquidity for certain markets but the Guidance also notes that "quantifying the levels of immediacy and price concession that would define material liquidity may differ from one market or commodity to another."

ii. Conclusion Regarding Material Liquidity

For the reasons discussed above, the Commission finds that the Alberta Basis contract does not meet the material liquidity criterion.

4. Overall Conclusion Regarding the Alberta Basis Contract

After considering the entire record in this matter, including the comments received, the Commission has determined that the NGX Alberta Basis contract does not perform a significant price discovery function under the criteria established in section 2(h)(7) of the CEA. Specifically, the Commission has determined that the NGX Alberta Basis contract does not meet the material price reference, price linkage, or material liquidity criteria at this time. Accordingly, the Commission is issuing the attached Order declaring that the Alberta Basis contract is not a SPDC.

Issuance of this Order indicates that the Commission does not at this time regard NGX as a registered entity in connection with its Alberta Basis contract.[37] Accordingly, with respect to its Alberta Basis contract, NGX is not required to comply with the obligations, requirements and timetables prescribed in Commission rule 36.3(c)(4) for ECMs with SPDCs. However, NGX must continue to comply with the applicable reporting requirements for ECMs.

b. The Phys, BS, LD1 (US/MM), Union-Dawn (Union-Dawn Basis) Contract and the SPDC Indicia

The NGX Union-Dawn Basis contract is a monthly contract that calls for physical delivery of natural gas based on the final settlement price for NYMEX's Henry Hub physically-delivered natural gas futures contract for the specified calendar month, plus or minus the price differential (basis) between the Dawn delivery point and the Henry Hub. There is no standard size for the Union-Dawn Basis contract, although a minimum volume of 100 mmBtu is required in increments of 100 units per day. The Union-Dawn Basis contract is listed for 60 consecutive calendar months.

The Henry Hub,[38] which is located in Erath, Louisiana, is the primary cash market trading and distribution center for natural gas in the United States. It also is the delivery point and pricing basis for the NYMEX's actively traded, physically-delivered natural gas futures contract, which is the most important pricing reference for natural gas in the United States. The Henry Hub, which is operated by Sabine Pipe Line, LLC, serves as a juncture for 13 different pipelines. These pipelines bring in natural gas from fields in the Gulf Coast region and ship it to major consumption centers along the East Coast and Midwest. The throughput shipping capacity of the Henry Hub is 1.8 trillion mmBtu per day.

In addition to the Henry Hub, there are a number of other locations where natural gas is traded. In 2008, there were 33 natural gas market centers in North America.[39] Some of the major trading centers include Alberta, Northwest Rockies, Southern California border and the Houston Ship Channel. For locations that are directly connected to the Henry Hub by one or more pipelines and where there typically is adequate shipping capacity, the price at the other locations usually directly tracks the price at the Henry Hub, adjusted for transportation costs. However, at other locations that are not directly connected to the Henry Hub or where shipping capacity is limited, the prices at those locations often diverge from the Henry Hub price. Furthermore, one local price may be significantly different than the price at another location even though the two markets' respective distances from the Henry Hub are the same. The reason for such pricing disparities is that a given location may experience supply and demand factors that are specific to that region, such as differences in pipeline shipping capacity, unusually high or low demand for heating or cooling or supply disruptions caused by severe weather. As a consequence, local natural gas prices can differ from the Henry Hub price by more than the cost of shipping and such price differences can vary in an unpredictable manner.

Union Gas, Ltd., is a major Canadian natural gas storage, transmission, and distribution company based in Ontario, Canada. Union Gas offers premium storage and transportation services to customers at the Dawn hub, which is the largest underground storage facility in Canada and one of the largest in North America. The Dawn hub offers customers an important link for natural gas moving from Western Canadian and U.S. supply basins to markets in central Canada and the northeast United States. The throughput capacity at the Dawn hub is 9.3 billion cubic feet per day. Moreover, the number of pipeline interconnections at that hub was ten in 2008. Lastly, the Dawn hub's capacity is 12.8 billion cubic feet per day.[40]

The local price at the Dawn hub typically differs from the price at the Henry Hub. Thus, the price of the Henry Hub physically-delivered futures contract is an imperfect proxy for the Dawn price. Moreover, exogenous factors, such as adverse weather, can cause the Dawn gas price to differ from the Henry Hub price by an amount that is more or less than the cost of shipping, making the NYMEX Henry Hub futures

[36] 73 FR 75892 (December 12, 2008).

[37] *See* 73 FR 75888, 75893 (Dec. 12, 2008).

[38] The term "hub" refers to a juncture where two or more natural gas pipelines are connected. Hubs also serve as pricing points for natural gas at the particular locations.

[39] *See http://www.eia.doe.gov/pub/oil_gas/natural_gas/feature_articles/2009/ngmarketcenter/ngmarketcenter.pdf.*

[40] *See http://www.eia.doe.gov/pub/oil_gas/natural_gas/feature_articles/2009/ngmarketcenter/ngmarketcenter.pdf.*

contract even less precise as a hedging tool than desired by market participants. Basis contracts [41] allow traders to more accurately discover prices at alternative locations and hedge price risk that is associated with natural gas at such locations. In this regard, a position at a local price for an alternative location can be established by adding the appropriate basis swap position to a position taken in the NYMEX physically-delivered Henry Hub contract (or in the NYMEX or ICE Henry Hub look-alike contract, which cash settle based on the NYMEX physically-delivered natural gas contract's final settlement price).

In its October 20, 2009, **Federal Register** notice, the Commission identified material price reference, price linkage and material liquidity as the potential SPDC criteria applicable to the Union-Dawn Basis contract. Each of these criteria is discussed below.[42]

1. Material Price Reference Criterion

The Commission's October 20, 2009, **Federal Register** notice identified material price reference as a potential basis for a SPDC determination with respect to this contract. The Commission noted that NGX forged an alliance with ICE to use ICE's matching engine to complete transactions in physical natural gas contracts traded on NGX. In return, NGX agreed to provide the clearing services for such transactions. As part of the agreement, NGX provides ICE with transaction data, which are then made available to market participants on a paid basis. ICE offers the NGX data in several packages, which vary in terms of the amount of available historical data. For example, the ICE offers the "OTC Gas End of Day" data packages with access to all price data, or just current prices plus a selected number of months (*i.e.*, 12, 24, 36, or 48 months) of historical data.

The Commission will rely on one of two sources of evidence—direct or indirect—to determine that the price of a contract was being used as a material price reference and therefore, serving a significant price discovery function.[43] With respect to direct evidence, the Commission will consider the extent to which, on a frequent and recurring basis, cash market bids, offers or transactions are directly based on or quoted at a differential to, the prices generated on the ECM in question. Direct evidence may be established when cash market participants are quoting bid or offer prices or entering into transactions at prices that are set either explicitly or implicitly at a differential to prices established for the contract in question. Cash market prices are set explicitly at a differential to the section 2(h)(3) contract when, for instance, they are quoted in dollars and cents above or below the reference contract's price. Cash market prices are set implicitly at a differential to a section 2(h)(3) contract when, for instance, they are arrived at after adding to, or subtracting from the section 2(h)(3) contract, but then quoted or reported at a flat price. With respect to indirect evidence, the Commission will consider the extent to which the price of the contract in question is being routinely disseminated in widely distributed industry publications—or offered by the ECM itself for some form of remuneration—and consulted on a frequent and recurring basis by industry participants in pricing cash market transactions.

The Union-Dawn hub is a relatively important trading center for natural gas in North America. Traders use the NGX Union-Dawn Basis contract to hedge cash market positions and transactions. Nevertheless, the relatively small volume of trading and open interest [44] in the Union-Dawn Basis contract does not support a finding that the contract is consulted on a frequent and recurring basis in establishing cash market transaction prices. Thus, the Union-Dawn Basis contract does not satisfy the direct price reference test for existence of material price reference. Furthermore, the Commission notes that publication of the Union-Dawn Basis contract's prices is not indirect evidence of material price reference. The Union-Dawn Basis contract's prices are published with those of numerous other contracts, including ICE's AECO Financial Basis contract, which are of more interest to market participants. Thus, the Commission has concluded that traders likely do not specifically purchase ICE data packages for the NGX Union-Dawn Basis contract's prices and do not consult such prices on a frequent and recurring basis in pricing cash market transactions.

i. **Federal Register** Comments

NGX expressed the opinion that the Union Dawn Basis contract does not meet the material price reference criterion because there is insufficient trading activity in this contract.

WGCEF stated that there is no evidence that the Union-Dawn Basis contract does not directly affect the "settlement of the NYMEX NG Contract nor does it influence physical pricing at the Henry Hub." [45] Moreover, there is no evidence that a contract in any market is tied directly or indirectly to the settlement price of the Union-Dawn Basis contract. With respect to indirect evidence, WGCEF believes that ICE's publication of the NGX contract's settlement prices does not "constitute sufficient evidence" of material price reference, and is simply an extension of the "unique [business] arrangement" between ICE and NGX.

ii. Conclusion Regarding Material Price Reference

Based on the above, the Commission finds that the NGX Union-Dawn Basis contract does not meet the material price reference criterion because cash market transactions are not priced either explicitly or implicitly on a frequent and recurring basis at a differential to the Union-Dawn Basis contract's price (direct evidence). Moreover, while the Union-Dawn Basis contract's price data is sold to market participants, individuals likely do not specifically purchase the ICE data packages for the Union-Dawn Basis contract's prices and do not consult such prices on a frequent and recurring basis in pricing cash market transactions (indirect evidence).

2. Price Linkage Criterion

In its October 20, 2009, **Federal Register** notice, the Commission identified price linkage as a potential basis for a SPDC determination with respect to the Union-Dawn Basis contract. In this regard, the final settlement of the Union-Dawn Basis contract is based, in part, on the final settlement price of the NYMEX's Henry Hub physically-delivered natural gas futures contract, where the NYMEX is registered with the Commission as a DCM.

The Commission's Guidance on Significant Price Discovery Contracts notes that a "price-linked contract is a contract that relies on a contract traded on another trading facility to settle, value or otherwise offset the price-

[41] Basis contracts denote the difference in the price of natural gas at a specified location minus the price of natural gas at the Henry Hub. The differential can be either a positive or negative value.

[42] As noted above, the Commission did not find an indication of arbitrage in connection with this contract; accordingly, that criterion is not discussed in reference to the Union-Dawn Basis contract.

[43] 17 CFR part 36, Appendix A.

[44] In the third quarter of 2009, the Union-Dawn Basis contract had a total trading volume that was equivalent to 28,090 NYMEX physically-delivered NG futures contracts (the size of one NYMEX NG contract is 10,000 mmBtu); the Union-Dawn contract also had an open interest equivalent to 2,948 NYMEX NG futures contracts.

[45] CL 03.

linked contract."[46] Furthermore, the Guidance notes that "[f]or a linked contract, the mere fact that a contract is linked to another contract will not be sufficient to support a determination that a contract performs a significant price discovery function. To assess whether such a determination is warranted, the Commission will examine the relationship between transaction prices of the linked contract and the prices of the referenced contract. The Commission believes that where material liquidity exists, prices for the linked contract would be observed to be substantially the same as, or move substantially in conjunction with, the prices of the referenced contract." The Guidance proposes a threshold price relationship such that prices of the ECM linked contract will fall within a 2.5 percent price range for 95 percent of contemporaneously determined closing, settlement or other daily prices over the most recent quarter. Finally, the Commission also stated in the Guidance that it would consider a linked contract that has a trading volume equivalent to 5 percent of the volume of trading in the contract to which it is linked to have sufficient volume potentially to be deemed a SPDC ("minimum threshold").

To assess whether the Union-Dawn contract meets the price linkage criterion, Commission staff obtained price data from NGX and performed the statistical tests cited above. Staff found that, while the Union-Dawn Basis contract price is determined, in part, by the final settlement price of the NYMEX physically-delivered natural gas futures contract (a DCM contract), the imputed Union-Dawn price (derived by adding the NYMEX Henry Hub Natural Gas price to the Union-Dawn Basis price) is not within 2.5 percent of the settlement price of the corresponding NYMEX Henry Hub natural gas futures contract on 95 percent or more of the days. Specifically, during the third quarter of 2009, 27.4 percent of the Union-Dawn Basis natural gas prices derived from the NGX basis values were within 2.5 percent of the daily settlement price of the NYMEX Henry Hub futures contract. In addition, staff found that the Union-Dawn Basis contract fails to meet the volume threshold requirement. In particular, the total trading volume in the NYMEX NG contract during the third quarter of 2009 was 14,022,963 contracts, with 5 percent of that number being 701,148 contracts. Trades on the NGX centralized market in the Union-Dawn Basis contract during the same period was 28,090 NYMEX-equivalent contracts. Thus, centralized-market trades in the Union-Dawn Basis contract amounted to less than the minimum threshold.

i. **Federal Register** Comments

NGX states its belief that the Union Dawn Basis contract does not meet the price linkage factor because there is insufficient trading activity in this contract. WGCEF acknowledges that the Union-Dawn Basis is technically linked to the NYMEX physically-delivered NG futures contract. The Working Group notes that a comparison of the Union-Dawn Basis with NYMEX NG settlement prices from July 21, 2009, through November 2, 2009, clearly establishes that these contracts are not substantially the same and do not move substantially in conjunction with one another.

ii. Conclusion Regarding the Price Linkage Criterion

The Commission finds that the Union-Dawn Basis contract does not meet the price linkage criterion because it fails the price relationship and volume tests provided for in the Commission's Guidance.

3. Material Liquidity Criterion

As noted above, in its October 20, 2009, **Federal Register** notice, the Commission identified material liquidity, price linkage and material price reference as potential criteria for SPDC determination of the Union-Dawn Basis contract. To assess whether a contract meets the material liquidity criterion, the Commission first examines trading activity as a general measurement of the contract's size and potential importance. If the Commission finds that the contract in question meets a threshold of trading activity that would render it of potential importance, the Commission will then perform a statistical analysis to measure the effect that changes to the subject-contract's prices potentially may have on prices for other contracts listed on an ECM or a DCM.

In its October 20, 2009, **Federal Register** release, the Commission noted that the total number of transactions executed on NGX's electronic platform in the nearby month of the Union-Dawn Basis contract was 8.3 trades per day in the second quarter of 2009. During the same period, the Union-Dawn Basis contract had an average daily trading volume of 1,332,400 mmBtu (or 133 NYMEX-equivalent contracts per day). Moreover, open interest as of June 30, 2009, was 28,203,800 mmBtu (2,820 NYMEX-equivalent contracts) in the nearby contract month and 12,908,400 mmBtu (1,291 NYMEX-equivalent contracts) for delivery two months out.[47]

In a subsequent filing, NGX reported that total trading volume in the third quarter of 2009 was 28,090 contracts (or 425 contracts on a daily basis). In term of number of transactions, 1,831 trades occurred in the third quarter of 2009 (28 trades per day). As of September 30, 2009, open interest in the Union-Dawn Basis contract was 23,289 NYMEX-equivalent contracts.

As indicated above, the average number of trades per day in the second and third quarters of 2009 was only slightly above the minimum reporting level (5 trades per day). Moreover, trading activity in the Union-Dawn Basis contract, as characterized by total quarterly volume, indicates that the Union-Dawn Basis contract experiences trading activity similar to that of minor futures markets.[48] Thus, the Union-Dawn Basis contract does not meets a threshold of trading activity that would render it of potential importance and no additional statistical analysis is warranted.[49]

i. **Federal Register** Comments

NGX stated in its comment letter that the Union-Dawn Basis contract does not meet the material liquidity criterion for SPDC determination for a number of reasons.

First, NGX opined that the Commission "seems to have applied a threshold for 'material liquidity' that is extremely low, and in general insufficient to support a determination that these contracts are no longer emerging markets but in fact serve a significant price discovery function". NGX also noted that the Commission's Guidance states that material liquidity was intended to be a "broad concept that captures the ability to transact immediately with little or no price

[46] Appendix A to the Part 36 rules.

[47] Second quarter 2009 data was submitted to the Commission is a different format than in later filings. In this regard total trading volume and total number of trades per quarter were not identified.

[48] Based on the Commission's experience, a minor futures contract is, generally, one that has a quarterly trading volume of 100,000 contracts or less.

[49] In establishing guidance to illustrate how it will evaluate the various criteria, or combinations of criteria, when determining whether a contract is a SPDC, the Commission made clear that "material liquidity itself would not be sufficient to make a determination that a contract is a [SPDC], * * * but combined with other factors it can serve as a guidepost indicating which contracts are functioning as [SPDCs]." For the reasons discussed above, the Commission has found that the Union-Dawn Basis contract does not meet either the price linkage or material price reference criterion. In light of this finding and the Commission's Guidance cited above, there is no need to evaluate further the material liquidity criteria since it cannot be used alone as a basis for a SPDC determination.

concession." The Guidance also states that where "material liquidity exists, a more or less continuous stream of prices can be observed and the prices should be similar", such as "where trades occur multiple times per minute." NGX then opined that "[t]he levels of liquidity outlined above for the Proposed Contracts cannot be what Congress intended in establishing the dividing line between contracts ripe for regulation and those still emerging and in need of further incubation.

The WGCEF used arguments similar to those of NGX in opining that the Union-Dawn Basis contract does not meet the material liquidity criterion. In addition, WGCEF noted that to be materially liquid, a contract must have "a material effect of other contracts" and have "sufficient liquidity to perform a significant price discovery function." WGCEF stated that the Union-Dawn Basis contract lacks both of those features.

In this regard, the Commission notes that it adopted a five trades-per-day threshold as a reporting requirement to enable it to "independently be aware of ECM contracts that may develop into SPDCs"[50] rather than solely relying upon an ECM on its own to identify any such potential SPDCs to the Commission. Thus, any contract that meets this threshold may be subject to scrutiny as a potential SPDC but this does not mean that the contract will be found to be a SPDC merely because it met the reporting threshold. Furthermore, the Commission observes that a continuous stream of prices would indeed be an indication of liquidity for certain markets but the Guidance also notes that "quantifying the levels of immediacy and price concession that would define material liquidity may differ from one market or commodity to another."

ii. Conclusion Regarding Material Liquidity

For the reasons discussed above, the Commission finds that the Union-Dawn Basis contract does not meet the material liquidity criterion.

4. Overall Conclusion Regarding the Union-Dawn Basis Contract

After considering the entire record in this matter, including the comments received, the Commission has determined that the Union-Dawn Basis contract does not perform a significant price discovery function under the criteria established in section 2(h)(7) of the CEA. Specifically, the Commission has determined that the Union-Dawn Basis contract does not meet the material price reference, price linkage, or material liquidity criteria at this time. Accordingly, the Commission is issuing the attached Order declaring that the Union-Dawn Basis contract is not a SPDC.

Issuance of this Order indicates that the Commission does not at this time regard NGX as a registered entity in connection with its Union-Dawn Basis contract.[51] Accordingly, with respect to its Union-Dawn Basis contract, NGX is not required to comply with the obligations, requirements and timetables prescribed in Commission rule 36.3(c)(4) for ECMs with SPDCs. However, NGX must continue to comply with the applicable reporting requirements for ECMs.

c. The Phys, FP, (CA/GJ), AB–NIT (Alberta Fixed Price) Contract and the SPDC Indicia

The Alberta Fixed-Price contract calls for physical delivery of natural gas at the Alberta hub over a number of different time periods. This contract allows delivery of natural gas during the following day, Friday plus two or three days, Saturday plus three or four days, Sunday plus two days, the remainder of the month, throughout the nearby calendar month, and during a specific future calendar month. Each delivery period is considered to be a separate contract, and market participants value each delivery period separately. However, overlapping delivery days are considered fungible, and, thus, may be offset by traders. There is no standard size for the Alberta Fixed-Priced contract, although a minimum volume of 94.78 mmBtu is required in increments of 100 units per day. The NGX lists the Alberta Fixed-Price contract for 60 calendar months.

As noted above, the primary pricing point for natural gas in North America is the Henry Hub, which is located in Erath, Louisiana. In addition to the Henry Hub, there are a number of other locations where natural gas is traded. In 2008, there were 33 natural gas market centers in North America.[52] Some of the major trading centers include Alberta, Northwest Rockies, Southern California border and the Houston Ship Channel. For locations that are directly connected to the Henry Hub by one or more pipelines and where there typically is adequate shipping capacity, the price at the other locations usually directly tracks the price at the Henry Hub, adjusted for transportation costs. However, at other locations that are not directly connected to the Henry Hub or where shipping capacity is limited, the prices at those locations often diverge from the Henry Hub price. Furthermore, one local price may be significantly different than the price at another location even though the two markets' respective distances from the Henry Hub are the same. The reason for such pricing disparities is that a given location may experience supply and demand factors that are specific to that region, such as differences in pipeline shipping capacity, unusually high or low demand for heating or cooling or supply disruptions caused by severe weather. As a consequence, local natural gas prices can differ from the Henry Hub price by more than the cost of shipping and such price differences can vary in an unpredictable manner.

The Alberta hub is far removed from the Henry Hub and is not directly connected to the Henry Hub by an existing pipeline. Located in the Canadian province of Alberta, the Alberta natural gas market is a major connection point for long-distance transmission systems that ship natural gas to points throughout Canada and the United States. The Alberta province is Canada's dominant natural gas producing region; six of the nine Canadian market centers are located in the Alberta province. The throughput capacity at the AECO–C hub is ten billion cubic feet per day. Moreover, the number of pipeline interconnections at that hub was four in 2008. Lastly, the AECO–C hub's capacity is 20.4 billion cubic feet per day.[53]

The local price at the Alberta hub typically differs from the price at the Henry Hub. Thus, the price of the Henry Hub physically-delivered futures contract is an imperfect proxy for the Alberta price. Moreover, exogenous factors, such as adverse weather, can cause the Alberta gas price to differ from the Henry Hub price by an amount that is more or less than the cost of shipping, making the NYMEX Henry Hub futures contract even less precise as a hedging tool than desired by market participants.

In its October 20, 2009, **Federal Register** notice, the Commission identified material liquidity and material price reference as the potential SPDC criteria applicable to the Alberta Fixed-Price contract. Each of these factors is discussed below.[54]

[50] 73 FR 75892 (December 12, 2008).

[51] *See* 73 FR 75888, 75893 (Dec. 12, 2008).

[52] *See http://www.eia.doe.gov/pub/oil_gas/natural_gas/feature_articles/2009/ngmarketcenter/ngmarketcenter.pdf.*

[53] *See http://www.eia.doe.gov/pub/oil_gas/natural_gas/feature_articles/2009/ngmarketcenter/ngmarketcenter.pdf*

[54] As noted above, the Commission did not find an indication of arbitrage and price linkage in

Continued

1. Material Price Reference Criterion

The Commission's October 20, 2009, **Federal Register** notice identified material price reference as a potential basis for a SPDC determination with respect to this contract. The Commission noted that the NGX forged an alliance with ICE to use the ICE's matching engine to complete transactions in physical gas contracts traded on NGX. In return, the NGX agreed to provide the clearing services for such transactions. As part of the agreement, NGX provides the ICE with transaction data, which are then made available to market participants on a paid basis. The ICE offers the NGX data in several packages, which vary in terms of the amount of available historical data. For example, the ICE offers the "OTC Gas End of Day" data package with access to all price data, or just current prices plus a selected number of months (*i.e.*, 12, 24, 36, or 48 months) of historical data.

The Commission will rely on one of two sources of evidence—direct or indirect—to determine that the price of a contract was being used as a material price reference and therefore, serving a significant price discovery function.[55] With respect to direct evidence, the Commission will consider the extent to which, on a frequent and recurring basis, cash market bids, offers or transactions are directly based on or quoted at a differential to, the prices generated on the ECM in question. Direct evidence may be established when cash market participants are quoting bid or offer prices or entering into transactions at prices that are set either explicitly or implicitly at a differential to prices established for the contract in question. Cash market prices are set explicitly at a differential to the section 2(h)(3) contract when, for instance, they are quoted in dollars and cents above or below the reference contract's price. Cash market prices are set implicitly at a differential to a section 2(h)(3) contract when, for instance, they are arrived at after adding to, or subtracting from the section 2(h)(3) contract, but then quoted or reported at a flat price. With respect to indirect evidence, the Commission will consider the extent to which the price of the contract in question is being routinely disseminated in widely distributed industry publications—or offered by the ECM itself for some form of remuneration—and consulted on a frequent and recurring basis by industry participants in pricing cash market transactions.

The Alberta hub is a major trading center for natural gas in North America. Traders, including producers, keep abreast of the prices of the Alberta market center when conducting cash deals. However, ICE's cash-settled AECO Financial Basis contract is used more widely as a price reference than the NGX Alberta Fixed-Price contract. Traders look to the ICE contract's competitively determined price as an indication of expected values of natural gas at the Alberta hub when entering into cash market transactions for natural gas, especially those trades providing for physical delivery in the future. Traders use ICE's AECO Financial Basis contract, as well as other basis contracts, to hedge cash market positions and transactions. The substantial volume of trading and open interest in the ICE contract attests to its use for this purpose.[56] In contrast, trading volume in the NGX Alberta Fixed-Price contract is much smaller than in ICE's AECO Financial Basis contract. In this regard, total trading volume in the NGX Alberta Fixed Price contract in the third quarter of 2009 was equivalent to 50,313 NYMEX physically-delivered NG contracts, which has a size of 10,000 mmBtu.[57]

Accordingly, although the Alberta Hub is a major trading center for natural gas and, as noted, NGX provides price information for the Alberta Fixed Price contract to ICE which sells it, the Commission has found upon further evaluation that the Alberta Fixed Price contract is not routinely consulted by industry participants in pricing cash market transactions and thus does not meet the Commission's Guidance for the material price reference criterion. In this regard, the ICE AECO Financial Basis contract is routinely consulted by industry participants in pricing cash market transactions at this location. Because both the NGX and the ICE contracts basically price the same commodity at the same location and time [58] and the ICE contract has significantly higher trading volume and open interest, it is not necessary for market participants to independently refer to the NGX Alberta Fixed-Price contract for pricing natural gas at this location. Thus, the Alberta Fixed-Price contract does not satisfy the direct price reference test for existence of material price reference. Furthermore, the Commission notes that publication of the NGX Alberta Fixed-Price contract's prices is not indirect evidence of material price reference. The NGX Alberta Fixed-Price contract's prices are published with those of numerous other contracts, which are of more interest to market participants. Thus, the Commission has concluded that traders likely do not specifically purchase the ICE data packages for the NGX Alberta Fixed-Price contract's prices and do not consult such prices on a frequent and recurring basis in pricing cash market transactions.

i. Federal Register Comments

NGX states its belief that the Alberta Fixed Price contract does not meet the material price reference factor because there is insufficient trading activity in this contract.

ii. Conclusion Regarding Material Price Reference

Based on the above, the Commission finds that the NGX Alberta Fixed-Price contract does not meet the material price reference criterion because cash market transactions are not priced either explicitly or implicitly on a frequent and recurring basis at a differential to the Alberta Fixed Price contract's price (direct evidence). Moreover, while the Alberta Fixed-Price contract's price data is sold to market participants, market participants likely do not specifically purchase the ICE data packages for the Alberta Fixed-Price contract's prices and do not consult such prices on a frequent and recurring basis in pricing cash market transactions (indirect evidence).

2. Material Liquidity Criterion

As noted above, in its October 20, 2009, **Federal Register** notice, the Commission identified material liquidity and material price reference as potential criteria for SPDC determination of the Alberta Fixed-Price contract. With respect to the material liquidity criterion, the Commission noted that the total number of transactions executed in the contract on NGX's electronic platform during the second quarter of 2009 was 122.1, 36.0,

connection with this contract; accordingly, those criteria are not discussed in reference to the Alberta Fixed-Price contract.

[55] 17 CFR part 36, Appendix A.

[56] In the third quarter of 2009, 6,320 separate trades occurred on ICE's electronic platform, resulting in a daily average of 95.8 trades. During the same period, the ICE contract had a total trading volume on its electronic platform of 736,412 contracts (which was an average of 11,158 contracts per day). Open interest in ICE's AECO Financial Basis Contract was 483,561 contracts as of September 30, 2009.

[57] Trading volume in the ICE AECO Financial Basis contract during the third quarter of 2009 was equivalent to 184,103 NYMEX NG contracts.

[58] The Alberta natural gas price can be derived using the Alberta Basis contract and the NYMEX Henry Hub NG contract. In this regard, the imputed price is the Henry Hub price plus or minus the basis at Alberta, as indicated by the NGX Alberta Basis contract.

7.0, 30.1, 7.4, 68.6 and 12.8 trades for the following delivery periods—following day, Friday plus two days, Friday plus three days, Saturday plus three days, Saturday plus four days, Sunday plus two days, remainder of the month, nearby calendar month, and any single future calendar month, respectively. During the same period, the Alberta Fixed-Price contract had a total trading volume of 1,209,505 mmBtu; 821,565 mmBtu; 223,874 mmBtu; 754,175 mmBtu; 672,568 mmBtu; 6,634,030 mmBtu; and 1,233,958 mmBtu for the following delivery periods—next day, Friday plus two days, Friday plus three days, Saturday plus three days, Saturday plus four days, Sunday plus two days, remainder of the month, nearby calendar month, and any single future calendar month, respectively. Moreover, the net open interest as of June 30, 2009, was 96,003,450 mmBtu for next-month delivery. For delivery two months out, the open interest was 54,456,997 mmBtu.[59]

In a subsequent filing NGX reported that total trading volume in the third quarter of 2009 was 50,313 contracts (or 762 contracts on a daily basis). In term of number of transactions, 4,694 trades occurred in the third quarter of 2009 (73 trades per day), for those Alberta Fixed-Price contracts that specify delivery in the spot month. As of September 30, 2009, open interest in the Alberta Fixed-Price contract was 23,961 NYMEX-equivalent contracts.

The average number of trades per day in the second and third quarters of 2009 was only moderately above the minimum reporting level (5 trades per day). Moreover, trading activity in the Alberta Fixed-Price contract, as characterized by total quarterly volume, indicates that the Alberta Fixed-Price contract experiences trading activity similar to that of minor futures markets.[60] Thus, the Alberta Fixed-Price contract does not meets a threshold of trading activity that would render it of potential importance and no additional statistical analysis is warranted.[61]

[59] Second quarter 2009 data was submitted to the Commission is a different format than in later filings. In this regard total trading volume and total number of trades per quarter were not identified.

[60] Based on the Commission's experience, a minor futures contract is, generally, one that has a quarterly trading volume of 100,000 contracts or less.

[61] In establishing guidance to illustrate how it will evaluate the various criteria, or combinations of criteria, when determining whether a contract is a SPDC, the Commission made clear that "material liquidity itself would not be sufficient to make a determination that a contract is a [SPDC], * * * but combined with other factors it can serve as a guidepost indicating which contracts are functioning as [SPDCs]." For the reasons discussed above, the Commission has found that the Alberta Fixed-Price contract does not meet either the price linkage or material price reference criterion. In light of this finding and the Commission's Guidance cited above, there is no need to evaluate further the material liquidity criteria since it cannot be used alone as a basis for a SPDC determination.

[62] 73 FR 75892 (December 12, 2008).

[63] *See* 73 FR 75888, 75893 (Dec. 12, 2008).

i. Federal Register Comments

NGX stated in its comment letter that the Alberta Fixed-Price contract does not meet the material liquidity criterion for SPDC determination for a number of reasons.

First, NGX opined that the Commission "seems to have applied a threshold for "material liquidity" that is extremely low, and in general insufficient to support a determination that these contracts are no longer emerging markets but in fact serve a significant price discovery function." NGX also noted that the Commission's Guidance states that material liquidity was intended to be a "broad concept that captures the ability to transact immediately with little or no price concession". The Guidance also states that where "material liquidity exists, a more or less continuous stream of prices can be observed and the prices should be similar", such as "where trades occur multiple times per minutes. NGX then opined that "[t]he levels of liquidity outlined above for the Proposed Contracts cannot be what Congress intended in establishing the dividing line between contracts ripe for regulation and those still emerging and in need of further incubation.

In this regard, the Commission notes that it adopted a five trades-per-day threshold as a reporting requirement to enable it to "independently be aware of ECM contracts that may develop into SPDCs"[62] rather than solely relying upon an ECM on its own to identify any such potential SPDCs to the Commission. Thus, any contract that meets this threshold may be subject to scrutiny as a potential SPDC but this does not mean that the contract will be found to be a SPDC merely because it met the reporting threshold. Furthermore, the Commission observes that a continuous stream of prices would indeed be an indication of liquidity for certain markets but the Guidance also notes that "quantifying the levels of immediacy and price concession that would define material liquidity may differ from one market or commodity to another."

ii. Conclusion Regarding Material Liquidity

For the reasons discussed above, the Commission finds that the Alberta Fixed-Price contract does not meet the material liquidity criterion.

3. Overall Conclusion Regarding the Alberta Fixed-Price Contract

After considering the entire record in this matter, including the comments received, the Commission has determined that the Alberta Fixed-Price contract does not perform a significant price discovery function under the criteria established in section 2(h)(7) of the CEA. Specifically, the Commission has determined that the Alberta Fixed-Price contract does not meet the material price reference or material liquidity criteria at this time. Accordingly, the Commission is issuing the attached Order declaring that the Alberta Fixed-Price contract is not a SPDC.

Issuance of this Order indicates that the Commission does not at this time regard NGX as a registered entity in connection with its Alberta Fixed-Price contract.[63] Accordingly, with respect to its Alberta Fixed-Price contract, NGX is not required to comply with the obligations, requirements and timetables prescribed in Commission rule 36.3(c)(4) for ECMs with SPDCs. However, NGX must continue to comply with the applicable reporting requirements.

d. The Phys, FP, (US/MM), Union-Dawn (Union-Dawn Fixed-Price) Contract and the SPDC Indicia

The Union-Dawn Fixed-Price contract calls for physical delivery of natural gas at the Dawn hub over two different time periods: The following day and Saturday plus three days. Each delivery period is considered to be a separate contract, and the market participants value each delivery period separately. However, overlapping delivery days are considered fungible, and, thus, may be offset by traders. There is no standard size for the Union-Dawn Fixed-Priced contract, although a minimum volume of 100 mmBtu required in increments of 100 units per day. The NGX lists the Union-Dawn Fixed-Price contract for 60 calendar months.

Union Gas, Ltd., is a major Canadian natural gas storage, transmission, and distribution company based in Ontario, Canada. Union Gas offers premium storage and transportation services to customers at the Dawn hub, which the largest underground storage facility in Canada and one of the largest in North America. The Dawn hub offers customers an important link for natural gas moving from Western Canadian and U.S. supply basins to markets in central

Canada and the northeast United States. The throughput capacity at the Dawn hub is 9.3 billion cubic feet per day. Moreover, the number of pipeline interconnections at that hub was ten in 2008. Lastly, the Dawn hub's capacity is 12.8 billion cubic feet per day.[64]

In its October 20, 2009, **Federal Register** notice, the Commission identified material liquidity and material price reference as the potential SPDC criteria applicable to the Union-Dawn Fixed-Price contract. Each of these factors is discussed below.[65]

1. Material Price Reference Criterion

The Commission's October 20, 2009, **Federal Register** notice identified material price reference as a potential basis for a SPDC determination with respect to this contract. The Commission noted that NGX forged an alliance with ICE to use the ICE's matching engine to complete transactions in physical gas contracts traded on NGX. In return, the NGX agreed to provide the clearing services for such transactions. As part of the agreement, NGX provides the ICE with transaction data, which are then made available to market participants on a paid basis. The ICE offers the NGX data in several packages, which vary in terms of the amount of available historical data. For example, the ICE offers the "OTC Gas End of Day" data packages with access to all price data, or just current prices plus a selected number of months (*i.e.*, 12, 24, 36, or 48 months) of historical data.

The Commission will rely on one of two sources of evidence—direct or indirect—to determine that the price of a contract was being used as a material price reference and therefore, serving a significant price discovery function.[66] With respect to direct evidence, the Commission will consider the extent to which, on a frequent and recurring basis, cash market bids, offers or transactions are directly based on or quoted at a differential to, the prices generated on the ECM in question. Direct evidence may be established when cash market participants are quoting bid or offer prices or entering into transactions at prices that are set either explicitly or implicitly at a differential to prices established for the contract in question. Cash market prices are set explicitly at a differential to the section 2(h)(3) contract when, for instance, they are quoted in dollars and cents above or below the reference contract's price. Cash market prices are set implicitly at a differential to a section 2(h)(3) contract when, for instance, they are arrived at after adding to, or subtracting from the section 2(h)(3) contract, but then quoted or reported at a flat price. With respect to indirect evidence, the Commission will consider the extent to which the price of the contract in question is being routinely disseminated in widely distributed industry publications—or offered by the ECM itself for some form of remuneration—and consulted on a frequent and recurring basis by industry participants in pricing cash market transactions.

The Dawn hub is a major trading center for natural gas in the United States. Traders use the NGX Union-Dawn Fixed-Price contract to hedge cash market positions and transactions. Nevertheless, the relatively small volume of trading and open interest[67] in the Union-Dawn Fixed-Price contract does not support a finding that the contract is consulted on a frequent and recurring basis in establishing cash market transaction prices. Thus, the Union-Dawn Fixed-Price contract does not satisfy the direct price reference test for existence of material price reference. Furthermore, the Commission notes that publication of the Union-Dawn Fixed-Price contract's prices is not indirect evidence of material price reference. The Union-Dawn Fixed-Price contract's prices are published with those of numerous other contracts, which are of more interest to market participants. Thus, the Commission has concluded that traders likely do not specifically purchase ICE data packages for the NGX Union-Dawn Fixed-Price contract's prices and do not consult such prices on a frequent and recurring basis in pricing cash market transactions.

i. **Federal Register** Comments

NGX states its belief that the Union Dawn Fixed Price contract does not meet the material price reference factor because there is insufficient trading activity in this contract.

ii. Conclusion Regarding Material Price Reference

Based on the above, the Commission finds that the NGX Union-Dawn Fixed-Price contract does not meet the material price reference criterion because cash market transactions are not priced either explicitly or implicitly on a frequent and recurring basis at a differential to the Union-Dawn Fixed-Price contract's price (direct evidence). Moreover, while the Union-Dawn Fixed-Price contract's price data is sold to market participants, traders likely do not specifically purchase the ICE data packages for the NGX Union-Dawn Fixed-Price contract's prices and do not consult such prices on a frequent and recurring basis in pricing cash market transactions (indirect evidence).

2. Material Liquidity Criterion

As noted above, in its October 20, 2009, **Federal Register** notice, the Commission identified material liquidity and material price reference as potential criteria for SPDC determination of the Union-Dawn Fixed-Price contract. With respect to the material liquidity criterion, the Commission noted that the total number of transactions executed on NGX's electronic platform in the Union-Dawn Fixed-Price contract during the second quarter of 2009 was 114.1 trades and 23.9 trades for next-day delivery and delivery Saturday plus the next three days, respectively. During the same period, the Union-Dawn Fixed-Price contract had an average daily trading volume of 812,800 mmBtu and 458,000 mmBtu for the delivery periods next day and Saturday plus three days, respectively. Moreover, the net open interest as of June 30, 2009, was 2,241,600 mmBtu for next-day delivery (equivalent to 224 NYMEX NG contracts).[68]

In a subsequent filing, NGX reported that total trading volume in the third quarter of 2009 was the equivalent of 8,333 NYMEX NG contracts (or 130 contracts on a daily basis).[69] In term of number of transactions, 7,899 trades occurred over the entire third quarter, which equates to 123 trades per day.[70] As of September 30, 2009, open interest

[64] *See http://www.eia.dae.gov/pub/ail_gas/natural_gas/feature_articles/2009/ngmarketcenter/ngmarketcenter.pdf.*

[65] As noted above, the Commission did not find an indication of arbitrage and price linkage in connection with this contract; accordingly, those criteria are not discussed in reference to the Union-Dawn Fixed-Price contract.

[66] 17 CFR part 36, Appendix A.

[67] In the third quarter of 2009, the Union-Dawn Fixed-Price contract had a total trading volume that was equivalent to 145 NYMEX physically-delivered NG futures contracts (the size of one NYMEX NG contract is 10,000 mmBtu); the Union-Dawn contract also had an open interest equivalent to 1,738 NYMEX NG futures contracts.

[68] Second quarter 2009 data was submitted to the Commission is a different format than in later filings. In this regard total trading volume and total number of trades per quarter were not identified.

[69] Approximately 96 percent of the contracted natural gas volume was specified for delivery on either the next day or on the weekend. The remaining volume was to be delivered over the specified month or during the remainder of the current month.

[70] Nearly all (more than 99 percent) of the trades were in contracts that specified next-day or weekend delivery of natural gas.

in the Union-Dawn Fixed-Price contract was 1,738 NYMEX NG contracts.

The Commission notes that while trading activity in the Union-Dawn Fixed-Price appears to be substantial, it is important to keep in mind that the majority of trades involve close to immediate delivery, many times on a daily basis. With deliveries occurring each day, it is reasonable that more contracts would be traded compared to those contracts that specify delivery over an entire month. Moreover, trading activity in the Union-Dawn Fixed-Price contract, as characterized by total quarterly volume, indicates that the Union-Dawn Fixed-Price contract experiences less trading activity than minor futures markets.[71] Thus, the Union-Dawn Fixed-Price contract does not meets a threshold of trading activity that would render it of potential importance and no additional statistical analysis is warranted.[72]

i. **Federal Register** Comments

NGX stated in its comment letter that the Union-Dawn Fixed-Price contract does not meet the material liquidity criterion for SPDC determination for a number of reasons.

First, NGX opined that the Commission "seems to have applied a threshold for "material liquidity" that is extremely low, and in general insufficient to support a determination that these contracts are no longer emerging markets but in fact serve a significant price discovery function". NGX also noted that the Commission's Guidance states that material liquidity was intended to be a "broad concept that captures the ability to transact immediately with little or no price concession". The Guidance also states that where "material liquidity exists, a more or less continuous stream of prices can be observed and the prices should be similar", such as "where trades occur multiple times per minutes. NGX then opined that "[t]he levels of liquidity outlined above for the Proposed Contracts cannot be what Congress intended in establishing the dividing line between contracts ripe for regulation and those still emerging and in need of further incubation.

In this regard, the Commission notes that it adopted a five trades-per-day threshold as a reporting requirement to enable it to "independently be aware of ECM contracts that may develop into SPDCs"[73] rather than solely relying upon an ECM on its own to identify any such potential SPDCs to the Commission. Thus, any contract that meets this threshold may be subject to scrutiny as a potential SPDC but this does not mean that the contract will be found to be a SPDC merely because it met the reporting threshold. Furthermore, the Commission observes that a continuous stream of prices would indeed be an indication of liquidity for certain markets but the Guidance also notes that "quantifying the levels of immediacy and price concession that would define material liquidity may differ from one market or commodity to another."

ii. Conclusion Regarding Material Liquidity

Based on the above, the Commission finds that the NGX Union-Dawn Fixed-Price contract does not meet the material liquidity criterion.

3. Overall Conclusion Regarding the Union-Dawn Fixed-Price Contract

After considering the entire record in this matter, including the comments received, the Commission has determined that the Union-Dawn Fixed-Price contract does not perform a significant price discovery function under the criteria established in section 2(h)(7) of the CEA. Specifically, the Commission has determined that the NGX Union-Dawn Fixed-Price contract does not meet the material price reference or material liquidity criteria at this time. Accordingly, the Commission is issuing the attached Order declaring that the Union-Dawn Fixed-Price contract is not a SPDC.

Issuance of this Order indicates that the Commission does not at this time regard NGX as a registered entity in connection with its Union-Dawn Fixed-Price contract.[74] Accordingly, with respect to its Union-Dawn Fixed-Price contract, NGX is not required to comply with the obligations, requirements and timetables prescribed in Commission rule 36.3(c)(4) for ECMs with SPDCs. However, NGX must continue to comply with the applicable reporting requirements for ECMs.

e. The Phys, ID, 7a (CA/GJ), AB–NIT (7a Index) Contract and the SPDC Indicia

The NGX 7a Index contract calls for physical delivery of natural gas at the Alberta, Canada, trading hub during the specified calendar month. When trading this contract, market participants price the difference between the anticipated value of natural gas at the time of delivery and the average of actual trades on the NGX system. The average of transactions on the NGX system is reported as a volume-weighted average price index in the first publication of the delivery month of Canadian Enerdata, Ltd.'s *Canadian Gas Price Reporter*. At the time of delivery, the negotiated price premium or discount is added or subtracted to the published index price. There is no standard size for the 7a Index contract, although a minimum volume of 94.78 mmBtu is required in increments of 100 units per day. The NGX lists the 7a Index contract for 60 calendar months.

Located in the Canadian province of Alberta, the Alberta natural gas market is a major connection point for long-distance transmission systems that ship natural gas to points throughout Canada and the United States. The Alberta province is Canada's dominant natural gas producing region; six of the nine Canadian market centers are located in the Alberta province. The throughput capacity at the AECO–C hub is ten billion cubic feet per day. Moreover, the number of pipeline interconnections at that hub was four in 2008. Lastly, the AECO–C hub's capacity is 20.4 billion cubic feet per day.[75]

In its October 20, 2009, **Federal Register** notice, the Commission identified material liquidity and material price reference as the potential SPDC criteria applicable to the 7a Index contract. Each of these factors is discussed below.[76]

1. Material Price Reference Criterion

The Commission's October 20, 2009, **Federal Register** notice identified material price reference as a potential basis for a SPDC determination with respect to this contract. The Commission noted that NGX forged an alliance with ICE to use ICE's matching engine to complete transactions in

[71] Based on the Commission's experience, a minor futures contract is, generally, one that has a quarterly trading volume of 100,000 contracts or less.

[72] In establishing guidance to illustrate how it will evaluate the various criteria, or combinations of criteria, when determining whether a contract is a SPDC, the Commission made clear that "material liquidity itself would not be sufficient to make a determination that a contract is a [SPDC], * * * but combined with other factors it can serve as a guidepost indicating which contracts are functioning as [SPDCs]." For the reasons discussed above, the Commission has found that the Alberta Fixed-Price contract does not meet either the price linkage or material price reference criterion. In light of this finding and the Commission's Guidance cited above, there is no need to evaluate further the material liquidity criteria since it cannot be used alone as a basis for a SPDC determination.

[73] 73 FR 75892 (December 12, 2008).

[74] See 73 FR 75888, 75893 (Dec. 12, 2008).

[75] See *http://www.eia.doe.gov/pub/oil_gas/natural_gas/feature_articles/2009/ngmarketcenter/ngmarketcenter.pdf.*

[76] As noted above, the Commission did not find an indication of arbitrage and price linkage in connection with this contract; accordingly, those criteria are not discussed in reference to the 7a Index contract.

physical gas contracts traded on NGX. In return, NGX agreed to provide the clearing services for such transactions. As part of the agreement, NGX provides ICE with transaction data, which are then made available to market participants on a paid basis. ICE offers the NGX data in several packages, which vary in terms of the amount of available historical data. For example, the ICE offers the "OTC Gas End of Day" data packages with access to all price data, or just current prices plus a selected number of months (*i.e.*, 12, 24, 36, or 48 months) of historical data.

The Commission will rely on one of two sources of evidence—direct or indirect—to determine that the price of a contract was being used as a material price reference and therefore, serving a significant price discovery function.[77] With respect to direct evidence, the Commission will consider the extent to which, on a frequent and recurring basis, cash market bids, offers or transactions are directly based on or quoted at a differential to, the prices generated on the ECM in question. Direct evidence may be established when cash market participants are quoting bid or offer prices or entering into transactions at prices that are set either explicitly or implicitly at a differential to prices established for the contract in question. Cash market prices are set explicitly at a differential to the section 2(h)(3) contract when, for instance, they are quoted in dollars and cents above or below the reference contract's price. Cash market prices are set implicitly at a differential to a section 2(h)(3) contract when, for instance, they are arrived at after adding to, or subtracting from the section 2(h)(3) contract, but then quoted or reported at a flat price. With respect to indirect evidence, the Commission will consider the extent to which the price of the contract in question is being routinely disseminated in widely distributed industry publications—or offered by the ECM itself for some form of remuneration—and consulted on a frequent and recurring basis by industry participants in pricing cash market transactions.

The Alberta hub is a major trading center for natural gas in North America. Traders, including producers, keep abreast of the prices of the Alberta market center when conducting cash deals. However, ICE's cash-settled AECO Financial Basis contract is used more widely as a price reference than the NGX 7a Index contract. Traders look to the ICE contract's competitively determined price as an indication of expected values of natural gas at the Alberta hub when entering into cash market transactions for natural gas, especially those trades providing for physical delivery in the future. Traders use ICE's Alberta contract, as well as other basis contracts, to hedge cash market positions and transactions. The substantial volume of trading and open interest in the ICE contract attests to its use for this purpose.[78] In contrast, trading volume in the 7a Index contract is much smaller than in ICE's cash-settled version of the contract. In this regard, total trading volume in the NGX 7a Index contract in the third quarter of 2009 was equivalent to 1,946 NYMEX physically-delivered natural gas contracts, which has a size of 10,000 mmBtu.

Accordingly, although the Alberta Hub is a major trading center for natural gas and, as noted, NGX provides price information for the 7a Index contract to ICE which sells it, the Commission has found upon further evaluation that the 7a Index contract is not routinely consulted by industry participants in pricing cash market transactions and thus does not meet the Commission's Guidance for the material price reference criterion. In this regard, the ICE AECO Financial Basis contract is routinely consulted by industry participants in pricing cash market transactions at this location. Because both the NGX and the ICE contracts basically price the same commodity at the same location and time and the ICE contract has significantly higher trading volume and open interest, it is not necessary for market participants to independently refer to the 7a Index contract for pricing natural gas at this location. Thus, the 7a Index contract does not satisfy the direct price reference test for existence of material price reference. Furthermore, the Commission notes that publication of the 7a Index contract's prices is not indirect evidence of material price reference. The 7a Index contract's prices are published with those of numerous other contracts, which are of more interest to market participants. Thus, the Commission has concluded that traders likely do not specifically purchase the ICE data packages for the 7a Index contract's prices and do not consult such prices on a frequent and recurring basis in pricing cash market transactions.

i. Federal Register Comments

NGX expressed the opinion that the 7a Index contract does not meet the material price reference criteria because it lacks sufficient trading activity.

ii. Conclusion Regarding Material Price Reference

Based on the above, the Commission finds that the NGX 7a Index contract does not meet the material price reference criterion because cash market transactions are not priced either explicitly or implicitly on a frequent and recurring basis at a differential to the 7a Index contract's price (direct evidence). Moreover, while the 7a Index contract's price data is sold to market participants, market participants likely do not specifically purchase the ICE data packages for the 7a Index contract's prices and do not consult such prices on a frequent and recurring basis in pricing cash market transactions (indirect evidence).

2. Material Liquidity Criterion

As noted above, in its October 20, 2009, **Federal Register** notice, the Commission identified material liquidity and material price reference as potential criteria for SPDC determination of the 7a Index contract. To assess whether a contract meets the material liquidity criterion, the Commission first examines trading activity as a general measurement of the contract's size and potential importance. If the Commission finds that the contract in question meets a threshold of trading activity that would render it of potential importance, the Commission will then perform a statistical analysis to measure the effect that changes to the subject-contract's prices potentially may have on prices for other contracts listed on an ECM or a DCM.

The Commission noted that the average number of transactions in the 7a Index contract was 10.9 in the second quarter of 2009. During the same period, the 7a Index contract had an average daily trading volume of 2,438,627 mmBtu (244 NYMEX-equivalent contracts of 10,000 mmBtu size). Moreover, the net open interest as of June 30, 2009, was 6,287,794 mmBtu (629 NYMEX-equivalent contracts of 10,000 mmBtu size) for delivery in the following month.[79]

[77] 17 CFR part 36, Appendix A.

[78] In the third quarter of 2009, 6,320 separate trades occurred on ICE's electronic platform, resulting in a daily average of 95.8 trades. During the same period, the ICE contract had a total trading volume on its electronic platform of 736,412 contracts (which was an average of 11,158 contracts per day). As of September 30, 2009, open interest in the ICE AECO Financial Basis contract was 483,561 contracts.

[79] Second quarter 2009 data was submitted to the Commission is a different format than in later filings. In this regard total trading volume and total number of trades per quarter were not identified.

In a subsequent filing dated November 13, 2009, NGX reported that total trading volume in the third quarter of 2009 was 1,964 NYMEX-equivalent contracts. In terms of number of transactions, 1,056 trades occurred in the third quarter of 2009 (an average of 17 trades per day). As of September 30, 2009, open interest in the 7a Index contract was 14,355 NYMEX-equivalent contracts.

The Commission notes that trading activity in the 7a Index contract increased between the second and third quarters of 2009. In any case, the number of trades per day was only slightly more than the minimum reporting threshold (5 trades per day). Moreover, trading activity in the 7a Index contract, as characterized by total quarterly volume, indicates that the Index contract experiences trading activity similar to that of minor futures markets.[80] Thus, the 7a Index contract does not meets a threshold of trading activity that would render it of potential importance and no additional statistical analysis is warranted.[81]

i. Federal Register Comments

NGX stated in its comment letter that the 7a Index contract does not meet the material liquidity criterion for SPDC determination for a number of reasons.

First NGX opined that the Commission "seems to have applied a threshold for "material liquidity" that is extremely low, and in general insufficient to support a determination that these contracts are no longer emerging markets but in fact serve a significant price discovery function". NGX also noted that the Commission's Guidance states that material liquidity was intended to be a "broad concept that captures the ability to transact immediately with little or no price concession." The Guidance also states that where "material liquidity exists, a more or less continuous stream of prices can be observed and the prices should be similar", such as "where trades occur multiple times per minutes. NGX then opined that "[t]he levels of liquidity outlined above for the Proposed Contracts cannot be what Congress intended in establishing the dividing line between contracts ripe for regulation and those still emerging and in need of further investigation.

WGCEF also stated that the 7a contract lacks sufficient liquidity to perform a significant price discovery function. They cite the data in the Notice of Intent as evidence that trade frequency in terms of multiple trades per day is extremely low.

In this regard, the Commission notes that it adopted a five trades-per-day threshold as a reporting requirement to enable it to "independently be aware of ECM contracts that may develop into SPDCs" [82] rather than solely relying upon an ECM on its own to identify any such potential SPDCs to the Commission. Thus, any contract that meets this threshold may be subject to scrutiny as a potential SPDC but this does not mean that the contract will be found to be a SPDC merely because it met the reporting threshold. Furthermore, the Commission observes that a continuous stream of prices would indeed be an indication of liquidity for certain markets but the Guidance also notes that "quantifying the levels of immediacy and price concession that would define material liquidity may differ from one market or commodity to another."

ii. Conclusion Regarding Material Liquidity

For the reasons discussed above, the Commission finds that the 7a Index contract does not meet the material liquidity criterion.

3. Overall Conclusion Regarding the 7a Index Contract

After considering the entire record in this matter, including the comments received, the Commission has determined that the 7a Index contract does not perform a significant price discovery function under the criteria established in section 2(h)(7) of the CEA. Specifically, the Commission has determined that the 7a Index contract does not meet the material price reference or material liquidity criteria at this time. Accordingly, the Commission will issue the attached Order declaring that the 7a Index contract is not a SPDC.

Issuance of this Order indicates that the Commission does not at this time regard NGX as a registered entity in connection with its 7a Index contract.[83] Accordingly, with respect to its 7a Index contract NGX is not required to comply with the obligations, requirements and timetables prescribed in Commission rule 36.3(c)(4) for ECMs with SPDCs. However, NGX must continue to comply with the applicable reporting requirements.

V. Related Matters

a. Paperwork Reduction Act

The Paperwork Reduction Act of 1995 ("PRA") [84] imposes certain requirements on Federal agencies, including the Commission, in connection with their conducting or sponsoring any collection of information as defined by the PRA. Certain provisions of Commission rule 36.3 impose new regulatory and reporting requirements on ECMs, resulting in information collection requirements within the meaning of the PRA. OMB previously has approved and assigned OMB control number 3038–0060 to this collection of information.

b. Cost-Benefit Analysis

Section 15(a) of the CEA[85] requires the Commission to consider the costs and benefits of its actions before issuing an order under the Act. By its terms, section 15(a) does not require the Commission to quantify the costs and benefits of an order or to determine whether the benefits of the order outweigh its costs; rather, it requires that the Commission "consider" the costs and benefits of its actions. Section 15(a) further specifies that the costs and benefits shall be evaluated in light of five broad areas of market and public concern: (1) Protection of market participants and the public; (2) efficiency, competitiveness and financial integrity of futures markets; (3) price discovery; (4) sound risk management practices; and (5) other public interest considerations. The Commission may in its discretion give greater weight to any one of the five enumerated areas and could in its discretion determine that, notwithstanding its costs, a particular order is necessary or appropriate to protect the public interest or to effectuate any of the provisions or accomplish any of the purposes of the Act.

When a futures contract begins to serve a significant price discovery function, that contract, and the ECM on which it is traded, warrants increased oversight to deter and prevent price manipulation or other disruptions to market integrity, both on the ECM itself and in any related futures contracts

[80] Based on the Commission's experience, a minor futures contract is, generally, one that has a quarterly trading volume of 100,000 contracts or less.

[81] In establishing guidance to illustrate how it will evaluate the various criteria, or combinations of criteria, when determining whether a contract is a SPDC, the Commission made clear that "material liquidity itself would not be sufficient to make a determination that a contract is a [SPDC], * * * but combined with other factors it can serve as a guidepost indicating which contracts are functioning as [SPDCs]." For the reasons discussed above, the Commission has found that the TCO contract does not meet either the price linkage or material price reference criterion. In light of this finding and the Commission's Guidance cited above, there is no need to evaluate further the material liquidity criteria since it cannot be used alone as a basis for a SPDC determination.

[82] 73 FR 75892 (December 12, 2008).

[83] See 73 FR 75888, 75893 (Dec. 12, 2008)

[84] 44 U.S.C. 3507(d).

[85] 7 U.S.C. 19(a).

trading on DCMs. An Order finding that a particular contract is a SPDC triggers this increased oversight and imposes obligations on the ECM calculated to accomplish this goal. The increased oversight engendered by the issue of a SPDC Order increases transparency and helps to ensure fair competition among ECMs and DCMs trading similar products and competing for the same business. Moreover, the ECM on which the SPDC is traded must assume, with respect to that contract, all the responsibilities and obligations of a registered entity under the CEA and Commission regulations. Additionally, the ECM must comply with nine core principles established by section 2(h)(7) of the Act—including the obligation to establish position limits and/or accountability standards for the SPDC. Section 4(i) of the CEA authorize the Commission to require reports for SPDCs listed on ECMs. These increased responsibilities, along with the CFTC's increased regulatory authority, subject the ECM's risk management practices to the Commission's supervision and oversight and generally enhance the financial integrity of the markets.

The Commission has concluded that NGX's Alberta Basis, Union-Dawn Basis, Alberta Fixed-Price, Union-Dawn Fixed-Price and 7a Index contracts that are the subject of the attached Orders are not SPDCs; accordingly, the Commission's Orders impose no additional costs and no additional statutorily or regulatory mandated responsibilities on the ECM.

c. Regulatory Flexibility Act

The Regulatory Flexibility Act ("RFA") [86] requires that agencies consider the impact of their rules on small businesses. The requirements of CEA section 2(h)(7) and the Part 36 rules affect ECMs. The Commission previously has determined that ECMs are not small entities for purposes of the RFA.[87] Accordingly, the Chairman, on behalf of the Commission, hereby certifies pursuant to 5 U.S.C. 605(b) that these Orders, taken in connection with section 2(h)(7) of the Act and the Part 36 rules, will not have a significant impact on a substantial number of small entities.

VI. Orders

a. Order Relating to the Phys, BS, LD1 (US/MM), AB–NIT Contract

After considering the complete record in this matter, including the comment letters received in response to its request for comments, the Commission has determined to issue the following Order:

The Commission, pursuant to its authority under section 2(h)(7) of the Act, hereby determines that the Phys, BS, LD1 (US/MM), AB–NIT contract, traded on the Natural Gas Exchange, Inc., does not at this time satisfy the material price preference, price linkage or material liquidity criteria for significant price discovery contracts. Consistent with this determination, the Natural Gas Exchange, Inc., is not considered a registered entity [88] with respect to the Phys, BS, LD1 (US/MM), AB–NIT contract and is not subject to the provisions of the Commodity Exchange Act applicable to registered entities. Further, the obligations, requirements and timetables prescribed in Commission rule 36.3(c)(4) governing core principle compliance by the Natural Gas Exchange, Inc., are not applicable to the Phys, BS, LD1 (US/MM), AB/NIT contract with the issuance of this Order.

This Order is based on the representations made to the Commission by the Natural Gas Exchange, Inc., dated August 25, 2009, and October 15, 2009, and other supporting material. Any material change or omissions in the facts and circumstances pursuant to which this order is granted might require the Commission to reconsider its current determination that the Phys, BS, LD1 (US/MM), AB–NIT contract is not a significant price discovery contract. Additionally, to the extent that it continues to rely upon the exemption in Section 2(h)(3) of the Act, the Natural Gas Exchange, Inc., must continue to comply with all of the applicable requirements of Section 2(h)(3) and Commission Regulation 36.3.

b. Order Relating to the Phys, BS, LD1 (US/MM), Union-Dawn Contract

After considering the complete record in this matter, including the comment letters received in response to its request for comments, the Commission has determined to issue the following Order:

The Commission, pursuant to its authority under section 2(h)(7) of the Act, hereby determines that the Phys, BS, LD1 (US/MM), Union-Dawn contract, traded on the Natural Gas Exchange, Inc., does not at this time satisfy the material price reference, price linkage or material liquidity criteria for significant price discovery contracts. Consistent with this determination, the Natural Gas Exchange, Inc., is not considered a registered entity [89] with respect to the Phys, BS, LD1 (US/MM), Union-Dawn contract and is not subject to the provisions of the Commodity Exchange Act applicable to registered entities. Further, the obligations, requirements and timetables prescribed in Commission rule 36.3(c)(4) governing core principle compliance by the Natural Gas Exchange, Inc., are not applicable to the Phys, BS, LD1 (US/MM), Union-Dawn contract with the issuance of this Order.

This Order is based on the representations made to the Commission by the Natural Gas Exchange, Inc., August 25, 2009, and October 15, 2009, and other supporting material. Any material change or omissions in the facts and circumstances pursuant to which this order is granted might require the Commission to reconsider its current determination that the Phys, BS, LD1 (US/MM), Union-Dawn contract is not a significant price discovery contract. Additionally, to the extent that it continues to rely upon the exemption in Section 2(h)(3) of the Act, the Natural Gas Exchange, Inc., must continue to comply with all of the applicable requirements of Section 2(h)(3) and Commission Regulation 36.3.

c. Order Relating to the Phys, FP, (CA/GJ), AB–NIT Contract

After considering the complete record in this matter, including the comment letters received in response to its request for comments, the Commission has determined to issue the following Order:

The Commission, pursuant to its authority under section 2(h)(7) of the Act, hereby determines that the Phys, FP, (CA/GJ), AB–NIT contract, traded on the Natural Gas Exchange, Inc., does not at this time satisfy the material price reference or material liquidity reference criteria for significant price discovery contracts. Consistent with this determination, the Natural Gas Exchange, Inc., is not considered a registered entity [90] with respect to the Phys, FP, (CA/GJ), AB–NIT contract and is not subject to the provisions of the Commodity Exchange Act applicable to registered entities. Further, the obligations, requirements and timetables prescribed in Commission rule 36.3(c)(4) governing core principle compliance by the Natural Gas Exchange, Inc., are not applicable to the Phys, FP, (CA/GJ), AB–NIT contract with the issuance of this Order.

[86] 5 U.S.C. 601 *et seq.*

[87] 66 FR 42256, 42268 (Aug. 10, 2001).

[88] 7 U.S.C. 1a(29).

[89] 7 U.S.C. 1a(29).

[90] 7 U.S.C. 1a(29).

This Order is based on the representations made to the Commission by the Natural Gas Exchange, Inc., dated August 25, 2009, and October 15, 2009, and other supporting material. Any material change or omissions in the facts and circumstances pursuant to which this order is granted might require the Commission to reconsider its current determination that the Phys, FP, (CA/GJ), AB–NIT contract is not a significant price discovery contract. Additionally, to the extent that it continues to rely upon the exemption in Section 2(h)(3) of the Act, the Natural Gas Exchange, Inc., must continue to comply with all of the applicable requirements of Section 2(h)(3) and Commission Regulation 36.3.

d. Order Relating to the Phys, FP, (US/MM), Union-Dawn Contract

After considering the complete record in this matter, including the comment letters received in response to its request for comments, the Commission has determined to issue the following Order:

The Commission, pursuant to its authority under section 2(h)(7) of the Act, hereby determines that the Phys, FP, (US/MM), Union-Dawn contract, traded on the Natural Gas Exchange, Inc., does not at this time satisfy the material price reference or material liquidity criteria for significant price discovery contracts. Consistent with this determination, the Natural Gas Exchange, Inc., is not considered a registered entity [91] with respect to the Phys, FP, (US/MM), Union-Dawn contract and is not subject to the provisions of the Commodity Exchange Act applicable to registered entities. Further, the obligations, requirements and timetables prescribed in Commission rule 36.3(c)(4) governing core principle compliance by the Natural Gas Exchange, Inc., are not applicable to the Phys, FP, (US/MM), Union-Dawn contract with the issuance of this Order.

This Order is based on the representations made to the Commission by the Natural Gas Exchange, Inc., dated August 25, 2009, and October, 15, 2009, and other supporting material. Any material change or omissions in the facts and circumstances pursuant to which this order is granted might require the Commission to reconsider its current determination that the Phys, FP, (US/MM), Union-Dawn contract is not a significant price discovery contract. Additionally, to the extent that it continues to rely upon the exemption in Section 2(h)(3) of the Act, the Natural Gas Exchange, Inc., must continue to comply with all of the applicable requirements of Section 2(h)(3) and Commission Regulation 36.3.

e. Order Relating to the Phys, ID, 7a (CA/GJ), AB–NIT Contract

After considering the complete record in this matter, including the comment letters received in response to its request for comments, the Commission has determined to issue the following Order:

The Commission, pursuant to its authority under section 2(h)(7) of the Act, hereby determines that the Phys, ID, 7a (CA/GJ), AB–NIT contract, traded on the Natural Gas Exchange, Inc., does not at this time satisfy the material price reference or material liquidity criteria for significant price discovery contracts. Consistent with this determination, the Natural Gas Exchange, Inc., is not considered a registered entity [92] with respect to the Phys, ID, 7a (CA/GJ), AB–NIT contract and is not subject to the provisions of the Commodity Exchange Act applicable to registered entities. Further, the obligations, requirements and timetables prescribed in Commission rule 36.3(c)(4) governing core principle compliance by the Natural Gas Exchange, Inc., are not applicable to the Phys, ID, 7a (CA/GJ), AB–NIT contract with the issuance of this Order.

This Order is based on the representations made to the Commission by the Natural Gas Exchange, Inc., dated August 25, 2009, and October 15, 2009, and other supporting material. Any material change or omissions in the facts and circumstances pursuant to which this order is granted might require the Commission to reconsider its current determination that the Phys, ID, 7a (CA/GJ), AB–NIT contract is not a significant price discovery contract. Additionally, to the extent that it continues to rely upon the exemption in Section 2(h)(3) of the Act, the Natural Gas Exchange, Inc., must continue to comply with all of the applicable requirements of Section 2(h)(3) and Commission Regulation 36.3.

Issued in Washington, DC on April 28, 2010, by the Commission.

David A. Stawick,

Secretary of the Commission.

[FR Doc. 2010–10314 Filed 5–3–10; 8:45 am]

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[91] 7 U.S.C. 1a(29).

[92] 7 U.S.C. 1a(29).

CONSUMER PRODUCT SAFETY COMMISSION

[CPSC Docket No. 10–C0003]

Jo-Ann Stores, Inc., Provisional Acceptance of a Settlement Agreement and Order

AGENCY: Consumer Product Safety Commission.

ACTION: Notice.

SUMMARY: It is the policy of the Commission to publish settlements which it provisionally accepts under the Consumer Product Safety Act in the **Federal Register** in accordance with the terms of 16 CFR 1118.20(e). Published below is a provisionally-accepted Settlement Agreement with Jo-Ann Stores, Inc., containing a civil penalty of $50,000.00.

DATES: Any interested person may ask the Commission not to accept this agreement or otherwise comment on its contents by filing a written request with the Office of the Secretary by May 19, 2010.

ADDRESSES: Persons wishing to comment on this Settlement Agreement should send written comments to the Comment 10–C0003, Office of the Secretary, Consumer Product Safety Commission, 4330 East West Highway, Room 820, Bethesda, Maryland 20814–4408.

FOR FURTHER INFORMATION CONTACT: Sean R. Ward, Trial Attorney, Division of Compliance, Office of the General Counsel, Consumer Product Safety Commission, 4330 East West Highway, Bethesda, Maryland 20814–4408; telephone (301) 504–7602.

SUPPLEMENTARY INFORMATION: The text of the Agreement and Order appears below.

Dated: April 28, 2010.

Todd A. Stevenson,

Secretary.

In the Matter of Jo-Ann Stores, Inc.

Settlement Agreement

1. In accordance with 16 CFR 1118.20, Jo-Ann Stores, Inc. ("*Jo-Ann*") and the staff ("*Staff*") of the United States Consumer Product Safety Commission ("*CPSC*" or the "*Commission*") enter into this Settlement Agreement ("*Agreement*"). The Agreement and the incorporated attached Order ("*Order*") settle the Staff's allegations set forth below.

Parties

2. The Commission is an independent federal regulatory agency established pursuant to the Consumer Product

Safety Act, 15 U.S.C. 2051–2089 (*"CPSA"*). The Commission is responsible for the enforcement of the CPSA.

3. Jo-Ann is a corporation organized and existing under the laws of the State of Ohio, with its principal offices located in Hudson, Ohio. At all times relevant hereto, Jo-Ann imported, offered for sale and sold various children's products.

Staff Allegations

4. Jo-Ann imported various Robbie Ducky™ children's products including the Kids Watering Cans ("Watering Cans") from February 2007 through August 2007, the children's toy rakes, hoes, brooms and spades ("Garden Tools") from January 2007 through September 2007, and Children's Water Globes ("Water Globes") in September 2007 (collectively, "Robbie Ducky products"). Jo-Ann sold the Robbie Ducky products at its retail stores nationwide during those periods for between $5 and $10 per unit.

5. The Robbie Ducky products are "consumer product(s)," and, at all times relevant hereto, Jo-Ann was a "manufacturer" and "retailer" of those consumer product(s), which were "distributed in commerce," as those terms are defined in CPSA sections 3(a)(3), (5), (8), (11) and (13), 15 U.S.C. 2052(a)(3), (5), (8), (11) and (13).

6. The Robbie Ducky products are articles intended to be entrusted to or for use by children, and, therefore, are subject to the requirements of the Commission's Ban of Lead-Containing Paint and Certain Consumer Products Bearing Lead-Containing Paint, 16 CFR part 1303 (the "Lead-Paint Ban"). Under the Lead-Paint Ban, toys and other children's articles must not bear or contain "lead-containing paint," defined as paint or other surface coating materials whose lead content is more than 0.06 percent of the weight of the total nonvolatile content of the paint or the weight of the dried paint film. 16 CFR 1303.2(b)(1).[1]

7. On August 24, 2007, Jo-Ann reported to CPSC that it had commissioned an independent laboratory to conduct testing of samples of the Watering Cans for the presence of lead in their surface coatings. The test results demonstrated that a sample Watering Can contained lead in excess of the permissible 0.06 percent limit set forth in the Lead-Paint Ban.

8. On August 28, 2007, the Commission and Jo-Ann announced a consumer-level recall of about 6,000 units of the Watering Cans because "[t]he beak of the watering can contains lead in the paint, which violates the federal law prohibiting lead paint on children's toys. Lead is toxic if ingested by young children and can cause adverse health effects."

9. On September 14, 2007, Jo-Ann reported to CPSC that it had commissioned an independent laboratory to conduct testing of samples of the Garden Tools for the presence of lead in their surface coatings. The test results demonstrated that a sample of Garden Tools contained lead in excess of the permissible 0.06 percent limit set forth in the Lead-Paint Ban.

10. On September 26, 2007, the Commission and Jo-Ann announced a consumer-level recall of about 16,000 Garden Tools because "[s]urface paint on the handle of the rake can contain excessive levels of lead paint, violating the federal lead paint standard." This recall was expanded on October 25, 2007 to include an additional 97,000 units of children's leaf rakes, hoes, brooms and spades because these Garden Tools contained excessive levels of lead in violation of the Lead-Paint Ban.

11. On November 14, 2007, Jo-Ann reported to CPSC that it had commissioned an independent laboratory to conduct testing of samples of the Water Globes for the presence of lead in their surface coatings. The test results demonstrated that a sample of Water Globes contained lead in excess of the permissible 0.06 percent limit set forth in the Lead-Paint Ban.

12. On December 13, 2007, the Commission and Jo-Ann announced a consumer-level recall of about 60 Water Globes because "[t]he painted base of the water globes contain excessive levels of lead, violating the federal lead paint standard."

13. Although Jo-Ann reported no incidents or injuries from the Robbie Ducky products, it failed to take adequate action to ensure that they did not bear or contain lead-containing paint, thereby creating a risk of lead poisoning and adverse health effects to children.

14. The Robbie Ducky products constitute "banned hazardous products" under CPSA section 8 and the Lead-Paint Ban, 15 U.S.C. 2057 and 16 CFR 1303.1(a)(1), 1303.4(b), in that they bear or contain paint or other surface coating materials whose lead content exceeds the permissible limit of 0.06 percent of the weight of the total nonvolatile content of the paint or the weight of the dried paint film.

15. From January 2007 through September 2007, Jo-Ann sold, manufactured for sale, offered for sale, distributed in commerce, or imported into the United States, with respect to the Robbie Ducky products, in violation of section 19(a)(1) of the CPSA, 15 U.S.C. 2068(a)(1). Jo-Ann committed these prohibited acts "knowingly," as that term is defined in section 20(d) of the CPSA, 15 U.S.C. 2069(d).

16. Pursuant to section 20 of the CPSA, 15 U.S.C. 2069, Jo-Ann is subject to civil penalties for the aforementioned violations.

Jo-Ann's Responsive Allegations

17. Jo-Ann denies the Staff's allegations set forth above that Jo-Ann knowingly violated the CPSA or any of its regulations. Jo-Ann believes that it reasonably relied upon its suppliers to manufacture products compliant with all applicable safety regulations.

18. Jo-Ann alleges that, to the best of its knowledge at the time when the Robbie Ducky products were imported, offered for sale and sold by the firm, they complied with the requirements of the Lead-Paint Ban. Jo-Ann notified CPSC of the lead-containing paint problems associated with the Robbie Ducky products promptly upon discovering them. After promptly investigating the facts, Jo-Ann voluntarily conducted each of the three recalls in cooperation with CPSC.

19. Jo-Ann has consistently acted in a cooperative manner with CPSC and engaged in corrective action without being so directed by either CPSC or by any third party.

Agreement of the Parties

20. Under the CPSA, the Commission has jurisdiction over this matter and over Jo-Ann.

21. The parties enter into the Agreement for settlement purposes only. The Agreement does not constitute an admission by Jo-Ann, nor does it constitute a determination by the Commission, that Jo-Ann has knowingly violated the CPSA.

22. In settlement of the Staff's allegations set forth above, Jo-Ann shall pay a civil penalty in the amount of fifty thousand dollars ($50,000.00) within twenty (20) calendar days of service of the Commission's final Order accepting the Agreement. The payment shall be by check payable to the order of the United States Treasury.

23. The Commission will not seek or initiate any enforcement action against Jo-Ann for civil penalties, based upon information known to CPSC through the

[1] At the time of the alleged violations stated in this Settlement Agreement, the permissible limit of 0.06 was in effect for the Lead-Paint Ban. As of August 14, 2009, the limit was amended to 0.009 percent pursuant to 15 U.S.C. 1278a(f)(1).

date of the final acceptance of this Agreement, for possible violations of the reporting requirements of section 15(b), 15 U.S.C. 2064(b), regarding any Robbie Ducky products. The Commission's agreement not to seek penalties as stated herein will not relieve Jo-Ann from the continuing duty to report to CPSC any new, additional or different information as required by CPSA section 15(b), 15 U.S.C. 2064(b) and the regulations at 16 CFR part 1115. Except as expressly provided herein, nothing in this Agreement is intended nor may be construed to preclude, limit, or otherwise reduce Jo-Ann's potential liabilities under any and all applicable law, statutory provisions, regulations, rules, standards, and/or bans enforced or administered by CPSC.

24. Upon the Commission's provisional acceptance of the Agreement, the Agreement shall be placed on the public record and published in the **Federal Register** in accordance with the procedures set forth in 16 CFR 1118.20(e). In accordance with 16 CFR 1118.20(f), if the Commission does not receive any written request not to accept the Agreement within fifteen (15) days, the Agreement shall be deemed finally accepted on the sixteenth (16th) day after the date it is published in the **Federal Register.**

25. Upon the Commission's final acceptance of the Agreement and issuance of the final Order, Jo-Ann knowingly, voluntarily, and completely waives any rights it may have in this matter to the following: (1) An administrative or judicial hearing; (2) judicial review or other challenge or contest of the validity of the Commission's Order or actions; (3) a determination by the Commission of whether Jo-Ann failed to comply with the CPSA and its underlying regulations; (4) a statement of findings of fact and conclusions of law; and (5) any claims under the Equal Access to Justice Act.

26. The Commission may publicize the terms of the Agreement and Order.

27. The Agreement and Order shall apply to, and be binding upon, Jo-Ann and each of its successors and assigns.

28. The Commission issues the Order under the provisions of the CPSA, and violation of the Order may subject those referenced in ¶ 27 to appropriate legal action.

29. The Agreement may be used in interpreting the Order. Understandings, agreements, representations, or interpretations apart from those contained in the Agreement and Order may not be used to vary or contradict its terms. The Agreement shall not be waived, amended, modified, or otherwise altered, except in a writing that is executed by the party against whom such waiver, amendment, modification, or alteration is sought to be enforced.

30. If after the effective date hereof, any provision of the Agreement and Order is held to be illegal, invalid, or unenforceable under present or future laws effective during the terms of the Agreement and Order, such provision shall be fully severable. The balance of the Agreement and Order shall remain in full force and effect, unless the Commission and Jo-Ann agree that severing the provision materially affects the purpose of the Agreement and Order.

Jo-Ann Stores, Inc.

Dated: 1/13/10.

By: _____

David B. Goldston,

Senior Vice President, General Counsel & Secretary, Jo-Ann Stores, Inc., 5555 Darrow Road, Hudson, Ohio.

Dated: 1/13/10.

By: _____

Joanne E. Mattiace, Esq.,

Law Offices of Joanne E. Mattiace, 58 Stroudwater Place, Westbrook, ME 04092–4044, Counsel for Jo-Ann Stores, Inc.

U.S. CONSUMER PRODUCT SAFETY COMMISSION STAFF

Cheryl A. Falvey,

General Counsel, Office of the General Counsel.

Ronald G. Yelenik,

Assistant General Counsel, Division of Compliance, Office of the General Counsel.

Dated: 1/14/10.

By: _____

Sean R. Ward,

Trial Attorney, Division of Compliance, Office of the General Counsel.

In the Matter of Jo-Ann Stores, Inc.

Order

Upon consideration of the Settlement Agreement entered into between Jo-Ann Stores, Inc. ("*Jo-Ann*") and the U.S. Consumer Product Safety Commission ("*Commission*") staff, and the Commission having jurisdiction over the subject matter and over Jo-Ann, and it appearing that the Settlement Agreement and Order are in the public interest, it is

Ordered, that the Settlement Agreement be, and hereby is, accepted; and it is

Further ordered, that Jo-Ann shall pay a civil penalty in the amount of fifty thousand dollars ($50,000.00) within twenty (20) calendar days of service of the Commission's final Order accepting the Agreement. The payment shall be made by check payable to the order of the United States Treasury. Upon the failure of Jo-Ann to make any of the foregoing payments when due, interest on the unpaid amount shall accrue and be paid by Jo-Ann at the federal legal rate of interest set forth at 28 U.S.C. 1961(a) and (b).

Provisionally accepted and provisional Order issued on the *28th* day of *April*, 2010.

By Order of the Commission.

Todd A. Stevenson,

Secretary, U.S. Consumer Product Safety Commission.

[FR Doc. 2010–10386 Filed 5–3–10; 8:45 am]

BILLING CODE 6355–01–P

DEPARTMENT OF DEFENSE

Department of the Navy

Notice of Availability (NOA) of the Draft Environmental Impact Statement for the Disposal and Reuse of Naval Air Station Brunswick, ME, and To Announce Public Hearings

AGENCY: Department of the Navy, DoD.

ACTION: Notice.

SUMMARY: Pursuant to Section 102(2)(C) of the National Environmental Policy Act (NEPA) of 1969, as implemented by the Council on Environmental Quality Regulations (40 CFR parts 1500–1508), the Department of the Navy (Navy) with the Federal Aviation Administration (FAA) acting as a cooperating agency, has prepared and filed the Draft Environmental Impact Statement (EIS) to evaluate the potential environmental consequences associated with the disposal and reuse of Naval Air Station (NAS) Brunswick, Maine. The Navy is required to close NAS Brunswick per Public Law 101–510, the Defense Base Closure and Realignment Act of 1990, as amended in 2005. Public hearings will be held to provide information and receive oral and written comments on the Draft EIS. Federal, state and local agencies, and interested individuals are invited to be present or represented at the hearings.

DATES AND ADDRESSES: Two public hearings will be held. Each scheduled public hearing will be preceded by an open information session to allow interested individuals to review information presented in the Draft EIS. Navy representatives will be available during the information session to provide clarification as necessary related to the Draft EIS. Afternoon and evening information sessions are scheduled as follows:

1. *Evening Information Session and Public Hearing:* Brunswick Junior High

School, Gymnasium, 65 Columbia Avenue, Brunswick, Maine 04011.

Wednesday, June 2, 2010

Information Session—4:30 p.m. to 6:30 p.m.
Public Hearing—7 p.m. to 9 p.m.

2. *Daytime Information Session and Public Hearing:* Town of Brunswick, Parks and Recreation Building, 30 Federal Street, Brunswick, Maine 04011.

Thursday, June 3, 2010

Information Session—10 a.m. to 12 p.m.
Public Hearing—12:30 p.m. to 2:30 p.m.

FOR FURTHER INFORMATION CONTACT: Director, BRAC Program Management Office Northeast, 4911 Broad Street, Building 679, Philadelphia, PA 19112–1303, telephone 215–897–4900, fax 215–897–4902, e-mail: *david.drozd@navy.mil.*

SUPPLEMENTARY INFORMATION: The Navy acting as a lead agency with the FAA acting as a cooperating agency, has prepared and filed, the Draft EIS for the Disposal and Reuse of NAS Brunswick, Maine in accordance with requirements of the National Environmental Policy Act (NEPA) of 1969 (42 U.S.C. 4321–4345) and its implementing regulations (40 CFR parts 1500–1508). A Notice of Intent for this Draft EIS was published in the **Federal Register** on October 24, 2008 (**Federal Register**/Vol. 73, No. 207 pgs 63451 & 63452/Friday, October 24, 2008/Notices). Navy is lead agency for the proposed action. The purpose of the proposed action is to dispose of NAS Brunswick, Maine in a manner consistent with the *Brunswick Naval Air Station Reuse Master Plan* as developed by the Brunswick Local Redevelopment Authority (BLRA) in December 2007. The Navy is required to close NAS Brunswick, Maine, in accordance with Public Law 101–510, the Defense Base Closure and Realignment Act of 1990, as amended in 2005. NAS Brunswick must be closed on or before September 15, 2011. The BRAC Law exempts the decision-making process of the Commission from the provisions of NEPA. The Law also relieves the Department of Defense (DoD) from the NEPA requirements to consider the need for closing, realigning, or transferring functions, and from looking at alternative installations to close or realign. However, in accordance with NEPA, before disposing of any real property, the Navy must analyze the environmental effects of the disposal of the NAS Brunswick property. This Draft EIS has identified and considered two alternatives for the disposal and reuse of NAS Brunswick, and the no-action alternative.

Alternative 1 includes the disposal of NAS Brunswick and its outlying properties by the Navy and its reuse in a manner consistent with the *Brunswick Naval Air Station Reuse Master Plan.* This alternative would maintain the existing airfield for private aviation purposes. It is anticipated that full build-out of the Plan would be implemented over a 20-year period. The *Brunswick Naval Air Station Reuse Master Plan* calls for the development of approximately 1,630 acres (51%) of the total base property. In addition, approximately 1,570 acres (49%) of the base would be dedicated to a variety of active and passive land uses, including recreation, open space, and natural areas. The plan reuses the existing airfield and its supporting infrastructure, provides a mix of land use types and densities, and preserves open space and natural areas. The Navy has recognized Alternative 1 as the preferred alternative.

Alternative 2 includes the disposal of NAS Brunswick and its outlying properties by the Navy and its reuse in a manner that features a higher density of residential and community mixed-use development and does not include reuse of the airfield. Similar to Alternative 1, this alternative includes a mix of land use types, preserves open space and natural areas. It is anticipated that full build-out of the high-density scenario would be implemented over a 20-year period. Under Alternative 2 there would be development of approximately 1,580 acres (49%) of the total base property. In addition, approximately 1,620 acres (51%) of the base would be dedicated to a variety of active and passive land uses, including recreation, open space, and natural areas. Although this alternative would have less developable acres than Alternative 1, the density of residential and community mixed-uses would be higher.

Alternative 3 is required by NEPA and will evaluate the impacts at NAS Brunswick in the event that the property is not disposed. Under this alternative, existing mission and support operations would be relocated; however, the installation would be retained by the U.S. government in caretaker status. No reuse or redevelopment would occur at the facility. The installation would be placed in caretaker status. The Draft EIS addresses environmental impacts of each alternative pertaining to the disposal and reuse of the NAS Brunswick property.

The Draft EIS addresses any potential environmental impacts under each alternative associated with: water resources; air quality; biological resources; soils, topography, and geology; land use; noise exposure levels; socioeconomic resources; community facilities; transportation; environmental management; infrastructure; and cultural resources. The analyses includes direct and indirect impacts, and accounts for cumulative impacts from other foreseen Federal, State, or local activities at and around NAS Brunswick. The Navy conducted the scoping process to identify community concerns and local issues that should be addressed in the EIS. Federal, State and local agencies, and interested parties provided written comments to the Navy and identified specific issues or topics of environmental concern that should be addressed in the EIS. The Navy considered these comments in determining the scope of the EIS. The Draft EIS has been distributed to various Federal, State, and local agencies, as well as other interested individuals and organizations. In addition, copies of the Draft EIS have been distributed to the following libraries and publicly accessible facilities for public review:

1. Curtis Memorial Library, 23 Pleasant Street, Brunswick, ME 04011–2261.

2. Town of Brunswick—Department of Planning and Development, 28 Federal Street, Brunswick, Maine 04011.

3. Topsham Public Library, 25 Foreside Road, Topsham, ME 04086–1832.

An electronic copy of the Draft EIS is available for public viewing at *http://www.brunswickeis.com.* Federal, State and local agencies, as well as interested parties, are invited and encouraged to be present or represented at the hearings. To ensure the accuracy of the record, all statements presented orally at the public hearings should be submitted in writing. All comments will become part of the public record and will be responded to in the Final Environmental Impact Statement (FEIS). Equal weight will be given to oral and written statements. In the interest of available time, and to ensure all who wish to give an oral statement at the public hearings have the opportunity to do so, each speaker's comments will be limited to three minutes. If a longer statement is to be presented, it should be summarized at the public hearing and the full text submitted in writing either at the hearing or mailed or e-mailed to: Director, BRAC Program Management Office (PMO) Northeast, 4911 Broad Street, Building 679, Philadelphia, PA 19112–1303, telephone 215–897–4900, fax 215–897–4902, e-mail: *david.drozd@navy.mil.*

Residents will be required to sign-in to speak. Comments can be made in the following ways: (1) Oral statements or

written comments at the public hearings; or (2) Written comments mailed to the BRAC PMO address in this notice; or (3) Written comments faxed to the BRAC PMO fax number in this notice; or (4) Comments submitted via e-mail using the BRAC PMO e-mail address in this notice. All written comments postmarked by Monday, June 28, 2010, will become a part of the official public record and will be responded to in the FEIS.

Requests for special assistance, sign language interpretation for the hearing impaired, language interpreters, or other auxiliary aids for scheduled public hearing meeting must be sent by mail or e-mail to Mr. Matthew Butwin, Ecology and Environment, Inc., 368 Pleasant View Drive, Lancaster, NY 14086, telephone: 716–684–8060, e-mail: *mbutwin@ene.com.*

Dated: April 27, 2010.

A.M. Vallandingham,

Lieutenant Commander, Judge Advocate General's Corps, U.S. Navy, Federal Register Liaison Officer.

[FR Doc. 2010–10396 Filed 5–3–10; 8:45 am]

BILLING CODE 3810–FF–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 13011–002]

Shelbyville Hydro LLC; Notice of Intent To File License Application and Approving Use of the Traditional Licensing Process

April 27, 2010.

a. *Type of Filing:* Notice of Intent to File License Application and Request to Use the Traditional Licensing Process.

b. *Project No.:* 13011–002.

c. *Dated Filed:* March 8, 2010.

d. *Submitted By:* Shelbyville Hydro LLC.

e. *Name of Project:* Lake Shelbyville Dam Hydroelectric Project.

f. *Location:* At the Corps of Engineers' Lake Shelbyville dam on the Kaskaskia River in Shelby County, Illinois.

g. *Filed Pursuant to:* 18 CFR 5.3 of the Commission's regulations.

h. *Applicant Contact:* Brent Smith, COO, Symbiotics, LLC, P.O. Box 535, Rigby, Idaho 83442 at (208) 745–0834 or e-mail at *brent.smith@symbioticsenergy.com* or Corrine Servis, at (208) 745–0834 or e-mail *corrine.servis@symbioticsenergy.com.*

i. *FERC Contact:* John Baummer, *John.Baummer@ferc.gov*, (202) 502–6837.

j. Shelbyville Hydro LLC filed its request to use the Traditional Licensing Process on March 8, 2010. In a letter dated April 23, 2010, the Director of the Division of Hydropower Licensing approved Shelbyville Hydro's request to use the Traditional Licensing Process.

k. With this notice, we are initiating informal consultation with: (a) The U.S. Fish and Wildlife Service and NOAA Fisheries under section 7 of the Endangered Species Act and the joint agency regulations thereunder at 50 CFR part 402; (b) NOAA Fisheries under section 305(b) of the Magnuson-Stevens Fishery Conservation and Management Act and implementing regulations at 50 CFR 600.920; and (c) the Illinois State Historic Preservation Officer, as required by Section 106, National Historical Preservation Act, and the implementing regulations of the Advisory Council on Historic Preservation at 36 CFR 800.2.

l. With this notice, we are designating Shelbyville Hydro as the Commission's non-Federal representative for carrying out informal consultation, pursuant to Section 7 of the Endangered Species Act, Section 305 of the Magnuson-Stevens Fishery Conservation and Management Act, and Section 106 of the National Historic Preservation Act.

m. Shelbyville Hydro filed a Pre-Application Document (PAD; including a proposed process plan and schedule) with the Commission on September 8, 2009, pursuant to 18 CFR 5.6 of the Commission's regulations.

n. A copy of the PAD is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site (*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, of for TTY, (202) 502–8659. A copy is also available for inspection and reproduction at the address in paragraph h.

o. Register online at *http://www.ferc.gov/docs-filing/esubscription.asp* to be notified via e-mail of new filing and issuances related to this or other pending projects. For assistance, contact FERC Online Support.

Kimberly D. Bose,

Secretary.

[FR Doc. 2010–10354 Filed 5–3–10; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Combined Notice of Filings

April 27, 2010.

Take notice that the Commission has received the following Natural Gas Pipeline Rate and Refund Report filings:

Docket Numbers: RP10–634–000.

Applicants: Gulf South Pipeline Company, LP.

Description: Gulf South Pipeline Company, LP submits capacity release agreement containing negotiated rate provisions with Texla Energy Management, Inc.

Filed Date: 04/23/2010.

Accession Number: 20100426–0206.

Comment Date: 5 p.m. Eastern Time on Wednesday, May 5, 2010.

Docket Numbers: RP10–635–000.

Applicants: Carolina Gas Transmission Corporation.

Description: Request for waiver of Carolina Gas Transmission Corporation.

Filed Date: 04/23/2010.

Accession Number: 20100426–0208.

Comment Date: 5 p.m. Eastern Time on Wednesday, May 5, 2010.

Docket Numbers: RP10–636–000.

Applicants: Southern Star Central Gas Pipeline, Inc.

Description: Southern Star Central Gas Pipeline, Inc. submits First Revised Sheet 6 *et al.* to its FERC Gas Tariff, Original Volume 1, to be effective 6/1/2010.

Filed Date: 04/26/2010.

Accession Number: 20100426–0209.

Comment Date: 5 p.m. Eastern Time on Monday, May 10, 2010.

Docket Numbers: RP10–637–000.

Applicants: Texas Eastern Transmission, L.P.

Description: Texas Eastern Transmission, LP submits Second Revised Fifth Revised Sheet 645 *et al.* to FERC Gas Tariff, Seventh Revised Volume 1, to be effective 11/13/09.

Filed Date: 04/26/2010.

Accession Number: 20100426–0210.

Comment Date: 5 p.m. Eastern Time on Monday, May 10, 2010.

Docket Numbers: RP10–638–000.

Applicants: CenterPoint Energy-Mississippi River Transmission Corporation.

Description: CenterPoint Energy-Mississippi River Transmission Corporation submits an amended negotiated rate agreement between MRT and LER.

Filed Date: 04/26/2010.

Accession Number: 20100426–0211

Comment Date: 5 p.m. Eastern Time on Monday, May 10, 2010.

Docket Numbers: RP10–639–000.
Applicants: CenterPoint Energy-Mississippi River Transmission Corporation.
Description: CenterPoint Energy-Mississippi River Transmission Corporation submits an amended negotiated rate agreement between MRT and CES.
Filed Date: 04/26/2010.
Accession Number: 20100426–0212.
Comment Date: 5 p.m. Eastern Time on Monday, May 10, 2010.

Docket Numbers: RP10–640–000.
Applicants: Texas Eastern Transmission, LP.
Description: Texas Eastern Transmission, LP submits tariff filing per 154.204: Texas Eastern April 26, 2010, Clean-up Filing to be effective 4/22/2010.
Filed Date: 04/26/2010.
Accession Number: 20100426–5042.
Comment Date: 5 p.m. Eastern Time on Monday, May 10, 2010.

Docket Numbers: RP10–641–000.
Applicants: Kinder Morgan Interstate Gas Trans. LLC.
Description: Petition of Kinder Morgan Interstate Gas Transmission LLC for a Limited Waiver of Tariff Provision.
Filed Date: 04/26/2010.
Accession Number: 20100426–5054.
Comment Date: 5 p.m. Eastern Time on Monday, May 10, 2010.

Docket Numbers: RP10–642–000.
Applicants: CenterPoint Energy Gas Transmission Company.
Description: CenterPoint Energy Gas Transmission Company submits Second Revised Sheet 195 part of its FERC Gas Tariff, Sixth Revised Volume 1, to be effective 5/26/2010.
Filed Date: 04/26/2010.
Accession Number: 20100426–0224.
Comment Date: 5 p.m. Eastern Time on Monday, May 10, 2010.

Docket Numbers: RP10–643–000.
Applicants: Dominion Transmission, Inc.
Description: Dominion Transmission, Inc. submits Thirtieth Revised Sheet 39 *et al.* to its FERC Gas Tariff, Third Revised Volume 1, to effective 5/26/2010.
Filed Date: 04/26/2010.
Accession Number: 20100426–0225.
Comment Date: 5 p.m. Eastern Time on Monday, May 10, 2010.

Docket Numbers: RP10–644–000.
Applicants: Texas Eastern Transmission, LP.
Description: Texas Eastern Transmission, LP submits tariff filing per 154.204: South Jersey Negotiated Rate be effective 4/26/2010.
Filed Date: 04/27/2010.
Accession Number: 20100427–5005.
Comment Date: 5 p.m. Eastern Time on Monday, May 10, 2010.

Any person desiring to intervene or to protest in any of the above proceedings must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214) on or before 5 p.m. Eastern time on the specified comment date. It is not necessary to separately intervene again in a subdocket related to a compliance filing if you have previously intervened in the same docket. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Anyone filing a motion to intervene or protest must serve a copy of that document on the Applicant. In reference to filings initiating a new proceeding, interventions or protests submitted on or before the comment deadline need not be served on persons other than the Applicant.

The Commission encourages electronic submission of protests and interventions in lieu of paper, using the FERC Online links at *http://www.ferc.gov.* To facilitate electronic service, persons with Internet access who will eFile a document and/or be listed as a contact for an intervenor must create and validate an eRegistration account using the eRegistration link. Select the eFiling link to log on and submit the intervention or protests.

Persons unable to file electronically should submit an original and 14 copies of the intervention or protest to the Federal Energy Regulatory Commission, 888 First St., NE., Washington, DC 20426.

The filings in the above proceedings are accessible in the Commission's eLibrary system by clicking on the appropriate link in the above list. They are also available for review in the Commission's Public Reference Room in Washington, DC. There is an eSubscription link on the Web site that enables subscribers to receive e-mail notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please e-mail *FERCOnlineSupport@ferc.gov.* or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Nathaniel J. Davis, Sr.,
Deputy Secretary.
[FR Doc. 2010–10346 Filed 5–3–10; 8:45 am]
BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Combined Notice of Filings # 1

April 26, 2010.

Take notice that the Commission received the following electric rate filings:

Docket Numbers: ER98–411–017.
Applicants: Wolverine Power Supply Cooperative, Inc.
Description: Notification of Change in Status of Wolverine Power Supply Cooperative, Inc.
Filed Date: 04/21/2010.
Accession Number: 20100421–5149.
Comment Date: 5 p.m. Eastern Time on Wednesday, May 12, 2010.

Docket Numbers: ER10–1045–001.
Applicants: PJM Interconnection, L.L.C.
Description: PJM Interconnection, LLC submits a substitute Interim ISA to supersede the Original Meadow Lake Interim ISA.
Filed Date: 04/23/2010.
Accession Number: 20100423–0214.
Comment Date: 5 p.m. Eastern Time on Friday, May 14, 2010.

Docket Numbers: ER10–1082–000.
Applicants: MidAmerican Energy Company.
Description: MidAmerican Energy Company submits Engineering and Procurement Agreement.
Filed Date: 04/23/2010.
Accession Number: 20100423–0213.
Comment Date: 5 p.m. Eastern Time on Friday, May 14, 2010.

Docket Numbers: ER10–1083–000.
Applicants: ISO New England Inc.
Description: ISO New England Inc et al submits an executed non-confirming Standard Small Generator Interconnection Agreement etc.
Filed Date: 04/23/2010.
Accession Number: 20100423–0212.
Comment Date: 5 p.m. Eastern Time on Friday, May 14, 2010.

Docket Numbers: ER10–1084–000.
Applicants: PJM Interconnection, L.L.C.
Description: PJM Interconnection LLC submits an executed Transmission Agreement among ATCLLC etc.
Filed Date: 04/23/2010.
Accession Number: 20100423–0220.
Comment Date: 5 p.m. Eastern Time on Friday, May 14, 2010.

Docket Numbers: ER10–1085–000.
Applicants: Midwest Independent Transmission System Operator, Inc.
Description: Midwest Independent System Operator, Inc submits an Amended and restated Facilities Construction agreement etc.

Filed Date: 04/23/2010.
Accession Number: 20100423–0211.
Comment Date: 5 p.m. Eastern Time on Friday, May 14, 2010.

Docket Numbers: ER10–1086–000.
Applicants: Midwest Independent Transmission System Operator, Inc.
Description: Midwest Independent System Operator, Inc. submits an executed Transmission Interconnection agreement etc.
Filed Date: 04/23/2010.
Accession Number: 20100423–0222.
Comment Date: 5 p.m. Eastern Time on Friday, May 14, 2010.

Docket Numbers: ER10–1087–000.
Applicants: Entergy Services, Inc.
Description: City of North Rock et al submits the mutual-executed Second Revised Dynamic Transfer Operating Agreement.
Filed Date: 04/23/2010.
Accession Number: 20100423–0215.
Comment Date: 5 p.m. Eastern Time on Friday, May 14, 2010.

Docket Numbers: ER10–1088–000.
Applicants: ISO New England Inc., New England Power Pool.
Description: ISO New England Inc et al submits transmittal letter and revised tariff sheets that revise, remove, and add definitions of the ISO New England Transmission, Markets and Services Tariff etc.
Filed Date: 04/23/2010.
Accession Number: 20100426–0203.
Comment Date: 5 p.m. Eastern Time on Monday, May 10, 2010.

Docket Numbers: ER10–1089–000.
Applicants: EquiPower Resources Management, LLC.
Description: EquilPower Resources Management, LLC submits application requesting that FERC accept their FERC Electric Tariff, Original Volume 1 etc.
Filed Date: 04/23/2010.
Accession Number: 20100426–0202.
Comment Date: 5 p.m. Eastern Time on Friday, May 14, 2010.

Docket Numbers: ER10–1090–000.
Applicants: Commercial Energy of Montana Inc.
Description: Commercial Energy of Montana Inc. submits tariff filing per 35.12: Initial Market Based Rate to be effective 5/3/2010.
Filed Date: 04/26/2010.
Accession Number: 20100426–5049.
Comment Date: 5 p.m. Eastern Time on Monday, May 17, 2010.

Docket Numbers: ER10–1093–000.
Applicants: Delaware City Refining Company LLC.
Description: Delaware City Refining Company LLC submits tariff filing per 35.12: Initial Market Based Rates to be effective 6/1/2010.
Filed Date: 04/26/2010.
Accession Number: 20100426–5085.
Comment Date: 5 p.m. Eastern Time on Monday, May 17, 2010.

Take notice that the Commission received the following open access transmission tariff filings:

Docket Numbers: OA08–42–004.
Applicants: American Transmission Company LLC.
Description: American Transmission Company, LLC et al submits compliance filing with the changes directed by the Commission to the transmission planning principles in Attachment FF–ATCLLC etc.
Filed Date: 04/23/2010.
Accession Number: 20100426–0204.
Comment Date: 5 p.m. Eastern Time on Friday, May 14, 2010.

Docket Numbers: OA08–53–003.
Applicants: Midwest Independent Transmission System.
Description: Midwest Independent Transmission System Operator, Inc submits compliance filing revising its Open Access Transmission, Energy and Operating Reserve Markets Tariff.
Filed Date: 04/23/2010.
Accession Number: 20100426–0205.
Comment Date: 5 p.m. Eastern Time on Friday, May 14, 2010.

Take notice that the Commission received the following electric reliability filings:

Docket Numbers: RD10–13–000.
Applicants: North American Electric Reliability Corporation.
Description: Petition of the North American Electric Reliability Corporation for Approval of an Interpretation to Reliability Standard CIP–006–2, Requirement R1.1.
Filed Date: 04/20/2010.
Accession Number: 20100420–5159.
Comment Date: 5 p.m. Eastern Time on Wednesday, May 12, 2010.

Any person desiring to intervene or to protest in any of the above proceedings must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214) on or before 5 p.m. Eastern time on the specified comment date. It is not necessary to separately intervene again in a subdocket related to a compliance filing if you have previously intervened in the same docket. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Anyone filing a motion to intervene or protest must serve a copy of that document on the Applicant. In reference to filings initiating a new proceeding, interventions or protests submitted on or before the comment deadline need not be served on persons other than the Applicant.

The Commission encourages electronic submission of protests and interventions in lieu of paper, using the FERC Online links at *http://www.ferc.gov*. To facilitate electronic service, persons with Internet access who will eFile a document and/or be listed as a contact for an intervenor must create and validate an eRegistration account using the eRegistration link. Select the eFiling link to log on and submit the intervention or protests.

Persons unable to file electronically should submit an original and 14 copies of the intervention or protest to the Federal Energy Regulatory Commission, 888 First St NE., Washington, DC 20426.

The filings in the above proceedings are accessible in the Commission's eLibrary system by clicking on the appropriate link in the above list. They are also available for review in the Commission's Public Reference Room in Washington, DC. There is an eSubscription link on the Web site that enables subscribers to receive e-mail notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please e-mail *FERCOnlineSupport@ferc.gov*. or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Nathaniel J. Davis, Sr.,
Deputy Secretary.

[FR Doc. 2010–10348 Filed 5–3–10; 8:45 am]
BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Combined Notice of Filings #1

April 23, 2010.

Take notice that the Commission received the following electric rate filings:

Docket Numbers: ER10–1077–000.
Applicants: Otay Mesa Energy Center, LLC.
Description: Otay Acquisition Company, LLC submits notice of succession to OMEC.
Filed Date: 04/22/2010.
Accession Number: 20100423–0206.
Comment Date: 5 p.m. Eastern Time on Thursday, May 13, 2010.

Docket Numbers: ER10–1078–000.
Applicants: Exelon New Boston, LLC.
Description: Exelon New Boston, LLC submits tariff filing per 35.12: Exelon New Boston MBR Tariff to be effective 4/23/2010.
Filed Date: 04/23/2010.

Accession Number: 20100423–5069.
Comment Date: 5 p.m. Eastern Time on Friday, May 14, 2010.

Docket Numbers: ER10–1079–000.
Applicants: Exelon New England Power Marketing, Limited Partnership.
Description: Exelon New England Power Marketing, Limited Partnership submits tariff filing per 35.12: Exelon NEPM MBR Tariff to be effective 4/23/2010.
Filed Date: 04/23/2010.
Accession Number: 20100423–5070.
Comment Date: 5 p.m. Eastern Time on Friday, May 14, 2010.

Docket Numbers: ER10–1080–000.
Applicants: Exelon West Medway, LLC.
Description: Exelon West Medway, LLC submits tariff filing per 35.12: Exelon West Medway MBR Tariff to be effective 4/23/2010.
Filed Date: 04/23/2010.
Accession Number: 20100423–5071.
Comment Date: 5 p.m. Eastern Time on Friday, May 14, 2010.

Docket Numbers: ER10–1081–000.
Applicants: Exelon Wyman, LLC.
Description: Exelon Wyman, LLC submits tariff filing per 35.12: Exelon Wyman MBR Tariff to be effective 4/23/2010.
Filed Date: 04/23/2010.
Accession Number: 20100423–5073.
Comment Date: 5 p.m. Eastern Time on Friday, May 14, 2010.

Any person desiring to intervene or to protest in any of the above proceedings must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214) on or before 5 p.m. Eastern time on the specified comment date. It is not necessary to separately intervene again in a subdocket related to a compliance filing if you have previously intervened in the same docket. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Anyone filing a motion to intervene or protest must serve a copy of that document on the Applicant. In reference to filings initiating a new proceeding, interventions or protests submitted on or before the comment deadline need not be served on persons other than the Applicant.

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Nathaniel J. Davis, Sr.,
Deputy Secretary.
[FR Doc. 2010–10347 Filed 5–3–10; 8:45 am]
BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Combined Notice of Filings #1

April 27, 2010.

Take notice that the Commission received the following electric rate filings:

Docket Numbers: ER06–560–008.
Applicants: Credit Suisse Energy LLC.
Description: Notice of Non-Material Change in Status of Credit Suisse Energy LLC.
Filed Date: 04/26/2010.
Accession Numbers: 20100426–5092.
Comment Date: 5 p.m. Eastern Time on Monday, May 17, 2010.

Docket Numbers: ER06–739–026; ER02–537–029; ER03–983–026; ER06–738–026; ER07–501–026; ER07–758–022; ER08–649–018.
Applicants: Cogen Technologies Linden Venture, L.P., Fox Energy Company LLC, Birchwood Power Partners, L.P., Shady Hills Power Company, L.L.C., East Coast Power Linden Holding, LLC, EFS Parlin Holdings LLC, Inland Empire Energy Center, LLC.
Description: Notice of Non-Material Change in Status and Request for Waiver of East Coast Power Linden Holding, LLC, *et al.*
Filed Date: 04/26/2010.
Accession Numbers: 20100426–5124.
Comment Date: 5 p.m. Eastern Time on Monday, May 17, 2010.

Docket Numbers: ER10–662–001.
Applicants: CER Generation, LLC.
Description: Amendment to Application of CER Generation, LLC.
Filed Date: 04/26/2010.
Accession Numbers: 20100426–5113.
Comment Date: 5 p.m. Eastern Time on Thursday, May 6, 2010.

Docket Numbers: ER10–1091–000.
Applicants: Northwestern Wisconsin Electric Company.
Description: Northwestern Wisconsin Electric Co submits proposed rate change to NWEC original FERC Rate Schedule 2.
Filed Date: 04/26/2010.
Accession Numbers: 20100426–0218.
Comment Date: 5 p.m. Eastern Time on Monday, May 17, 2010.

Docket Numbers: ER10–1092–000.
Applicants: Public Service Company of New Mexico.
Description: Public Service Company of New Mexico submits Second Amended and Restated Agreement for Electric Service between PNM's Wholesale Power Marketing Department and Gallup, dated 4/18/2010.
Filed Date: 04/22/2010.
Accession Numbers: 20100426–0217.
Comment Date: 5 p.m. Eastern Time on Thursday, May 13, 2010.

Docket Numbers: ER10–1094–000.
Applicants: PacifiCorp.
Description: PacifiCorp submits Revised Network Integration Transmission Service Agreement dated 4/8/2010 etc.
Filed Date: 04/26/2010.
Accession Numbers: 20100426–0216.
Comment Date: 5 p.m. Eastern Time on Monday, May 17, 2010.

Docket Numbers: ER10–1095–000.
Applicants: Public Service Company of New Mexico.
Description: Public Service Company of New Mexico submits Construction Agreement RS–09–0064, Construction of the Interconnection Association, Inc to facilitate the interconnection of the new PNM Mendoza Substations etc.
Filed Date: 04/26/2010.
Accession Numbers: 20100426–0215.
Comment Date: 5 p.m. Eastern Time on Monday, May 17, 2010.

Docket Numbers: ER10–1096–000.
Applicants: Public Service Company of New Mexico.
Description: Public Service Company of New Mexico submits First revised Service Agreement for Network Integration Transmission Service Agreement *et al.*
Filed Date: 04/26/2010.
Accession Numbers: 20100426–0214.

Comment Date: 5 p.m. Eastern Time on Monday, May 17, 2010.

Docket Numbers: ER10–1097–000.

Applicants: PBF Power Marketing LLC.

Description: PBF Power Marketing LLC submits tariff filing per 35.12: Initial Market Based Rates to be effective 6/1/2010.

Filed Date: 04/27/2010.

Accession Numbers: 20100427–5006.

Comment Date: 5 p.m. Eastern Time on Tuesday, May 18, 2010.

Docket Numbers: ER10–1098–000.

Applicants: Midwest Independent Transmission System Operator, Inc.

Description: Midwest Independent Transmission System Operator, Inc. submits an Amended and Restated Facilities Construction Agreement among the Midwest ISO etc.

Filed Date: 04/26/2010.

Accession Numbers: 20100427–0203.

Comment Date: 5 p.m. Eastern Time on Monday, May 17, 2010.

Docket Numbers: ER10–1099–000.

Applicants: Southern California Edison Company.

Description: Southern California Edison submits revisions to Exhibit C BLY of the contract with Western Area Power Administration.

Filed Date: 04/26/2010.

Accession Numbers: 20100427–0205.

Comment Date: 5 p.m. Eastern Time on Monday, May 17, 2010.

Docket Numbers: ER10–1100–000.

Applicants: Unitil Power Corporation.

Description: Unitil Power Corp. submits Amended Unitil System Agreement Annual Filing.

Filed Date: 04/23/2010.

Accession Numbers: 20100426–0241.

Comment Date: 5 p.m. Eastern Time on Friday, May 14, 2010.

Docket Numbers: ER10–1101–000.

Applicants: Mint Energy, LLC.

Description: Mint Energy, LLC submits tariff filing per 35.12: Rate Schedule FERC No. 1 to be effective 6/26/2010.

Filed Date: 04/27/2010.

Accession Numbers: 20100427–5044.

Comment Date: 5 p.m. Eastern Time on Tuesday, May 18, 2010.

Docket Numbers: ER10–1102–000.

Applicants: Madison Paper Industries.

Description: Madison Paper Industries submits tariff filing per 35.12: Baseline Filing to be effective 3/1/2009.

Filed Date: 04/27/2010.

Accession Numbers: 20100427–5091.

Comment Date: 5 p.m. Eastern Time on Tuesday, May 18, 2010.

Take notice that the Commission received the following electric securities filings:

Docket Numbers: ES10–36–000.

Applicants: Ameren Energy Generating Company.

Description: Application for Blanket Authorization Under FPA 204 and 18 CFR Part 34 of Ameren Energy Generating Company.

Filed Date: 04/27/2010.

Accession Numbers: 20100427–5039.

Comment Date: 5 p.m. Eastern Time on Tuesday, May 18, 2010.

Any person desiring to intervene or to protest in any of the above proceedings must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214) on or before 5 p.m. Eastern time on the specified *comment date.* It is not necessary to separately intervene again in a subdocket related to a compliance filing if you have previously intervened in the same docket. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Anyone filing a motion to intervene or protest must serve a copy of that document on the Applicant. In reference to filings initiating a new proceeding, interventions or protests submitted on or before the comment deadline need not be served on persons other than the Applicant.

The Commission encourages electronic submission of protests and interventions in lieu of paper, using the FERC Online links at *http://www.ferc.gov.* To facilitate electronic service, persons with Internet access who will eFile a document and/or be listed as a contact for an intervenor must create and validate an eRegistration account using the eRegistration link. Select the eFiling link to log on and submit the intervention or protests.

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The filings in the above proceedings are accessible in the Commission's eLibrary system by clicking on the appropriate link in the above list. They are also available for review in the Commission's Public Reference Room in Washington, DC. There is an eSubscription link on the Web site that enables subscribers to receive e-mail notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please e-mail *FERCOnlineSupport@ferc.gov,* or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. 2010–10349 Filed 5–3–10; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Combined Notice of Filings #2

April 27, 2010.

Take notice that the Commission received the following qualifying facility filings:

Docket Numbers: QF10–13–000.

Applicants: Cornell University.

Description: Self Certification of Cogeneration Facility Cornell University (NY).

Filed Date: 10/08/2009.

Accession Number: 20091008–5041.

Comment Date: None Applicable.

Docket Numbers: QF10–88–000.

Applicants: Little Sisters of the Poor, Jeanne Jugan Residence.

Description: Notice of Self Certification of Qualifying Facility Status for a proposed Cogeneration Facility at Little Sisters of the Poor, Jeanne Jugan Residence.

Filed Date: 11/05/2009.

Accession Number: 20091106–0087.

Comment Date: None Applicable.

Docket Numbers: QF10–145–000.

Applicants: Covenant Health Systems, Inc.

Description: Self Certification Notice of Covenant Health Systems.

Filed Date: 12/01/2009.

Accession Number: 20091201–5153.

Comment Date: None Applicable.

Docket Numbers: QF10–272–000.

Applicants: St. Mary's Women and Children's Center.

Description: Qualifying Facility (QF) Application for the St. Mary's Women and Children's Center Cogeneration System in Dorchester, MA.

Filed Date: 01/21/2010.

Accession Number: 20100121–5016.

Comment Date: None Applicable.

Docket Numbers: QF10–290–000.

Applicants: Growpro Inc.

Description: Self Certification Notice of Growpro Inc.

Filed Date: 01/28/2010.

Accession Number: 20100128–5053.

Comment Date: None Applicable.

Docket Numbers: QF10–327–000.

Applicants: Beaufort Regional Health System.

Description: Notice of Self-Certification of Qualifying Status of a

Cogeneration Facility of PowerSecure Inc. for Beaufort Regional Health System.

Filed Date: 02/23/2010.

Accession Number: 20100223–5132.

Comment Date: None Applicable.

Docket Numbers: QF10–338–000.

Applicants: Suburban Athletic Club.

Description: Self Certification Notice of Suburban Athletic Club.

Filed Date: 03/02/2010.

Accession Number: 20100302–5027.

Comment Date: None Applicable.

Docket Numbers: QF10–365–000; QF10–366–000.

Applicants: Roger Grimes; Belk Inc.

Description: Belk, Inc. Qualifying Facility Application or PURPA Energy Utility Filing.

Filed Date: 03/17/2010.

Accession Number: 20100317–5093.

Comment Date: None Applicable.

Docket Numbers: QF10–415–000.

Applicants: Massachusetts Department of Corrections Bridgewater Cogeneration Plant.

Description: Certification of Qualifying Facility Status for an Existing or a Proposed Small Power Production or Cogeneration Facility Commonwealth of Massachusetts Department of Corrections.

Filed Date: 04/12/2010.

Accession Number: 20100412–5035.

Comment Date: None Applicable.

Docket Numbers: QF10–418–000.

Applicants: The Trustees of Smith College.

Description: Form 556 of Smith College.

Filed Date: 04/13/2010.

Accession Number: 20100413–5115.

Comment Date: None Applicable.

Docket Numbers: QF10–422–000.

Applicants: Fisher, Dave.

Description: Notice of Certification of Qualifying Facility Status for an Existing or a Proposed Small Power Production or Cogeneration Facility for Dave Fisher.

Filed Date: 04/14/2010.

Accession Number: 20100414–5036.

Comment Date: None Applicable.

Docket Numbers: QF10–427–000.

Applicants: Rigo, Jr., Anthony.

Description: Baker Renewable Energy for 556 of Anthony Rigo Jr.

Filed Date: 04/15/2010.

Accession Number: 20100415–5069.

Comment Date: None Applicable.

Docket Numbers: QF10–429–000.

Applicants: Green, Matthew.

Description: Baker Renewable Energy Form 556 of Matthew Green.

Filed Date: 04/16/2010.

Accession Number: 20100416–5193.

Comment Date: None Applicable.

Docket Numbers: QF10–431–000.

Applicants: Oregon State University.

Description: Self-Certification of a nominal 6.5 MW cogeneration facility on the Oregon State University campus.

Filed Date: 04/19/2010.

Accession Number: 20100419–5191.

Comment Date: None Applicable.

A notice of self-certification or self-recertification does not institute a proceeding regarding qualifying facility status; a notice of self-certification or self-recertification provides notice that the entity making the filing has determined the Facility meets the applicable criteria to be a qualifying facility. Any person seeking to challenge such qualifying facility status may do so by filing a motion pursuant to 18 CFR 292.207(d)(iii).

This filing is accessible on-line at *http://www.ferc.gov*, using the "eLibrary" link and is available for review in the Commission's Public Reference Room in Washington, DC. There is an "eSubscription" link on the Web site that enables subscribers to receive e-mail notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please e-mail *FERCOnlineSupport@ferc.gov*, or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. 2010–10350 Filed 5–3–10; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Combined Notice of Filings

April 23, 2010.

Take notice that the Commission has received the following Natural Gas Pipeline Rate and Refund Report filings:

Docket Numbers: RP10–621–000.

Applicants: Williston Basin Interstate Pipeline Company.

Description: Williston Basin Interstate Pipeline Company submits Seventy-Fifth revised Sheet 15 *et al.* to Second Revised Volume 1, to be effective 5/21/2010.

Filed Date: 04/21/2010.

Accession Number: 20100421–0211.

Comment Date: 5 p.m. Eastern Time on Monday, May 3, 2010.

Docket Numbers: RP10–622–000.

Applicants: Transcontinental Gas Pipe Line Company, LLC.

Description: Transcontinental Gas Pipe Line Company, LLC submits Eighth Revised Sheet 27 to its FERC Gas Tariff, Fourth Revised Volume 1, to be effective 5/1/10.

Filed Date: 04/21/2010.

Accession Number: 20100422–0204.

Comment Date: 5 p.m. Eastern Time on Monday, May 3, 2010.

Docket Numbers: RP10–624–000.

Applicants: Gulf South Pipeline Company, LP.

Description: Gulf South Pipeline Company, LP submits capacity release agreement containing negotiated rate provisions with Texla Energy Management, Inc.

Filed Date: 04/21/2010.

Accession Number: 20100422–0203.

Comment Date: 5 p.m. Eastern Time on Monday, May 3, 2010.

Docket Numbers: RP10–625–000.

Applicants: Texas Eastern Transmission, LP.

Description: Texas Eastern Transmission, LP submits tariff filing per 154.203: Texas Eastern Baseline Filing to be effective 4/22/2010.

Filed Date: 04/22/2010.

Accession Number: 20100422–5016.

Comment Date: 5 p.m. Eastern Time on Tuesday, May 4, 2010.

Docket Numbers: RP10–626–000.

Applicants: Southern Star Central Gas Pipeline, Inc.

Description: Southern Star Central Gas Pipeline, Inc. Petition for Waiver of Index of Customer Filing Instructions.

Filed Date: 02/19/2010.

Accession Number: 20100219–5142.

Comment Date: 5 p.m. Eastern Time on Monday, May 3, 2010.

Docket Numbers: CP10–107–000.

Applicants: The East Ohio Gas Company.

Description: The East Ohio Gas Company submits an abbreviated joint application requesting approval to lease storage capacity from DEO.

Filed Date: 03/26/2010.

Accession Number: 20100329–0210.

Comment Date: 5 p.m. Eastern Time on Monday, May 3, 2010.

Any person desiring to intervene or to protest in any of the above proceedings must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214) on or before 5 p.m. Eastern time on the specified comment date. It is not necessary to separately intervene again in a subdocket related to a compliance filing if you have previously intervened in the same docket. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Anyone filing a motion to intervene or protest must serve a copy of that

document on the Applicant. In reference to filings initiating a new proceeding, interventions or protests submitted on or before the comment deadline need not be served on persons other than the Applicant.

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Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. 2010–10351 Filed 5–3–10; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Combined Notice of Filings #1

April 22, 2010.

Take notice that the Commission received the following exempt wholesale generator filings:

Docket Numbers: EG10–36–000.

Applicants: Otay Acquisition Company, LLC.

Description: Notice of Self-Certification of Exempt Wholesale Generator Status of Otay Acquisition Company, LLC.

Filed Date: 04/22/2010.

Accession Number: 20100422–5110.

Comment Date: 5 p.m. Eastern Time on Thursday, May 13, 2010.

Take notice that the Commission received the following electric rate filings:

Docket Numbers: ER00–2885–029; ER01–2765–028; ER02–2102–028; ER05–1232–025; ER07–1358–015; ER09–1141–008.

Applicants: J.P. Morgan Ventures Energy Corporation, BE Louisiana LLC, Cedar Brakes I, L.L.C., Utility Contract Funding, L.L.C., Cedar Brakes II, L.L.C., J.P. Morgan Commodities Canada Corporation.

Description: J.P. Morgan submits supplement to notice of change in status.

Filed Date: 04/16/2010.

Accession Number: 20100421–0034.

Comment Date: 5 p.m. Eastern Time on Friday, May 7, 2010.

Docket Numbers: ER01–424–011; ER01–313–011.

Applicants: Pacific Gas and Electric Company; California Independent System Operator Corporation.

Description: Refund Report of the California Independent System Operator Corporation.

Filed Date: 04/21/2010.

Accession Number: 20100421–5180.

Comment Date: 5 p.m. Eastern Time on Wednesday, May 12, 2010.

Docket Numbers: ER07–771–004.

Applicants: E.ON U.S., LLC.

Description: E.ON U.S. LLC Annual true-up filing under Open Access Transmission Tariff.

Filed Date: 04/22/2010.

Accession Number: 20100422–5159.

Comment Date: 5 p.m. Eastern Time on Thursday, May 13, 2010.

Docket Numbers: ER09–1051–003.

Applicants: ISO New England Inc., New England Power Pool

Description: ISO New England, Inc et al submits response to the compliance requirements set forth in the Jan 21 Order.

Filed Date: 04/21/2010.

Accession Number: 20100422–0202.

Comment Date: 5 p.m. Eastern Time on Wednesday, May 12, 2010.

Docket Numbers: ER10–1071–000.

Applicants: Midwest Independent Transmission System Operator, Inc.

Description: Midwest Independent Transmission System Operator, Inc submits an executed Amended and Restated Generator Interconnection Agreement etc.

Filed Date: 04/21/2010.

Accession Number: 20100421–0203.

Comment Date: 5 p.m. Eastern Time on Wednesday, May 12, 2010.

Docket Numbers: ER10–1072–000.

Applicants: Westar Energy, Inc.

Description: Westar Energy, Inc. submits Supplemental Generation Agreements between Westar and the Cities of Herington and Wamego, Kansas designated as Rate Schedule FERC 338 and 339.

Filed Date: 04/21/2010.

Accession Number: 20100421–0209.

Comment Date: 5 p.m. Eastern Time on Wednesday, May 12, 2010.

Docket Numbers: ER10–1073–000.

Applicants: Electrade Corporation.

Description: Electrade Corporation submits tariff filing per 35.12: Baseline Tariff Filing to be effective 4/21/2010.

Filed Date: 04/21/2010.

Accession Number: 20100421–5112.

Comment Date: 5 p.m. Eastern Time on Wednesday, May 12, 2010.

Docket Numbers: ER10–1074–000; ER10–1075–000; ER10–1076–000.

Applicants: Raven One, LLC; Raven Two, LLC; Raven Three, LLC

Description: Raven One, LLC et al submits notice of cancellation of the Companies' market-based rate tariffs currently on file with the Commission.

Filed Date: 04/21/2010.

Accession Number: 20100422–0201.

Comment Date: 5 p.m. Eastern Time on Wednesday, May 12, 2010.

Take notice that the Commission received the following electric securities filings:

Docket Numbers: ES10–35–000.

Applicants: American Transmission Company LLC, ATC Management Inc.

Description: American Transmission Company LLC and ATC. Management Inc under Section 204 of the Federal Power Act for Authorization to Issue Securities.

Filed Date: 04/21/2010.

Accession Number: 20100421–5145.

Comment Date: 5 p.m. Eastern Time on Wednesday, May 12, 2010.

Take notice that the Commission received the following electric reliability filings:

Docket Numbers: RD10–11–000.

Applicants: North American Electric Reliability Corporation.

Description: Petition of the North American Electric Reliability Corporation for Approval of Interpretation to Reliability Standard CIP–001—Cyber Security—Sabotage Reporting, Requirement R2.

Filed Date: 04/21/2010.

Accession Number: 20100421–5077.

Comment Date: 5 p.m. Eastern Time on Wednesday, May 12, 2010.

Docket Numbers: RD10–12–000.

Applicants: North American Electric Reliability Corporation.

Description: Petition of the North American Electric Reliability Corporation for Approval of Interpretation to Reliability Standard

CIP–005–2, Cyber Security, Electronic Security Perimeter(s), Section 4.2.2 and Requirement R1.3.

Filed Date: 04/21/2010.

Accession Number: 20100421–5078.

Comment Date: 5 p.m. Eastern Time on Wednesday, May 12, 2010.

Take notice that the Commission received the following electric reliability filings:

Docket Numbers: RR10–1–001.

Applicants: North American Electric Reliability Corporation.

Description: Compliance Filing of the North American Electric Reliability Corp in Response to January 21, 2010 Commission Order Concerning Appendix 4D to the NERC Rules of Procedure- Procedure for Requesting and Receiving Technical Feasibility Exceptions.

Filed Date: 04/21/2010.

Accession Number: 20100421–5166.

Comment Date: 5 p.m. Eastern Time on Wednesday, May 12, 2010.

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Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. 2010–10353 Filed 5–3–10; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Combined Notice of Filings

April 26, 2010.

Take notice that the Commission has received the following Natural Gas Pipeline Rate and Refund Report filings:

Docket Numbers: RP10–623–000.

Applicants: Texas Eastern Transmission, L.P.

Description: Texas Eastern Transmission, LP submits First Revised Eighth Revised Sheet No 529 *et al.* to FERC Gas Tariff, Seventh Revised Volume No 1, to be effective 11/16/09.

Filed Date: 04/21/2010.

Accession Number: 20100426–0201.

Comment Date: 5 p.m. Eastern Time on Monday, May 3, 2010.

Docket Numbers: RP10–627–000.

Applicants: Saltville Gas Storage Company L.L.C.

Description: Saltville Gas Storage Company, LLC submits First Revised Sheet 1 *et al.* to FERC Gas Tariff, Original Volume 1, to be effective 5/24/10.

Filed Date: 04/22/2010.

Accession Number: 20100423–0204.

Comment Date: 5 p.m. Eastern Time on Tuesday, May 4, 2010.

Docket Numbers: RP10–628–000.

Applicants: Egan Hub Storage, LLC.

Description: Egan Hub Storage, LLC submits Third Revised Sheet 2 *et al.* to FERC Gas Tariff, First Revised Volume 1, to be effective 5/24/10.

Filed Date: 04/22/2010.

Accession Number: 20100423–0203.

Comment Date: 5 p.m. Eastern Time on Tuesday, May 4, 2010.

Docket Numbers: RP10–629–000.

Applicants: Gulf South Pipeline Company, LP.

Description: Gulf South Pipeline Company, LP submits a capacity release agreement containing negotiated rate provisions with Texla Energy Management, Inc.

Filed Date: 04/22/2010.

Accession Number: 20100423–0201.

Comment Date: 5 p.m. Eastern Time on Tuesday, May 4, 2010.

Docket Numbers: RP10–630–000.

Applicants: Gulf Stream Natural Gas System, LLC.

Description: Gulfstream Natural Gas System, LLC submits Second Revised Sheet 121 *et al.* FERC Gas tariff, Original Volume 1, to be effective 5/24/2010.

Filed Date: 04/23/2010.

Accession Number: 20100423–0216.

Comment Date: 5 p.m. Eastern Time on Wednesday, May 5, 2010.

Docket Numbers: RP10–631–000.

Applicants: Horizon Pipeline Company, L.L.C.

Description: Horizon Pipeline Company, LLC submits a report of the refund of penalty revenues.

Filed Date: 04/23/2010.

Accession Number: 20100423–0217.

Comment Date: 5 p.m. Eastern Time on Wednesday, May 5, 2010.

Docket Numbers: RP10–632–000.

Applicants: Gulf South Pipeline Company, LP.

Description: Gulf South Pipeline Company, LP submits a capacity release agreement containing negotiated rate provisions.

Filed Date: 04/23/2010.

Accession Number: 20100423–0218.

Comment Date: 5 p.m. Eastern Time on Wednesday, May 5, 2010.

Docket Numbers: RP10–633–000.

Applicants: Gulf Crossing Pipeline Company LLC.

Description: Gulf Crossing Pipeline Company submits First Revised Sheet 1 of its FERC Gas Tariff, Original Volume 1, to be effective 6/1/10.

Filed Date: 04/23/2010.

Accession Number: 20100423–0219.

Comment Date: 5 p.m. Eastern Time on Wednesday, May 5, 2010.

Any person desiring to intervene or to protest in any of the above proceedings must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214) on or before 5 p.m. Eastern time on the specified comment date. It is not necessary to separately intervene again in a subdocket related to a compliance filing if you have previously intervened in the same docket. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Anyone filing a motion to intervene or

protest must serve a copy of that document on the Applicant. In reference to filings initiating a new proceeding, interventions or protests submitted on or before the comment deadline need not be served on persons other than the Applicant.

The Commission encourages electronic submission of protests and interventions in lieu of paper, using the FERC Online links at *http://www.ferc.gov*. To facilitate electronic service, persons with Internet access who will eFile a document and/or be listed as a contact for an intervenor must create and validate an eRegistration account using the eRegistration link. Select the eFiling link to log on and submit the intervention or protests.

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Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. 2010–10352 Filed 5–3–10; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP10–76–000]

Eastern Shore Natural Gas Company; Notice of Intent To Prepare an Environmental Assessment for the Proposed Mainline Extension Interconnect Project and Request for Comments on Environmental Issues

April 27, 2010.

The staff of the Federal Energy Regulatory Commission (FERC or Commission) will prepare an environmental assessment (EA) that will discuss the environmental impacts of the Mainline Extension Interconnect Project involving construction and operation of facilities by Eastern Shore Natural Gas Company (ESNG) in Lancaster and Chester Counties, Pennsylvania. This EA will be used by the Commission in its decision-making process to determine whether the project is in the public convenience and necessity.

This notice announces the opening of the scoping process the Commission will use to gather input from the public and interested agencies on the project. Your input will help the Commission staff determine what issues need to be evaluated in the EA. Please note that the scoping period will close on May 28, 2010.

This notice is being sent to the Commission's current environmental mailing list for this project. State and local government representatives are asked to notify their constituents of this planned project and encourage them to comment on their areas of concern.

If you are a landowner receiving this notice, you may be contacted by a pipeline company representative about the acquisition of an easement to construct, operate, and maintain the proposed facilities. The company would seek to negotiate a mutually acceptable agreement. However, if the project is approved by the Commission, that approval conveys with it the right of eminent domain. Therefore, if easement negotiations fail to produce an agreement, the pipeline company could initiate condemnation proceedings in accordance with State law.

A fact sheet prepared by the FERC entitled "An Interstate Natural Gas Facility On My Land? What Do I Need To Know?" was attached to the project notice ESNG provided to landowners. This fact sheet addresses a number of typically-asked questions, including the use of eminent domain and how to participate in the Commission's proceedings. It is also available for viewing on the FERC Web site (*http://www.ferc.gov*).

Summary of the Proposed Project

ESNG proposes to construct and operate approximately 8.3 miles of 16-inch-diameter natural gas pipeline and other associated facilities in Lancaster and Chester Counties, Pennsylvania. The Mainline Extension Interconnect Project would provide its shippers the opportunity to receive natural gas supplies, with a capacity of 40,000 dekatherms per day, from the Appalachian region and other areas through an interconnection with Texas Eastern Transmission, LP's pipeline system.

The Mainline Extension Interconnect Project would consist of the following facilities:

- 8.3 miles of 16-inch-diameter natural gas pipeline;
- One meter station/pig[1] launcher at the interconnect with Texas Eastern Transmission, LP, near Honey Brook, Pennsylvania;
- One mainline valve; and
- One interconnect/pig receiver at the existing ESNG meter station near Parkesburg, Pennsylvania.

The general location of the project facilities is shown in Appendix 1.[2]

Land Requirements for Construction

Construction of the proposed facilities would disturb about 76.4 acres of land for the aboveground facilities and the pipeline. Following construction, about 51.1 acres would be maintained for permanent operation of the project's facilities; the remaining acreage would be restored and allowed to revert to former uses.

The EA Process

The National Environmental Policy Act (NEPA) requires the Commission to take into account the environmental impacts that could result from an action whenever it considers the issuance of a Certificate of Public Convenience and Necessity. NEPA also requires us[3] to discover and address concerns the public may have about proposals. This process is referred to as "scoping". The main goal of the scoping process is to focus the analysis in the EA on the important environmental issues. By this notice, the Commission requests public comments on the scope of the issues to address in the EA. All comments received will be considered during the preparation of the EA.

In the EA we will discuss impacts that could occur as a result of the construction and operation of the proposed project under these general headings:

- Geology and soils;
- Land use;
- Water resources, fisheries, and wetlands;
- Cultural resources;

[1] A "pig" is a tool that is inserted into and moves through the pipeline, and is used for cleaning the pipeline, internal inspections, or other purposes.

[2] The appendices referenced in this notice are not being printed in the **Federal Register**. Copies of appendices were sent to all those receiving this notice in the mail and are available at *http://www.ferc.gov* using the link called "eLibrary" or from the Commission's Public Reference Room, 888 First Street, NE., Washington, DC 20426, or call (202) 502–8371. For instructions on connecting to eLibrary, refer to the last page of this notice.

[3] "We", "us", and "our" refer to the environmental staff of the Commission's Office of Energy Projects.

- Vegetation and wildlife;
- Air quality and noise;
- Endangered and threatened species; and
- Public safety.

We will also evaluate reasonable alternatives to the proposed project or portions of the project, and make recommendations on how to lessen or avoid impacts on the various resource areas.

Our independent analysis of the issues will be presented in the EA. The EA will be placed in the public record and, depending on the comments received during the scoping process, may be published and distributed to the public. A comment period will be allotted if the EA is published for review. We will consider all comments on the EA before we make our recommendations to the Commission. To ensure your comments are considered, please carefully follow the instructions in the Public Participation section below.

With this notice, we are asking agencies with jurisdiction and/or special expertise with respect to environmental issues to formally cooperate with us in the preparation of the EA. These agencies may choose to participate once they have evaluated the proposal relative to their responsibilities. Agencies that would like to request cooperating agency status should follow the instructions for filing comments provided under the Public Participation section of this notice.

Consultations Under Section 106 of the National Historic Preservation Act

In accordance with the Advisory Council on Historic Preservation's implementing regulations, we are using this notice to solicit the views of the public on the project's potential effects on historic properties.[4] We will document our findings on the impacts on cultural resources and summarize the status of consultations under section 106 of the National Historic Preservation Act in our EA.

Public Participation

You can make a difference by providing us with your specific comments or concerns about the project. Your comments should focus on the potential environmental effects, reasonable alternatives, and measures to avoid or lessen environmental impacts. The more specific your comments, the more useful they will be. To ensure that your comments are timely and properly recorded, please send your comments so that they will be received in Washington, DC on or before May 28, 2010.

For your convenience, there are three methods which you can use to submit your comments to the Commission. In all instances, please reference the project docket number CP10–76–000 with your submission. The Commission encourages electronic filing of comments and has expert eFiling staff available to assist you at (202) 502–8258 or *efiling@ferc.gov*.

(1) You may file your comments electronically by using the Quick Comment feature, which is located at *http://www.ferc.gov* under the link called "*Documents and Filings*". A Quick Comment is an easy method for interested persons to submit text-only comments on a project;

(2) You may file your comments electronically by using the "eFiling" feature that is listed under the "*Documents and Filings*" link. eFiling involves preparing your submission in the same manner as you would if filing on paper, and then saving the file on your computer's hard drive. You will attach that file to your submission. New eFiling users must first create an account by clicking on the links called "*Sign up*" or "*eRegister*". You will be asked to select the type of filing you are making. A comment on a particular project is considered a "Comment on a Filing"; or

(3) You may file a paper copy of your comments at the following address: Kimberly D. Bose, Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Room 1A, Washington, DC 20426.

Environmental Mailing List

The environmental mailing list includes federal, state, and local government representatives and agencies; elected officials; Native American Tribes; other interested parties; and local libraries and newspapers. This list also includes all affected landowners (as defined in the Commission's regulations) who are potential right-of-way grantors, whose property may be used temporarily for project purposes, or who own homes within certain distances of aboveground facilities, and anyone who submits comments on the project. We will update the environmental mailing list as the analysis proceeds to ensure that we send the information related to this environmental review to all individuals, organizations, and government entities interested in and/or potentially affected by the proposed project.

If the EA is published for distribution, copies will be sent to the environmental mailing list for public review and comment.

Becoming an Intervenor

In addition to involvement in the EA scoping process, you may want to become an "intervenor" which is an official party to the Commission's proceeding. Intervenors play a more formal role in the process and are able to file briefs, appear at hearings, and be heard by the courts if they choose to appeal the Commission's final ruling. An intervenor formally participates in the proceeding by filing a request to intervene. Instructions for becoming an intervenor are included in the User's Guide under the "e-filing" link on the Commission's Web site.

Additional Information

Additional information about the project is available from the Commission's Office of External Affairs, at (866) 208–FERC, or on the FERC Web site at *http://www.ferc.gov* using the "eLibrary" link. Click on the eLibrary link, click on "General Search" and enter the docket number, excluding the last three digits in the Docket Number field (*i.e.*, CP10–76). Be sure you have selected an appropriate date range. For assistance, please contact FERC Online Support at *FercOnlineSupport@ferc.gov* or toll free at (866) 208–3676, or for TTY, contact (202) 502–8659. The eLibrary link also provides access to the texts of formal documents issued by the Commission, such as orders, notices, and rulemakings.

In addition, the Commission now offers a free service called eSubscription which allows you to keep track of all formal issuances and submittals in specific dockets. This can reduce the amount of time you spend researching proceedings by automatically providing you with notification of these filings, document summaries, and direct links to the documents. Go to *http://www.ferc.gov/esubscribenow.htm*.

Finally, public meetings or site visits will be posted on the Commission's calendar located at *http://www.ferc.gov/EventCalendar/EventsList.aspx* along with other related information.

Kimberly D. Bose,

Secretary.

FR Doc. 2010–10355 Filed 5–3–10; 8:45 am]

BILLING CODE 6717–01–P

[4] The Advisory Council on Historic Preservation's regulations are at Title 36, Code of Federal Regulations, Part 800. Historic properties are defined in those regulations as any prehistoric or historic district, site, building, structure, or object included in or eligible for inclusion in the National Register for Historic Places.

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. AD10–11–000]

Frequency Regulation Compensation in the Organized Wholesale Power Markets; Notice of Technical Conference

April 27, 2010.

Take notice that Commission staff will hold a technical conference to elicit input on issues pertaining to Frequency Regulation Compensation in the ISO/RTO Markets. The technical conference will take place on May 26, 2010, from 9 a.m. to 1 p.m. Eastern Time. The conference will be held in the Commission Meeting Room at the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426. All interested persons are invited to participate in the conference.

Those interested in speaking at the conference should notify the Commission by May 3, 2010 by completing an online form describing the topics that they will address: *https://www.ferc.gov/whats-new/registration/markets-05-26-speaker-form.asp*. Due to time constraints, we may not be able to accommodate all those interested in speaking. A detailed agenda, including panel speakers, will be published at a later date.

The technical conference will be transcribed. Transcripts of the conferences will be immediately available for a fee from Ace-Federal Reporters, Inc. (202–347–3700 or 1–800–336–6646). The transcripts will be available for free on the Commission's eLibrary system and on the Calendar of Events approximately one week after the conference.

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.

Commission conferences are accessible under section 508 of the Rehabilitation Act of 1973. For accessibility accommodations, please send an e-mail to *accessibility@ferc.gov* or call toll free (866)–208–3372 (voice) or (202)–208–1659 (TTY), or send a FAX to (202)–208–2106 with the required accommodations.

For further information about the conference, please contact:

Tatyana Kramskaya (Technical Information), Office of Energy Policy and Innovation, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426. (202)–502–6262. *Tatyana.Kramskaya@ferc.gov*.

Eric Winterbauer (Legal Information), Office of the General Counsel—Energy Markets, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426. (202) 502–8329. *Eric.Winterbauer@ferc.gov*.

Kimberly D. Bose,

Secretary.

[FR Doc. 2010–10356 Filed 5–3–10; 8:45 am]

BILLING CODE 6717–01–P

ENVIRONMENTAL PROTECTION AGENCY

[EPA–HQ–OPP–2010–0261; FRL–8821–8]

Pesticide Products; Registration Applications

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: EPA has received applications to register pesticide products containing an active ingredient not included in any previously registered pesticide product. Pursuant to the provisions of section 3(c)(4) of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA), EPA is hereby providing notice of receipt and opportunity to comment on these applications.

DATES: Comments must be received on or before June 3, 2010.

ADDRESSES: Submit your comments, identified by docket identification (ID) number EPA–HQ–OPP–2010–0261, by one of the following methods:

- *Federal eRulemaking Portal*: *http://www.regulations.gov*. Follow the on-line instructions for submitting comments.
- *Mail*: Office of Pesticide Programs (OPP) Regulatory Public Docket (7502P), Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001.
- *Delivery*: OPP Regulatory Public Docket (7502P), Environmental Protection Agency, Rm. S–4400, One Potomac Yard (South Bldg.), 2777 S. Crystal Dr., Arlington, VA. Deliveries are only accepted during the Docket Facility's normal hours of operation (8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays). Special arrangements should be made for deliveries of boxed information. The Docket Facility telephone number is (703) 305–5805.

Instructions: Direct your comments to docket ID number EPA–HQ–OPP–2010–0261. EPA's policy is that all comments received will be included in the docket without change and may be made available on-line at *http://www.regulations.gov*, including any personal information provided, unless the comment includes information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Do not submit information that you consider to be CBI or otherwise protected through regulations.gov or e-mail. The regulations.gov website is an "anonymous access" system, which means EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an e-mail comment directly to EPA without going through regulations.gov, your e-mail address will be automatically captured and included as part of the comment that is placed in the docket and made available on the Internet. If you submit an electronic comment, EPA recommends that you include your name and other contact information in the body of your comment and with any disk or CD-ROM you submit. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses.

Docket: All documents in the docket are listed in the docket index available at *http://www.regulations.gov*. Although listed in the index, some information is not publicly available, e.g., CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available either in the electronic docket at *http://www.regulations.gov*, or, if only available in hard copy, at the OPP Regulatory Public Docket in Rm. S–4400, One Potomac Yard (South Bldg.), 2777 S. Crystal Dr., Arlington, VA. The hours of operation of this Docket Facility are from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The Docket Facility telephone number is (703) 305–5805.

FOR FURTHER INFORMATION CONTACT: Shaunta Hill, Registration Division (7504P), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001; telephone number: (703) 347–8961; e-mail address: *hill.shaunta@epa.gov*.

SUPPLEMENTARY INFORMATION

I. General Information

A. Does this Action Apply to Me?

You may be potentially affected by this action if you are an agricultural producer, food manufacturer, or pesticide manufacturer. Potentially affected entities may include, but are not limited to:

- Crop production (NAICS code 111).
- Animal production (NAICS code 112).
- Food manufacturing (NAICS code 311).
- Pesticide manufacturing (NAICS code 32532).

This listing is not intended to be exhaustive, but rather provides a guide for readers regarding entities likely to be affected by this action. Other types of entities not listed in this unit could also be affected. The North American Industrial Classification System (NAICS) codes have been provided to assist you and others in determining whether this action might apply to certain entities. If you have any questions regarding the applicability of this action to a particular entity, consult the person listed under **FOR FURTHER INFORMATION CONTACT**.

B. What Should I Consider as I Prepare My Comments for EPA?

1. *Submitting CBI.* Do not submit this information to EPA through regulations.gov or e-mail. Clearly mark the part or all of the information that you claim to be CBI. For CBI information in a disk or CD-ROM that you mail to EPA, mark the outside of the disk or CD-ROM as CBI and then identify electronically within the disk or CD-ROM the specific information that is claimed as CBI. In addition to one complete version of the comment that includes information claimed as CBI, a copy of the comment that does not contain the information claimed as CBI must be submitted for inclusion in the public docket. Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2.

2. *Tips for preparing your comments.* When submitting comments, remember to:

i. Identify the document by docket ID number and other identifying information (subject heading, **Federal Register** date and page number).

ii. Follow directions. The Agency may ask you to respond to specific questions or organize comments by referencing a Code of Federal Regulations (CFR) part or section number.

iii. Explain why you agree or disagree; suggest alternatives and substitute language for your requested changes.

iv. Describe any assumptions and provide any technical information and/or data that you used.

v. If you estimate potential costs or burdens, explain how you arrived at your estimate in sufficient detail to allow for it to be reproduced.

vi. Provide specific examples to illustrate your concerns and suggest alternatives.

vii. Explain your views as clearly as possible, avoiding the use of profanity or personal threats.

viii. Make sure to submit your comments by the comment period deadline identified.

II. Registration Applications

EPA has received applications to register pesticide products containing an active ingredient not included in any previously registered pesticide product. Pursuant to the provisions of section 3(c)(4) of FIFRA, EPA is hereby providing notice of receipt and opportunity to comment on these applications. Notice of receipt of these applications does not imply a decision by the Agency on these applications.

File Symbol: 7969-GNN. *Applicant*: BASF Corporation, 26 Davis Drive, P.O. Box 13528, Research Triangle Park, NC, 27709. *Product name*: BAS 650 00F. *Active ingredient*: Ametoctradin at 19.2%. *Proposed classification/Use*: Terrestrial food use for brassica leafy vegetables, bulb vegetables, cucurbit vegetables, fruiting vegetables, leafy vegetables, tuberous and corm vegetables, grapes, and hops.

File Symbol: 7969-GNR. *Applicant*: BASF Corporation, 26 Davis Drive, P.O. Box 13528, Research Triangle Park, NC, 27709. *Product name*: Orvego. *Active ingredients*: Dimethomorph at 20.2% and Ametoctradin at 26.9%. *Proposed classification/Use*: Terrestrial nonfood, greenhouse nonfood, residential outdoor, indoor nonfood use for ornamentals, golf courses, residential and commercial landscapes, hardwood and conifer trees.

File Symbol: 7969-GNE. *Applicant*: BASF Corporation, 26 Davis Drive, P.O. Box 13528, Research Triangle Park, NC, 27709. *Product name*: Zampro. *Active ingredients*: Dimethomorph at 20.2% and Ametoctradin at 26.9%. *Proposed classification/Use*: Terrestrial food use for brassica leafy vegetables, bulb vegetables, cucurbit vegetables, fruiting vegetables, grapes, hops, leafy vegetables, and tuberous and corm vegetable.

File Symbol: 7969-GNG. *Applicant*: BASF Corporation, 26 Davis Drive, P.O. Box 13528, Research Triangle Park, NC, 27709. *Product name*: Initium. *Active ingredient*: Ametoctradin at 99.2%. *Proposed classification/Use*: Manufacturing use product.

List of Subjects

Environmental protection, Pesticides and pest.

Dated: April 22, 2010.

G. Jeffrey Herndon,

Acting Director, Registration Division, Office of Pesticide Programs.

[FR Doc. 2010–10408 Filed 5–3–10; 8:45 am]

BILLING CODE 6560–50–S

ENVIRONMENTAL PROTECTION AGENCY

[EPA–R03–OW–2009–0985; FRL–9144–7]

Notice of Public Hearing Regarding Environmental Protection Agency Region III's Proposed Determination To Prohibit, Restrict, or Deny the Specification, or the Use for Specification (Including Withdrawal of Specification), of an Area as a Disposal Site; Spruce No. 1 Surface Mine, Logan County, WV

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of public hearing.

SUMMARY: On April 2, 2010, EPA Region III published its Proposed determination to Prohibit, Restrict, or Deny the Specification, or the Use for Specification (including Withdrawal of Specification), of an Area as a Disposal Site; Spruce No. 1 Surface Mine, Logan County, West Virginia in the **Federal Register** soliciting comments from the public. The permittee is Mingo Logan Coal Company. That notice can be found at *http://www.regulations.gov* (search for EPA–R03–OW–2009–0985). Relevant documents are also available on EPA's Web site at *http://www.epa.gov/region3/mtntop/spruce1.html*. EPA has decided that it would be in the public interest to conduct a public hearing on the Proposed 404(c) Determination for the Spruce No. 1 Surface Mine.

Date and Location: The U.S. Environmental Protection Agency, Region III, (EPA) will hold a public hearing on Tuesday, May 18, 2010, at 7 p.m. at the Charleston Civic Center (South Hall), located at 200 Civic Center Drive, Charleston, WV 25301. Registration will begin at 5 p.m.

FOR FURTHER INFORMATION CONTACT: For information regarding this notice of a public hearing, contact the Office of Environmental Programs;

Environmental Assessment and Innovation Division; U.S. Environmental Protection Agency, Region III; 1650 Arch Street; Philadelphia, Pennsylvania 19103. The telephone number for information about this hearing and to sign up to give oral comments is 877–368–3552. The EPA office can also be reached via electronic mail at *R3_Spruce_Surface_Mine@epa.gov*. This mailbox is for information on the notice only and is not the official comment submission forum. If you would like to submit written comments you may do so at the public hearing or on-line at *http://www.regulations.gov* (search for EPA–R03–OW–2009–0985). For those who have special needs and require auxiliary aids and/or services to fully participate in the public hearing, please call 215–814–2760.

SUPPLEMENTARY INFORMATION:

The purpose of the public hearing is to obtain public testimony or comment on EPA's proposed 404(c) action on the Spruce No. 1 Mine project. The Regional Administrator will designate the official (Presiding Officer) who will preside at the public hearing. Any person may appear at the hearing and submit oral and/or written statements or data and may be represented by counsel or other authorized representatives.

In anticipation of a large turnout for the hearing, advanced sign-up is recommended for all, but especially for those planning to make oral comments due to time and capacity limitations. The following information is requested for sign-up: First name, Last name, City, State, Email address, and Phone number. To sign up, go to *http://www.epa.gov/region3/mtntop/spruce1hearing.html* and click on the link, "Registering ahead of time is recommended." You may also sign up by phone at 877–368–3552. You will receive confirmation that your registration has been received. Speakers will be on a first-registered basis, followed by those who sign up for public comment on-site the day of the public hearing. Audio-visual equipment will not be provided. If you would like to submit written comments you may do so at the public hearing or on-line at *http://www.regulations.gov* (search for EPA–R03–OW–2009–0985).

To maximize the number of individuals who are able to speak at the hearing, oral statements will be limited to two minutes per person. The Presiding Officer will establish other reasonable limits on the nature and length of time for oral presentation. There will be no direct questioning of any hearing participant, although the Presiding Officer may make appropriate inquiries of any such participant. EPA will not respond to questions/comments during the hearing. EPA will consider the comments received at the public hearing and other comments submitted pursuant to the instructions set forth in the public notice at *http://www.regulations.gov* (search for EPA–R03–OW–2009–0985) when it develops its Final Determination to Prohibit, Restrict, or Deny the Specification, or the Use for Specification (including Withdrawal of Specification), of an Area as a Disposal Site; Spruce No. 1 Surface Mine, Logan County, West Virginia.

Dated: April 28, 2010.

Shawn M. Garvin,

Regional Administrator, EPA Region III.

[FR Doc. 2010–10415 Filed 5–3–10; 8:45 am]

BILLING CODE 6560–50–P

FARM CREDIT ADMINISTRATION

Farm Credit Administration Board; Sunshine Act Regular Meeting

AGENCY: Farm Credit Administration.

SUMMARY: Notice is hereby given, pursuant to the Government in the Sunshine Act (5 U.S.C. 552b(e)(3)), of the regular meeting of the Farm Credit Administration Board (Board).

DATE AND TIME: The regular meeting of the Board will be held at the offices of the Farm Credit Administration in McLean, Virginia, on May 13, 2010, from 9 a.m. until such time as the Board concludes its business.

FOR FURTHER INFORMATION CONTACT: Roland E. Smith, Secretary to the Farm Credit Administration Board, (703) 883–4009, TTY (703) 883–4056.

ADDRESSES: Farm Credit Administration, 1501 Farm Credit Drive, McLean, Virginia 22102–5090.

SUPPLEMENTARY INFORMATION: Parts of this meeting of the Board will be open to the public (limited space available), and parts will be closed to the public. In order to increase the accessibility to Board meetings, persons requiring assistance should make arrangements in advance. The matters to be considered at the meeting are:

Open Session

A. *Approval of Minutes*
- April 8, 2010.

B. *New Business*
- Advanced Notice of Proposed Rulemaking—Farmer Mac Non-Program Investments and Liquidity.
- Proposed Bookletter—Evaluating Strategies and Risk for Loan Pricing and Structure.

C. *Reports*
- OMS Quarterly Report.
- OE Quarterly Report.

Closed Session *
- Update on OE Oversight Activities.

Dated: April 30, 2010.

Roland E. Smith,

Secretary, Farm Credit Administration Board.

[FR Doc. 2010–10616 Filed 4–30–10; 4:15 pm]

BILLING CODE 6705–01–P

FEDERAL COMMUNICATIONS COMMISSION

Notice of Public Information Collections Being Reviewed by the Federal Communications Commission for Extension Under Delegated Authority, Comments Requested

April 28, 2010.

SUMMARY: The Federal Communications Commission, as part of its continuing effort to reduce paperwork burden invites the general public and other Federal agencies to take this opportunity to comment on the following information collections, as required by the Paperwork Reduction Act (PRA) of 1995, 44 U.S.C. 3501 – 3520. Comments are requested concerning: (a) whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; (b) the accuracy of the Commission's burden estimate; (c) ways to enhance the quality, utility, and clarity of the information collected; (d) ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology, and (e) ways to further reduce the information collection burden for small business concerns with fewer than 25 employees.

The FCC may not conduct or sponsor a collection of information unless it displays a currently valid control number. No person shall be subject to any penalty for failing to comply with a collection of information subject to the Paperwork Reduction Act (PRA) that does not display a currently valid OMB control number.

DATES: Written Paperwork Reduction Act (PRA) comments should be submitted on or before July 6, 2010. If you anticipate that you will be submitting PRA comments, but find it

* Session Closed—Exempt pursuant to 5 U.S.C. 552b(c)(8) and (9).

difficult to do so within the period of time allowed by this notice, you should advise the FCC contact listed below as soon as possible.

ADDRESSES: Direct all PRA comments to Nicholas A. Fraser, Office of Management and Budget, via fax at 202–395–5167 or via email to Nicholas_A._Fraser@omb.eop.gov and to the Federal Communications Commission via email to PRA@fcc.gov and Cathy.Williams@fcc.gov.

FOR FURTHER INFORMATION CONTACT: For additional information, contact Cathy Williams on (202) 418–2918.

SUPPLEMENTARY INFORMATION:

OMB Control Number: 3060–0422.

Title: Section 68.5, Waivers (Application for Waivers of Hearing Aid Compatibility Requirements).

Form Number: Not applicable.

Type of Review: Extension of a currently approved collection.

Respondents: Business or other for–profit entities.

Number of Respondents and Responses: 10 respondents and 10 responses.

Estimated Time per Response: 3 hours (avg).

Frequency of Response: On occasion reporting requirement.

Obligation to Respond: Required to obtain or retain benefits. The statutory authority for this information collection is contained in 47 U.S.C. 610.

Total Annual Burden: 30 hours.

Total Annual Cost: None.

Privacy Impact Assessment: No impact(s).

Nature and Extent of Confidentiality: An assurance of confidentiality is not offered because this information collection does not require the collection of personal identifiable information (PII) from individuals.

Needs and Uses: Telephone manufacturers seeking a waiver of 47 CFR 68.4(a)(1), which requires that certain telephones be hearing aid compatible, must demonstrate that compliance with the rule is technologically infeasible or too costly. Information is used by FCC staff to determine whether to grant or dismiss the request.

OMB Control Number: 3060–0967.

Title: Section 79.2, Accessibility of Programming Providing Emergency Information.

Form Number: Not applicable.

Type of Review: Extension of a currently approved collection.

Respondents: Business or other for–profit entities; Individuals or households; Not–for–profit institutions; and State, local, or tribal Governments.

Number of Respondents and Responses: 100 respondents and 200 responses.

Estimated Time per Response: 1 to 2 hours.

Frequency of Response: On occasion reporting requirement; Third party disclosure requirement.

Obligation To Respond: Required to obtain or retain benefits. The statutory authority for this information collection is contained in Sections 151, 152(a), 154(i), 154(j), 303, 307, 309, 310 and 613 of the Communications Act of 1934, as amended.

Total Annual Burden: 210 hours.

Total Annual Cost: $22,500.

Nature and Extent of Confidentiality: Confidentiality is an issue to the extent that individuals' and households' information is contained in the OSCAR database, which is covered under the Commission's system of records notice (SORN), FCC/CGB–1, "Informal Complaints and Inquiries." The Commission believes that it provides sufficient safeguards to protect the privacy of individuals who file complaints under 47 CFR 79.2(c).

Privacy Impact Assessment: The FCC has completed a Privacy Assessment covering the information system covered by this system of records notice (SORN), which may be reviewed at: http://www.fcc.gov/omd/privacyact/Privacy_Impact_Assessment.html.

Needs and Uses: 47 CFR 79.2 is designed to ensure that persons with hearing and visual disabilities have access to the critical details of emergency information. The Commission adopted the rules to assist persons with hearing disabilities on April 14, 2000, in the Second Report and Order in MM Docket No. 95–176.The Commission modified the rules to assist persons with visual disabilities on July 21, 2000, in the Report and Order in MM Docket No. 99–339.

47 CFR 79.2(c) requires that each complaint transmitted to the Commission include the following: the name of the video programming distributor at issue; the date and time of the omission of the emergency information; and the type of emergency. The Commission then notifies the video programming distributor, which must reply within 30 days.

Federal Communications Commission.

Marlene H. Dortch,

Secretary,

Office of the Secretary,

Office of Managing Director.

[FR Doc. 2010–10407 Filed 5–3–10; 8:45 am]

BILLING CODE 6712–01–S

FEDERAL COMMUNICATIONS COMMISSION

Notice of Public Information Collection Being Submitted for Review and Approval to the Office of Management and Budget (OMB), Comments Requested

April 28, 2010.

SUMMARY: The Federal Communications Commission, as part of its continuing effort to reduce paperwork burden invites the general public and other Federal agencies to take this opportunity to comment on the following information collection, as required by the Paperwork Reduction Act (PRA) of 1995, 44 U.S.C. 3501 – 3520. Comments are requested concerning: (a) whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; (b) the accuracy of the Commission's burden estimate; (c) ways to enhance the quality, utility, and clarity of the information collected; (d) ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology; and (e) ways to further reduce the information collection burden for small business concerns with fewer than 25 employees.

The FCC may not conduct or sponsor a collection of information unless it displays a currently valid control number. No person shall be subject to any penalty for failing to comply with a collection of information subject to the Paperwork Reduction Act (PRA) that does not display a currently valid OMB control number.

DATES: Written Paperwork Reduction Act (PRA) comments should be submitted on or before June 3, 2010. If you anticipate that you will be submitting PRA comments, but find it difficult to do so within the period of time allowed by this notice, you should advise the FCC contact listed below as soon as possible.

ADDRESSES: Direct all PRA comments to Nicholas A. Fraser, Office of Management and Budget, via fax at 202–395–5167 or via email to Nicholas_A._Fraser@omb.eop.gov and to the Federal Communications Commission via email to PRA@fcc.gov and Cathy.Williams@fcc.gov. To view a copy of this information collection request (ICR) submitted to OMB: (1) Go to the web page http://reginfo.gov/public/do/PRAMain, (2) look for the section of the web page called

"Currently Under Review", (3) click on the downward–pointing arrow in the "Select Agency" box below the "Currently Under Review" heading, (4) select "Federal Communications Commission" from the list of agencies presented in the "Select Agency" box, (5) click the "Submit" button to the right of the "Select Agency" box, and (6) when the list of FCC ICRs currently under review appears, look for the title of this ICR (or its OMB Control Number, if there is one) and then click on the ICR Reference Number to view detailed information about this ICR.

FOR FURTHER INFORMATION CONTACT: For additional information or copies of the information collection, contact Cathy Williams on (202) 418–2918.

SUPPLEMENTARY INFORMATION:

OMB Control Number: 3060–1103.

Title: Section 76.41, Franchise Application Process.

Type of Review: Extension of a currently approved collection.

Form Number: N/A.

Respondents: Business or other for profit entities; State, local or tribal government.

Number of Respondents and Responses: 6,006 respondents; 24,000 responses.

Estimated Hours per Response: 0.5 to 4 hours.

Frequency of Response: On occasion reporting requirement; Third party disclosure requirement.

Total Annual Burden: 54,000 hours.

Total Annual Cost: None.

Privacy Impact Assessment: No impact(s).

Obligation to Respond: Required to obtain or retain benefits. The statutory authority for this information collection is contained in 47 USC 151, 152, 154(i), 157nt, 201, 531, 541 and 542.

Confidentiality: No need for confidentiality required with this collection of information.

Needs and Uses: The Commission adopted on December 20, 2006 a Report and Order In the Matter of Implementation of Section 621(a)(1) of the Cable Communications Policy Act of 1984 as amended by the Cable Television Consumer Protection and Competition Act of 1992 ("R&O"), FCC 06–180, MB Docket 05–311. This R&O provides rules and guidance to implement Section 621 of the Communications Act of 1934, as amended. Section 621 of the Communications Act prohibits franchising authorities from unreasonably refusing to award competitive franchises for the provision of cable services. The Commission has found that the current franchising process constitutes an unreasonable barrier to entry for competitive entrants that impede enhanced cable competition and accelerated broadband deployment. The information collection requirements adopted as a result of FCC 06–180 are as follows:

47 CFR 76.41(b) requires a competitive franchise applicant to include the following information in writing in its franchise application, in addition to any information required by applicable state and local laws: (1) the applicant's name; (2) the names of the applicant's officers and directors; (3) the business address of the applicant; (4) the name and contact information of a designated contact for the applicant; (5) a description of the geographic area that the applicant proposes to serve; (6) the PEG channel capacity and capital support proposed by the applicant; (7) the term of the agreement proposed by the applicant; (8) whether the applicant holds an existing authorization to access the public rights–of–way in the subject franchise service area; (9) the amount of the franchise fee the applicant offers to pay; and (10) any additional information required by applicable state or local laws.

47 CFR 76.41 (d) states when a competitive franchise applicant files a franchise application with a franchising authority and the applicant has existing authority to access public rights–of–way in the geographic area that the applicant proposes to serve, the franchising authority grant or deny the application within 90 days of the date the application is received by the franchising authority. If a competitive franchise applicant does not have existing authority to access public rights–of–way in the geographic area that the applicant proposes to serve, the franchising authority must perform grant or deny the application within 180 days of the date the application is received by the franchising authority. A franchising authority and a competitive franchise applicant may agree in writing to extend the 90–day or 180–day deadline, whichever is applicable.

Federal Communications Commission.

Marlene H. Dortch,

Secretary,

Office of the Secretary,

Office of Managing Director.

[FR Doc. 2010–10409 Filed 5–3–10; 8:45 am]

BILLING CODE 6712–01–S

FEDERAL COMMUNICATIONS COMMISSION

Notice of Public Information Collections Approved by the Office of Management and Budget (OMB)

April 28, 2010.

SUMMARY: The Federal Communications Commission (FCC) has received Office of Management and Budget (OMB) approval for the following public information collections pursuant to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520). An agency may not conduct or sponsor a collection of information unless it displays a currently valid OMB control number, and no person is required to respond to a collection of information unless it displays a currently valid OMB control number. Comments concerning the accuracy of the burden estimates and any suggestions for reducing the burden should be directed to the person listed in the **FOR FURTHER INFORMATION CONTACT** section below.

FOR FURTHER INFORMATION CONTACT: For additional information, send an e-mail to *Cathy.Williams@fcc.gov* or call Cathy Williams on (202) 418–2918.

SUPPLEMENTARY INFORMATION:

OMB Control No.: 3060–0405.

OMB Approval Date: 4/19/2010.

Expiration Date: 4/30/2013.

Title: Application for Authority to Construct or Make Changes in an FM Translator or FM Booster Station, FCC Form 349.

Form No.: FCC Form 349.

Type of Review: Reinstatement without change of a previously approved collection.

Number of Respondents/Responses: 1,200 respondents; 2,400 responses.

Estimated Time per Response: 1 to 1.5 hours.

Total Annual Burden: 4,500 hours.

Total Annual Cost: $4,598,100.

Obligation to Respond: Required to obtain benefits. Statutory authority for this collection of information is contained in Sections 154(i), 303, and 308 of the Communications Act of 1934, as amended.

Nature and Extent of Confidentiality: No need for confidentiality required with this information collection.

Needs and Uses: The Commission requested and received from the Office of Management and Budget (OMB) the reinstatement of OMB control number 3060–0405.

In 2008, we merged the requirements that were previously under this OMB control number into an existing information collection, OMB control number 3060–0029, Application for TV Broadcast Station License, FCC Form

302–TV. Although the requirements were merged under the supporting statement, the forms themselves remained separate and only shared the same OMB control number. Since that time, we find that the merging of these requirements under one OMB control number is ineffective, causing delays in submissions to OMB for review, especially when the various requirements were revised by multiple and simultaneously adopted Commission actions.

FCC Form 349 is used to apply for authority to construct a new FM translator or FM booster broadcast station, or to make changes in the existing facilities of such stations.

Form 349's Newspaper Notice (third party disclosure) requirement; 47 CFR 73.3580: Form 349 also contains a third party disclosure requirement, pursuant to 47 CFR 73.3580. This rule requires stations applying for a new broadcast station, or to make major changes to an existing station, to give local public notice of this filing in a newspaper of general circulation in the community in which the station is located. This local public notice must be completed within 30 days of the tendering of the application. This notice must be published at least twice a week for two consecutive weeks in a three-week period. In addition, a copy of this notice must be placed in the station's public inspection file along with the application, pursuant to 47 CFR 73.3527. This recordkeeping information collection requirement is contained in OMB Control No. 3060–0214, which covers 47 CFR 73.3527.

OMB Control No.: 3060–0837.
OMB Approval Date: 4/19/2010.
Expiration Date: 4/30/2013.
Title: Application for DTV Broadcast Station License, FCC Form 302–DTV.
Form No.: FCC Form 302–DTV.
Type of Review: Reinstatement without change of a previously approved collection.
Number of Respondents/Responses: 300 respondents; 300 responses.
Estimated Time per Response: 2 hours.
Total Annual Burden: 600 hours.
Total Annual Cost: $133,800.
Obligation to Respond: Required to obtain or retain benefits. Statutory authority for this collection of information is contained in Sections 154(i), 303, and 308 of the Communications Act of 1934, as amended.
Nature and Extent of Confidentiality: No need for confidentiality required with this information collection.
Needs and Uses: The Commission requested and received from the Office of Management and Budget (OMB) the reinstatement of OMB control number 3060–0837. In 2008, we merged the requirements that were previously under this OMB control number into an existing information collection, OMB control number 3060–0029, Application for TV Broadcast Station License, FCC Form 302–TV. Although the requirements were merged under the supporting statement, the forms themselves remained separate and only shared the same OMB control number. Since that time, we find the merging of these requirements under one OMB control number as ineffective causing delays for submission to OMB for review especially when the various requirements were revised by multiple Commission actions.

Form 302–DTV is used by licensees and permittees of Digital TV ("DTV") broadcast stations to obtain a new or modified station license and/or to notify the Commission of certain changes in the licensed facilities of those stations. It may be used: (1) To cover an authorized construction permit (or auxiliary antenna), provided that the facilities have been constructed in compliance with the provisions and conditions specified on the construction permit; or (2) to implement modifications to existing licenses as permitted by Section 73.1675(c) or 73.1690(c) of the Commission's rules.

Federal Communications Commission.
Marlene H. Dortch,
Secretary, Office of the Secretary, Office of Managing Director.

[FR Doc. 2010–10410 Filed 5–3–10; 8:45 am]
BILLING CODE 6712–01–P

FEDERAL DEPOSIT INSURANCE CORPORATION

FEDERAL RESERVE SYSTEM

[Docket No. OP–1369]

DEPARTMENT OF THE TREASURY

Office of the Comptroller of the Currency

[Docket ID OCC–2010–0016]

DEPARTMENT OF THE TREASURY

Office of Thrift Supervision

[Docket ID OTS–2010–0013]

Correspondent Concentration Risks

AGENCY: Federal Deposit Insurance Corporation (FDIC); Board of Governors of the Federal Reserve System (Board), Office of the Comptroller of the Currency, Treasury (OCC); and Office of Thrift Supervision, Treasury (OTS).

ACTION: Final guidance.

DATES: Effective upon publication in the **Federal Register**.

SUMMARY: The FDIC, Board, OCC, and OTS (the Agencies) are issuing final guidance on Correspondent Concentration Risks (CCR Guidance). The CCR Guidance outlines the Agencies' expectations for financial institutions to identify, monitor, and manage credit and funding concentrations to other institutions on a standalone and organization-wide basis, and to take into account exposures to the correspondents' affiliates, as part of their prudent risk management practices. Institutions also should be aware of their affiliates' exposures to correspondents as well as the correspondents' subsidiaries and affiliates. In addition, the CCR Guidance addresses the Agencies' expectations for financial institutions to perform appropriate due diligence on all credit exposures to and funding transactions with other financial institutions.

FOR FURTHER INFORMATION CONTACT:
FDIC: Beverlea S. Gardner, Senior Examination Specialist, Division of Supervision and Consumer Protection, (202) 898–3640; or Mark G. Flanigan, Counsel, Legal Division, (202) 898–7426.
Board: Barbara J. Bouchard, Associate Director, (202) 452–3072; or Craig A. Luke, Supervisory Financial Analyst, Supervisory Guidance and Procedures, (202) 452–6409. For users of Telecommunications Device for the Deaf ("TDD") only, contact (202) 263–4869.
OCC: Kerri R. Corn, Director, Market Risk, (202) 874–4364; or Russell E. Marchand, Technical Lead Expert, Market Risk, (202) 874–4456.
OTS: Lori J. Quigley, Managing Director, Supervision; (202) 906–6265; or William J. Magrini, Senior Project Manager of Credit Policy, (202) 906–5744.

SUPPLEMENTARY INFORMATION:

I. Background

The Agencies developed the CCR Guidance to outline supervisory expectations for financial institutions[1] to address correspondent concentration risks and to perform appropriate due diligence on credit exposures to and funding transactions with correspondents as part of their prudent

[1] This guidance applies to all banks and their subsidiaries, bank holding companies and their nonbank subsidiaries, savings associations and their subsidiaries, and savings and loan holding companies and their subsidiaries.

risk management policies and procedures.[2] Credit (asset) risk is the potential that an obligation will not be paid in a timely manner or in full. Credit concentration risk arises whenever an institution advances or commits a significant volume of funds to a correspondent, as the advancing institution's assets are at risk of loss if the correspondent fails to repay.

Funding (liability) concentration risk arises when an institution depends heavily on the liquidity provided by one particular correspondent or a limited number of correspondents to meet its funding needs. Funding concentration risk can create an immediate threat to an institution's viability if the advancing correspondent suddenly reduces the institution's access to liquid funds. For example, a correspondent might abruptly limit the availability of liquid funding sources as part of a prudent program for limiting credit exposure to one institution or organization or as required by regulation when the financial condition of the institution declines rapidly. The Agencies realize some concentrations arise from the need to meet certain business needs or purposes, such as maintaining large due from balances with a correspondent to facilitate account clearing activities. However, correspondent concentrations represent a lack of diversification that management should consider when formulating strategic plans and internal risk limits.

The Agencies generally consider credit exposures arising from direct and indirect obligations in an amount equal to or greater than 25 percent of total capital[3] as concentrations. Depending on its size and characteristics, a concentration of credit for a financial institution may represent a funding exposure to the correspondent. While the Agencies have not established a funding concentration threshold, the Agencies have seen instances where funding exposures of 5 percent of an institution's total liabilities have posed an elevated risk to the recipient, particularly when aggregated with other similar sized funding concentrations. An example of how these interbank correspondent risks can become concentrated is illustrated below:

Respondent Institution (RI) has $400 million in total assets and is well capitalized with $40 million (10 percent) of total capital. RI maintains $10 million in its due from account held at Correspondent Bank (CB) and sells $20 million in unsecured overnight Federal funds to CB. These relationships collectively result in RI having an aggregate risk exposure of 75 percent of its total capital to CB. CB, which has $2 billion in total assets, $1.8 billion in total liabilities, and is well capitalized with $200 million (10 percent) total capital, has a total of 20 respondent banks (RB) with the same credit exposures to CB as RI has to CB. The 20 RBs' $600 million aggregate relationship represents one-third (33 percent) of CB's total liabilities. These relationships create significant funding risk for CB if a few of the RBs withdraw their funds in close proximity of each other.

These relationships also could threaten the viability of the 20 RBs. The loss of all or a significant portion of the RBs' due from balances and the unsecured Federal funds sold to CB could deplete a significant portion of their capital bases, resulting in multiple institution failures. The RBs' viability also could be jeopardized if CB, in turn, had sold a significant portion of the Federal funds from the RBs to another financial institution that abruptly fails. In addition, the financial institutions that rely on CB for account clearing services may find it difficult to quickly transfer processing services to another provider.

Although these interbank exposures may comply with regulations governing individual relationships, collectively they pose significant correspondent concentration risks that need to be monitored and managed consistent with the institutions' overall risk-management policies and procedures. Therefore, the Agencies published the proposed Correspondent Concentration Risks Guidance (Proposed Guidance) for comment and are now issuing the final CCR Guidance after consideration of the comments received on the Proposed Guidance.

II. Overview of Public Comments

The Agencies received 91 unique comments on the Proposed Guidance primarily from financial institutions and industry trade groups. In general, the commenters agreed with the fundamental principles underlying the CCR Guidance, but some responses characterized the CCR Guidance as excessive, unnecessarily complex, and burdensome. A number of institutions and industry trade groups also voiced concern that the credit and funding thresholds in the CCR Guidance would be applied as "hard caps" rather than as indicators of potentially heightened risk. A few commenters noted that a 5 percent funding threshold was vague and lacked sufficient discussion on relevant issues, such as the type, term and nature of some funding sources. Other commenters raised concerns the CCR Guidance would effectively amend the Board's Regulation F (Regulation F).[4]

The Agencies requested comment on all aspects of the Proposed Guidance. The Agencies also specifically requested comment on:

- The appropriateness of aggregating all credit and funding exposures that an institution or its organization has advanced or committed to another financial institution or its correspondents when calculating concentrations, and whether some types of advances or commitments should be excluded.
- The types of factors institutions should consider when assessing correspondents' financial condition.
- The need to establish internal limits as well as ranges or tolerances for each factor being monitored.
- The types of actions that should be considered for contingency planning and the timeframes for implementing those actions to ensure concentrations that meet or exceed organizations' established internal limits, ranges, or tolerances are reduced in an orderly manner.
- The operational issues the Agencies should consider when issuing the final CCR Guidance, such as the single excess balance account limitation.[5]

In response to the Agencies' specific questions, many commenters responded that the CCR Guidance needed to be flexible, providing financial institutions latitude in establishing relationships with correspondents that are appropriate with the institutions' individual risk management practices and business needs. Almost all of the commenters asked the Agencies to clarify the types of loan participations to be included when calculating credit exposures. Further, many commenters supported using Regulation F's specified factors for assessing institutions' financial condition and timeframes for contingency plans.

Several commenters also suggested that the Agencies should exclude transactions from the credit and funding concentration calculations when these

[2] Unless otherwise indicated, references to "correspondent" include the correspondent's holding company, subsidiaries, and affiliates.

[3] For purposes of this guidance, the term "total capital" means the total risk-based capital as reported for commercial banks and thrifts in the Report of Condition and the Thrift Financial Report, respectively.

[4] 12 CFR part 206.

[5] An excess balance account (EBA) is an account held at a Federal Reserve Bank that is established for purposes of maintaining the excess balances of one or more eligible institutions through an agent. Under the terms of an EBA agreement, an eligible institution is permitted to participate in one EBA at a Federal Reserve Bank.

transactions would have a nominal effect on the calculations, especially when the recordkeeping and cost of tracking complex exposures outweighed the benefit of obtaining this information. Many commenters also raised concerns that the calculation of credit and funding exposures on both a gross and net basis created significant additional burden on financial institutions. Some commenters suggested that the Agencies should provide a detailed example of how to calculate credit and funding exposures. Further, many commenters also strongly supported the use of multiple excess balance accounts.

A small number of commenters stressed that the Agencies need to apply the CCR Guidance uniformly to all financial institutions engaged in correspondent banking services to ensure that smaller scale correspondents are not placed at a competitive disadvantage to large institutions due to a perception of large institutions being "too big to fail" or having government support. In addition, a few commenters asked the Agencies to make the CCR Guidance effective 90 days after its issuance to provide institutions with time to implement any additional procedures that might be needed to ensure compliance. The following discussion summarizes how the Agencies addressed these issues in the CCR Guidance.

III. Revisions to the CCR Guidance

The Agencies made a number of changes to the Proposed Guidance to respond to comments and to provide additional clarity in the CCR Guidance.

Scope of the CCR Guidance

The Agencies revised the CCR Guidance to state that it does not supplant or amend Regulation F, but provides supervisory guidance on correspondent concentration risks. The CCR Guidance clarifies that financial institutions should consider taking actions beyond the minimum requirements established in Regulation F to identify, monitor, and manage correspondent concentration risks in a safe and sound manner, especially when there are rapid changes in market conditions or in a correspondent's financial condition. The revised CCR Guidance also specifies that the credit and funding thresholds are not "hard caps" or firm limits, but are indicators that a financial institution has concentration risk with a correspondent. In addition, the Agencies modified the credit concentration threshold calculation to reflect positions as a percentage of total capital rather than tier 1 capital. This revision provides consistency with Regulation F.

Identifying, Calculating, and Monitoring Correspondent Concentrations

The CCR Guidance clarifies that for risk management purposes, institutions should identify correspondent credit and funding concentrations to assist management in assessing how significant economic events or abrupt deterioration in a correspondent's risk profile might affect their financial condition.[6] In responses to commenters' concerns, the Agencies maintained supervisory flexibility, as the CCR Guidance clarifies that each financial institution should establish appropriate internal parameters (such as information, ratios, trends or other factors) commensurate with the nature, size, and risk characteristics of their correspondent concentrations. An institution's internal parameters should:

- Detail the information, ratios, or trends that will be reviewed for each correspondent on an ongoing basis,
- Instruct management to conduct comprehensive assessments of correspondent concentrations that consider its internal parameters, and
- Revise the frequency of correspondent concentration reviews when appropriate.

The Agencies also clarified the types of loan participations to be included when calculating credit exposures. The Agencies did not exclude transactions that may have a nominal effect from either the credit or funding concentration calculations to ensure consistency with Regulation F.

The Agencies maintained their expectation that, as part of prudent risk management, institutions should calculate their credit and funding exposures with a correspondent on both a gross and net basis. While institutions already calculate their exposures on a net basis, the benefit of management being aware of the institution's overall risk position with a correspondent on a gross basis outweighs the potential burden of conducting a secondary set of calculations to ascertain the institution's aggregate exposure. Further, the CCR Guidance includes examples on the method for calculating credit and funding exposures on a standalone and on an organization-wide basis for illustrative purposes only in response to some commenters' requests for examples.

Other Commenter Issues

The Agencies appreciate the concern of commenters who remarked that failure to apply the CCR Guidance uniformly to all financial institutions engaged in correspondent banking services could cause smaller scale correspondents to be placed at a competitive disadvantage to large institutions due to a perception of large institutions being "too big to fail" or having government support. The Agencies are working together to ensure that the CCR Guidance is applied uniformly to all financial institutions engaged in correspondent banking services. Further, since institutions already have policies and procedures for identifying, monitoring, and managing credit and funding concentrations on a net basis, the Agencies decided not to delay the effective date of the CCR Guidance. In addition, when the Board authorized Federal Reserve Banks to offer excess balance accounts, the Board stated that it would re-evaluate the continuing need for those accounts when more normal market functioning resumes. 74 FR 25,626 (May 29, 2009). The Board will consider these comments within the context of such a re-evaluation.

IV. Text of Final CCR Guidance and Illustrations in Appendix A and Appendix B

The text of the final CCR Guidance and the illustrations in Appendix A and Appendix B follows:

Correspondent Concentration Risks

A financial institution's[7] relationship with a correspondent[8] may result in credit (asset) and funding (liability) concentrations. On the asset side, a credit concentration represents a significant volume of credit exposure that a financial institution has advanced or committed to a correspondent. On the liability side, a funding concentration exists when an institution depends on one or a few correspondents for a

[6] Financial institutions should identify and monitor all direct or indirect relationships with their correspondents. Institutions should take into account exposures of their affiliates to correspondents, and how those relationships may affect the institution's exposure. While each financial institution is responsible for monitoring its own credit and funding exposures, institution holding companies should manage the organization's concentration risk on a consolidated basis.

[7] This guidance applies to all banks and their subsidiaries, bank holding companies and their nonbank subsidiaries, savings associations and their subsidiaries, and savings and loan holding companies and their subsidiaries.

[8] Unless the context indicates otherwise, references to "correspondent" include the correspondent's holding company, subsidiaries, and affiliates. A correspondent relationship results when a financial organization provides another financial organization a variety of deposit, lending, or other services.

disproportionate share of its total funding.

The Agencies [9] realize some concentrations meet certain business needs or purposes, such as a concentration arising from the need to maintain large "due from" balances to facilitate account clearing activities. However, correspondent concentrations represent a lack of diversification, which adds a dimension of risk that management should consider when formulating strategic plans and internal risk limits.

The Agencies have generally considered credit exposures greater than 25 percent of total capital [10] as concentrations. While the Agencies have not established a liability concentration threshold, the Agencies have seen instances where funding exposures as low as 5 percent of an institution's total liabilities have posed an elevated liquidity risk to the recipient institution.

These levels of credit and funding exposures are not firm limits, but indicate an institution has concentration risk with a correspondent. Such relationships warrant robust risk management practices, particularly when aggregated with other similarly sized funding concentrations, in addition to meeting the minimum regulatory requirements specified in applicable regulations. Financial institutions should identify, monitor, and manage both asset and liability correspondent concentrations and implement procedures to perform appropriate due diligence on all credit exposures to and funding transactions with correspondents, as part of their overall risk management policies and procedures.

This guidance does not supplant or amend applicable regulations such as the Board's *Limitations on Interbank Liabilities* (Regulation F).[11] This guidance clarifies that financial institutions should consider taking actions beyond the minimum requirements established in Regulation F to identify, monitor, and manage correspondent concentration risks, especially when there are rapid changes in market conditions or in a correspondent's financial condition, in order to maintain risk management practices consistent with safe and sound operations.

Identifying Correspondent Concentrations

Institutions should implement procedures for identifying correspondent concentrations. For prudent risk management purposes, these procedures should encompass the totality of the institutions' aggregate credit and funding concentrations to each correspondent on a standalone basis, as well as taking into account exposures to each correspondent organization as a whole.[12] In addition, the institution should be aware of exposures of its affiliates to the correspondent and its affiliates.

Credit Concentrations

Credit concentrations can arise from a variety of assets and activities. For example, an institution could have due from bank accounts, Federal funds sold on a principal basis, and direct or indirect loans to or investments in a correspondent. In identifying credit concentrations for risk management purposes, institutions should aggregate all exposures, including, but not limited to:

- Due from bank accounts (demand deposit accounts (DDA) and certificates of deposit (CD)),
- Federal funds sold on a principal basis,
- The over-collateralized amount on repurchase agreements,
- The under-collateralized portion of reverse repurchase agreements,
- Net current credit exposure on derivatives contracts,
- Unrealized gains on unsettled securities transactions,
- Direct or indirect loans to or for the benefit of the correspondent,[13] and
- Investments, such as trust preferred securities, subordinated debt, and stock purchases, in the correspondent.

Funding Concentrations

Depending on its size and characteristics, a concentration of credit for a financial institution may be a funding exposure for the correspondent. The primary risk of a funding concentration is that an institution will have to replace those advances on short notice. This risk may be more pronounced if the funds are credit sensitive, or if the financial condition of the party advancing the funds has deteriorated.

The percentage of liabilities or other measurements that may constitute a concentration of funding is likely to vary depending on the type and maturity of the funding, and the structure of the recipient's sources of funds. For example, a concentration in overnight unsecured funding from one source might raise different concentration issues and concerns than unsecured term funding, assuming compliance with covenants and diversification with short and long-term maturities. Similarly, concerns arising from concentrations in long-term unsecured funding typically increase as these instruments near maturity.

Calculating Credit and Funding Concentrations

When identifying credit and funding concentrations for risk management purposes, institutions should calculate both gross and net exposures to the correspondent on a standalone basis and on a correspondent organization-wide basis as part of their prudent risk management practices. Exposures are reduced to net positions to the extent that the transactions are secured by the net realizable proceeds from readily marketable collateral or are covered by valid and enforceable netting agreements. Appendix A, *Calculating Correspondent Exposures,* contains examples, which are provided for illustrative purposes only.

Monitoring Correspondent Relationships

Prudent management of correspondent concentration risks includes establishing and maintaining written policies and procedures to prevent excessive exposure to any correspondent in relation to the correspondent's financial condition. For risk management purposes, institutions' procedures and frequency for monitoring correspondent relationships may be more or less aggressive depending on the nature, size, and risk of the exposure.

In monitoring correspondent relationships for risk-management purposes, institutions should specify internal parameters relative to what information, ratios, or trends will be reviewed for each correspondent on an ongoing basis. In addition to a

[9] The Agencies consist of the Federal Deposit Insurance Corporation (FDIC), Board of Governors of the Federal Reserve System (Board), Office of the Comptroller of the Currency, Treasury (OCC), and Office of Thrift Supervision, Treasury (OTS) (collectively, the Agencies).

[10] For purposes of this guidance, the term "total capital" means the total risk-based capital as reported for commercial banks and thrifts in the Report of Condition and the Thrift Financial Report, respectively.

[11] 12 CFR part 206. All depository institutions insured by the FDIC are subject to Regulation F.

[12] Financial institutions should identify and monitor all direct or indirect relationships with their correspondents. Institutions should take into account exposures of their affiliates to correspondents, and how those relationships may affect the institution's exposure. While each financial institution is responsible for monitoring its own credit and funding exposures, institution holding companies, if any, should manage the organization's concentration risk on a consolidated basis.

[13] Exclude loan participations purchased without recourse from a correspondent, its holding company, or an affiliate.

correspondent's capital, level of problem loans, and earnings, institutions may want to monitor other factors, which could include, but are not limited to:

- Deteriorating trends in capital or asset quality.
- Reaching certain target ratios established by management, *e.g.*, aggregate of nonaccrual and past due loans and leases as a percentage of gross loans and leases.
- Increasing level of other real estate owned.
- Attaining internally specified levels of volatile funding sources such as large CDs or brokered deposits.
- Experiencing a downgrade in its credit rating, if publicly traded.
- Being placed under a public enforcement action.

For prudent risk management purposes, institutions should implement procedures that ensure ongoing, timely reviews of correspondent relationships. Institutions should use these reviews to conduct comprehensive assessments that consider their internal parameters and are commensurate with the nature, size, and risk of their exposure. Institutions should increase the frequency of their internal reviews when appropriate, as even well capitalized institutions can experience rapid deterioration in their financial condition, especially in economic downturns.

Institutions' procedures also should establish documentation requirements for the reviews conducted. In addition, the procedures should specify when relationships that meet or exceed internal criteria are to be brought to the attention of the board of directors or the appropriate management committee.

Managing Correspondent Concentrations

Institutions should establish prudent internal concentration limits, as well as ranges or tolerances for each factor being monitored for each correspondent. Institutions should develop plans for managing risk when these internal limits, ranges or tolerances are met or exceeded, either on an individual or collective basis. Contingency plans should provide a variety of actions that can be considered relative to changes in the correspondent's financial condition. However, contingency plans should not rely on temporary deposit insurance programs for mitigating concentration risk.

Prudent risk management of correspondent concentration risks should include procedures that provide for orderly reductions of correspondent concentrations that exceed internal parameters over a reasonable timeframe that is commensurate with the size, type, and volatility of the risk in the exposure. Such actions could include, but are not limited to:

- Reducing the volume of uncollateralized/uninsured funds.
- Transferring excess funds to other correspondents after conducting appropriate reviews of their financial condition.
- Requiring the correspondent to serve as agent rather than as principal for Federal funds sold.
- Establishing limits on asset and liability purchases from and investments in correspondents.
- Specifying reasonable timeframes to meet targeted reduction goals for different types of exposures.

Examiners will review correspondent relationships during examinations to ascertain whether an institution's policies and procedures appropriately identify and monitor correspondent concentrations. Examiners also will review the adequacy and reasonableness of institutions' contingency plans to manage correspondent concentrations.

Performing Appropriate Due Diligence

Financial institutions that maintain credit exposures in or provide funding to other financial institutions should have effective risk management programs for these activities. For this purpose, credit or funding exposures may include, but are not limited to, due from bank accounts, Federal funds sold as principal, direct or indirect loans (including participations and syndications), and trust preferred securities, subordinated debt, and stock purchases of the correspondent.

An institution that maintains or contemplates entering into any credit or funding transactions with another financial institution should have written investment, lending, and funding policies and procedures, including appropriate limits, that govern these activities. In addition, these procedures should ensure the institution conducts an independent analysis of credit transactions prior to committing to engage in the transactions. The terms for all such credit and funding transactions should strictly be on an arm's length basis, conform to sound investment, lending, and funding practices, and avoid potential conflicts of interest.

Appendix A

Calculating Respondent Credit Exposures on an Organization-Wide Basis

Respondent Bank's Gross Credit Exposure to a Correspondent, its Holding Company and Affiliates

50,000,000	Due from DDA with correspondent.
1,000,000	Due from DDA with correspondent's two affiliated insured depository institutions (IDIs).
1,000,000	CDs issued by correspondent bank.
500,000	CDs issued by one of correspondent's two affiliated IDIs.
51,500,000	Federal funds sold to correspondent on a principal basis.
2,500,000	Federal funds sold to correspondent's affiliated IDIs on a principal basis.
3,750,000	Reverse Repurchase agreements.
250,000	Net current credit exposure on derivatives.[1]
4,500,000	Direct and indirect loans to or for benefit of a correspondent, its holding company, or affiliates.
2,500,000	Investments in the correspondent, its holding company, or affiliates
117,500,000	Gross Credit Exposure.
100,000,000	Total Capital.
118%	Gross Credit Concentration.

Respondent Bank's Net Credit Exposure to a Correspondent, its Holding Company and Affiliates

17,850,000	Due from DDA (less checks/cash not available for withdrawal & federal deposit insurance (FDI)).[2]
500,000	Due from DDA with correspondent's two affiliated IDIs (less FDI).[2]
750,000	CDs issued by correspondent bank (less FDI).
250,000	CDs issued by one of correspondent's two affiliated IDIs (less FDI).

51,500,000	Federal funds sold on a principal basis.
2,500,000	Federal funds sold to correspondent's affiliated IDIs on a principal basis.
100,000	Under-collateralized amount on reverse repurchase agreements (less the current market value of government securities or readily marketable collateral pledged).[3]
50,000	Uncollateralized net current derivative position.[1]
4,500,000	Direct and indirect loans to or for benefit of a correspondent, its holding company, or affiliates.
2,500,000	Investments in the correspondent, its holding company, or affiliates.
80,500,000	Net Credit Exposure.
100,000,000	Total Capital.
81%	Net Credit Concentration.

Note: Respondent Bank has $1 billion in Total Assets, 10% Total Capital, and 90% Total Liabilities and Correspondent Bank has $1.5 billion in Total Assets, 10% Total Capital, and 90% Total Liabilities.

Calculating Correspondent Funding Exposures on an Organization-Wide Basis

Correspondent Bank's Gross Funding Exposure to a Respondent Bank

50,000,000	Due to DDA with respondent.
1,000,000	Correspondent's two affiliated IDIs' Due to DDA with respondent.
1,000,000	CDs sold to respondent bank.
500,000	CDs sold to respondent from one of correspondent's two affiliated IDIs.
51,500,000	Federal funds purchased from respondent on a principal basis.
2,500,000	Federal funds sold to correspondent's affiliated IDIs on a principal basis.
1,000,000	Repurchase Agreements.
107,500,000	Gross Funding Exposure.
1,350,000,000	Total Liabilities.
7.96%	Gross Funding Concentration.

Correspondent Bank's Net Funding Exposure to a Respondent, its Holding Company and Affiliates

17,850,000	Due to DDA with respondent (less checks and cash not available for withdrawal and FDI).[2]
500,000	Correspondent's two affiliated IDIs' Due to DDA with respondent (less FDI).[2]
750,000	CDs sold to correspondent (less FDI).
250,000	One of correspondent's two affiliated IDIs' CDs sold to respondent (less FDI).[2]
51,500,000	Federal funds purchased from respondent on a principal basis.
2,500,000	Federal funds sold to correspondent's affiliated IDIs on a principal basis.
150,000	Under-collateralized amount of repurchase agreements relative to the current market value of government securities or readily marketable collateral pledged.[3]
73,500,000	Net Funding Exposure.
1,350,000,000	Total Liabilities.
5.44%	Net Funding Concentration.

[1] There are 5 derivative contracts with a mark-to-market fair value position as follows: Contract 1 (100), Contract 2 +400, Contract 3 (50), Contract 4 +150, and Contract 5 (150). Collateral is 200, resulting in an uncollateralized position of 50.

[2] While temporary deposit insurance programs may provide certain transaction accounts higher levels of federal deposit insurance coverage, institutions should not rely on such programs for mitigating concentration risk.

[3] Government securities means obligations of, or obligations fully guaranteed as to principal and interest by, the U.S. government or any department, agency, bureau, board, commission, or establishment of the United States, or any corporation wholly owned, directly or indirectly, by the United States.

Appendix B

Calculating Respondent *Credit Exposures* on a *Correspondent Only* Basis

RESPONDENT BANK'S GROSS CREDIT EXPOSURE TO A CORRESPONDENT

50,000,000	Due from DDA with correspondent.
0	Due from DDA with correspondent's two affiliated insured depository institutions (IDIs).
1,000,000	CDs issued by correspondent bank.
0	CDs issued by one of correspondent's two affiliated IDIs.
51,500,000	Federal funds sold to correspondent on a principal basis.
0	Federal funds sold to correspondent's affiliated IDIs on a principal basis.
3,750,000	Reverse Repurchase agreements.

250,000	Net current credit exposure on derivatives.[1]
4,500,000	Direct and indirect loans to or for benefit of a correspondent, its holding company, or affiliates.
2,500,000	Investments in the correspondent, its holding company, or affiliates.
113,500,000	Gross Credit Exposure.
100,000,000	Total Capital.
114%	Gross Credit Concentration.

Respondent Bank's Net Credit Exposure to a Correspondent

17,850,000	Due from DDA (less checks/cash not available for withdrawal and federal deposit insurance (FDI)).[2]
0	Due from DDA with correspondent's two affiliated IDIs (less FDI).[2]
750,000	CDs issued by correspondent bank (less FDI).
0	CDs issued by one of correspondent's two affiliated IDIs (less FDI).
51,500,000	Federal funds sold on a principal basis.
0	Federal funds sold to correspondent's affiliated IDIs on a principal basis.
100,000	Under-collateralized amount on reverse repurchase agreements (less the current market value of government securities or readily marketable collateral pledged).[3]
50,000	Uncollateralized net current derivative position.[1]
4,500,000	Direct and indirect loans to or for benefit of a correspondent, its holding company, or affiliates.
2,500,000	Investments in the correspondent, its holding company, or affiliates.
77,250,000	Net Credit Exposure.
100,000,000	Total Capital.
77%	Net Credit Concentration.

Note: Respondent Bank has $1 billion in Total Assets, 10% Total Capital, and 90% Total Liabilities and Correspondent Bank has $1.5 billion in Total Assets, 10% Total Capital, and 90% Total Liabilities.

Calculating Respondent *Funding Exposures* on a *Correspondent Only* Basis

Correspondent Bank's Gross Funding Exposure to a Respondent

50,000,000	Due to DDA with respondent.
0	Correspondent's two affiliated IDIs' Due to DDA with respondent.
1,000,000	CDs sold to respondent bank.
0	CDs sold to respondent from one of correspondent's two affiliated IDIs.
51,500,000	Federal funds purchased from respondent on a principal basis.
0	Federal funds sold to correspondent's affiliated IDIs on a principal basis.
1,000,000	Repurchase agreements.
103,500,000	Gross Funding Exposure.
1,350,000,000	Total Liabilities.
7.67%	Gross Funding Concentration.

Correspondent Bank's Net Funding Exposure to a Respondent

17,850,000	Due to DDA with respondent (less checks and cash not available for withdrawal and FDI).[2]
0	Correspondent's two affiliated IDIs' Due to DDA with respondent (less FDI).[2]
750,000	CDs sold to correspondent (less FDI).
0	One of correspondent's two affiliated IDIs' CDs sold to respondent (less FDI).[2]
51,500,000	Federal funds purchased from respondent on a principal basis.
0	Federal funds sold to correspondent's affiliated IDIs on a principal basis.
100,000	Under-collateralized amount on repurchase agreements (less the current market value of government securities or readily marketable collateral pledged).[3]
70,200,000	Net Funding Exposure.
1,350,000,000	Total Liabilities.
5.20%	Net Funding Concentration.

[1] There are 5 derivative contracts with a mark-to-market fair value position as follows: Contract 1 (100), Contract 2 +400, Contract 3 (50), Contract 4 +150, and Contract 5 (150). Collateral is 200, resulting in an uncollateralized position of 50.

[2] While temporary deposit insurance programs may provide certain transaction accounts higher levels of federal deposit insurance coverage, institutions should not rely on such programs for mitigating concentration risk.

[3] Government securities means obligations of, or obligations fully guaranteed as to principal and interest by, the U.S. government or any department, agency, bureau, board, commission, or establishment of the United States, or any corporation wholly owned, directly or indirectly, by the United States.

Dated at Washington, DC, the 27th day of April 2010.

By order of the Federal Deposit Insurance Corporation.

Robert E. Feldman,

Executive Secretary.

By order of the Board of Governors of the Federal Reserve System.

Jennifer J. Johnson,

Secretary of the Board.

John C. Dugan,

Comptroller of the Currency.

Dated: April 9, 2010.

By the Office of Thrift Supervision.

John E. Bowman,

Acting Director.

[FR Doc. 2010–10382 Filed 5–3–10; 8:45 am]

BILLING CODE 6714–01–P, 6210–01–P, 4810–33–P, 6720–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Resources and Services Administration

Agency Information Collection Activities: Proposed Collection: Comment Request

In compliance with the requirement for opportunity for public comment on proposed data collection projects (section 3506(c)(2)(A) of Title 44, United States Code, as amended by the Paperwork Reduction Act of 1995, Pub. L. 104–13), the Health Resources and Services Administration (HRSA) publishes periodic summaries of proposed projects being developed for submission to the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1995. To request more information on the proposed project or to obtain a copy of the data collection plans and draft instruments, e-mail *paperwork@hrsa.gov* or call the HRSA Reports Clearance Officer at (301) 443–1129.

Comments are invited on: (a) The proposed collection of information for the proper performance of the functions of the agency; (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: Children's Hospital Graduate Medical Education Payment Program (CHGME PP) Annual Report (OMB No. 0915–0313)—Extension

The CHGME PP was enacted by Public Law 106–129 to provide Federal support for graduate medical education (GME) to freestanding children's hospitals, similar to Medicare GME support received by other, non-children's hospitals. The legislation indicates that eligible children's hospitals will receive payments for both direct and indirect medical education. Direct payments are designed to offset the expenses associated with operating approved graduate medical residency training programs and indirect payments are designed to compensate hospitals for expenses associated with the treatment of more severely ill patients and the additional costs relating to teaching residents in such programs.

The CHGME PP program was reauthorized for a period of five years in October 2006 by Public Law 109–307. The reauthorizing legislation requires that participating children's hospitals provide information about their residency training programs in an annual report that will be an addendum to the hospitals' annual applications for funds.

Data are required to be collected on the (1) Types of training programs that the hospital provided for residents such as general pediatrics, internal medicine/pediatrics, and pediatric subspecialties including both medical subspecialties certified and non-medical subspecialties; (2) the number of training positions for residents, the number of such positions recruited to fill, and the number of positions filled; (3) the types of training that the hospital provided for residents related to the health care needs of difference populations such as children who are underserved for reasons of family income or geographic location, including rural and urban areas; (4) changes in residency training including changes in curricula, training experiences, and types of training programs, and benefits that have resulted from such changes and changes for purposed of training residents in the measurement and improvement and the quality and safety of patient care; (5) and the numbers of residents (disaggregated by specialty and subspecialty) who completed training in the academic year and care for children within the borders of the service area of the hospital or within the borders of the State in which the hospital is located.

The estimated annual burden is as follows:

Form name	Number of respondents	Responses per respondent	Total number of responses	Hours per response	Total burden hours	Wage rate ($/hr.)	Total hour cost
Screening Instrument (HRSA 100–1)	57	1	57	10.0	570.0	56.38	32,136.60
Annual Report: Hospital and Program-Level Information (HRSA 100–2 and 3)	57	1	57	74.8	4263.6	56.38	240,381.76
Total	57		57	84.8	4833.6	56.38	272,518.36

E-mail comments to *paperwork@hrsa.gov* or mail the HRSA Reports Clearance Officer, Room 10–33, Parklawn Building, 5600 Fishers Lane, Rockville, MD 20857. Written comments should be received within 60 days of this notice.

Dated: April 28, 2010.

Sahira Rafiullah,

Director, Division of Policy and Information Coordination.

[FR Doc. 2010–10462 Filed 5–3–10; 8:45 am]

BILLING CODE 4165–15–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Resources and Services Administration

Agency Information Collection Activities: Proposed Collection: Comment Request

In compliance with the requirement for opportunity for public comment on proposed data collection projects (section 3506(c)(2)(A) of Title 44, United States Code, as amended by the Paperwork Reduction Act of 1995, Pub. L. 104–13), the Health Resources and Services Administration (HRSA) publishes periodic summaries of proposed projects being developed for submission to the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1995. To request more information on the proposed project or to obtain a copy of the data collection plans and draft instruments, e-mail *paperwork@hrsa.gov* or call the HRSA Reports Clearance Officer at (301) 443–1129:

Comments are invited on: (a) The proposed collection of information for the proper performance of the functions of the agency; (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: "Health Care and Other Facilities" Construction Program: Web-Based Status Reporting Form: (OMB No. 0915–0309)—[Extension]

The Health Resources and Services Administration's Health Care and Other Facilities (HCOF) Construction Program provides congressional directed funds to health facilities for construction-related activities and/or capital equipment purchases. Awarded facilities are required to provide HRSA with a periodic (quarterly for construction-related projects, annually for equipment only projects) update of the status of the funded project until it is completed. The monitoring period averages about 3 years, although some projects take up to 5 years to complete. The information collected from these updates is vital to program management staff to determine whether projects are progressing according to the established timeframes, meeting deadlines established in the Notice of Grant Award (NGA), drawing down funds appropriately. The data collected from the updates is also shared with the Division of Grants Management Operations (DGMO), which assists in the overall evaluation of each project's progress. A Web-based form has been developed for progress reporting for the HCOF program. This form will allow awardees the ability to directly input the required status update information in a timely, consistent, and uniform manner. The Web-based form will minimize burden to respondents and will inform respondents when there are missing data elements prior to submission.

The annual estimate of burden is as follows:

Instrument	Number of respondents	Responses per respondent	Total responses	Hours per response	Total burden hours
Construction-Related	357	4	1428	.5	714
Equipment Only	905	1	905	.5	453
Total	1262		2333		1167

E-mail comments to *paperwork@hrsa.gov* or mail the HRSA Reports Clearance Officer, Room 10–33, Parklawn Building, 5600 Fishers Lane, Rockville, MD 20857. Written comments should be received within 60 days of this notice.

Dated: April 27, 2010.

Sahira Rafiullah,

Director, Division of Policy and Information Coordination.

[FR Doc. 2010–10456 Filed 5–3–10; 8:45 am]

BILLING CODE 4165–15–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Resources and Services Administration

Agency Information Collection Activities: Submission for OMB Review; Comment Request

Periodically, the Health Resources and Services Administration (HRSA) publishes abstracts of information collection requests under review by the Office of Management and Budget (OMB), in compliance with the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35). To request a copy of the clearance requests submitted to OMB for review, call the HRSA Reports Clearance Office on (301) 443–1129.

The following request has been submitted to the Office of Management and Budget for review under the Paperwork Reduction Act of 1995:

Proposed Project: Combating Autism Act Initiative Evaluation (New) .

Background: In response to the growing need for research and resources devoted to autism spectrum disorder (ASD) and other developmental disorders (DD), the U.S. Congress passed the Combating Autism Act (CAA) in 2006. This Act authorized Federal programs to combat ASD and other DD through research, screening, intervention, and education. Through the CAA, the Health Resources and Services Administration (HRSA) is tasked with increasing awareness of ASD and other DD, reducing barriers to screening and diagnosis, promoting evidence-based interventions, and training health care professionals in the use of valid and reliable screening and diagnostic tools.

Purpose: HRSA's activities under this legislation are conducted by the Maternal and Child Health Bureau

(MCHB), which is implementing the Combating Autism Act Initiative (CAAI) in response to the legislative mandate. The purpose of this evaluation is to design and implement a three-year assessment of the effectiveness of MCHB's activities in meeting the goals and objectives of the CAAI, and to provide sufficient data to inform MCHB and the Congress as to the utility of the grant programs funded under the Initiative. To address the requirements for the Report to Congress, the evaluation will focus on short-term indicators related to: (1) Increasing awareness of ASD and other DD among health care providers, other MCH professionals and the general public; (2) reducing barriers to screening and diagnosis; (3) supporting research on evidence-based interventions; (4) promoting the development of evidence-based guidelines and tested/validated intervention tools; and (5) training professionals.

Respondents: Grantees funded by HRSA under the CAAI will be the respondents for this data collection activity. The programs to be evaluated are listed below.

1. Training Programs

- Leadership Education in Neurodevelopmental Disabilities (LEND) training programs with thirty nine grantees; and
- Developmental Behavioral Pediatrics (DBP) training programs with six grantees.

2. Research Programs

- Two Autism Intervention Research Networks that focus on intervention research, guideline development, and information dissemination;
- Five R40 Maternal and Child Health (MCH) Autism Intervention Research Program grantees that support research on evidence-based practices for interventions to improve the health and well-being of children and adolescents with ASD and other DD; and
- Two R40 MCH Autism Intervention Secondary Data Analysis Study (SDAS) Program grantees that support research on evidence-based practices for interventions to improve the health and well-being of children and adolescents with ASD and other DD, utilizing exclusively the analysis of existing secondary data.

3. State Implementation Program Grants for Improving Services for Children and Youth With Autism Spectrum Disorder (ASD) and Other Developmental Disabilities (DD)

- Nine grantees will implement state autism plans and develop models for improving the system of care for children and youth with ASD and other DD.

The data gathered through this evaluation will be used to:

- Evaluate the grantees' performance in achieving the objectives of the CAAI during the three year grant period;
- Assess the short- and intermediate-term impacts of the grant programs on children and
- families affected by ASD and other DD;
- Measure the CAAI outputs and outcomes for the Report to Congress; and
- Provide foundation data for future measurement of the initiative's long-term impact.

The estimated response burden is shown in Table 1.

TABLE 1—ESTIMATED HOUR AND COST BURDEN OF THE DATA COLLECTION

Grant program	No. of respondents	Responses per respondent	Total responses	Average hours per response	Total hour burden	Wage rate	Total hour cost
LEND	39	6	234	.75	175.5	$39.36	$6907.68
DBP	6	6	36	.75	27	39.36	1062.72
State Implementation Program	9	6	54	.75	40.5	38.22	1547.91
Research Program	9	6	54	.75	40.5	39.36	1594.08
Total	63		378		283.5		11,112.39

Written comments and recommendations concerning the proposed information collection should be sent within 30 days of this notice to the desk officer for HRSA, either by e-mail to *OIRA_submission@omb.eop.gov* or by fax to 202–395–6974. Please direct all correspondence to the "attention of the desk officer for HRSA."

Dated April 28, 2010.

Sahira Rafiullah,

Director, Division of Policy and Information Coordination.

[FR Doc. 2010–10450 Filed 5–3–10; 8:45 am]

BILLING CODE 4165–15–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2009–N–0535]

Agency Information Collection Activities; Submission for Office of Management and Budget Review; Comment Request; "Real Time" Surveys of Consumers' Knowledge, Perceptions, and Reported Behavior Concerning Foodborne Illness Outbreaks or Food Recalls

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing that a proposed collection of information has been submitted to the Office of Management and Budget (OMB) for review and clearance under the Paperwork Reduction Act of 1995.

DATES: Fax written comments on the collection of information by June 3, 2010.

ADDRESSES: To ensure that comments on the information collection are received, OMB recommends that written comments be faxed to the Office of Information and Regulatory Affairs, OMB, Attn: FDA Desk Officer, FAX: 202–395–7285, or e-mailed to *oira_submission@omb.eop.gov*. All comments should be identified with the OMB control number 0910–NEW and title "'Real Time' Surveys of Consumers' Knowledge, Perceptions, and Reported Behavior Concerning Foodborne Illness Outbreaks or Food Recalls." Also include the FDA docket number found in brackets in the heading of this document.

FOR FURTHER INFORMATION CONTACT: Denver Presley, Office of Information Management, Food and Drug Administration, 1350 Piccard Dr., PI50–400B, Rockville, MD 20850, 301–796–3793.

SUPPLEMENTARY INFORMATION: In compliance with 44 U.S.C. 3507, FDA has submitted the following proposed collection of information to OMB for review and clearance.

"Real Time" Surveys of Consumers' Knowledge, Perceptions, and Reported Behavior Concerning Foodborne Illness Outbreaks or Food Recalls (OMB Control No. 0910–NEW)

I. Description

FDA communicates with consumers about food recalls directly, at its own Web site, and through various mass media channels, such as television and newspapers, during a foodborne illness outbreak or food recall. In these communications, FDA typically identifies the implicated food, the symptoms of the foodborne illness at issue, any subpopulations at elevated risk of infection or illness, and protective measures individuals can or should take. The purpose of these communications is to provide consumers with information so they can protect themselves from potential health risks associated with an outbreak or food recall. Consumers also get information about an outbreak or recall from other sources, including other Federal and State agencies, industry, consumer groups, and the mass media, which may or may not relay FDA's public announcements.

Existing data show that many consumers do not take appropriate protective actions during a foodborne illness outbreak or food recall (Refs. 1 and 2). For example, 41 percent of U.S. consumers say they have never looked for any recalled product in their home (Ref. 2). Conversely, some consumers overreact to the announcement of a foodborne illness outbreak or food recall. In response to the 2006 fresh, bagged spinach recall which followed a multistate outbreak of *E. coli* O157: H7 infections (Ref. 3), 18 percent of consumers said they stopped buying other bagged, fresh produce because of the spinach recall (Ref. 1). Existing research also suggests that many consumers may not have correct knowledge about products subject to a given recall. For example, in a survey conducted 2 months after the onset of the 2006 spinach recall, one third of respondents did not know that, in addition to bagged spinach, fresh loose spinach was part of the recall, while 22 percent believed that frozen spinach was subject to the recall (it was not) (Refs. 1 and 3). In order for FDA to protect the public health during foodborne illness outbreaks or food recalls, the Agency needs timely information collected from consumers as the events unfold to ensure that consumers understand the extent of the incident and that they are taking appropriate actions. Results from the information collection will indicate to FDA whether the Agency should adjust its communications to help consumers react appropriately.

FDA conducts research and educational and public information programs relating to food safety under its broad statutory authority, set forth in section 903(b)(2) of the Federal Food, Drug, and Cosmetic Act (the act) (21 U.S.C. 393 (b)(2), to protect the public health by ensuring that foods are "safe, wholesome, sanitary, and properly labeled," and in section 903(d)(2)(C) to conduct research relating to foods, drugs, cosmetics, and devices in carrying out the act.

FDA plans to survey U.S. consumers using a Web-based panel of U.S. households to collect information on consumers' "real time" knowledge, perceptions, beliefs, and self-reported behaviors for up to five foodborne illness outbreaks or food recalls a year. Moreover, because the information environment during certain foodborne illness outbreaks or food recalls evolves as new information emerges, the Agency plans to field up to three waves of independent surveys per event (i.e., outbreak or recall). The surveys will query consumers on topics such as: (1) The products that are subject to the outbreak or recall, (2) the implicated pathogens, (3) the food vehicle of the outbreak or recall, and (4) how consumers can protect themselves. FDA plans to conduct the surveys soon after the onset of an outbreak or recall and whenever the Agency suspects that: (1) Messages are not reaching consumers, and/or (2) consumers do not understand the messages, and/or (3) consumers are not taking appropriate actions in response to the messaging. Collecting information quickly during a foodborne illness outbreak or food recall is important because erroneous perceptions or misinterpreted information about an outbreak or recall can impede consumer adoption of recommended protective behaviors. Criteria for selecting a particular foodborne illness outbreak or food recall for a survey will include a qualitative assessment of the salience of some or all of the following: The geographical dispersion of the event, the number of illnesses or deaths associated with it, the relative familiarity of the food product, the complexity of consumer precaution instructions, and the presence of national media focus.

The Agency will use the survey results to help adjust its communication strategies and messages for foodborne illness outbreaks or food recalls, when needed. The results will not be used to develop population estimates.

In the **Federal Register** of November 18, 2009 (74 FR 59558), FDA published a 60-day notice requesting public comment on the proposed collection of information. No comments were received.

FDA estimates the burden of this collection of information as follows:

TABLE 1.—ESTIMATED ANNUAL REPORTING BURDEN[1]

Activity	No. of Respondents	Annual Frequency per Response	Total Annual Responses	Hours per Response	Total Hours
Screener	30,000	1	30,000	.0055	165
Pre-test	40	1	40	.167	7
Survey	15,000	1	15,000	.167	2,505
Total					2,677

[1] There are no capital costs or operating and maintenance costs associated with this collection of information.

Approximately 30,000 respondents of a Web-based consumer panel will be screened (3 waves (independent surveys)) for each of 5 incidents; 2,000 respondents per wave). We estimate that it will take a respondent 20 seconds (0.0055 hours) to complete the screening questions, for a total of 165 hours. We will conduct a pre-test of the first survey with 40 respondents; we estimate that it will take a respondent 10 minutes (0.167 hours) to complete the pre-test, for a total of 7 hours. Fifteen thousand (15,000) respondents will complete the surveys (3 waves (independent surveys)) for each of 5 incidents; 1,000 respondents per wave). We estimate that it will take a respondent 10 minutes (0.167 hours) to complete the survey, for a total of 2,505 hours. Thus, the total estimated burden is 2,677 hours. FDA's burden estimate is based on prior experience with consumer surveys that are similar to these.

II. References

1. Cuite, C., S. Condry, M. Nucci, et al., "Public Response to the Contaminated Spinach Recall of 2006," Publication no. RR–0107–013, New Brunswick, NJ: Rutgers, the State University of New Jersey, Food Policy Institute, 2007.

2. Hallman, W., C. Cuite, N. Hooker, "Consumer Responses to Food Recalls: 2009 National Survey Report," Publication no. RR–0109–018, New Brunswick, NJ: Rutgers, the State University of New Jersey, Food Policy Institute, 2009.

3. Acheson, D., "Outbreak of *Escherichia coli* 0157 Infections Associated With Fresh Spinach—United States, August-September 2006," 2007 (*http://first.fda.gov/cafdas/documents/Acheson_Spinach_Outbreak_2006_FDA_pres.ppt*).

Dated: April 28, 2010.

Leslie Kux,

Acting Assistant Commissioner for Policy.

[FR Doc. 2010–10357 Filed 5–3–10; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2010–N–0184]

Agency Information Collection Activities; Proposed Collection; Comment Request; Experimental Study of Patient Information Prototypes

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing an opportunity for public comment on the proposed collection of certain information by the agency. Under the Paperwork Reduction Act of 1995 (the PRA), Federal agencies are required to publish notice in the **Federal Register** concerning each proposed collection of information, and to allow 60 days for public comment in response to the notice. This notice solicits comments for research entitled "Experimental Study of Patient Information Prototypes." This study is designed to determine based on different prototype testing whether consumers are able to comprehend serious warnings, directions for use, drug indications and uses, contraindications, and side effects in the material that is presented.

DATES: Submit written or electronic comments on the collection of information by July 6, 2010.

ADDRESSES: Submit electronic comments on the collection of information to *http://www.regulations.gov*. Submit written comments on the collection of information to the Division of Dockets Management (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852. All comments should be identified with the docket number found in brackets in the heading of this document.

FOR FURTHER INFORMATION CONTACT: Elizabeth Berbakos, Office of Management Programs (HFA–250), Food and Drug Administration, 1350 Piccard Dr., PI50–400B, Rockville, MD 20850 301–796–3792, *Elizabeth.Berbakos@fda.hhs.gov*.

SUPPLEMENTARY INFORMATION:

I. Background

Under the PRA (44 U.S.C. 3501–3520), Federal agencies must obtain approval from the Office of Management and Budget (OMB) for each collection of information they conduct or sponsor. "Collection of information" is defined in 44 U.S.C. 3502(3) and 5 CFR 1320.3(c) and includes agency requests or requirements that members of the public submit reports, keep records, or provide information to a third party. Section 3506(c)(2)(A) of the PRA (44 U.S.C. 3506(c)(2)(A)) requires Federal agencies to provide a 60-day notice in the **Federal Register** concerning each proposed collection of information before submitting the collection to OMB for approval. To comply with this requirement, FDA is publishing notice of the proposed collection of information set forth in this document.

With respect to the following collection of information, FDA invites comments on these topics: (1) whether the proposed collection of information is necessary for the proper performance of FDA's functions, including whether the information will have practical utility; (2) the accuracy of FDA's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (3) ways to enhance the quality, utility and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques, when appropriate, and other forms of information technology.

Experimental Study of Patient Information Prototypes—New

In order to make informed decisions about health care and to use their medications correctly, consumers need easy access to up-to-date and accurate information about the risks, benefits and safe use of their prescription drugs. Consumers currently receive multiple pieces of paper with their prescription drugs from the pharmacy, containing information that is developed and distributed through various sources. Written prescription drug information is provided through a voluntary effort (Consumer Medication Information)[1] as well as through FDA mandated use of Medication Guides[2] and Patient Package Inserts (PPI).[3] Patients describe a wide range of experiences and varying degrees of satisfaction with information currently provided at the time medicines are received at the pharmacy. In some cases, the written documents are difficult to read and understand, duplicative and overlapping, incomplete or contradictory. FDA has held multiple public meetings to solicit feedback on providing balanced, comprehensive and up-to-date prescription drug information to consumers.

Since 1968, FDA regulations have required that PPIs written specifically for patients be distributed when certain prescription drugs or classes of prescription drugs are dispensed. PPIs are required for estrogens and oral contraceptives, are considered part of the product labeling, and are to be dispensed to the patient with the product. In the 1970s, FDA began evaluating the general usefulness of patient labeling for prescription drugs resulting in a series of regulatory steps to help ensure the availability of useful written consumer information. Other

[1] Public Law 104–180, August 6, 1996, Title VI. Effective Medication Guides.

[2] 21 CFR part 208.

[3] 21 CFR 310.501 and 310.515.

PPIs are submitted to FDA voluntarily by manufacturers and approved by FDA, but their distribution is not mandated by regulation. In the **Federal Register** of July 6, 1979 (44 FR 40016), FDA proposed regulations that would have required written patient information for all prescription drugs. In the **Federal Register** of September 12, 1980 (45 FR 60754), FDA finalized those regulations. In the **Federal Register** of September 7, 1982 (47 FR 39147), the regulations were revoked based, in part, on assurances that the effort could be handled more efficiently within the private sector.

In the **Federal Register** of August 24, 1995 (60 FR 44182), FDA proposed the Prescription Drug Product Labeling: Medication Guide Requirements, designed to set specific distribution and quality goals and timeframes for distributing written information to patients. In the **Federal Register** of December 1, 1998 (63 FR 66378 at 66396), the agency published a final rule that established a program under which Medication Guides would be required for a small number of drugs considered to pose a serious and significant public health concern (21 CFR 208.20).

Evidence suggests that both the content (e.g., organization) and format (e.g., white space) of a document will impact the comprehension of patient information. Research on reading behavior and document simplification suggests that the use of less complex terminology presented in shorter sentences with a more organized, or *chunked*, structure should improve consumer processing for at least three reasons. First, it should decrease the *cognitive load* engendered by the current physician-directed format. Second, a more structured and organized patient information document should present a less imposing processing demand, increasing consumers' willingness and self-perceived ability to read and understand the presented material. Research with the format of over-the-counter (OTC) drug labels,[4] the nutrition facts label,[5] and other information formats[6] demonstrates that information presented with section headings, graphics (such as bullets), and other design elements is more easily read than information presented in paragraph format. Consumers are more likely to engage in behavior they believe they can successfully complete.[7] Third, a patient information document that provides readers with clearer "signals" regarding the most important information should help readers prioritize the importance of the presented information. This should increase the probability that the set of information identified as important is subjected to more complete mental processing, thereby increasing the communication of that information.[8]

As part of FDA's efforts to improve the patient information received with prescription drugs, a Risk Communications Advisory Committee meeting was held on February 26 and 27, 2009. At this meeting, committee members discussed issues such as the ones described previously in this document and listened to stakeholder problems regarding the design and distribution of patient information. Following the advisory committee meeting, the working group created four prototypes to aid discussion at a public workshop to be held later in the year.

This public workshop was held on September 24 and 25, 2009. During the workshop stakeholders from industry, consumer advocacy, and academia converged to discuss desirable features for a single-document patient leaflet, if that were to be developed, consumer tested and distributed. Participants were divided into six groups to address the pros and cons of the four prototypes with the goal of deciding which features participants appreciated and did not appreciate. Additional information on the September 24 and 25, 2009, public workshop, is available at *http://www.fda.gov/Drugs/NewsEvents/ucm168106.htm*.

Given the information obtained from workshop participants, the working group refined several prototypes and designed a study to investigate the usefulness of three possible patient information formats from a user perspective. The results of this study will inform FDA as to the usefulness and parameters of various format options for the patient information documents.

II. Description of the Project

This project is designed to test different ways of presenting information about prescription drugs to patients who have obtained a prescription. The information used will be based on a fictitious medication for the treatment of rheumatoid arthritis, ankylosing spondylitis, and plaque psoriasis. Data collection will occur via computer at training and testing facilities with orientation and debriefing conducted by interviewers. Participants will include adults who have been diagnosed with one of the conditions the fictitious drug treats. Participants will be prescreened to obtain a reasonable representation of health literacy, including those who score at the lower end of the scale. Questionnaire measures will include open- and closed-ended questions. Extensive pretesting of materials and stimuli will be conducted to refine the experimental stimuli and dependent measures and to ensure the stimuli meet minimum communication requirements and are delivering expected messages.

Proposed Study Design and Protocol

The study is experimental and will have two independent variables in a 3 x 2 design. The independent variables are Format (3 levels: Drug Facts, Minimal Column, and Column Plus) and Order (2 levels: Warning first and Indication first).

[4] Aikin, K.J., "Consumer Comprehension and Preference for Variations in the Proposed Over-The-Counter Drug Labeling Format, Final Report" (1998); Vigilante, W.J., M.S. Wogalter, "The Preferred Order of Over-the-Counter (OTC) Pharmaceutical Label Components," *Drug Information Journal*, 31, 973–988, 1997.

[5] Levy, A.S., S.B. Fein, R.E. Schucker. "More Effective Nutrition Label Formats Are Not Necessarily More Preferred." *Journal of the American Dietetic Association*, 92(10), 1230–1234, 1992.

[6] Lorch, R., E. Lorch, "Effects of Organizational Signals on Text-Processing Strategies," *Journal of Educational Psychology*, 87(4), 537–544, 1995; Lorch, R., E. Lorch, "Effects of Organizational Signals on Free Recall of Expository Text," *Journal of Educational Psychology*, 88(1), 38–48, 1996; Lorch, R., E. Lorch, W. Inman, "Effects of Signaling Topic Structure on Text Recall," *Journal of Educational Psychology*, 85(2), 281–290, 1993.

[7] Wood, R., A. Bandura, "Impact of Conceptions of Ability on Self-regulatory Mechanisms and Complex Decision Making." *Journal of Personality and Social Psychology*, 56(3), 407–415, 1989.

[8] Lorch, R., E. Lorch, "Effects of Organizational Signals on Text-processing Strategies," *Journal of Educational Psychology*, 87(4), 537–544, 1995; Lorch, R., E. Lorch, "Effects of Organizational Signals on Free Recall of Expository Text," *Journal of Educational Psychology*, 88(1), 38–48, 1996; Lorch, R., E. Lorch, W. Inman, "Effects of Signaling Topic Structure on Text Recall," *Journal of Educational Psychology*, 85(2), 281–290, 1993.

FORMAT

Order	Drug Facts	Minimal Column	Column Plus
Warning first			
Indication first			

The Order manipulation will vary the primacy of the boxed warning information versus the paragraph about the uses to the drug. In terms of Format, the Drug Facts format will follow the conventions of the existing OTC labeling. The Minimal Column condition will contain information in two columns with only basic information in the sections regarding information patients should tell their doctors. The Column Plus condition will also present information in two columns, but will include additional contextual information in the sections about what information patients should report to their doctors.

Participants with relevant medical conditions will be randomly assigned to one of the six experimental conditions and each participant will see only one version of the patient information. Participants will be prescreened to represent a range of health literacy levels, including a portion with low literacy. Thus, all participants in the study will have been diagnosed with rheumatoid arthritis, ankylosing spondylitis, or plaque psoriasis and at least 30 percent of the sample will fall in the lower range of literacy. Because the average reading level in the United States is estimated to be 8th grade[9] and it is recommended that consumer medication information be written at a 5th grade reading level,[10] the low literate cohort will consist of consumers who have 5th to 8th grade reading skills. Education level is not a reliable substitute for literacy testing. At screening, the participants will be assessed for literacy level using a validated instrument.

An additional small study will be conducted via the Internet to determine whether electronic prototype presentation alters the processing of the information in any way. Two-hundred individuals with the same characteristics of the original sample (e.g., medical condition and literacy levels) will be recruited over the Internet and will complete the same questionnaire as original participants.

FDA is undertaking this study because it does not yet have sufficient evidence-based research relating to patient needs, or whether those needs are being effectively met. Research related to the functionality and effectiveness of written patient information consistently identifies the importance of performance-based testing as well as content based testing, which enables the evaluation of materials in order to assure their utility and identify issues in content format, or design. Development of new prescription drug patient materials must be based on consumer testing that focuses on utility to the patient and comprehension of material in the broadest audience possible. FDA has developed three prototypes in order to user test prescription drug information with consumers in order to achieve this goal. For further information, contact Elizabeth Berbakos (see **FOR FURTHER INFORMATION CONTACT**).

The burden table reflects up to three pretests of 180 individuals each, 900 participants in the main study, and 200 participants in the followup study involving electronic administration.

FDA estimates the burden of this collection of information as follows:

TABLE 1.—ESTIMATED ANNUAL REPORTING BURDEN [1]

21 CFR Section	No. of Respondents	Annual Frequency per Response	Total Annual Responses	Hours per Response	Total Hours
	540	1	540	20/60	178
	900	1	900	25/60	369
	200	1	200	25/60	82
Total					629

[1] There are no capital costs or operating and maintenance costs associated with this collection of information.

Dated: April 28, 2010.

Leslie Kux,

Acting Assistant Commissioner for Policy.

[FR Doc. 2010–10359 Filed 5–3–10; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2010–N–0190]

Agency Information Collection Activities; Proposed Collection; Comment Request; Infant Formula Requirements

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing an opportunity for public comment on the proposed collection of certain information by the agency. Under the Paperwork Reduction Act of 1995 (the PRA), Federal agencies are required to publish notice in the **Federal Register** concerning each proposed collection of information, including each proposed extension of an existing collection of

[9] Cotunga N., C.E. Vickery, K.M. Carpenter-Haefele, "Evaluation of Literacy Level of Patient Education Pages in Health-Related Journals," *Journol of Community Health*, 30(3), 213–219, 2005.

[10] Andrus, M.R., M.T. Roth, "Health Literacy: A Review," *Pharmocotherapy*, 22(3), 282–302, 2002.

information, and to allow 60 days for public comment in response to the notice. This notice solicits comments on information collection regarding the manufacture of infant formula, including infant formula labeling, quality control procedures, notification requirements, and recordkeeping.

DATES: Submit written or electronic comments on the collection of information by July 6, 2010.

ADDRESSES: Submit electronic comments on the collection of information to *http://www.regulations.gov*. Submit written comments on the collection of information to the Division of Dockets Management (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852. All comments should be identified with the docket number found in brackets in the heading of this document.

FOR FURTHER INFORMATION CONTACT: Denver Presley, Jr., Office of Information Management, Food and Drug Administration, 1350 Piccard Dr., PI50–400B, Rockville, MD 20850, 301–796–3793.

SUPPLEMENTARY INFORMATION: Under the PRA (44 U.S.C. 3501–3520), Federal agencies must obtain approval from the Office of Management and Budget (OMB) for each collection of information they conduct or sponsor. "Collection of information" is defined in 44 U.S.C. 3502(3) and 5 CFR 1320.3(c) and includes agency requests or requirements that members of the public submit reports, keep records, or provide information to a third party. Section 3506(c)(2)(A) of the PRA (44 U.S.C. 3506(c)(2)(A)) requires Federal agencies to provide a 60-day notice in the **Federal Register** concerning each proposed collection of information, including each proposed extension of an existing collection of information, before submitting the collection to OMB for approval. To comply with this requirement, FDA is publishing notice of the proposed collection of information set forth in this document.

With respect to the following collection of information, FDA invites comments on these topics: (1) Whether the proposed collection of information is necessary for the proper performance of FDA's functions, including whether the information will have practical utility; (2) the accuracy of FDA's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques, when appropriate, and other forms of information technology.

Infant Formula Requirements—21 CFR Parts 106 and 107 (OMB Control Number 0910–0256)—Extension

Statutory requirements for infant formula under the Federal Food, Drug, and Cosmetic Act (the act) are intended to protect the health of infants and include a number of reporting and recordkeeping requirements. Among other things, section 412 of the act (21 U.S.C. 350a) requires manufacturers of infant formula to establish and adhere to quality control procedures, notify FDA when a batch of infant formula that has left the manufacturers' control may be adulterated or misbranded, and keep records of distribution. FDA has issued regulations to implement the act's requirements for infant formula in parts 106 and 107 (21 CFR parts 106 and 107). FDA also regulates the labeling of infant formula under the authority of section 403 of the act (21 U.S.C. 343). Under the labeling regulations for infant formula in part 107, the label of an infant formula must include nutrient information and directions for use. The purpose of these labeling requirements is to ensure that consumers have the information they need to prepare and use infant formula appropriately. In a notice of proposed rulemaking published in the **Federal Register** of July 9, 1996 (61 FR 36154), FDA proposed changes in the infant formula regulations, including some of those listed in tables 1, 2, and 3 of this document. The document included revised burden estimates for the proposed changes and solicited public comment. In the interim, however, FDA is seeking an extension of OMB approval for the current regulations so that it can continue to collect information while the proposal is pending.

FDA estimates the burden of this collection of information as follows:

TABLE 1.—ESTIMATED ANNUAL REPORTING BURDEN[1]

Federal Food, Drug, and Cosmetic Act or 21 CFR Section	No. of Respondents	Annual Frequency per Response	Total Annual Responses	Hours per Response	Total Hours
Section 412(d) of the act	5	13	65	10	650
21 CFR 106.120(b)	1	1	1	4	4
21 CFR 107.50(b)(3) and (b)(4)	3	2	6	4	24
21 CFR 107.50(e)(2)	1	1	1	4	4
Total					682

[1] There are no capital costs or operating and maintenance costs associated with this collection of information.

TABLE 2.—ESTIMATED ANNUAL RECORDKEEPING BURDEN[1]

21 CFR Section	No. of Recordkeepers	Annual Frequency per Recordkeeping	Total Annual Records	Hours per Record	Total Hours
106.100	5	10	50	400	20,000
107.50 (c)(3)	3	10	30	300	9,000

TABLE 2.—ESTIMATED ANNUAL RECORDKEEPING BURDEN[1]—Continued

21 CFR Section	No. of Recordkeepers	Annual Frequency per Recordkeeping	Total Annual Records	Hours per Record	Total Hours
Total					29,000

[1] There are no capital costs or operating and maintenance costs associated with this collection of information.

TABLE 3.—THIRD PARTY DISCLOSURE REQUIREMENTS[1]

21 CFR Section	No. of Respondents	Annual Frequency of Disclosure	Total Annual Disclosures	Hours per Disclosure	Total Hours
21 CFR 107.10(a) and 107.20	5	13	65	8	520

[1] There are no capital costs or operating and maintenance costs associated with this collection of information

In compiling these estimates, FDA consulted its records of the number of infant formula submissions received in the past. All infant formula submissions to FDA may be provided in electronic format. The hours per response reporting estimates are based on FDA's experience with similar programs and information received from industry.

FDA estimates that it will receive 13 reports from 5 manufacturers annually under section 412(d) of the act, for a total annual response of 65 reports. Each report is estimated to take 10 hours per response for a total of 650 hours. FDA also estimates that it will receive one notification under § 106.120(b). The notification is expected to take 4 hours per response, for a total of 4 hours.

For exempt infant formula, FDA estimates that it will receive two reports from three manufacturers annually under § 107.50(b)(3) and (b)(4), for a total annual response of six reports. Each report is estimated to take 4 hours per response for a total of 24 hours. FDA also estimates that it will receive one notification under § 107.50(e)(2). The notification is expected to take 4 hours per response, for a total of 4 hours.

FDA estimates that 5 firms will expend approximately 20,000 hours per year to fully satisfy the record keeping requirements in § 106.100. It is estimated that 3 firms will expend approximately 9,000 hours per year to fully satisfy the record keeping requirements in § 107.50(c)(3).

FDA estimates that compliance with the labeling requirements of §§ 107.10(a) and 107.20 will require 520 hours annually by 5 manufacturers.

Dated: April 28, 2010.

Leslie Kux,

Acting Assistant Commissioner for Policy.

[FR Doc. 2010–10360 Filed 5–3–10; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2009–N–0507]

Agency Information Collection Activities; Submission for Office of Management and Budget Review; Comment Request; Requirements for Submission of Labeling for Human Prescription Drugs and Biologics in Electronic Format

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing that a proposed collection of information has been submitted to the Office of Management and Budget (OMB) for review and clearance under the Paperwork Reduction Act of 1995.

DATES: Fax written comments on the collection of information by June 3, 2010.

ADDRESSES: To ensure that comments on the information collection are received, OMB recommends that written comments be faxed to the Office of Information and Regulatory Affairs, OMB, Attn: FDA Desk Officer, FAX: 202–395–7285, or e-mailed to *oira_submission@omb.eop.gov*. All comments should be identified with the OMB control number 0910–0530. Also include the FDA docket number found in brackets in the heading of this document.

FOR FURTHER INFORMATION CONTACT: Elizabeth Berbakos, Office of Information Management, Food and Drug Administration, 1350 Piccard Dr., PI50–400B, Rockville, MD 20850, *Elizabeth.Berbakos@fda.hhs.gov*, 301–796–3792.

SUPPLEMENTARY INFORMATION: In compliance with 44 U.S.C. 3507, FDA has submitted the following proposed collection of information to OMB for review and clearance.

Requirements for Submission of Labeling for Human Prescription Drugs and Biologics in Electronic Format—OMB Control Number 0910–0530—Extension

FDA is requesting that OMB extend approval under the Paperwork Reduction Act (44 USC 3501–3520) for the information collection resulting from the requirement that the content of labeling for prescription drug products be submitted to FDA electronically in a form that FDA can process, review, and archive. This requirement was set forth in the final rule entitled "Requirements for Submission of Labeling for Human Prescription Drugs and Biologics in Electronic Format" (December 11, 2003; 68 FR 69009), which amended FDA regulations governing the format in which certain labeling is required to be submitted for FDA review with new drug applications (NDAs) (21 CFR 314.50(l)(1)(i)), including supplemental NDAs, abbreviated new drug applications (ANDAs) (21 CFR 314.94(d)(1)(ii)), including supplemental ANDAs, and annual reports (21 CFR 314.81(b)(2)(iii)(b)) (the final rule also applied to certain Biologics License Applications, but the information collection for these requirements is not part of this OMB approval request).

This OMB approval request is only for the burden associated with the electronic submission of the content of labeling. The burden for submitting labeling as part of NDAs, ANDAs, supplemental NDAs and ANDAs, and annual reports, has been approved by OMB under Control Number 0910–0001.

When we last requested that OMB extend approval for this information collection (see the **Federal Register** of March 29, 2006 (71 FR 15752)), we received several comments. Generally,

the comments said that, unlike FDA's December 11, 2003, final rule, the agency has now identified Extensible Markup Language (XML) as the required file format for Structured Product Label documents (SPL), and that the burden hours and costs that were calculated in the final rule were based on the submission of the content of labeling in PDF (portable document format). The comments said that the burden estimate in the March 29, 2006, **Federal Register** notice does not take into account the amount of time required to obtain, install, and update the program required to create the electronic files in the new format, and that SPL is a relatively new format requiring an initial investment in software, training, and process change that cannot simply be converted from the Word or PDF version of labeling. The comments said that the process for creating the SPL labeling includes significant effort in mapping, coding, recreation of the file, and quality control.

In the December 13, 2006, **Federal Register** (71 FR 74924), we said that we will respond to the comments as soon as we have gathered sufficient information to address the costs specified in the comments, and that the public will have an opportunity to comment on the response at that time. The burden hours and costs associated with making these submissions using the SPL standard are discussed here.

We estimate that it should take applicants approximately 1.25 hours to convert the content of labeling from Word or PDF to SPL format. The main task involved in this conversion is copying the content from one document (Word or PDF) to another (SPL). Over the past few years, several enhancements have been made to SPL authoring software which significantly reduces the burden and time needed to generate well-formed SPL documents. SPL authors may now copy a paragraph from a Word or PDF document and paste the text into the appropriate section of an SPL document. In those cases where an SPL author needs to create a table, the table text may be copied from the Word or PDF document and pasted into each table cell in the SPL document, eliminating the need to retype any information. Enhancements have also been made to the software for conversion vendors. Conversion software vendors have designed tools which will import the Word version of the content of labeling and, within minutes, automatically generate the SPL document (a few formatting edits may have to be made).

Based on the number of content of labeling submissions received during 2006, 2007, and 2008, we estimate that approximately 5,000 content of labeling submissions are made annually with original NDAs, ANDAs, supplemental NDAs and ANDAs, and annual reports by approximately 450 applicants. Therefore, the total annual hours to convert the content of labeling from Word or PDF to SPL format would be approximately 6,250 hours.

Concerning costs, we continue to conclude that there are no capital costs or operating and maintenance costs associated with this collection of information. In May 2009, FDA issued a guidance for industry entitled "Providing Regulatory Submissions in Electronic Format—Drug Establishment Registration and Listing." The guidance describes how to electronically create and submit SPL files using defined code sets and codes for establishment registration and drug listing information, including labeling. The information collection resulting from this guidance, discussed in the **Federal Register** of January 8, 2009 (74 FR 816), has been approved by OMB under Control Number 0910–0045. As discussed in the January 8, 2009, **Federal Register** notice, to create an SPL file and submit it to FDA, a registrant would need the following tools: A computer, appropriate software, access to the Internet, knowledge of terminology and standards, and access to FDA's electronic submission gateway (ESG). Registrants (and most individuals) have computers and Internet access available for their use. If a business does not have an available computer or access to the Internet, free use of computers and the Internet are usually available at public facilities, e.g., a community library. In addition, there should be no additional costs associated with obtaining the appropriate software. In 2008, FDA collaborated with GlobalSubmit to make available free SPL authoring software that SPL authors may utilize to create new SPL documents or edit previous versions. (Information on obtaining this software is explained in section IV.A of the guidance "Providing Regulatory Submissions in Electronic Format—Drug Establishment Registration and Listing.") In addition to the software, FDA also provides technical assistance and other resources, code sets and codes, and data standards regarding SPL files.

After the SPL file is created, the registrant would upload the file through the ESG, as explained in the January 8, 2009, **Federal Register** notice. A digital certificate is needed to use the ESG. The digital certificate binds together the owner's name and a pair of electronic keys (a public key and a private key) that can be used to encrypt and sign documents. A fee of up to $20.00 is charged for the digital certificate and the registrant may need to renew the certificate not less than annually. We are not calculating this fee as a cost for this extension because all applicants who submit content of labeling are also subject to the drug establishment registration and listing requirements and would have already acquired the digital certificate as a result of the May 2009 guidance on drug establishment registration and listing.

In the **Federal Register** of November 6, 2009 (74 FR 57491), FDA published a 60-day notice requesting public comment on the proposed collection of information. No comments were received.

FDA estimates the burden of this collection of information as follows:

TABLE 1.—ESTIMATED ANNUAL REPORTING BURDEN[1]

Content of labeling submissions in NDAs, ANDAs, supplemental NDAs and ANDAs, and annual reports	Number of Respondents	Annual Frequency per Response	Total Annual Responses	Hours per Response	Total Hours
	450	11.11	5,000	1.25	6,250

[1] There are no capital costs or operating and maintenance costs associated with this collection of information.

Dated: April 28, 2010.

Leslie Kux,

Acting Assistant Commissioner for Policy.

[FR Doc. 2010–10361 Filed 5–3–10; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2010–N–0199]

Agency Information Collection Activities; Proposed Collection; Comment Request; Administrative Procedures for the Clinical Laboratory Improvement Amendments of 1988 Categorization

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing an opportunity for public comment on the proposed collection of certain information by the agency. Under the Paperwork Reduction Act of 1995 (the PRA), Federal agencies are required to publish notice in the **Federal Register** concerning each proposed collection of information including each proposed extension of an existing collection of information, and to allow 60 days for public comment in response to the notice. This notice solicits comments on administrative procedures for the Clinical Laboratory Improvement Amendments of 1988 (CLIA) categorization.

DATES: Submit written or electronic comments on the collection of information by July 6, 2010.

ADDRESSES: Submit electronic comments on the collection of information to *http://www.regulations.gov*. Submit written comments on the collection of information to the Division of Dockets Management (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852. All comments should be identified with the docket number found in brackets in the heading of this document.

FOR FURTHER INFORMATION CONTACT: Daniel Gittleson, Office of Information Management, Food and Drug Administration, 1350 Piccard Dr., PI50–400B, Rockville, MD 20850, 301–796–5156, *Daniel.Gittleson@fda.hhs.gov*.

SUPPLEMENTARY INFORMATION: Under the PRA (44 U.S.C. 3501–3520), Federal agencies must obtain approval from the Office of Management and Budget (OMB) for each collection of information they conduct or sponsor. "Collection of information" is defined in 44 U.S.C. 3502(3) and 5 CFR 1320.3(c) and includes agency requests or requirements that members of the public submit reports, keep records, or provide information to a third party. Section 3506(c)(2)(A) of the PRA (44 U.S.C. 3506(c)(2)(A)) requires Federal agencies to provide a 60-day notice in the **Federal Register** concerning each proposed collection of information including each proposed extension an existing collection of information, before submitting the collection to OMB for approval. To comply with this requirement, FDA is publishing notice of the proposed collection of information set forth in this document.

With respect to the following collection of information, FDA invites comments on these topics: (1) Whether the proposed collection of information is necessary for the proper performance of FDA's functions, including whether the information will have practical utility; (2) the accuracy of FDA's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques, when appropriate, and other forms of information technology.

Administrative Procedures for CLIA Categorization—42 CFR 493.17 (OMB Control Number 0910–0607–Extension)

A guidance document entitled "Guidance for Administrative Procedures for CLIA Categorization" was released on May 7, 2008. The document describes procedures FDA will use to assign the complexity category to a device. Typically, FDA assigns complexity categorizations to devices at the time of clearance or approval of the device. In this way, no additional burden is incurred by the manufacturer since the labeling (including operating instructions) is included in the 510(k) or PMA. In some cases, however, a manufacturer may request CLIA categorization even if FDA is not simultaneously reviewing a 510(k) or PMA. One example is when a manufacturer requests that FDA assign CLIA categorization to a previously cleared device that has changed names since the original CLIA categorization. Another example is when a device is exempt from premarket review. In such cases, the guidance recommends that manufacturers provide FDA with a copy of the package insert for the device and a cover letter indicating why the manufacturer is requesting a categorization (e.g. name change, exempt from 510(k) review). The guidance recommends that in the correspondence to FDA the manufacturer should identify the product code and classification as well as reference to the original 510(k) when this is available.

FDA estimates the burden of this collection of information as follows:

TABLE 1.—ESTIMATED ANNUAL REPORTING BURDEN[1]

CFR Section	No. of Respondents	Annual Frequency per Response	Total Annual Responses	Hours per Responses	Total Hours	Total Operating & Maintenance Costs
42 CFR 493.17	60	15	900	1 hr	900 hr	$46,800

[1] There are no capital costs associated with this collection of information.

The number of respondents is approximately 60. On average, each respondent will request categorizations (independent of a 510(k) or PMA) 15 times per year. The cost, not including personnel, is estimated at $52 per hour (52 x 900) totaling $46,800. This includes the cost of copying and mailing copies of package inserts and a cover letter, which includes a statement of the reason for the request and reference to the original 510(k) numbers, including regulation numbers and product codes. The burden hours are based on FDA familiarity with the types of documentation typically included in a sponsor's categorization requests, and costs for basic office supplies (e.g. paper). The costs have been updated based on the Bureau of Labor Statistics estimates of inflation.

Dated: April 28, 2010.

Leslie Kux,

Acting Assistant Commissioner for Policy.

[FR Doc. 2010–10358 Filed 5–3–10; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Diabetes and Digestive and Kidney Diseases; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. App.), notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Diabetes and Digestive and Kidney Diseases Special Emphasis Panel; Bariatric Surgery and Kidney Function.

Date: June 8, 2010.

Time: 2 p.m. to 4 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Two Democracy Plaza, 6707 Democracy Boulevard, Bethesda, MD 20892 (Telephone Conference Call).

Contact Person: D.G. Patel, PhD, Scientific Review Officer, Review Branch, DEA, NIDDK, National Institutes of Health, Room 756, 6707 Democracy Boulevard, Bethesda, MD 20892–5452, (301) 594–7682, *pateldg@niddk.nih.gov.*

Name of Committee: National Institute of Diabetes and Digestive and Kidney Diseases Special Emphasis Panel; Collaborative Interdisciplinary.

Date: June 11, 2010.

Time: 1 p.m. to 3 p.m.

Agenda: To review and evaluate grant applications and/or proposals.

Place: National Institutes of Health, Two Democracy Plaza, 6707 Democracy Boulevard, Bethesda, MD 20892 (Telephone Conference Call).

Contact Person: D.G. Patel, PhD, Scientific Review Officer, Review Branch, DEA, NIDDK, National Institutes of Health, Room 756, 6707 Democracy Boulevard, Bethesda, MD 20892–5452, (301) 594–7682, *pateldg@niddk.nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.847, Diabetes, Endocrinology and Metabolic Research; 93.848, Digestive Diseases and Nutrition Research; 93.849, Kidney Diseases, Urology and Hematology Research, National Institutes of Health, HHS)

Dated: April 27, 2010.

Jennifer Spaeth,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 2010–10268 Filed 5–3–10; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2010–N–0001]

Drug Safety and Risk Management Advisory Committee; Notice of Meeting

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

This notice announces a forthcoming meeting of a public advisory committee of the Food and Drug Administration (FDA). The meeting will be open to the public.

Name of Committee: Drug Safety and Risk Management Advisory Committee.

General Function of the Committee: To provide advice and recommendations to the agency on FDA's regulatory issues.

Date and Time: The meeting will be held on September 14, 2010, from 8 a.m. to 5 p.m.

Location: The Marriott Inn and Conference Center, University of Maryland and University College (UMUC), The Ballrooms, 3501 University Blvd. East, Adelphi, MD. The conference center telephone number is 301–985–7300.

Contact Person: Elaine Ferguson, e-mail: *elaine.ferguson@fda.hhs.gov* (*contact information through June 8, 2010*, Elaine Ferguson c/o Melanie Whelan, Food and Drug Administration, 10903 New Hampshire Ave., WO51–6100, Silver Spring, MD 20993–0002, telephone: 301–827–7001, FAX: 301–847–8742), (*contact information beginning June 9, 2010*: Elaine Ferguson c/o Christine Shipe, Food and Drug Administration, 10903 New Hampshire Ave., WO31–2419, Silver Spring, MD 20993–0002, telephone: 301–0796–9001, FAX: 301–847–8532), or FDA Advisory Committee Information Line, 1–800–741–8138 (301–443–0572 in the Washington, DC area), code 3014512535. Please call the Information Line for up-to-date information on this meeting. A notice in the **Federal Register** about last minute modifications that impact a previously announced advisory committee meeting cannot always be published quickly enough to provide timely notice. Therefore, you should always check the agency's Web site and call the appropriate advisory committee hot line/phone line to learn about possible modifications before coming to the meeting.

Agenda: On September 14, 2010, the committee will discuss the abuse potential of the drug dextromethorphan and the public health benefits and risks of dextromethorphan use as a cough suppressant in prescription and nonprescription drug products. The Department of Health and Human Services received a request from the Drug Enforcement Administration for a scientific and medical evaluation and scheduling recommendation for dextromethorphan in response to the increased incidence of abuse, especially among adolescents.

FDA intends to make background material available to the public no later than 2 business days before the meeting. If FDA is unable to post the background material on its Web site prior to the meeting, the background material will be made publicly available at the location of the advisory committee meeting, and the background material will be posted on FDA's Web site after the meeting. Background material is available at *http://www.fda.gov/AdvisoryCommittees/Calendar/default.htm*. Scroll down to the appropriate advisory committee link.

Procedure: Interested persons may present data, information, or views, orally or in writing, on issues pending before the committee. Written submissions may be made to the contact person on or before August 30, 2010. Oral presentations from the public will be scheduled between approximately 1 p.m. to 2 p.m. Those desiring to make formal oral presentations should notify the contact person and submit a brief statement of the general nature of the evidence or arguments they wish to present, the names and addresses of proposed participants, and an indication of the approximate time requested to make their presentation on or before August 20, 2010. Time allotted for each presentation may be limited. If the number of registrants requesting to speak is greater than can be reasonably accommodated during the scheduled open public hearing session, FDA may conduct a lottery to determine the speakers for the scheduled open public hearing session. The contact person will notify interested persons regarding their request to speak by August 23, 2010.

Persons attending FDA's advisory committee meetings are advised that the

agency is not responsible for providing access to electrical outlets.

FDA 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 Elaine Ferguson at least 7 days in advance of the meeting.

FDA is committed to the orderly conduct of its advisory committee meetings. Please visit our Web site at *http://www.fda.gov/AdvisoryCommittees/AboutAdvisoryCommittees/ucm111462.htm* for procedures on public conduct during advisory committee meetings.

Notice of this meeting is given under the Federal Advisory Committee Act (5 U.S.C. app. 2).

Dated: April 27, 2010.

Jill Hartzler Warner,

Acting Associate Commissioner for Special Medical Programs.

[FR Doc. 2010–10384 Filed 5–3–10; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute on Aging; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. App.), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute on Aging Special Emphasis Panel; Osteoarthritis.

Date: May 26, 2010.

Time: 12 p.m. to 4 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institute on Aging, Gateway Building, 7201 Wisconsin Avenue, Suite 2C212, Bethesda, MD 20892 (Telephone Conference Call).

Contact Person: Alicja L. Markowska, PhD, DSC, Scientific Review Officer, Scientific Review Branch, National Institute on Aging, 7201 Wisconsin Avenue, Suite 2C212, Bethesda, MD 20892, 301–496–9666, *markowsa@nia.nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.866, Aging Research, National Institutes of Health, HHS)

Dated: April 30, 2010.

Jennifer Spaeth,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 2010–10448 Filed 5–3–10; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HOMELAND SECURITY

[Docket No. DHS–2010–0019]

National Protection and Programs Directorate; Sector-Specific Agency Executive Management Office Meeting Registration

AGENCY: National Protection and Programs Directorate, DHS.

ACTION: 60-Day Notice and request for comments; New Information Collection Request: 1670–NEW

SUMMARY: The Department of Homeland Security, National Protection and Programs Directorate (NPPD, Office of Infrastructure Protection (IP), Sector-Specific Agency Executive Management Office (SSA EMO), has submitted the following Information Collection Request (ICR) to the Office of Management and Budget (OMB) for review and clearance in accordance with the Paperwork Reduction Act of 1995 (Pub. L. 104–13, 44 U.S.C. Chapter 35).

DATES: Comments are encouraged and will be accepted until July 6, 2010. This process is conducted in accordance with 5 CFR 1320.1.

ADDRESSES: Written comments and questions about this Information Collection Request should be forwarded to NPPD/IP/SSA EMO, Attn.: Esther Langer, *Esther.Langer@dhs.gov.* Written comments should reach the contact person listed no later than July 6, 2010. Comments must be identified by DHS–2010–0019 and may be submitted by *one* of the following methods:

- *Federal eRulemaking Portal: http://www.regulations.gov.*
- *E-mail: Esther.Langer@dhs.gov.*

Include the docket number in the subject line of the message.

Instructions: All submissions received must include the words "Department of Homeland Security" and the docket number for this action. Comments received will be posted without alteration at *http://www.regulations.gov,* including any personal information provided.

SUPPLEMENTARY INFORMATION: On behalf of DHS, IP manages the Department's program to protect the Nation's 18 Critical Infrastructure and Key Resource (CIKR) Sectors by implementing the National Infrastructure Protection Plan (NIPP). Pursuant to Homeland Security Presidential Directive—7 (HSPD–7) (December 2003), each sector is assigned an SSA to oversee Federal interaction with the array of sector security partners, both public and private. An SSA is responsible for leading a unified public-private sector effort to develop, coordinate, and implement a comprehensive physical, human, and cybersecurity strategy for its assigned sector. The SSA EMO, within IP, executes the SSA responsibilities for the six CIKR sectors assigned to IP: Chemical; Commercial Facilities; Critical Manufacturing; Dams; Emergency Services; and Nuclear Reactors, Materials, and Waste (Nuclear).

The mission of the SSA EMO is to enhance the resiliency of the Nation by leading the unified public-private sector effort to ensure its assigned CIKR are prepared, more secure, and safer from terrorist attacks, natural disasters, and other incidents. To achieve this mission, SSA EMO leverages the resources and knowledge of its CIKR sectors to develop and apply security initiatives that result in significant, measurable benefits to the Nation.

Each SSA EMO branch builds sustainable partnerships with its public and private sector stakeholders to enable more effective sector coordination, information sharing, and program development and implementation. These partnerships are sustained through the Sector Partnership Model, described in the 2009 NIPP pages 18–20.

Information sharing is a key component of the NIPP Partnership Model, and DHS-sponsored conferences are one mechanism for information sharing. To facilitate conference planning and organization, the SSA EMO plans to establish an event registration tool for use by all of its branches. The information collection is voluntary and will be used by the SSAs within the SSA EMO. The six SSAs within SSA EMO will use this information to register public and private sector stakeholders for meetings hosted by the SSA. The SSA EMO will use the information collected to reserve space at a meeting for the registrant; contact the registrant with a reminder about the event; develop meeting materials for attendees; determine key topics of interest; and efficiently generate attendee and speaker nametags.

Additionally, it will allow the SSA EMO to have a better understanding of the organizations participating in the CIKR protection partnership events. By understanding who is participating, the SSA can identify portions of a sector that are underrepresented, and the SSA could then target that underrepresented sector elements through outreach and awareness initiatives.

OMB is particularly interested in comments which:

1. Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

2. Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

3. Enhance the quality, utility, and clarity of the information to be collected; and

4. Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.*, permitting electronic submissions of responses.

Analysis

Agency: Department of Homeland Security, National Protection and Programs Directorate.

Title: Sector-Specific Agency Executive Management Officer Online Meeting Registration Tool.

Form: N/A.

OMB Number: 1670–NEW.

Frequency: On occasion.

Affected Public: Private Sector, State, local, or tribal government.

Number of Respondents: 1,900.

Estimated Time per Respondent: 3 minutes.

Total Burden Hours: 95 annual burden hours.

Total Burden Cost (capital/startup): $0.

Total Burden Cost (operating/maintaining): $3,800.00.

Signed: March 26, 2010.

Thomas Chase Garwood, III,

Chief Information Officer, National Protection and Programs Directorate, Department of Homeland Security.

[FR Doc. 2010–10435 Filed 5–3–10; 8:45 am]

BILLING CODE 9110–9P–P

DEPARTMENT OF HOMELAND SECURITY

U.S. Citizenship and Immigration Services

Agency Information Collection Activities: Form I–643; Extension of an Existing Information Collection; Comment Request

ACTION: 60-Day Notice of Information Collection Under Review; Form I–643, Health and Human Services Statistical Data for Refugee/Asylee Adjusting Status; OMB Control No. 1615–0070.

The Department of Homeland Security, U.S. Citizenship and Immigration Services (USCIS) has submitted the following information collection request for review and clearance in accordance with the Paperwork Reduction Act of 1995. The information collection is published to obtain comments from the public and affected agencies. Comments are encouraged and will be accepted for sixty days until July 6, 2010.

During this 60-day period, USCIS will be evaluating whether to revise the Form I–643. Should USCIS decide to revise Form I–643 we will advise the public when we publish the 30-day notice in the **Federal Register** in accordance with the Paperwork Reduction Act. The public will then have 30 days to comment on any revisions to the Form I–643.

Written comments and/or suggestions regarding the item(s) contained in this notice, especially regarding the estimated public burden and associated response time, should be directed to the Department of Homeland Security (DHS), USCIS, Chief, Regulatory Products Division, 111 Massachusetts Avenue NW., Washington, DC 20529–2210. Comments may also be submitted to DHS via facsimile to 202–272–8352 or via e-mail at *rfs.regs@dhs.gov*. When submitting comments by e-mail, please make sure to add OMB Control No. 1615–0070 in the subject box. Written comments and suggestions from the public and affected agencies concerning the collection of information should address one or more of the following four points:

(1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(2) Evaluate the accuracy of the agencies estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

(3) Enhance the quality, utility, and clarity of the information to be collected; and

(4) Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

Overview of This Information Collection

(1) *Type of Information Collection:* Extension of an existing information collection.

(2) *Title of the Form/Collection:* Health and Human Services Statistical Data for Refugee/Asylee Adjusting Status.

(3) *Agency form number, if any, and the applicable component of the Department of Homeland Security sponsoring the collection:* Form I–643; U.S. Citizenship and Immigration Services (USCIS).

(4) *Affected public who will be asked or required to respond, as well as a brief abstract: Primary:* Individuals or households. Refugees and Asylees, Cuban/Haitian Entrants under section 202 of Public Law 99–603, and Amerasians under Public Law 97–359, must use this form when applying for adjustment of status, with the U.S. Citizenship and Immigration Services (USCIS). USCIS will provide the data collected on this form to the Department of Health and Human Services (HHS).

(5) *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond:* 195,000 responses at 55 minutes (.916) per response.

(6) *An estimate of the total public burden (in hours) associated with the collection:* 178,620 annual burden hours.

If you need a copy of the information collection instrument, please visit the Web site at: *http://www.regulations.gov/*.

We may also be contacted at: USCIS, Regulatory Products Division, 111 Massachusetts Avenue, NW., Washington, DC 20529–2210, Telephone number 202–272–8377.

Dated: April 29, 2010.

Sunday Aigbe,

Chief, Regulatory Products Division, U.S. Citizenship and Immigration Services, Department of Homeland Security.

[FR Doc. 2010–10423 Filed 5–3–10; 8:45 am]

BILLING CODE 9111–97–P

DEPARTMENT OF HOMELAND SECURITY

U.S. Citizenship and Immigration Services

Agency Information Collection Activities: Form G–639; Extension of an Existing Information Collection; Comment Request

ACTION: 60-Day Notice of Information Collection Under Review; Form G–639, Freedom of Information/Privacy Act Request; OMB Control No. 1615–0102.

The Department of Homeland Security, U.S. Citizenship and Immigration Services (USCIS) has submitted the following information collection request for review and clearance in accordance with the Paperwork Reduction Act of 1995. The information collection is published to obtain comments from the public and affected agencies. Comments are encouraged and will be accepted for sixty days until July 6, 2010.

During this 60 day period, USCIS will be evaluating whether to revise the Form G–639. Should USCIS decide to revise Form G–639 we will advise the public when we publish the 30-day notice in the **Federal Register** in accordance with the Paperwork Reduction Act. The public will then have 30 days to comment on any revisions to the Form G–639.

Written comments and/or suggestions regarding the item(s) contained in this notice, especially regarding the estimated public burden and associated response time, should be directed to the Department of Homeland Security (DHS), USCIS, Chief, Regulatory Products Division, 111 Massachusetts Avenue NW., Washington, DC 20529–2210. Comments may also be submitted to DHS via facsimile to 202–272–8352 or via e-mail at *rfs.regs@dhs.gov*. When submitting comments by e-mail, please make sure to add OMB Control No. 1615–0102 in the subject box. Written comments and suggestions from the public and affected agencies concerning the collection of information should address one or more of the following four points:

(1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(2) Evaluate the accuracy of the agencies estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

(3) Enhance the quality, utility, and clarity of the information to be collected; and

(4) Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

Overview of this Information Collection:

(1) *Type of Information Collection:* Extension of an existing information collection.

(2) *Title of the Form/Collection:* Freedom of Information/Privacy Act Request.

(3) *Agency form number, if any, and the applicable component of the Department of Homeland Security sponsoring the collection:* Form G–639; U.S. Citizenship and Immigration Services (USCIS).

(4) *Affected public who will be asked or required to respond, as well as a brief abstract:* Primary: Individuals or households. Form G–639 is provided as a convenient means for persons to provide data necessary for identification of a particular record desired under FOIA/PA.

(5) *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond:* 100,000 responses at 15 minutes (.25) per response.

(6) *An estimate of the total public burden (in hours) associated with the collection:* 25,000 annual burden hours.

If you need a copy of the information collection instrument, please visit the Web site at: *http://www.regulations.gov/*.

We may also be contacted at: USCIS, Regulatory Products Division, 111 Massachusetts Avenue, NW., Washington, DC 20529–2210, Telephone number 202–272–8377.

Dated: April 29, 2010.

Sunday Aigbe,

Chief, Regulatory Products Division, U.S. Citizenship and Immigration Services, Department of Homeland Security.

[FR Doc. 2010–10412 Filed 5–3–10; 8:45 am]

BILLING CODE 9111–97–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[Docket ID FEMA–2010–0014]

Assistance to Firefighters Grant Program

AGENCY: Federal Emergency Management Agency, DHS.

ACTION: Notice of guidance.

SUMMARY: This Notice provides guidelines that describe the application process for grants and the criteria for awarding grants in the 2010 Assistance to Firefighters Grant program year, as well as an explanation for any differences from the guidelines recommended by representatives of the Nation's fire service leadership during the annual Criteria Development meeting. The program makes grants directly to fire departments and nonaffiliated emergency medical services organizations for the purpose of enhancing first-responders' abilities to protect the health and safety of the public as well as that of first-responder personnel facing fire and fire-related hazards. In addition, the authorizing statute requires that a minimum of 5 percent of appropriated funds be expended for fire prevention and safety grants, which are also made directly to local fire departments and to local, regional, State or national entities recognized for their expertise in the field of fire prevention and firefighter safety research and development.

Authority: 15 U.S.C. 2229, 2229a.

FOR FURTHER INFORMATION CONTACT: Tom Harrington, Acting Director, Assistance to Firefighters Program Office, U.S. Department of Homeland Security/FEMA, Assistance to Firefighters Grant Program, TechWorld Building—5th Floor South Tower, 800 K Street, NW., Washington, DC, 20472–3620.

SUPPLEMENTARY INFORMATION: The purpose of the Assistance to Firefighters Grant (AFG) Program is to provide grants directly to fire departments and nonaffiliated Emergency Medical Services (EMS) organizations to enhance their ability to protect the health and safety of the public, as well as that of first-responder personnel, with respect to fire and fire-related hazards.

Appropriations

For fiscal year 2010, Congress appropriated $390,000,000 to carry out the activities of the AFG Program. The Department of Homeland Security (DHS) is authorized to use up to

$19,500,000 for administration of the AFG program (5 percent of the appropriated amount); however, the Executive Branch has limited the funds available for administration to 4 percent of the appropriation ($15,600,000). In addition, DHS must set aside no less than $19,500,000 of the funds (5 percent of the appropriation) for the Fire Prevention and Safety Grants (FP&S). However, for fiscal year 2010, DHS will award $35,000,000 for FP&S. Under FP&S, DHS may make grants to, or enter into contracts or cooperative agreements with, national, State, local or community organizations or agencies, including fire departments, for the purpose of carrying out fire prevention grants and firefighter safety research and development grants.

The $339,400,000 will be used for competitive grants to fire departments and nonaffiliated EMS organizations for equipment, training and first responders' safety. Within the portion of funding available for these competitive grants, DHS must assure that no less than 3.5 percent of the appropriation, or $13,650,000, is awarded for EMS equipment and training. However, awards to nonaffiliated EMS organizations are limited to no more than 2 percent of the appropriation or $7,800,000. Therefore, at least the balance of the requisite awards for EMS equipment and training must go to fire departments.

Background

DHS awards the grants on a competitive basis to the applicants that best address the AFG program's priorities and provide the most compelling justification. Applicants whose requests best address the program's priorities will be reviewed by a panel composed of fire service personnel. The panel will review the narrative and evaluate the application in four different areas: (1) The clarity of the proposed project description, (2) the organization's financial need, (3) the benefit to be derived from the proposed project relative to the cost, and (4) the extent to which the grant would enhance the applicant's daily operations and/or how the grant would positively impact the applicant's ability to protect life and property.

The AFG program for 2010 generally mirrors previous years' AFG programs. The program will again segregate the FP&S program from the AFG. DHS will have a separate application period devoted solely to FP&S tentatively scheduled to occur in the Fall of 2010. All applications will be accessible from *https://portal.fema.gov.*

Congress has enacted statutory limits to the amount of funding that a grantee may receive from the AFG program in any fiscal year (15 U.S.C. 2229(b)(10)). These limits are based on population served. A grantee that serves a jurisdiction with 500,000 people or less may not receive grant funding in excess of $1,000,000 in any fiscal year. A grantee that serves a jurisdiction with more than 500,000 but not more than 1,000,000 people may not receive grants in excess of $1,750,000 in any fiscal year. A grantee that serves a jurisdiction with more than 1,000,000 people may not receive grants in excess of $2,750,000 in any fiscal year. DHS may waive these established limits to any grantee serving a jurisdiction of 1,000,000 people or less if DHS determines that extraordinary need for assistance warrants the waiver. No grantee, under any circumstance, may receive "more than the lesser of $2,750,000 or one half of one percent of the funds appropriated under this section for a single fiscal year." (15 U.S.C. 2229(b)(10)(B)).

Grantees must share in the costs of the projects funded under this grant program (15 U.S.C. 2229(b)(6)). Fire departments and nonaffiliated EMS organizations that serve populations of less than 20,000 must match the Federal grant funds with an amount of non-Federal funds equal to 5 percent of the total project cost. Fire departments and nonaffiliated EMS organizations serving areas with a population between 20,000 and 50,000, inclusive, must match the Federal grant funds with an amount of non-Federal funds equal to 10 percent of the total project cost. Fire departments and nonaffiliated EMS organizations that serve populations of over 50,000 must match the Federal grant funds with an amount of non-Federal funds equal to 20 percent of the total project costs. All non-Federal funds must be in cash, *i.e.*, in-kind contributions are not eligible. The only waiver granted for this requirement will be for applicants located in Insular Areas as provided for in 48 U.S.C. 1469a.

The authorizing statute imposes additional requirements on ensuring a distribution of grant funds among career, volunteer, and combination (volunteer and career personnel) fire departments, and among urban, suburban and rural communities. More specifically with respect to department types, DHS must ensure that all-volunteer or combination fire departments receive a portion of the total grant funding that is not less than the proportion of the United States population that those departments protect (15 U.S.C. 2229(b)(11)). There is no corresponding minimum for career departments. Therefore, subject to the other statutory limitations on DHS ability to award funds, DHS will ensure that, for the 2009 program year, no less than 34 percent of the funding available for grants will be awarded to combination departments, and no less than 21 percent will be awarded to all-volunteer departments. These figures were obtained from the National Fire Protection Association report entitled *U.S. Department Profile Through 2008,* issued October 2009. If, and only if, other statutory limitations inhibit DHS ability to ensure this distribution of funding, DHS will ensure that the aggregate combined total percent of funding provided to both combination and volunteer departments is no less than 55 percent.

DHS generally makes funding decisions using rank order resulting from the panel evaluation. However, DHS may deviate from rank order and make funding decisions based on the type of department (career, combination, or volunteer) and/or the size and character of the community the applicant serves (urban, suburban, or rural) to the extent it is required to satisfy statutory provisions.

Fire Prevention and Safety Grant Program

In addition to the grants available to fire departments in fiscal year 2010 through the competitive grant program, DHS will set aside $35,000,000 of the funds available under the AFG program to make grants to, or enter into contracts or cooperative agreements with, national, State, local or community organizations or agencies, including fire departments, for the purpose of carrying out fire prevention and injury prevention projects, and for research and development grants that address firefighter safety.

In accordance with the statutory requirement to fund fire prevention activities, support to Fire Prevention and Safety Grant activities concentrates on organizations that focus on the prevention of injuries to children from fire. In addition to this priority, DHS places an emphasis on funding innovative projects that focus on protecting children under 14, seniors over 65, and firefighters. Because the victims of burns experience both short- and long-term physical and psychological effects, DHS places a priority on programs that focus on reducing the immediate and long-range effects of fire and burn injuries.

DHS will issue an announcement regarding pertinent details of the Fire Prevention and Safety Grant portion of

this program prior to the application period.

Application Process

Prior to the start of the application period, DHS will conduct applicant workshops across the country to inform potential applicants about the AFG program for 2010. In addition, DHS will provide applicants an online Web-based tutorial and other information to use in preparing a quality application. Applicants are advised to access the application electronically at *https://portal.fema.gov*. New applicants will have to register and establish a username and password for secure access to their application. Applicants that have applied to any AFG funding opportunities in the past will have to use their established username and passwords. In completing the application, applicants will provide relevant information on the applicant's characteristics, call volume, and existing capacities. Applicants will answer questions regarding their assistance request that reflects the funding priorities (iterated below). In addition, each applicant will complete a narrative addressing statutory competitive factors: financial need, benefits/costs, and improvement to the organization's daily operations. During the application period, applicants will be encouraged to contact DHS via a toll free number or online help desk with any questions. The electronic application process will permit the applicant to enter data and save the application for further use, and will not permit the submission of incomplete applications. Except for the narrative, the application uses a "point-and-click" selection process, or requires the entry of information (*e.g.*, name and address, call volume numbers, *etc.*).

The application period for the AFG grants will open on or about March 29, 2010, and close on or about April 30, 2010. Interested applicants are encouraged to read the Program Guidance for more details. During the approaching application season, the program office expects to receive between 20,000 and 25,000 applications.

Application Review Process

DHS evaluates all applications in the preliminary screening process to determine which applications best address the program's announced funding priorities. This preliminary screening evaluates and scores the applicants' answers to the activity specific questions. Applications containing multiple activities will be given prorated scores based on the amount of funding requested for each activity. The best applications as determined in the preliminary step are deemed to be in the "competitive range."

Once the competitive range is established DHS will review the list of applicants that are not included in the competitive range to determine if any of those applicants are responsible for protecting DHS-specified critical infrastructure or key resources. If it is determined that an applicant has responsibility for protecting one or more critical infrastructure or key resources but is not included in the competitive range, DHS will determine whether it is appropriate to place that application before the peer review panel due to the importance of its mission to protect these critical resources. Adding additional applications to peer review will not affect the number of applications that would have been reviewed by the peer reviewers or otherwise undermine the process used to determine the competitive range. Peer review panelists will not be aware of which applications may have been added to the universe of applications at panel as a result of this initiative. All applications will be peer reviewed against the criteria described in this document.

All applications in the competitive range are subject to a second level review by a technical evaluation panel made up of individuals from the fire service including, but not limited to, firefighters, fire marshals, and fire training instructors. The panelists will assess the application's merits with respect to the clarity and detail provided about the project, the applicant's financial need, the project's purported benefit to be derived from the cost, and the effectiveness of the project to enhance the health and safety of the public and fire service personnel.

Using the evaluation criteria included here, the panelists will independently score each application before them and then discuss the merits and shortcomings of the application in an effort to reconcile any major discrepancies. A consensus on the score is not required. The panelists will assign a score to each of the elements detailed above. DHS will then consider the highest scoring applications resulting from this second level of review for awards. Applications that involve interoperable communications projects will undergo a separate review by the State Administrative Agency to assure that the communications project is consistent with the Statewide Communications Interoperability Plan (SCIP). If the State determines that the project is inconsistent with the State SCIP, the project will not be funded.

After the completion of the reviews, DHS will select a sufficient number of awardees from this application period to obligate all of the available grant funding. DHS will announce the awards over several months and will notify non-successful applicants as soon as feasible. DHS will not make awards in any specified order, *i.e.*, not by State, program, nor any other characteristic.

Modification to facility projects (including renovations associated with equipment installations) are subject to all applicable environmental and historic preservation requirements. Applicants seeking assistance to modify their facilities or to install equipment requiring renovations may undergo additional screening. Specifically, DHS is required to ascertain to what degree the proposed modifications and renovations might affect an applicant's facility relative to the National Environmental Policy Act, National Historic Preservation Act of 1966, National Flood Insurance Program regulations, and any other applicable laws and Executive Orders. No project that involves a modification to facility can proceed—except for project planning—prior to formal written approval from DHS. If your award includes a modification to a facility, you are responsible for contacting the Program Office so you can be given direction on how to proceed. Noncompliance with these provisions may jeopardize an applicant's award and subsequent funding.

Criteria Development Process

Each year, DHS conducts a criteria development meeting to develop the program's priorities for the coming year. DHS brings together a panel of fire service professionals representing the leadership of the nine major fire service organizations:

- Congressional Fire Service Institute (CFSI),
- International Association of Arson Investigators (IAAI),
- International Association of Fire Chiefs (IAFC),
- International Association of Fire Fighters (IAFF),
- International Society of Fire Service Instructors (ISFSI),
- National Association of State Fire Marshals (NASFM),
- National Fire Protection Association (NFPA),
- National Volunteer Fire Council (NVFC), and
- North American Fire Training Directors (NAFTD).

The criteria development panel is charged with making recommendations to the grants program office regarding the creation and/or modification of program priorities as well as development of criteria and definitions as necessary.

The governing statute requires that DHS publish each year in the **Federal Register** the guidelines that describe the application process and the criteria for grant awards. DHS must also include an explanation of any differences between the published guidelines and the recommendations made by the criteria development panel. The guidelines and the statement regarding the differences between the guidelines and the criteria development panel recommendations must be published in the **Federal Register** prior to making any grants under the program. (15 U.S.C. 2229(b)(14)).

The Fiscal year 2010 criteria development panel meeting occurred July 20–24, 2009. During the criteria development panel meeting, the group discussed the 2010 program year under the assumption that the changes that had been proposed in draft reauthorization language would be implemented in 2010. But, the reauthorization has not been enacted, so the 2010 AFG funding opportunity will replicate the 2009 program with the following exception:

- In 2009, we gave a higher consideration for "source capture" vehicle exhaust extraction systems over either vehicle mounted systems or ambient air systems. For 2010, any system that handles vehicle exhaust will receive the same consideration. The criteria development group did not recommend this equality; they recommended that ambient air systems receive a lower priority.

Review Considerations

Fire Department Priorities

Specific rating criteria for each of the eligible programs and activities are discussed below. The funding priorities described in this Notice have been recommended by a panel of representatives from the Nation's fire service leadership and have been accepted by DHS for the purposes of implementing the AFG. These rating criteria provide an understanding of the grant program's priorities and the expected cost-effectiveness of any proposed project(s). The activities listed below are in no particular order of priority. Within each activity, DHS will consider the population served by the applicant with higher populations afforded a higher consideration than applicants with lower populations. DHS will further explain program priorities in program guidance to be published separately.

(1) *Operations and Firefighter Safety Program.*

(i) *Training Activities.* In implementing the fire service's recommendations, DHS has determined that the most benefit will be derived from instructor-led, hands-on training that leads to a nationally sanctioned or State certification. Training requests that include Web-based home study or distance learning or the purchase of training materials, equipment, or props are a lower priority. Therefore, applications focused on national or State certification training, including train-the-trainer initiatives, will receive a higher competitive rating. Training that (1) involves instructors, (2) requires the students to demonstrate their grasp of knowledge of the training material via testing, and (3) is integral to a certification will receive a high competitive rating. Instructor-led training that does not lead to a certification, and any self-taught courses, are of lower benefit, and therefore will not receive a high priority.

DHS will give higher priority, within the limitations imposed by statute, to training proposals which improve coordination capabilities across disciplines (Fire, EMS, and Police), and jurisdictions (local, State, and Federal). Training related to coordinated incident response (*i.e.*, bomb threat or Improvised Explosive Device response), tactical emergency communications procedures, or similar types of interdisciplinary, inter-jurisdictional training will receive the highest competitive rating.

Due to the inherent differences between urban, suburban, and rural firefighting characteristics, DHS has accepted the recommendations of the criteria development panel for different priorities in the training activities of departments that service these different types of communities. CBRNE awareness training has a high benefit, however, and will receive the highest consideration regardless of the type of community served and regardless of the absence of any national standard.

For fire departments serving rural communities, DHS has determined that funding basic, operational-level firefighting, operational-level rescue, driver training, and first-responder EMS, Emergency Medical Technician-Basic (EMT–B), and Emergency Medical Technician-Intermediate (EMT–I) training (*i.e.*, training in basic firefighting, EMS, and rescue duties) has greater benefit than funding officer training, safety officer training, or incident-command training. In rural communities, after basic training, there is a greater cost-benefit ratio for officer training than for other specialized types of training such as mass casualty, hazardous materials (HAZMAT), advanced rescue and Emergency Medical Technician-Paramedic (EMT–P), or inspector training.

Conversely, for departments that are serving urban or suburban communities, DHS has determined that, due to the number of firefighters and the relatively high percentage of the population protected, any training requests will receive a high priority rating regardless of the level of training requested. As such, when considering applications for training from departments serving urban and suburban communities, DHS will give higher priority to training proposals which improve coordination capabilities across first-responder disciplines (fire, EMS, and law enforcement), and jurisdictions (local, State, and Federal). Training related to coordinated incident response (*e.g.*, weapons of mass destruction awareness and incident operations, chemical or biological operations, or bomb threats), tactical emergency communications procedures, or similar types of interdisciplinary, inter-jurisdictional training will receive the highest competitive rating.

(ii) *Wellness and Fitness Activities.* In implementing the criteria panel's recommendations, DHS has determined that fire departments must offer periodic health screenings, entry physical examinations, and an immunization program to have an effective wellness/fitness program. Accordingly, applicants for grants in this category must currently offer or plan to offer with grant funds *all three benefits* to receive funding for any other initiatives in this activity. After the provision of the three requisite benefits, the criteria development panel recommended providing the highest consideration to candidate physical agility evaluations. DHS will give a lower priority to formal fitness and injury prevention programs. DHS will give the lowest priority to stress management, injury/illness rehabilitation, and employee assistance.

DHS has determined the greatest relative benefit will be realized by supporting new wellness and fitness programs. Therefore, applicants for new wellness/fitness programs will receive higher competitive ratings when compared with applicants whose wellness/fitness programs lack one or more of the three top priority items cited above, and applicants that already

employ the requisite three activities of a wellness/fitness program. Finally, because participation is critical to achieving any benefits from a wellness or fitness program, applications that mandate participation and are open to all personnel or provide incentives for participation will receive higher competitive ratings.

(iii) *Equipment Acquisition.* As stated in the AFG statute, DHS administers this grant program to protect the health and safety of firefighters and the public from fire and fire-related hazards. As such, equipment that has a direct effect on the health and safety of either firefighters or the public will receive a higher competitive rating than equipment that has no such effect. Equipment that promotes interoperability with neighboring jurisdictions (especially for communications equipment interoperable with a regional shared system) will receive additional consideration in the cost-benefit assessment if the application makes it into the competitive range.

The criteria development panel concluded that this grant program will achieve the greatest benefits if the grant program provides funds to purchase firefighting equipment (including rescue, EMS, and/or CBRNE preparedness) that the applicant has not owned prior to the grant, or to replace used or obsolete equipment.

According to the panel, a department takes on a "new mission" when it expands its services into areas not previously offered, such as a fire department seeking funding to provide emergency medical services for the first time. A "new risk" presents itself when a department must address risks that have materialized in the department's area of responsibility, *e.g.*, the construction of a plant that uses significant levels of certain chemicals could constitute a "new risk." An organization taking on "new risks" should be afforded higher consideration than departments taking on a "new mission." New missions receive a lower priority due to the potential that an applicant will not be able to financially support and sustain the new mission beyond the period of the grant.

Departments responding to high call volumes will be afforded a higher competitive rating than departments responding to lower call volumes. In other words, those departments that are required to respond more frequently will receive a higher competitive rating then those that respond less frequently.

The purchase of equipment that brings the department into statutory or regulatory compliance will provide the highest benefit and therefore will receive the highest consideration. The purchase of equipment that brings a department into voluntary compliance with national standards will also receive a high competitive rating, but not as high as for the purchase of equipment that brings a department into statutory compliance. The purchase of equipment that does not affect statutory compliance or voluntary compliance with a national standard will receive a lower competitive rating.

(iv) *Personal Protective Equipment (PPE) Acquisition.* The primary purpose of AFG is to protect the health and safety of the public and of firefighters. To achieve this goal and maximize the benefit to the firefighting community, the FY 2010 AFG will give higher priority to funding applicants needing to purchase PPE for the first time (*i.e.*, for new firefighters) than departments replacing old and obsolete or substandard equipment (*e.g.*, equipment not meeting current NFPA and Occupational Safety and Health Administration standards). In applications that request funding to replace equipment, the age and condition of the PPE that is to be replaced will be the primary consideration with the replacement of older or worn-out equipment receiving higher consideration than requests for replacement of newer equipment.

For departments replacing equipment such as "turnout gear," the condition of the equipment to be replaced will be factored into the score with a higher priority given to replacing equipment that is damaged, torn, or contaminated over equipment that is worn but usable. For departments replacing old or damaged equipment, departments with the oldest equipment will receive the highest priority, and departments with the newest equipment will receive a low priority.

Finally, DHS takes into account the number of fire response calls that a department makes in a year with the higher priority going to departments with higher call volumes, while applications from departments with low call volumes are afforded lower competitive ratings.

(v) *Modifications to Fire Stations and Facilities.* DHS believes that more benefit is derived from modifying fire stations than by modifying fire-training facilities or other fire-related facilities. The highest priority has been assigned to initiatives that have an immediate effect on life and safety of firefighters. Initiatives such as sprinkler systems, and fire/smoke alarm systems will be afforded the highest priority. The next priority has been assigned to generators, exhaust evacuation systems, vehicle mounted exhaust filtration systems and ambient air systems. The frequency of use for any structure has a bearing on the benefits derived from grant funds. As such, DHS will afford facilities occupied 24-hours-per-day/7-days-a-week the highest consideration when contrasted with facilities used on a part-time or irregular basis. Fire stations with sleeping quarters will receive higher consideration than stations where there are no sleeping quarters for firefighters. Facilities open for broad usage and have a high occupancy capacity receive a higher competitive rating than facilities that have limited use and/or low occupancy capacity. The frequency and duration of a facility's occupancy have a direct relationship to the benefits realized from funding in this activity.

(2) *Firefighting Vehicle Acquisition Program.* Due to the inherent differences between urban, suburban, and rural firefighting conventions, DHS has developed different priorities in the vehicle program for departments that service different types of communities. The following chart delineates the priorities in this program area for each type of community. Due to the competitive nature of this program and the imposed limits of funding available for this program, it is unlikely that DHS will fund many vehicles not listed as a Priority One during the 2010 program year.

FIREFIGHTING VEHICLE PROGRAM PRIORITIES

Priority	Urban communities	Suburban communities	Rural communities
Priority One	Pumper Aerial Quint (Aerial < 76') Quint (Aerial < 76')	Pumper Aerial Quint (Aerial > 76') Quint (Aerial > 76')	Pumper Brush/Attack Tanker/Tender Quint (Aerial < 76')

FIREFIGHTING VEHICLE PROGRAM PRIORITIES—Continued

Priority	Urban communities	Suburban communities	Rural communities
	Rescue		
Priority Two	Command	Command	
	HAZMAT	HAZMAT	HAZMAT
	Light/Air	Rescue	Rescue
	Rehab	Tanker/Tender	Aerial
	Foam Truck	Brush/Attack	Quint (Aerial > 76')
	Foam Truck	Foam Truck	
Priority Three	ARFFV [1]	ARFFV [1]	ARFFV [1]
	Brush/Attack	Rehab	Rehab
	Tanker/Tender	Light/Air	Command
	Ambulance	Ambulance	Ambulance
	Fire Boat	Fire Boat	Fire Boat
			Light/Air

[1] Airport Rescue and Firefighting Vehicle.

DHS will evaluate the marginal value derived from an additional vehicle of any given type on the basis of call volume. As a result, departments with fewer vehicles of a given type than other departments who service comparable call volumes are more likely to score competitively than departments with more vehicles of that type and comparable call volume unless the need for an additional vehicle of such type is made apparent in the application.

Applicants from urban and suburban communities may submit requests for more than one vehicle. Applicants must supply sufficient justification for each vehicle contained in the request. For those applications with multiple vehicles, the panelists will be instructed to evaluate the marginal benefit to be derived from funding the additional vehicle(s) given the potential use and the population protected. DHS anticipates that the panels will only recommend an award for a multiple-vehicles application when the cost-benefit justification is adequately compelling.

DHS believes that a greater benefit will be derived from funding an additional vehicle(s) to departments that own fewer or no vehicles of the type requested. As such, DHS assigns a higher competitive rating in the apparatus category to fire departments that own fewer firefighting vehicles relative to other departments serving similar types of communities (*i.e.*, urban, suburban, and rural). DHS assesses all vehicles with similar functions when assessing the number of vehicles a department possesses within a particular type. For example, the "pumper" category includes: pumpers, engines, pumper/tankers (apparatus that carries a minimum of 300 gallons of water and has a pump with a capacity to pump a minimum of 750 gallons per minute), rescue-pumpers, quints (with aerials less than 76 feet in length), and urban interface vehicles (Type I). Apparatus that has water capacity in excess of 1,000 gallons and a pump with pumping capacity of less than 750 gallons per minute are considered to be a tanker/tender.

DHS assigns a higher competitive rating to departments possessing an aged fleet of firefighting vehicles. In evaluating the age of an applicant's fleet, DHS will take into account the oldest vehicle in the class requested as well as the youngest vehicle in the class requested. DHS will also take into account the average age of the applicants' fleet. In each of these instances, older vehicles will receive higher consideration. DHS will also assign a higher competitive rating to departments that respond to a high volume of incidents.

DHS will give lower priority to funding departments seeking apparatus with the goal to expand into new mission areas unless the applicant demonstrates that they will be able to support and sustain the new mission or service area beyond the grant program.

DHS will assign no competitive advantage to the purchase of standard model commercial vehicles relative to custom vehicles, or the purchase of used vehicles relative to new vehicles in the preliminary evaluation of applications. DHS has noted that, depending on the type and size of department, the peer review panelists often prefer low-cost vehicles when evaluating the cost-benefit section of the project narratives. DHS also reserves the right to consider current vehicle costs within the fire service vehicle manufacturing industry when determining the level of funding that will be offered to the potential grantee, particularly if those current costs indicate that the applicant's proposed purchase costs are excessive.

DHS will allow departments serving urban or suburban communities to apply for more than one vehicle. DHS, however, will only allow departments serving rural communities to apply for one vehicle. DHS will limit applications from suburban or urban departments to one vehicle per station as well as per statutory funding limits. DHS will not limit 2010 applications because of a vehicle award from previous AFG program years.

(3) Administrative Costs. Panelists will assess the reasonableness of the administrative costs requested in any application and determine if the request is reasonable and in the best interest of the program.

Nonaffiliated EMS Organization Priorities.

DHS may make grants for the purpose of enhancing the provision of emergency medical services by nonaffiliated EMS organizations. The authorizing statute limits funding for these organizations to no more than 2 percent of the appropriated amount. DHS has determined that it is more cost-effective to enhance or expand an existing emergency medical service organization by providing training and/or equipment than to create a new service. Communities that do not currently offer emergency medical services but are turning to this grant program to initiate such a service received the lowest competitive rating. DHS does not believe creating a nonaffiliated EMS program is a substantial and sufficient benefit under the program.

Specific rating criteria and priorities for each of the grant categories are provided below following the descriptions of this year's eligible programs. The rating criteria, in conjunction with the program description, provide an understanding of the evaluation standards. In each

activity, the amount of the population served by the applicant will be taken into consideration with higher populations afforded more consideration than low populations served. DHS will further explain program priorities in the Program Guidance upon publication thereof.

(1) *EMS Operations and Safety Program.*

Five different activities may be funded under this program area: EMS training, EMS equipment, EMS personal protective equipment, wellness and fitness, and modifications to facilities. Requests for equipment and training to prepare for response to incidents involving CBRNE were available under the applicable equipment and training activities.

(i) *Training Activities.* DHS believes that EMS training is a prerequisite to the effective use of EMS equipment, organizations whose requests are more focused on training activities will receive a higher competitive rating than organizations whose requests are more focused on equipment. A higher competitive rating will be given to nonaffiliated EMS organizations that are planning to upgrade services to Advanced Life Support (ALS) level of response. Specifically, organizations that are seeking to elevate their response level from EMT–B to EMT–I will receive the highest priority and organizations that are seeking to elevate their response level from EMT–I to EMT–P will receive a high priority. Our second priority is to elevate emergency responders' capabilities from first-responder to a Basic Life Support (BLS) level of response (*i.e.*, EMT–B). Due to the time and cost, upgrading an organization's response level from EMT–B to EMT–P is a lower priority. Organizations seeking training in rescue or HAZMAT or rescue operations will receive lower consideration than organizations seeking training for medical services. Our lowest priority is to fund first responder training. Organizations that are seeking to train a high percentage of their active first responders will receive additional consideration when applying under the training activity.

(ii) *EMS Equipment Acquisition.* As noted above, training received a higher competitive rating than equipment. DHS believes that equipment is of no use if the operator is not trained to use it. As such, applicants must demonstrate that users of equipment purchased with the grant either are or will be sufficiently trained to use the equipment. Inability to demonstrate and fulfill this training requirement will result in ineligibility for equipment funding.

Organizations that request training to the ALS level of response, along with basic support equipment, will receive a higher priority. Requests seeking assistance to purchase equipment to support BLS level of response are a secondary priority. Organizations seeking equipment for rescue or HAZMAT operations will receive lower consideration than organizations seeking equipment used to provide medical services. Our lowest priority is to fund first responder training.

As discussed previously, organizations taking on "new risks" will be afforded much higher consideration than an organization taking on a "new mission."

(iii) *EMS Personal Protective Equipment.* DHS gives the same priorities for EMS PPE as it did for fire department PPE discussed above. Acquisition of Personal Alert Safety Systems or any firefighting PPE is not eligible, however, for funding for EMS organizations.

(iv) *Wellness and Fitness Activities.* DHS believes that to have an effective wellness/fitness program, nonaffiliated EMS organizations must offer periodic health screenings, entry physical examinations, and an immunization program similar to the programs for fire departments discussed previously. Accordingly, applicants for grants in this category must currently offer or plan to offer with grant funds *all three benefits* (periodic health screenings, entry physical examinations, and an immunization program) to receive funding for any other initiatives in this activity. The priorities for EMS wellness/fitness programs are the same as for fire departments as discussed above.

(v) *Modification to EMS Stations and Facilities.* DHS believes that the competitive rankings and priorities applied to modification of fire stations and facilities, discussed above, apply equally to EMS stations and facilities.

(2) *EMS Vehicle Acquisition Program.*

DHS gives the highest funding priority to acquisition of ambulances and transport vehicles due to the inherent benefits to the community and EMS service provider. Due to the costs associated with obtaining and outfitting non-transport rescue vehicles relative to the benefits derived from such vehicles, DHS will give non-transport rescue vehicles a lower competitive rating than transport vehicles. DHS anticipates that the EMS vehicle awards will be very competitive due to very limited available funding. Accordingly, DHS will likely only fund vehicles that are listed as a "Priority One" in the 2010 program year.

The following chart delineates the priorities in this program area for EMS vehicle program. The priorities are the same regardless of the type of community served.

EMS VEHICLE PROGRAM PRIORITIES

Priority one	Priority two	Priority three
• Ambulance or transport unit to support EMS functions.	• First responder non-transport vehicles	• Command vehicles.
	• Special operations vehicles	• Hovercraft • Other special access vehicles.

Along with the priorities illustrated above, DHS has accepted the fire service recommendation that emerged from the criteria development process that funding applicants that own few or no vehicles of the type sought will be more beneficial than funding applicants that own numerous vehicles of that same type. DHS assesses the number of vehicles an applicant owns by including all vehicles of the same type. For example, transport vehicles will be considered the same as ambulances. DHS will give a higher competitive rating to applicants that have an aged fleet of emergency vehicles, and to applicants with old, high-mileage vehicles. DHS will give a higher competitive rating to applicants that respond to a significant number of incidents relative to applicants responding less often. Finally, DHS will afford applicants with transport vehicles with high mileage more consideration than applicants with vehicles that are not driven extensively.

(3) Administrative Costs. Panelists assess the reasonableness of the administrative costs requested in each application and determined whether the

request will be reasonable and in the best interest of the program.

Dated: April 28, 2010.

W. Craig Fugate,

Administrator, Federal Emergency Management Agency.

[FR Doc. 2010–10385 Filed 5–3–10; 8:45 am]

BILLING CODE 9111–64–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[Internal Agency Docket No. FEMA–1902–DR; Docket ID FEMA–2010–0002]

Nebraska; Major Disaster and Related Determinations

AGENCY: Federal Emergency Management Agency, DHS.

ACTION: Notice.

SUMMARY: This is a notice of the Presidential declaration of a major disaster for the State of Nebraska (FEMA–1902–DR), dated April 21, 2010, and related determinations.

DATES: *Effective Date:* April 21, 2010.

FOR FURTHER INFORMATION CONTACT: Peggy Miller, Recovery Directorate, Federal Emergency Management Agency, 500 C Street, SW., Washington, DC 20472, (202) 646–3886.

SUPPLEMENTARY INFORMATION: Notice is hereby given that, in a letter dated April 21, 2010, the President issued a major disaster declaration under the authority of the Robert T. Stafford Disaster Relief and Emergency Assistance Act, 42 U.S.C. 5121 *et seq.* (the "Stafford Act"), as follows:

I have determined that the damage in certain areas of the State of Nebraska resulting from severe storms, ice jams, and flooding during the period of March 6 to April 3, 2010, is of sufficient severity and magnitude to warrant a major disaster declaration under the Robert T. Stafford Disaster Relief and Emergency Assistance Act, 42 U.S.C. 5121 *et seq.* (the "Stafford Act"). Therefore, I declare that such a major disaster exists in the State of Nebraska.

In order to provide Federal assistance, you are hereby authorized to allocate from funds available for these purposes such amounts as you find necessary for Federal disaster assistance and administrative expenses.

You are authorized to provide Public Assistance in the designated areas and Hazard Mitigation throughout the State. Consistent with the requirement that Federal assistance is supplemental, any Federal funds provided under the Stafford Act for Public Assistance and Hazard Mitigation will be limited to 75 percent of the total eligible costs.

Further, you are authorized to make changes to this declaration for the approved assistance to the extent allowable under the Stafford Act.

The Federal Emergency Management Agency (FEMA) hereby gives notice that pursuant to the authority vested in the Administrator, under Executive Order 12148, as amended, Stephen R. Thompson, of FEMA is appointed to act as the Federal Coordinating Officer for this major disaster.

The following areas of the State of Nebraska have been designated as adversely affected by this major disaster:

Antelope, Arthur, Boone, Boyd, Butler, Cass, Colfax, Cuming, Dakota, Gage, Greeley, Hayes, Holt, Howard, Jefferson, Johnson, Lancaster, Loup, Madison, Nance, Nemaha, Nuckolls, Otoe, Pawnee, Pierce, Platte, Polk, Richardson, Saline, Seward, Stanton, Thurston, Valley, Wheeler, and York Counties for Public Assistance.

All counties within the State of Nebraska are eligible to apply for assistance under the Hazard Mitigation Grant Program.

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. 2010–10331 Filed 5–3–10; 8:45 am]

BILLING CODE 9111–23–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[Internal Agency Docket No. FEMA–1900–DR; Docket ID FEMA–2010–0002]

Minnesota; Major Disaster and Related Determinations

AGENCY: Federal Emergency Management Agency, DHS.

ACTION: Notice.

SUMMARY: This is a notice of the Presidential declaration of a major disaster for the State of Minnesota (FEMA–1900–DR), dated April 19, 2010, and related determinations.

DATES: *Effective Date:* April 19, 2010.

FOR FURTHER INFORMATION CONTACT: Peggy Miller, Recovery Directorate, Federal Emergency Management Agency, 500 C Street, SW., Washington, DC 20472, (202) 646–3886.

SUPPLEMENTARY INFORMATION: Notice is hereby given that, in a letter dated April 19, 2010, the President issued a major disaster declaration under the authority of the Robert T. Stafford Disaster Relief and Emergency Assistance Act, 42 U.S.C. 5121 *et seq.* (the "Stafford Act"), as follows:

I have determined that the damage in certain areas of the State of Minnesota resulting from flooding beginning on March 1, 2010, and continuing, is of sufficient severity and magnitude to warrant a major disaster declaration under the Robert T. Stafford Disaster Relief and Emergency Assistance Act, 42 U.S.C. 5121 *et seq.* (the "Stafford Act"). Therefore, I declare that such a major disaster exists in the State of Minnesota.

In order to provide Federal assistance, you are hereby authorized to allocate from funds available for these purposes such amounts as you find necessary for Federal disaster assistance and administrative expenses.

You are authorized to provide Public Assistance in the designated areas and Hazard Mitigation throughout the State. Direct Federal assistance is authorized. Consistent with the requirement that Federal assistance is supplemental, any Federal funds provided under the Stafford Act for Public Assistance and Hazard Mitigation will be limited to 75 percent of the total eligible costs.

Further, you are authorized to make changes to this declaration for the approved assistance to the extent allowable under the Stafford Act.

The Federal Emergency Management Agency (FEMA) hereby gives notice that pursuant to the authority vested in the Administrator, under Executive Order 12148, as amended, Lawrence Sommers, of FEMA is appointed to act as the Federal Coordinating Officer for this major disaster.

The following areas of the State of Minnesota have been designated as adversely affected by this major disaster:

Big Stone, Blue Earth, Brown, Carver, Chippewa, Clay, Kittson, Lac Qui Parle, Marshall, Norman, Polk, Redwood, Renville, Scott, Sibley, Traverse, Wilkin, and Yellow Medicine Counties and the Tribal Nation of the Upper Sioux Community for Public Assistance. Direct Federal assistance is authorized.

All counties and Tribes within the State of Minnesota are eligible to apply for assistance under the Hazard Mitigation Grant Program.

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. 2010–10333 Filed 5–3–10; 8:45 am]

BILLING CODE 9111–23–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[Internal Agency Docket No. FEMA–1901–DR; Docket ID FEMA–2010–0002]

North Dakota; Major Disaster and Related Determinations

AGENCY: Federal Emergency Management Agency, DHS.

ACTION: Notice.

SUMMARY: This is a notice of the Presidential declaration of a major disaster for the State of North Dakota (FEMA–1901–DR), dated April 21, 2010, and related determinations.

DATES: *Effective Date:* April 21, 2010.

FOR FURTHER INFORMATION CONTACT: Peggy Miller, Recovery Directorate, Federal Emergency Management Agency, 500 C Street, SW., Washington, DC 20472, (202) 646–3886.

SUPPLEMENTARY INFORMATION: Notice is hereby given that, in a letter dated April 21, 2010, the President issued a major disaster declaration under the authority of the Robert T. Stafford Disaster Relief and Emergency Assistance Act, 42 U.S.C. 5121 *et seq.* (the "Stafford Act"), as follows:

I have determined that the damage in certain areas of the State of North Dakota resulting from a severe winter storm during the period of April 1–3, 2010, is of sufficient severity and magnitude to warrant a major disaster declaration under the Robert T. Stafford Disaster Relief and Emergency Assistance Act, 42 U.S.C. 5121 *et seq.* (the "Stafford Act"). Therefore, I declare that such a major disaster exists in the State of North Dakota.

In order to provide Federal assistance, you are hereby authorized to allocate from funds available for these purposes such amounts as you find necessary for Federal disaster assistance and administrative expenses.

You are authorized to provide Public Assistance in the designated areas and Hazard Mitigation throughout the State. Consistent with the requirement that Federal assistance is supplemental, any Federal funds provided under the Stafford Act for Public Assistance and Hazard Mitigation will be limited to 75 percent of the total eligible costs.

Further, you are authorized to make changes to this declaration for the approved assistance to the extent allowable under the Stafford Act.

The Federal Emergency Management Agency (FEMA) hereby gives notice that pursuant to the authority vested in the Administrator, under Executive Order 12148, as amended, Justo Hernandez, of FEMA is appointed to act as the Federal Coordinating Officer for this major disaster.

The following areas of the State of North Dakota have been designated as adversely affected by this major disaster:

Adams, Benson, Burleigh, Grant, McHenry, McLean, Mercer, Morton, Oliver, Sheridan, Sioux, and Wells Counties and the portion of the Standing Rock Sioux Indian Reservation that lies within the State of North Dakota for Public Assistance.

All counties and Tribes within the State of North Dakota are eligible to apply for assistance under the Hazard Mitigation Grant Program.

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. 2010–10336 Filed 5–3–10; 8:45 am]

BILLING CODE 9111–23–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[Internal Agency Docket No. FEMA–1893–DR; Docket ID FEMA–2010–0002]

West Virginia; Amendment No. 2 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 West Virginia (FEMA–1893–DR), dated March 29, 2010, and related determinations.

DATES: *Effective Date:* April 27, 2010.

FOR FURTHER INFORMATION CONTACT: Peggy Miller, Recovery 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 West Virginia is hereby amended to include the following area among those areas determined to have been adversely affected by the event declared a major disaster by the President in his declaration of March 29, 2010.

Greenbrier County for Public Assistance (already designated for Individual 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. 2010–10334 Filed 5–3–10; 8:45 am]

BILLING CODE 9111–23–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

[Docket No. USCG–2010–0032]

Houston/Galveston Navigation Safety Advisory Committee

AGENCY: Coast Guard, DHS.

ACTION: Notice of meeting.

SUMMARY: The Houston/Galveston Navigation Safety Advisory Committee ("HOGANSAC" or "the Committee") and its working groups will meet in Houston, Texas to discuss waterway improvements, aids to navigation, area projects impacting safety on the Houston Ship Channel, and various

other navigation safety matters in the Galveston Bay area. All meetings will be open to the public.

DATES: The Committee will meet on Tuesday, May 25, 2010 from 9 a.m. to 12 p.m. The Committee's working groups will meet on Tuesday, May 11, 2010 from 9 a.m. to 12 p.m. These meetings may close early if all business is finished. Written material and requests to make oral presentations should reach the Coast Guard on or before May 18, 2010. Requests to have a copy of your materials distributed to each member of the committee or working group should reach the Coast Guard on or before May 10, 2010. All comments and related material submitted after the meeting must be received by the Coast Guard on or before June 25, 2010.

ADDRESSES: The full Committee will meet at the Charles T. Doyle Convention Center, 2010 5th Avenue North, Texas City, TX 77590, (409) 643–5990. The working group meeting will be held at Western Gulf Maritime Association (WGMA), 1717 East Loop, Suite 200, Houston, Texas 77029, (713) 678–7655.

Send written material and requests to make oral presentations to Commander Michael Zidik, Assistant Designated Federal Officer (ADFO) of HOGANSAC, CG SEC Houston-Galveston, 9640 Clinton Drive, Houston, TX 77029. This notice and documents identified in the **SUPPLEMENTARY INFORMATION** section as being available in the docket may be viewed in our online docket, USCG–2010–0032, at *http://www.regulations.gov*.

FOR FURTHER INFORMATION CONTACT: If you have questions concerning the meeting, please call or e-mail Lieutenant Junior Grade Margaret Brown, Waterways Management Branch, Coast Guard; telephone 713–678–9001, e-mail *Margaret.A.Brown@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: Notice of these meetings is given pursuant to the Federal Advisory Committee Act, 5 U.S.C. App. (Pub. L. 92–463).

Agenda of the Meeting

Houston/Galveston Navigation Safety Advisory Committee (HOGANSAC). The tentative agenda is as follows:

(1) Opening Remarks by the Designated Federal Officer (CAPT Woodring) and Committee Chair (Mrs. Tava Foret).

(2) Approval of March 11, 2010 minutes.

(3) Old Business.

(a) Navigation Operations (NAVOPS) subcommittee report;

(b) Dredging subcommittee report;

(c) Technology subcommittee report;

(d) Waterways Safety and Utilization subcommittee report;

(e) Commercial Recovery Contingency (CRC) subcommittee report;

(f) HOGANSAC Outreach subcommittee report;

(g) Freeport working group report;

(h) Area Maritime Security Committee (AMSC) Liaison's report.

(4) New Business.

(a) Discussion on bid for hosting 2011 AMSC/HSC Conference in Houston.

(5) Announcements.

(a) Schedule Next Meetings.

Working Groups Meeting. The tentative agenda for the working groups meeting is as follows:

(1) Presentation by each working group of its accomplishments and plans for the future;

(2) Review and discuss the work completed by each working group;

(3) Put forth any action items for consideration at full committee meeting.

Procedural

Both meetings are open to the public. Please note that meetings may close early if all business is finished. At the Chair's discretion, members of the public may make oral presentations during the meetings. If you would like to make an oral presentation at the Committee meeting, please notify the ADFO no later than May 18, 2010. Written material for distribution at a meeting should reach the Coast Guard no later than May 10, 2010. If you would like a copy of your material distributed to each member of the Committee in advance of the meetings, please submit 19 copies to the Coast Guard no later than May 10, 2010.

Information on Service for Individuals With Disabilities

For information on facilities or services for individuals with disabilities or to request special assistance at the public meeting, contact Lieutenant Junior Grade Margaret Brown at the telephone number or e-mail address indicated under the **FOR FURTHER INFORMATION CONTACT** section of this notice.

Dated: April 14, 2010.

M.E. Woodring,

Captain, U.S. Coast Guard, Commander, Sector Houston-Galveston.

[FR Doc. 2010–10307 Filed 5–3–10; 8:45 am]

BILLING CODE 9110–04–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–5376–N–29]

FHA-Insured Mortgage Loan Servicing of Payments, Prepayments, Terminations, Assumptions and Transfers

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.

Information is collected from respondents who are companies (mortgagees) servicing FHA–Insured mortgage loans. This information concerns detailed loan. The information is subject to the Privacy Act and may be made available only to the appropriate Federal, State, and local agencies. The data and information provided is essential for managing HUD's programs and FHA's Mutual Mortgage Insurance Fund.

DATES: *Comments Due Date: June 3, 2010.*

ADDRESSES: Interested persons are invited to submit comments regarding this proposal. Comments should refer to the proposal by name and/or OMB approval Number (2502–New) 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: Leroy McKinney, Jr., Reports Management Officer, QDAM, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410; e-mail Leroy McKinney, Jr. at *Leroy.McKinneyJr@hud.gov* or telephone (202) 402–5564. This is not a toll-free number. Copies of available documents submitted to OMB may be obtained from Mr. McKinney.

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 affected 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: FHA–Insured Mortgage Loan Servicing of Payments, Prepayments, Terminations, Assumptions and Transfers.

OMB Approval Number: 2502–New.

Form Numbers: HUD–27050–A Mortgage Insurance Termination, HUD–92210.1 Approval of Purchaser and Release of Seller, HUD–92080 Mortgage Record Change.

Description of the Need for the Information and Its Proposed Use: Information is collected from respondents who are companies (mortgagees) servicing FHA–Insured mortgage loans. This information concerns detailed loan. The information is subject to the Privacy Act and may be made available only to the appropriate Federal, State, and local agencies. The data and information provided is essential for managing HUD's programs and FHA's Mutual Mortgage Insurance Fund.

Frequency of Submission: On occasion, Monthly, Other within 24 hours of request.

	Number of respondents	Annual responses	×	Hours per response	=	Burden hours
Reporting Burden	223	196.61	....	19.004	....	833,250

Total Estimated Burden Hours: 833,250.

Status: New Collection.

Authority: Section 3507 of the Paperwork Reduction Act of 1995, 44 U.S.C. 35, as amended.

Dated: April 27, 2010.

Leroy McKinney, Jr.,

Departmental Reports Management Officer, Office of the Chief Information Officer.

[FR Doc. 2010–10322 Filed 5–3–10; 8:45 am]

BILLING CODE 4210–67–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–5376–N–27]

Notice of Proposed Information Collection: American Recovery and Reinvestment Act; Public and Indian Housing Grants Reporting; Comment Request

AGENCY: Office of the Chief Information Officer, HUD.

ACTION: Notice.

SUMMARY: The proposed information collection requirement described below will be submitted to the Office of Management and Budget (OMB) for review, as required by the Paperwork Reduction Act. The Department is soliciting public comments on the subject proposal.

DATES: *Comments Due Date:* July 6, 2010.

ADDRESSES: Interested persons are invited to submit comments regarding this proposal. Comments should refer to the proposal by name and/or OMB Control Number (2577–0264) and should be sent to: Departmental Reports Management Officer, QDAM, Department of Housing and Urban Development, 451 Seventh Street, SW., Room 4178, Washington, DC 20410.

FOR FURTHER INFORMATION CONTACT: Jeffrey D. Little, Office of the Secretary Recovery Implementation Team, Department of Housing and Urban Development, 451 Seventh Street, SW., Room 10156, Washington, DC 20410; telephone: 202–402–5649, (this is not a toll-free number) or e-mail Mr. Little at *Jeffrey.D.Little@hud.gov.*

SUPPLEMENTARY INFORMATION: The Department will submit the proposed information collection to OMB for review, as required by the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35, as amended).

This Notice is soliciting comments from members of the public and 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: American Recovery and Reinvestment Act Public and Indian Housing Grants Reporting.

OMB Control Number, if applicable: 2577–0264.

Description of the need for the information and proposed use: Public Housing Capital Fund, Assisted Housing Stability and Energy and Green Retrofit Investments Program, Indian Community Development Block Grant Program, Native American Housing Block Grants, Native Hawaiian Housing Block Grants; must provide information to HUD for the reporting Requirements of HUD ARRA Section 1512. ("Recovery Act") grants.

Section 1512 of the Recovery Act details reporting requirements for the recipients of recovery Act funding. Recipients are to report on the obligation and expenditure of Recovery Act funds, details of the projects on which those funds have been obligated and expended, an evaluation of the completion status of projects and the number of jobs created and jobs retained by the project.

Agency form numbers, if applicable: N/A, the data will be collected utilizing a Web-based application.

Members of Affected Public: State, Local or Local Government and Non-profit organization.

Estimation of the total number of hours needed to prepare the information collection including number of respondents, frequency of response, and hours of response: The estimated number of respondents is 5,500 and the number of responses is 4. There will be in total, approximately 22,000 total responses. The total reporting burden is 90,222 hours.

Status of the proposed information collection: Revision of previously approved collection on Recovery Act projects.

Authority: Section 3506 of the Paperwork Reduction Act of 1995, 44 U.S.C. Chapter 35, as amended.

Dated: April 27, 2010.

Peter Grace,

Special Assistant to the Secretary, Office of Strategic Planning and Management.

[FR Doc. 2010–10326 Filed 5–3–10; 8:45 am]

BILLING CODE 4210–67–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–5376–N–31]

Request for Withdrawals From Replacements Reserves/Residual Receipts Funds

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.

Project owners are required to submit this information and required supporting documentation when requesting a withdrawal for funds from the Reserves for Replacement and/or Residual Receipt Funds. HUD reviews this information to ensure that funds are withdrawn and used in accordance with regulatory and administrative policy.

DATES: *Comments Due Date:* June 3, 2010.

ADDRESSES: Interested persons are invited to submit comments regarding this proposal. Comments should refer to the proposal by name and/or OMB approval Number (2502–0555) 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: Leroy McKinney, Jr., Reports Management Officer, QDAM, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410; e-mail Leroy McKinney Jr. at *Leroy.McKinneyJr@hud.gov* or telephone (202) 402–5564. This is not a toll-free number. Copies of available documents submitted to OMB may be obtained from Mr. McKinney.

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: Request for Withdrawals from Replacements Reserves/Residual Receipts Funds.

OMB Approval Number: 2502–0555.

Form Numbers: HUD–9250.

Description of the Need for the Information and its Proposed Use: Project owners are required to submit this information and required supporting documentation when requesting a withdrawal for funds from the Reserves for Replacement and/or Residual Receipt Funds. HUD reviews this information to ensure that funds are withdrawn and used in accordance with regulatory and administrative policy.

Frequency of Submission: On occasion.

	Number of respondents	Annual responses	×	Hours per response	=	Burden hours
Reporting Burden	8,257	1		0.5		4,129

Total Estimated Burden Hours: 4,129.

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: April 29, 2010.

Leroy McKinney, Jr.,

Departmental Reports Management Officer, Office of the Chief Information Officer.

[FR Doc. 2010–10419 Filed 5–3–10; 8:45 am]

BILLING CODE 4210–67–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–5376–N–30]

Multifamily Housing Service Coordinator Program

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.

Housing project owners/managers apply for grants under the Housing Service Coordinator Program. The requested information will assist HUD in evaluating grant applicants and to determine how well grant funds meet stated program goals and how well the public was served.

DATES: *Comments Due Date:* June 3, 2010.

ADDRESSES: Interested persons are invited to submit comments regarding this proposal. Comments should refer to the proposal by name and/or OMB approval Number (2502–0447) 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: Leroy McKinney, Jr., Reports Management Officer, QDAM, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410; e-mail Leroy McKinney Jr. at *Leroy.McKinney, Jr@hud.gov* or telephone (202) 402–5564. This is not a toll-free number. Copies of available documents submitted to OMB may be obtained from Mr. McKinney.

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: Multifamily Housing Service Coordinator Program.

OMB Approval Number: 2502–0447.

Form Numbers: HUD–92456, HUD–50080–SCMF, HUD–91186, SF–269–A, SF–424, SF–424–Supp, HUD–2880, SF–LLL, HUD–96010, HUD–91186–A.

Description of the Need for the Information and Its Proposed Use: Housing project owners/managers apply for grants under the Housing Service Coordinator Program. The requested information will assist HUD in evaluating grant applicants and to determine how well grant funds meet stated program goals and how well the public was served.

Frequency of Submission: Quarterly, Semi-annually, Annually.

	Number of respondents	Annual responses	×	Hours per response	=	Burden hours
Reporting Burden	4300	4.837		3.324		69,150

Total Estimated Burden Hours: 69,150.

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: April 28, 2010.

Leroy McKinney, Jr.,

Departmental Reports Management Officer, Office of the Chief Information Officer.

[FR Doc. 2010–10421 Filed 5–3–10; 8:45 am]

BILLING CODE 4210–67–P

DEPARTMENT OF THE INTERIOR

Geological Survey

Proposed Information Collection; Assessment of the Business Requirements and Benefits of Enhanced National Elevation Data

AGENCY: United States Geological Survey (USGS), Interior.

ACTION: Notice; request for comments.

SUMMARY: We (U.S. Geological Survey) will ask the Office of Management and Budget (OMB) to approve the information collection (IC) described below. To comply with the Paperwork Reduction Act of 1995 and a part of our continuing efforts to reduce paperwork and respondent burden, we invite the general public and other Federal agencies to comment on this IC. We may not conduct or sponsor and a person is not required to respond to a collection unless it displays a currently valid OMB control number.

DATES: You must submit comment on or before July 6, 2010.

ADDRESSES: Send your comments to the IC to Phadrea Ponds, Information Collections Clearance Officer, U.S. Geological Survey, 2150–C Center Avenue, Fort Collins, CO 80525 (mail); (970) 226–9230 (fax); or *pponds@usgs.gov* (e-mail). Please reference Information Collection 1028–NEW, LiDAR.

FOR FURTHER INFORMATION CONTACT: Gregory Snyder by mail at U.S. Geological Survey, 12201 Sunrise Valley Drive, MS 517, Reston, VA 20192–0001, or by telephone at 703–648–5169.

SUPPLEMENTARY INFORMATION:

I. Abstract

USGS Geography supports some of the most pressing resource management, environmental and climate change science issues faced by our Nation. Light Detection And Ranging (LiDAR) is the leading technology for collecting highly-accurate three-dimensional measurements of the Earth's topography and surface features such buildings, bridges, coastlines, rivers, forests and other landscape characteristics. These data provide an unprecedented tool for scientific understanding and informed National decisions related to ecosystem management, energy development, natural resource conservation and mitigating geologic and flood-related hazards. The USGS now collects LiDAR data to a limited extent and primarily for upgrading bare-earth elevation data for The National Map. This study seeks to establish a baseline of national business needs and associated benefits for LiDAR to enhance the responsiveness of USGS programs, and to design an efficient future program that balances requirements, benefits and costs. The study advances coordinated program development among the numerous federal and state agencies that increasingly rely on LiDAR to enable the fulfillment of their missions. The study is sponsored by the National Digital Elevation Program steering committee and supported by several member agencies.

The information collection process will be guided by an interagency management team led by USGS with support from a professional services contractor. The information collection will be conducted using a standardized template. We will protect information from respondents considered proprietary under the Freedom of Information Act (5 U.S.C. 552) and its implementing regulations (43 CFR part 2), and under regulations at 30 CFR 250.197, "Data and information to be made available to the public or for limited inspection." Responses are voluntary. No questions of a "sensitive" nature are asked.

II. Data

OMB Control Number: None. This is a new collection.

Title: Assessment of the Business Requirements and Benefits of Enhanced National Elevation Data.

Type of Request: New.

Affected Public: States, U.S. Territories, Tribes and selected private natural resource development companies.

Respondent's Obligation: Voluntary.

Frequency of Collection: One time only.

Estimated Annual Number of Respondents: Approximately 300 responses.

Estimated Total Annual Burden Hours: 1,200.

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.

Please note that the comments submitted in response to this notice are a matter of public record. 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 OMB in your comment to withhold your personal identifying information from public review, we cannot guarantee that it will be done. To comply with the public process, we hereby publish this **Federal Register** notice announcing that we will submit this IC to OMB for approval. The notice provides the required 60-day public comment period.

USGS Information Collection Clearance Officer: Phadrea D. Ponds, 970–226–9445.

Dated: April 27, 2010.

Bruce K. Quirk,

Land Remote Sensing Program Coordinator.

[FR Doc. 2010–10374 Filed 5–3–10; 8:45 am]

BILLING CODE 4311–AM–P

DEPARTMENT OF THE INTERIOR

National Park Service

Boundary Revision at George Washington Carver National Monument

AGENCY: National Park Service, Interior.

ACTION: Announcement of boundary revision.

SUMMARY: This notice announces a revision of the boundary of George Washington Carver National Monument, Newton County, Missouri, to include adjacent land donated by the Carver Birthplace Association. The boundary revision is authorized by the Act of July 14, 1943, 57 Stat. 563, (16 U.S.C. 450aa).

FOR FURTHER INFORMATION CONTACT: James R. Heaney, Superintendent, George Washington Carver National Monument, 5646 Carver Road, Diamond, Missouri 64840, or by telephone: 417–325–4151.

SUPPLEMENTARY INFORMATION: Notice is hereby provided that the boundaries of George Washington Carver National Monument are revised. This revision, effective upon publication of this notice, includes certain adjacent real property situated in Newton County, Missouri legally described as: Thirty acres squarely off the South side of the Southwest Quarter of the Southeast Quarter (SW¼ SE¼) of Section 7, Township 26 North, Range 31 West, 5th P.M., Newton County, Missouri.

Dated: April 21, 2010.

Ernest Quintana,

Regional Director, Midwest Region, National Park Service.

[FR Doc. 2010–10329 Filed 5–3–10; 8:45 am]

BILLING CODE 4312–BB–P

DEPARTMENT OF THE INTERIOR

Minerals Management Service

Environmental Assessment Prepared for Proposed Cape Wind Energy Project in Nantucket Sound, Offshore Massachusetts

AGENCY: Minerals Management Service (MMS), Interior.

ACTION: Notice of Availability of an Environmental Assessment (EA) and Finding of No New Significant Impact (FONNSI)

SUMMARY: The MMS, in accordance with regulations implementing the National Environmental Policy Act (NEPA), announces the availability of an EA and FONNSI for the Cape Wind Energy Project proposed for Nantucket Sound, offshore Massachusetts. On January 16, 2009, the MMS announced the release of the Final Environmental Impact Statement (FEIS) for the Cape Wind Energy Project. The FEIS assessed the physical, biological, and social/human impacts of the proposed project and 13 alternatives, including a no-action alternative (*i.e.*, the project is not built), and proposed mitigation.

The MMS prepared this EA to determine whether MMS needs to supplement the FEIS for the Cape Wind Energy Project by examining whether there are "substantial changes in the proposed action that are relevant to environmental concerns" or whether "there are significant new circumstances or information relevant to environmental concerns and bearing on the proposed action or its impacts" that either were not fully discussed or did not exist at the time the FEIS was prepared (40 CFR 1502.9). The MMS reviewed information obtained from the scientific/technical literature, government reports and actions, intergovernmental coordination and communications, required consultations, comments made during the FEIS comment period, and comments received during the 30-day comment period after the initial circulation of this EA on March 8, 2010. This included the information discussed in the January 13, 2010, MMS Documentation of Section 106 Finding of Adverse Effect (Revised Finding), contained in the comments received during the 30-day period offered after the Revised Finding was circulated, and the information contained in the April 2, 2010, comment by the Advisory Council on Historic Preservation.

The MMS has determined that there is no new information that would necessitate a re-analysis of the range of the alternatives or the kinds, levels, or locations of the impacts of the Proposed Action on socioeconomic conditions or biologic, physical, or cultural resources. The analyses, potential impacts, and conclusions detailed in the FEIS remain valid. Therefore, the MMS has concluded that a supplemental EIS is not required. The EA and FONNSI are available at *http://www.mms.gov/offshore/RenewableEnergy/CapeWind.htm.*

FOR FURTHER INFORMATION CONTACT: James F. Bennett, Chief, Environmental Assessment Branch, Minerals Management Service, 381 Elden Street MS–4042, Herndon, Virginia 20170.

SUPPLEMENTARY INFORMATION: In November 2001, Cape Wind Associates, LLC, applied for a permit from the U.S. Army Corps of Engineers (USACE) under the Rivers and Harbors Act of 1899 to construct a wind power facility on Horseshoe Shoal in Nantucket Sound, offshore Massachusetts. Following the passage of the Energy Policy Act of 2005 (EPAct) and associated amendments to the Outer Continental Shelf Lands Act (OCSLA), the Department of the Interior was given statutory authority to issue leases, easements, and rights-of-way for renewable energy projects on the Outer Continental Shelf (OCS). Accordingly, Cape Wind Associates, LLC, submitted an application to the MMS in 2005 to construct, operate, and eventually decommission an offshore wind power facility on Horseshoe Shoal in Nantucket Sound.

The project calls for 130, 3.6 megawatt (MW) wind turbine generators, each with a maximum blade height of 440 feet, to be arranged in a grid pattern in 25 square miles of Nantucket Sound, offshore Cape Cod, Martha's Vineyard, and Nantucket Island. With a maximum electric output of 468 MW and an average anticipated output of 182 MW, the facility is projected to generate up to three-

quarters of the Cape and Islands' electricity needs. Each of the 130 wind turbine generators would generate electricity independently. Solid dielectric submarine inner-array cables (33 kilovolt) from each wind turbine generator would interconnect within the array and terminate on an electrical service platform, which would serve as the common interconnection point for all of the wind turbines. The proposed submarine transmission cable system (115 kilovolt) from the electric service platform to the landfall location in Yarmouth would be approximately 12.5 miles in length (7.6 miles of which falls within Massachusetts' territory).

Nantucket Sound is a roughly triangular body of water generally bound by Cape Cod, Martha's Vineyard, and Nantucket Island. Open bodies of water include Vineyard Sound to the West and the Atlantic Ocean to the East and the South. Nantucket Sound encompasses between 500 and 600 square miles of ocean, most of which lies above the OCS. The Cape Wind Energy Project would be located completely on the OCS, except for the transmission cables, which would run through Massachusetts' territory to shore. For reference, the northernmost turbines would be approximately 5.2 miles (8.4 km) from Point Gammon on the mainland; the southernmost turbines would be approximately 11 miles (17.7 km) from Nantucket Island (Great Point); and the westernmost turbines would be approximately 5.5 miles (8.9 km) from the island of Martha's Vineyard (Cape Poge).

Dated: April 28, 2010.

Chris C. Oynes,

Associate Director for Offshore Energy and Minerals Management.

[FR Doc. 2010–10486 Filed 5–3–10; 8:45 am]

BILLING CODE 4310–MR–P

DEPARTMENT OF THE INTERIOR

National Park Service

Notice of Intent to Repatriate a Cultural Item: Rochester Museum & Science Center, Rochester, NY

AGENCY: National Park Service, Interior.

ACTION: Notice.

Notice is here given in accordance with the Native American Graves Protection and Repatriation Act (NAGPRA), 25 U.S.C. 3005, of the intent to repatriate one cultural item in the possession of the Rochester Museum & Science Center, Rochester, NY, that meets the definitions of "sacred object" and object of "cultural patrimony" under 25 U.S.C. 3001.

This notice is published as part of the National Park Service's administrative responsibilities under NAGPRA, 25 U.S.C. 3003(d)(3). The determinations in this notice are the sole responsibility of the museum, institution, or Federal agency that has control of the cultural item. The National Park Service is not responsible for the determinations in this notice.

In 1982, the museum acquired a small red stone medicine face (82.54.1). It appears to be a contemporary piece and was donated to the museum by Mrs. Beverly Anderson, Rochester, NY.

Original museum documentation stated that this medicine face could only be generally affiliated with the "Iroquois." Oral evidence presented during consultation with representatives of the Haudenosaunee Standing Committee on Burial Rules and Regulations, as well as historical and anthropological scholarly materials, support the fact that the Onondaga Nation is the Keeper of the Central Fire of the Haudenosaunee Confederacy, and as such has the responsibility within the Haudenosaunee Confederacy to bring back national cultural patrimony and sacred objects that are affiliated with the "Iroquois" generally, and to return those objects to their rightful communities. Therefore, it is the understanding of all the Haudenosaunee Confederacy Nations that any medicine faces affiliated generally as "Iroquois" are affiliated with the Onondaga Nation.

In the course of consultations with members of the Onondaga Nation, it was shown that any individual who carved a medicine face and alienated it to a third party that in turn donated it to the Rochester Museum & Science Center did not have the authority to do so. Furthermore, Onondaga Nation traditional religious leaders have identified this medicine face as being needed for the practice of traditional Native American religions by present-day adherents. Based on consultation with NAGPRA representatives from the Onondaga Nation and other Haudenosaunee and non-Haudenosaunee consultants, the museum has determined that the medicine faces are both sacred objects and objects of cultural patrimony. Accordingly, museum documentation, consultation and oral evidence show that this medicine face is a sacred object and an object of cultural patrimony, and that the medicine face can be culturally affiliated to the Onondaga Nation of New York on behalf of the Haudenosaunee Confederacy (also known as the Iroquois Confederacy or Six Nations, which includes the Mohawk, Oneida, Onondaga, Cayuga, Seneca, and Tuscarora Nations that are in part represented by the following Federally-recognized tribes: Cayuga Nation of New York; Oneida Nation of New York; Oneida Tribe of Indians of Wisconsin; Onondaga Nation of New York; Seneca Nation of New York; Seneca-Cayuga Tribe of Oklahoma; Saint Regis Mohawk Tribe, New York; Tonawanda Band of Seneca Indians of New York; and Tuscarora Nation of New York).

Officials of the Rochester Museum & Science Center have determined, that pursuant to 25 U.S.C. 3001(3)(C), the one cultural item described above is a specific ceremonial object needed by traditional Native American religious leaders for the practice of traditional Native American religions by their present-day adherents. Officials of the Rochester Museum & Science Center have also determined that, pursuant to 25 U.S.C. 3001(3)(D), the one cultural item described above has an ongoing historical, traditional, or cultural importance central to the Native American group or culture itself, rather than property owned by an individual. Lastly, officials of the Rochester Museum & Science Center have determined that, pursuant to 25 U.S.C. 3001(2), there is a relationship of shared group identity that can be reasonably traced between the sacred object/object of cultural patrimony and the Onondaga Nation of New York.

Representatives of any other Indian Nation or tribe that believes itself to be culturally affiliated with the sacred object/object of cultural patrimony should contact Adele DeRosa, Rochester Museum & Science Center, Rochester, NY 14607, telephone (585) 271–4552, ext 302, before June 3, 2010. Repatriation of the sacred object/object of cultural patrimony to the Onondaga Nation of New York may proceed after that date if no additional claimants come forward.

The Rochester Museum & Science Center is responsible for notifying the Onondaga Nation of New York that this notice has been published.

Dated: April 27, 2010.

David Tarler,

Acting Manager, National NAGPRA Program.

[FR Doc. 2010–10364 Filed 5–3–10; 8:45 am]

BILLING CODE 4312–50–S

DEPARTMENT OF THE INTERIOR

National Park Service

Notice of Intent to Repatriate a Cultural Item: Rochester Museum & Science Center, Rochester, NY

AGENCY: National Park Service, Interior.

ACTION: Notice.

Notice is here given in accordance with the Native American Graves Protection and Repatriation Act (NAGPRA), 25 U.S.C. 3005, of the intent to repatriate one cultural item in the possession of the Rochester Museum & Science Center, Rochester, NY, that meets the definitions of "sacred object" and object of "cultural patrimony" under 25 U.S.C. 3001.

This notice is published as part of the National Park Service's administrative responsibilities under NAGPRA, 25 U.S.C. 3003(d)(3). The determinations in this notice are the sole responsibility of the museum, institution, or Federal agency that has control of the cultural item. The National Park Service is not responsible for the determinations in this notice.

In 1961, the museum acquired a large wooden medicine face (AE 9499/61.334.1) from the Rochester Museum Association that previously had purchased it from M.L. Philpott, Rochester, NY. According to the seller, it had belonged to his father-in-law, a worker on several estates in the Adirondacks, who received it from a Dr. Salisbury in approximately 1913.

Original museum documentation stated that this medicine face could only be generally affiliated with the "Iroquois" (New York State or Canada). Oral evidence presented during consultation with representatives of the Haudenosaunee Standing Committee on Burial Rules and Regulations, as well as historical and anthropological scholarly materials, support the fact that the Onondaga Nation is the Keeper of the Central Fire of the Haudenosaunee Confederacy, and as such has the responsibility within the Haudenosaunee Confederacy to bring back national cultural patrimony and sacred objects that are affiliated with the "Iroquois" generally, and to return those objects to their rightful communities. Therefore, it is the understanding of all the Haudenosaunee Confederacy Nations that any medicine faces affiliated generally as "Iroquois" are affiliated with the Onondaga Nation.

In the course of consultations with members of the Onondaga Nation, it was shown that any individual who carved a medicine face and alienated it to a third party that in turn donated it to the Rochester Museum & Science Center did not have the authority to do so. Furthermore, Onondaga Nation traditional religious leaders have identified this medicine face as being needed for the practice of traditional Native American religions by present-day adherents. Based on consultation with NAGPRA representatives from the Onondaga Nation and other Haudenosaunee and non-Haudenosaunee consultants, the museum has determined that the medicine face is both a sacred object and object of cultural patrimony. Accordingly, museum documentation, consultation and oral evidence show that this medicine face is a sacred object and an object of cultural patrimony, and that the medicine face can be culturally affiliated to the Onondaga Nation of New York on behalf of the Haudenosaunee Confederacy (also known as the Iroquois Confederacy or Six Nations, which includes the Mohawk, Oneida, Onondaga, Cayuga, Seneca, and Tuscarora Nations that are in part represented by the following Federally-recognized tribes: Cayuga Nation of New York; Oneida Nation of New York; Oneida Tribe of Indians of Wisconsin; Onondaga Nation of New York; Seneca Nation of New York; Seneca-Cayuga Tribe of Oklahoma; Saint Regis Mohawk Tribe, New York; Tonawanda Band of Seneca Indians of New York; and Tuscarora Nation of New York).

Officials of the Rochester Museum & Science Center have determined, that pursuant to 25 U.S.C. 3001(3)(C), the one cultural item described above is a specific ceremonial object needed by traditional Native American religious leaders for the practice of traditional Native American religions by their present-day adherents. Officials of the Rochester Museum & Science Center have also determined that, pursuant to 25 U.S.C. 3001(3)(D), the one cultural item described above has an ongoing historical, traditional, or cultural importance central to the Native American group or culture itself, rather than property owned by an individual. Lastly, officials of the Rochester Museum & Science Center have determined that, pursuant to 25 U.S.C. 3001(2), there is a relationship of shared group identity that can be reasonably traced between the sacred object/object of cultural patrimony and the Onondaga Nation of New York.

Representatives of any other Indian Nation or tribe that believes itself to be culturally affiliated with the sacred object/object of cultural patrimony should contact Adele DeRosa, Rochester Museum & Science Center, Rochester, NY 14607, telephone (585) 271–4552, ext 302, before June 3, 2010. Repatriation of the sacred object/object of cultural patrimony to the Onondaga Nation of New York may proceed after that date if no additional claimants come forward.

The Rochester Museum & Science Center is responsible for notifying the Onondaga Nation of New York that this notice has been published.

Dated: April 27, 2010.

David Tarler,

Acting Manager, National NAGPRA Program.

[FR Doc. 2010–10376 Filed 5–3–10; 8:45 am]

BILLING CODE 4312–50–S

DEPARTMENT OF THE INTERIOR

National Park Service

Notice of Intent to Repatriate a Cultural Item: Virginia Museum of Fine Arts, Richmond, VA

AGENCY: National Park Service, Interior.

ACTION: Notice.

Notice is here given in accordance with the Native American Graves Protection and Repatriation Act (NAGPRA), 25 U.S.C. 3005, of the intent to repatriate a cultural item in the possession of the Virginia Museum of Fine Arts, Richmond, VA, that meets the definition of "object of cultural patrimony" under 25 U.S.C. 3001.

This notice is published as part of the National Park Service's administrative responsibilities under NAGPRA, 25 U.S.C. 3003(d)(3). The determinations in this notice are the sole responsibility of the museum, institution, or Federal agency that has control of the cultural item. The National Park Service is not responsible for the determinations in this notice.

The cultural item is a ceremonial headdress made of wood, eagle or eider down, sea lion whiskers, ermine hide, abalone shell, feathers, and fibers (VMFA accession # 55.31.7). The headdress is approximately 17.25 inches in height, 10 inches in width, and 9.5 inches in diameter (43.7 cm x 25.2 cm x 24.2 cm). The mask portion of the headdress is composed of a polychrome carved wooden bird holding a limp object in its beak, and the right wing of the mask has been broken off and repaired. A stylized face appears beneath the beak, which is flanked by applied vertical wings. The nose of the face is a bird's head, turned upward. The eyes and teeth are made of abalone shell. The top of the headdress is decorated with alternating sea lion

whiskers and red-shafted flicker feathers. The headdress itself is lined with ermine hide, and ermine hide also hangs from the back of the headdress.

In 1955, the headdress was purchased by the Virginia Museum of Fine Arts from the Portland Art Museum, OR (Portland Art Museum accession # 48.3.439). Records from the Portland Art Museum read as follows: "Purchase, Indian Collection Subscription Fund. To be known as the Axel Rassmussen Collection. Vendor, Earl Stendahl."

Representatives of the Central Council of the Tlingit & Haida Indian Tribes, specifically the Lúkaax.ádi clan, a Tlingit clan, have identified that this headdress represents the Kingfisher Fort. The Kingfisher Fort is a site of cultural and historic importance to the Lúkaax.ádi clan, and this Kingfisher Fort Headdress (*Tlax'aneis' Noow Shaakee.át*) is needed for continuing their cultural ceremonies. Representatives of the Central Council of the Tlingit & Haida Indian Tribes have also provided evidence that this headdress is an object of cultural patrimony. It is communally owned and, at the time of removal had - and continues to have - ongoing, historical, traditional, and cultural importance central to the Tlingit society and culture. Furthermore, no tribal member consented to alienate it, and no evidence exists to demonstrate that its transfer outside the tribe was voluntary.

Officials of the Virginia Museum of Fine Arts have determined that, pursuant to 25 U.S.C. 3001(3)(D), the cultural item described above has ongoing historical, traditional, or cultural importance central to the Native American group or culture itself, rather than property owned by an individual. Officials of the Virginia Museum of Fine Arts also have determined that, pursuant to 25 U.S.C. 3001(2), there is a relationship of shared group identity that can be reasonably traced between the object of cultural patrimony and the Central Council of the Tlingit & Haida Indian Tribes.

Representatives of any other Indian tribe that believes itself to be culturally affiliated with the object of cultural patrimony should contact Kelly Burrow, Assistant Registrar, Virginia Museum of Fine Arts, 200 N. Blvd., Richmond, VA 23220, telephone (804) 204–2669, before June 3, 2010. Repatriation of the object of cultural patrimony to the Central Council of the Tlingit & Haida Indian Tribes may proceed after that date if no additional claimants come forward.

The Virginia Museum of Fine Arts is responsible for notifying the Central Council of the Tlingit & Haida Indian Tribes that this notice has been published.

Dated: March 25, 2010.

Sherry Hutt,

Manager, National NAGPRA Program.

[FR Doc. 2010–10365 Filed 5–3–10; 8:45 am]

BILLING CODE 4312–50–S

DEPARTMENT OF THE INTERIOR

National Park Service

Notice of Intent to Repatriate Cultural Items: Rochester Museum & Science Center, Rochester, NY

AGENCY: National Park Service, Interior.

ACTION: Notice.

Notice is here given in accordance with the Native American Graves Protection and Repatriation Act (NAGPRA), 25 U.S.C. 3005, of the intent to repatriate cultural items in the possession of the Rochester Museum & Science Center, Rochester, NY, that meet the definitions of "sacred objects" and "objects of cultural patrimony" under 25 U.S.C. 3001.

This notice is published as part of the National Park Service's administrative responsibilities under NAGPRA, 25 U.S.C. 3003(d)(3). The determinations in this notice are the sole responsibility of the museum, institution, or Federal agency that has control of the cultural items. The National Park Service is not responsible for the determinations in this notice.

In 1929, the museum purchased two small wooden medicine faces from Alvin Dewey, Rochester, NY. On March 25, 1922, Alvin Dewey obtained them from Albert G. Heath, Chicago, IL. The first medicine face measures 2 3/4" inches long (AE 2880/D 10922/ 29.259.27). The second medicine face is a small wooden "Leader's" face that measures 2 7/8" long (AE 2881/D 11923/ 29.259.28). According to the documentation, these were individually tied to poles "and carried by the Leader in the Seneca False Face Ceremonies."

Museum documentation indicates that these medicine faces are culturally affiliated with the "Seneca." NAGPRA representative consultants from the Tonawanda Seneca Nation informed the Rochester Museum & Science Center that ethnographic objects identified as "Seneca" should go back to them because the Tonawanda Seneca Nation is the center of the Seneca religious fire. This was agreed upon by representatives from the Seneca Nation of New York, the Tonawanda Band of Seneca Indians of New York, and the Seneca-Cayuga Tribe of Oklahoma.

Tonawanda Seneca Nation traditional religious leaders have identified these medicine faces as being needed for the practice of traditional Native American religions by present-day adherents. During consultation, it was shown that individuals who carved a face did not have the authority to alienate it to a third party or sell it indirectly to the Rochester Museum & Science Center. Therefore, based on consultation with NAGPRA representatives from the Tonawanda Seneca Nation and other Haudenosaunee and non-Haudenosaunee consultants, the museum has determined that the medicine faces are both sacred objects and objects of cultural patrimony.

Officials of the Rochester Museum & Science Center have determined, that pursuant to 25 U.S.C. 3001(3)(C), the two cultural items described above are specific ceremonial objects needed by traditional Native American religious leaders for the practice of traditional Native American religions by their present-day adherents. Officials of the Rochester Museum & Science Center have also determined that, pursuant to 25 U.S.C. 3001(3)(D), the two cultural items described above have an ongoing historical, traditional, or cultural importance central to the Native American group or culture itself, rather than property owned by an individual. Lastly, officials of the Rochester Museum & Science Center have determined that, pursuant to 25 U.S.C. 3001(2), there is a relationship of shared group identity that can be reasonably traced between the sacred objects/ objects of cultural patrimony and the Tonawanda Band of Seneca Indians of New York.

Representatives of any other Indian Nation or tribe that believes itself to be culturally affiliated with the sacred objects/objects of cultural patrimony should contact Adele DeRosa, NAGPRA Coordinator/Collections Manager, Rochester Museum & Science Center, 657 East Ave., Rochester, NY 14607, telephone (585) 271–4552, ext 302, before June 3, 2010. Repatriation of the sacred objects/objects of cultural patrimony to the Tonawanda Band of Seneca Indians of New York may proceed after that date if no additional claimants come forward.

The Rochester Museum & Science Center is responsible for notifying the Seneca Nation of New York, Seneca-Cayuga Tribe of Oklahoma, and Tonawanda Band of Seneca Indians of New York that this notice has been published.

Dated: April 12, 2010.

Sherry Hutt,

Manager, National NAGPRA Program.

[FR Doc. 2010–10368 Filed 5–3–10; 8:45 am]

BILLING CODE 4312–50–S

DEPARTMENT OF THE INTERIOR

National Park Service

Notice of Intent to Repatriate Cultural Items: U.S. Department of the Interior, Bureau of Reclamation, Phoenix Area Office, Phoenix, AZ, and Huhugam Heritage Center, Gila River Indian Community, AZ

AGENCY: National Park Service, Interior.

ACTION: Notice.

Notice is here given in accordance with the Native American Graves Protection and Repatriation Act (NAGPRA), 25 U.S.C. 3005, of the intent to repatriate cultural items in the control of the U.S. Department of the Interior, Bureau of Reclamation, Phoenix Area Office, Phoenix, AZ, and in the physical custody of the Huhugam Heritage Center, Gila River Indian Community, AZ, that meet the definition of "unassociated funerary objects" under 25 U.S.C. 3001.

This notice is published as part of the National Park Service's administrative responsibilities under NAGPRA, 25 U.S.C. 3003(d)(3). The determinations in this notice are the sole responsibility of the museum, institution, or Federal agency that has control of the Native American cultural items. The National Park Service is not responsible for the determinations in this notice.

Human remains and associated funerary objects from the sites described below were originally reported in a Notice of Inventory Completion published in the **Federal Register** (39 FR 8996–9002, February 27, 2002); and subsequently corrected with two additional Notices of Inventory Completion (67 FR 45539–45540, July 9, 2002; 67 FR 78247–78248, December 23, 2002). The materials reported in the earlier notices were repatriated to the affiliated tribes in October and November of 2002. A recent review of Bureau of Reclamation collections, now curated at the Huhugam Heritage Center, Gila River Indian Community, revealed the presence of additional possible isolated Native American human remains and 40 additional funerary objects, all culturally affiliated with the same tribes listed in the original notice. Although these possible isolated human remains were identified, they do not increase the number of individuals listed in the previously published notices. Since the human remains in the previous notices were repatriated, the funerary objects are now considered to be unassociated funerary objects.

Between 1980 and 1981, during legally authorized data recovery efforts undertaken by the Arizona State Museum for the Bureau of Reclamation, human remains representing 20 individuals were recovered from the Siphon Draw site, AZ U: 10:6(ASM), south of Apache Junction, Pinal County, AZ. No known individuals were identified. Previously a total of 141 associated funerary objects were reported as also being recovered. In October 2002, these materials were repatriated to the Gila River Indian Community of the Gila River Indian Reservation, Arizona. An additional four funerary objects were recently identified in the Siphon Draw (AZ U:10:6(ASM)) collections. The four unassociated funerary objects are two unworked whole shells (terrestrial snails), one flotation, and one pollen sample.

On the basis of archeological context, chronometric, architectural, ceramic, and other types of artifactual evidence, the site represents a Hohokam occupation of the Santa Cruz through Sacaton Phases (A.D. 700–1150) of the Preclassic period.

Between 1980 and 1981, during legally authorized data recovery efforts undertaken by the Arizona State Museum for the Bureau of Reclamation, human remains representing 31 individuals were recovered from the Las Fosas site, AZ U:15:19(ASM), in the Gila Valley east of Florence, Pinal County, AZ. No known individuals were identified. Previously a total of 290 associated funerary objects were reported as also being recovered. In October 2002, these materials were repatriated to the Gila River Indian Community of the Gila River Indian Reservation, Arizona. An additional 24 funerary objects were recently identified in the Las Fosas, AZ U:15:19(ASM), collections. The 24 unassociated funerary objects are 1 reconstructable ceramic bowl, 2 individual ceramic sherds, 2 bags ceramic sherds, 1 bag chipped stone, 2 unworked obsidian nodules, 1 bag of unworked faunal bone (including a near-complete macaw), 1 soil sample with possible cremains, 13 unprocessed soil samples, and 1 unprocessed flotation sample.

On the basis of archeological context, chronometric, architectural, ceramic, and other types of artifactual evidence, the site represents a Hohokam occupation of the Classic period (A.D. 1150–1450).

Between 1980 and 1981, during legally authorized data recovery efforts undertaken by the Arizona State Museum for the Bureau of Reclamation, human remains representing a minimum of 31 individuals were recovered from Frogtown, AZ U:15:61(ASM), west of Florence Junction, Pinal County, AZ. No known individuals were identified. Previously a total of 120 associated funerary objects were also reported as being recovered. In October 2002, these materials were repatriated to the Gila River Indian Community of the Gila River Indian Reservation, Arizona. An additional 10 funerary objects were recently identified in the Frogtown (AZ U:15:61(ASM)) collection, as well as possible human remains of a previously repatriated individual. The 10 unassociated funerary objects are 1 stone palette fragment, 3 pieces of worked shell, 1 piece unworked shell, 3 bags of unworked faunal bone mixed with possible human remains, 1 unprocessed flotation sample with possible human remains, and 1 unprocessed flotation sample.

On the basis of archeological context, chronometric, architectural, ceramic, and other types of artifactual evidence, the site represents a Hohokam occupation of the Santa Cruz and Sacaton Phases (A.D. 750–1150) of the Preclassic period.

Between 1980 and 1981, during legally authorized data recovery efforts undertaken by the Arizona State Museum for the Bureau of Reclamation, human remains representing a minimum of six individuals were recovered from site AZ U:15:85(ASM), in Pinal County, AZ. No known individuals were identified. Previously a total of 10 associated funerary objects were also reported as being recovered. In October 2002, these materials were repatriated to the Gila River Indian Community of the Gila River Indian Reservation, Arizona. The two funerary objects recently identified in the AZ U:15:85(ASM) collections are two bags of ceramic sherds.

On the basis of archeological context, chronometric, architectural, ceramic, and other types of artifactual evidence, the site represents a Hohokam occupation of the Classic period (A.D. 1150–1450).

Evidence provided by anthropological, archeological, biological, geographical, historical, kinship, linguistics, and oral tradition sources was considered in determining the cultural affiliation of the funerary objects. Bureau of Reclamation officials

have determined that the preponderance of the evidence suggests that the historic O'odham groups (Ak-Chin Indian Community of the Ak-Chin Indian Reservation, Arizona; Gila River Indian Community of the Gila River Indian Reservation, Arizona; Salt River Pima-Maricopa Indian Community of the Salt River Reservation, Arizona; and the Tohono O'odham Nation of Arizona, including the San Xavier District) have a strong cultural affiliation with the prehistoric Hohokam who occupied the middle Gila Valley and surrounding areas. Great similarities in settlement patterns, economic systems, architecture, and material culture point to a close relationship between the Hohokam and the O'odham groups. The O'odham were well established along the rivers and in the deserts when the Spanish first arrived in northern Sonora and southern Arizona.

One of the two Pima moieties claims descend from the Hohokam, while the other moiety is said to have descended from the "emergers," those who overthrew the Hohokam leaders. Although the O'odham belong to the same linguistic group (Piman) as communities in what is now northern Mexico, shared vocabulary and syntax with Yuman language groups along the Colorado River suggests a long-term history of interaction that stretches back into prehistoric times in what is now southern Arizona.

Evidence also shows the affiliation of ancestral Zuni and Hopi groups with the prehistoric Hohokam. Interaction is indicated by the presence of trade items, particularly ceramics. Such interaction continued into protohistoric and early historic times. In addition to trade, Hopi and Zuni migration traditions indicate that clans originating from areas south of the Colorado Plateau joined the plateau communities late in prehistoric times. These groups contributed ceremonies, societies, and iconography to the plateau groups. Both O'odham and Western Pueblo oral traditions indicate that some Hohokam groups may have left the Salt-Gila River Basin after disastrous floods and social upheaval. These groups traveled north and east, possibly to be assimilated by the Hopi and Zuni. These ties are reflected in some of the traditional ceremonies maintained as part of the annual ceremonial cycle. Therefore, the evidence suggests that the Hopi and Zuni are also culturally affiliated with the Hohokam. Their ancestors had trade relationships and other likely interactions with the Hohokam, similar to those found between groups in the early historic period. Hopi and Zuni oral traditions indicate that segments of the prehistoric Hohokam population migrated to the areas occupied by the Hopi and Zuni and were assimilated into the resident populations.

Officials of the Bureau of Reclamation have determined that, pursuant to 25 U.S.C. 3001(3)(B), the 40 items described above are reasonably believed to have been placed with or near individual human remains at the time of death or later as part of the death rite or ceremony and are believed to have been removed from a specific burial site of Native American individuals. Officials of the Bureau of Reclamation also have determined that, pursuant to 25 U.S.C. 3001(2), there is a relationship of shared group identity that can be reasonably traced between the unassociated funerary objects and the Ak-Chin Indian Community of the Maricopa (Ak-Chin) Indian Reservation, Arizona; Gila River Indian Community of the Gila River Indian Reservation, Arizona; Hopi Tribe of Arizona; Salt River Pima-Maricopa Indian Community of the Salt River Reservation, Arizona; Tohono O'odham Nation of Arizona; and Zuni Tribe of the Zuni Reservation, New Mexico.

Representative of any other Indian tribe that believes itself to be culturally affiliated with the unassociated funerary objects should contact in writing Carol Erwin, Area Manager, Bureau of Reclamation, Phoenix Area Office, 6150 West Thunderbird Road, Glendale, AZ 85306–4001, before June 3, 2010. Repatriation of the unassociated funerary objects to the Ak-Chin Indian Community of the Maricopa (Ak-Chin) Indian Reservation, Arizona; Gila River Indian Community of the Gila River Indian Reservation, Arizona; Hopi Tribe of Arizona; Salt River Pima-Maricopa Indian Community of the Salt River Reservation, Arizona; Tohono O'odham Nation of Arizona; and Zuni Tribe of the Zuni Reservation, New Mexico, may proceed after that date if no additional claimants come forward.

The Bureau of Reclamation is responsible for notifying the Ak-Chin Indian Community of the Maricopa (Ak-Chin) Indian Reservation, Arizona; Chemehuevi Indian Tribe of the Chemehuevi Indian Reservation, California; Cocopah Tribe of Arizona; Colorado River Indian Tribes of the Colorado River Indian Reservation, Arizona and California; Fort McDowell Yavapai Nation, Arizona; Fort Mohave Indian Tribe of Arizona, California, and Nevada; Gila River Indian Community of the Gila River Indian Reservation, Arizona; Hopi Tribe of Arizona; Pascua Yaqui Tribe of Arizona; Quechan Tribe of the Fort Yuma Indian Reservation, California and Arizona; Salt River Pima-Maricopa Indian Community of the Salt River Reservation, Arizona; San Carlos Apache Tribe of the San Carlos Reservation, Arizona; Tohono O'odham Nation of Arizona; Tonto Apache Tribe of Arizona; White Mountain Apache Tribe of the Fort Apache Reservation, Arizona; Yavapai-Apache Nation of the Camp Verde Indian Reservation, Arizona; Yavapai-Prescott Tribe of the Yavapai Reservation, Arizona; and Zuni Tribe of the Zuni Reservation, New Mexico, that this notice has been published.

Dated: April 6, 2010.

Sherry Hutt,

Manager, National NAGPRA Program.

[FR Doc. 2010–10378 Filed 5–3–10; 8:45 am]

BILLING CODE 4312–50–S

DEPARTMENT OF THE INTERIOR

National Park Service

Notice of Inventory Completion: Bishop Museum, Honolulu, HI

AGENCY: National Park Service, Interior.

ACTION: Notice.

Notice is here given in accordance with the Native American Graves Protection and Repatriation Act (NAGPRA), 25 U.S.C. 3003, of the completion of an inventory of human remains in the possession and control of the Bishop Museum, Honolulu, HI. The human remains were removed from Brooks Island, Contra Costa County, CA.

This notice is published as part of the National Park Service's administrative responsibilities under NAGPRA, 25 U.S.C. 3003(d)(3). The determinations in this notice are the sole responsibility of the museum, institution, or Federal agency that has control of the Native American human remains. The National Park Service is not responsible for the determinations in this notice.

A detailed assessment of the human remains was made by Bishop Museum professional staff in consultation with representatives of the the Santa Rosa Indian Community of the Santa Rosa Rancheria, California (Tachi Yokut Tribe).

On February 8, 1958, human remains representing a minimum of one individual were removed from Brooks Island, in San Pablo Bay, Contra Costa County, CA, most likely by A.C. Ziegler. The circumstances of the removal from Brooks Island are not known, but the remains were included in Dr. Ziegler's personal collections donated to the Bishop Museum after his death. The remains were housed in a box labeled "Homo Sapiens (infant)/sex?/Brooks

Island, 5 ft, contra Costa County, California/picked up Feb 9, 1958/part skeleton only/1016 A.C. Ziegler." No known individual was identified. No associated funerary objects are present.

The human remains were listed on the National Park Service Culturally Unidentified Inventory database, and Bishop Museum received information from the Santa Rosa Indian Community of the Santa Rosa Rancheria, California (Tachi Yokut Tribe) establishing their cultural affiliation to the remains through their historic and geographical connection to the Contra Costa County area.

Officials of the Bishop Museum have determined that, pursuant to 25 U.S.C. 3001(9), the human remains described above represent the physical remains of one individual of Native American ancestry. Officials of the Bishop Museum also have determined that, pursuant to 25 U.S.C. 3001(2), there is a relationship of shared group identity that can be reasonably traced between the Native American human remains and the Santa Rosa Indian Community of the Santa Rosa Rancheria, California (Tachi Yokut Tribe).

Representatives of any other Indian tribe that believes itself to be culturally affiliated with the human remains should contact Betty Lou Kam, Vice-President, Cultural Resources, Bishop Museum, 1525 Bernice St., Honolulu, HI 96817, telephone (808) 848–4144, before June 3, 2010. Repatriation of the human remains to the Santa Rosa Indian Community of the Santa Rosa Rancheria, California (Tachi Yokut Tribe) may proceed after that date if no additional claimants come forward.

The Bishop Museum is responsible for notifying the Santa Rosa Indian Community of the Santa Rosa Rancheria, California (Tachi Yokut Tribe) that this notice has been published.

Dated: April 6, 2010.

Sherry Hutt,

Manager, National NAGPRA Program.

[FR Doc. 2010–10366 Filed 5–3–10; 8:45 am]

BILLING CODE 4312–50–S

DEPARTMENT OF THE INTERIOR

National Park Service

Notice of Inventory Completion: Paul H. Karshner Memorial Museum, Puyallup, WA

AGENCY: National Park Service, Interior.

ACTION: Notice.

Notice is here given in accordance with the Native American Graves Protection and Repatriation Act (NAGPRA), 25 U.S.C. 3003, of the completion of an inventory of human remains in the possession of the Paul H. Karshner Memorial Museum, Puyallup, WA. The human remains were removed from the Aleutian Islands, AK.

This notice is published as part of the National Park Service's administrative responsibilities under NAGPRA, 25 U.S.C. 3003(d)(3). The determinations in this notice are the sole responsibility of the museum, institution, or Federal agency that has control of the Native American human remains. The National Park Service is not responsible for the determinations in this notice.

A detailed assessment of the human remains was made by the Paul H. Karshner Memorial Museum professional staff in consultation with representatives of the Aleut Corporation.

Prior to 1945, human remains representing a minimum of one individual were removed from the Aleutian Islands in Alaska. On May 5, 1945, the human remains were donated to the museum by Lee Anna (or Lavanna) McAllister (Catalog # 1–93, Accn. #1945–1). Museum records state that the human remains are "one skull from Aleutian Islands. Found at the mouth of the Salmon River on the shores of the Bering Sea". No known individual was identified. No associated funerary objects are present.

Research into the donor has not indicated how she may have acquired the human remains. There is no known "Salmon River" that drains into the Bering Sea, however, "Salmon Lagoon" was a location with significant U.S. military presence during World War II on Kiska Island, Aleutian Islands. Military records were searched to locate a McAllister who may have been stationed on Kiska Island, but no further information was identified. Although no further information could be identified, based on the known military presence on Kiska Island at Salmon Lagoon and the date of the donation (post-World War II), this individual is reasonably believed to have been collected by military personnel.

The museum's inventory book identifies the human remains as being part of the "Native American Collection" and being from the Aleutian Islands, AK. The Aleutian Islands are known to be aboriginal lands for the Aleut Corporation. Based on museum records, geographical location, and consultation, the museum reasonably believes the individual is culturally affiliated with the Aleut Corporation.

Officials of the Paul H. Karshner Memorial Museum have determined that, pursuant to 25 U.S.C. 3001 (9)-(10), the human remains described above represent the physical remains of one individual of Native American ancestry. Officials of the Paul H. Karshner Memorial Museum also have determined that, pursuant to 25 U.S.C. 3001 (2), there is a relationship of shared group identity that can be reasonably traced between the Native American human remains and the Aleut Corporation.

Representatives of any other Indian tribe that believes itself to be culturally affiliated with the human remains should contact Dr. Jay Reifel, Assistant Superintendent, Paul H. Karshner Memorial Museum, telephone (253) 840–8971, or Ms. Beth Bestrom, Museum Curator, Paul H. Karshner Memorial Museum, telephone (253) 841–8748, 309 4th St. NE, Puyallup, WA 98372, before June 3, 2010. Repatriation to the Aleut Corporation may proceed after that date if no additional claimants come forward.

The Paul H. Karshner Memorial Museum is responsible for notifying the Aleut Corporation that this notice has been published.

Dated: April 16, 2010.

David Tarler,

Acting Manager, National NAGPRA Program.

[FR Doc. 2010–10370 Filed 5–3–10; 8:45 am]

BILLING CODE 4312–50–S

DEPARTMENT OF THE INTERIOR

National Park Service

Notice of Inventory Completion: Alaska State Office, Bureau of Land Management, Anchorage, AK; Museum of the Aleutians, Unalaska, AK; and University of Wisconsin, Madison, WI; Correction

AGENCY: National Park Service, Interior.

ACTION: Notice; correction.

Notice is here given in accordance with the Native American Graves Protection and Repatriation Act (NAGPRA), 25 U.S.C. 3003, of the completion of an inventory of human remains and associated funerary objects in the control of the U.S. Department of the Interior, Bureau of Land Management, Alaska State Office, Anchorage, AK, and in the possession of the Museum of the Aleutians, Unalaska, AK, and the University of Wisconsin, Madison, WI. The human remains were removed from Umnak Island, AK.

This notice is published as part of the National Park Service's administrative responsibilities under NAGPRA, 25 U.S.C. 3003 (d)(3). The determinations

in this notice are the sole responsibility of the museum, institution, or Federal agency that has control of the Native American human remains and associated funerary objects. The National Park Service is not responsible for the determinations in this notice.

This notice corrects a Notice of Inventory Completion published in the **Federal Register** (73 FR 47224, August 13, 2008) with the addition of another individual and associated funerary objects, a repository that has possession of the additional set of Native American human remains and funerary objects, and also amends the determination of shared group relationships. Since publication of the notice, additional Native American human remains and associated funerary objects removed by Dr. William Laughlin from the Chaluka site at the Native Village of Nikolski were found to be in the possession of the University of Wisconsin Curation Facility collections.

The notice published in the **Federal Register** (73 FR 47224, August 13, 2008) is corrected by substituting paragraphs 3–10 with the following:

A detailed assessment of the human remains was made by the Alaska State Office, Bureau of Land Management; Museum of the Aleutians; University of Wisconsin; and the Smithsonian Institution professional staff in consultation with representatives of the Native Village of Nikolski and Chaluka Corporation.

Between 1950 and the 1980s, human remains representing a minimum of 213 individuals were removed from various sites in the southwestern part of Umnak Island, located in the Fox Island group of the eastern Aleutian Islands, AK. These sites included the Chaluka site at the Native Village of Nikolski, Ogalodox site, Sandy Beach site, and other nearby smaller sites. The exact provenience for each individual cannot be determined. All of the human remains were probably removed at the direction of the late Dr. William Laughlin from Umnak Island as they were later found to be among his collections. No known individuals were identified. The 276 associated funerary objects include coffin pieces, cultural materials, fragmentary faunal remains, pebbles, rocks, fabric, buttons, and a snap/button.

According to museum records, the 213 sets of human remains were probably first sent to the University of Wisconsin, where one set is presently located. The other 212 sets of human remains were removed by Dr. William Laughlin to the University of Connecticut at an unknown date. From there, the 212 sets of human remains were shipped by Dr. Laughlin to the Museum of the Aleutians in 1998, where they are presently located. The 276 associated funerary objects are all associated with the one set of human remains at the University of Wisconsin, and most are in a mixed and fragmentary state.

During 1961–62, human remains representing a minimum of nine individuals were removed from the Chaluka site at the Native Village of Nikolski, on Umnak Island in the Fox Island group of the eastern Aleutian Islands, AK. These remains were also all probably removed at the direction of the late Dr. William Laughlin from Umnak Island as they were later found to be among his collections after his death. No known individuals were identified. No associated funerary objects are present.

The remains of the nine individuals were shipped to the University of Wisconsin for study by Dr. William Laughlin, and remained there after his death. In 2006, the Bureau of Land Management sent the remains to the Smithsonian Institution to be inventoried, where they are presently located.

Umnak Island has been inhabited for over 8,000 years by Aleut (Unangan) people. Based on geographical location, oral history, and archeological evidence, the human remains from this island are of Aleut (Unangan) origin. The Aleut (Unangan) are ancestors of inhabitants of the Native Village of Nikolski and Chaluka Corporation, the current and only Indian tribe and Corporation on Umnak Island, AK.

Officials of the Bureau of Land Management have determined that, pursuant to 25 U.S.C. 3001 (9)-(10), the human remains described above represent the physical remains of a minimum of 222 individuals of Native American ancestry. Officials of the Bureau of Land Management have also determined that, pursuant to 25 U.S.C. 3001 (3)(A), the 276 objects described above are reasonably believed to have been placed with or near individual human remains at the time of death or later as part of the death rite or ceremony. Lastly, officials of the Bureau of Land Management have determined that, pursuant to 25 U.S.C. 3001 (2), there is a relationship of shared group identity that can be reasonably traced between the Native American human remains and associated funerary objects and the Native Village of Nikolski and Chaluka Corporation located on Umnak Island, AK.

Representatives of any other Indian tribe that believes itself to be culturally affiliated with the human remains and associated funerary objects should contact Dr. Robert E. King, Alaska State NAGPRA Coordinator, Bureau of Land Management, 222 W. 7th Avenue, #13, Anchorage, AK 99513–7599, telephone (907) 271–5510, before June 3, 2010. Repatriation of the human remains and associated funerary objects to the Native Village of Nikolski and Chaluka Corporation may proceed after that date if no additional claimants come forward.

The Bureau of Land Management is responsible for notifying the Native Village of Nikolski and the Chaluka Corporation that this notice has been published.

Dated: April 14, 2010.

David Tarler,

Acting Manager, National NAGPRA Program.

[FR Doc. 2010–10383 Filed 5–3–10; 8:45 am]

BILLING CODE 4312–50–S

DEPARTMENT OF THE INTERIOR

National Park Service

Notice of Inventory Completion: U.S. Department of the Interior, Bureau of Land Management, Grand Junction Field Office, Grand Junction, CO and Mesa State College, Grand Junction, CO

AGENCY: National Park Service, Interior.

ACTION: Notice.

Notice is here given in accordance with the Native American Graves Protection and Repatriation Act (NAGPRA), 25 U.S.C. 3003, of the completion of an inventory of human remains in the joint control of the U.S. Department of the Interior, Bureau of Land Management, Grand Junction Field Office, Grand Junction, CO, and Mesa State College, Grand Junction, CO. The human remains were removed from Mesa County, CO.

This notice is published as part of the National Park Service's administrative responsibilities under NAGPRA, 25 U.S.C. 3003(d)(3). The determinations in this notice are the sole responsibility of the museum, institution, or Federal agency that has control of the Native American human remains. The National Park Service is not responsible for the determinations in this notice.

A detailed assessment of the human remains was made by Bureau of Land Management, Grand Junction Field Office and Mesa State College professional staff, in consultation with representatives of the Hopi Tribe of Arizona; Jicarilla Apache Nation, New Mexico; Kiowa Indian Tribe of Oklahoma; Navajo Nation, Arizona, New Mexico & Utah; Ohkay Owingeh,

New Mexico; Paiute Indian Tribe of Utah; Pueblo of San Ildefonso, New Mexico; Pueblo of Santa Ana, New Mexico; Pueblo of Santa Clara, New Mexico; Pueblo of Pojoaque, New Mexico; Shoshone-Bannock Tribes of the Fort Hall Reservation of Idaho; Southern Ute Indian Tribe of the Southern Ute Reservation, Colorado; Standing Rock Sioux Tribe of North & South Dakota; Ute Indian Tribe of the Uintah & Ouray Reservation, Utah; and Ute Mountain Tribe of the Ute Mountain Reservation, Colorado, New Mexico & Utah.

On an unknown date in the 1970s, human remains representing two individuals were removed from an unknown location near Grand Mesa, in Mesa County, CO. On April 1, 2009, the human remains were discovered in the Geology Department of Mesa State College by college staff, and were reported to the Ute Tribe of the Uintah & Ouray Reservation, and subsequently to the Bureau of Land Management. Based on investigations into their origin and placement at Mesa State College, most likely these remains were unofficially removed in the 1970s from public lands near Grand Mesa, CO, by Mesa State College students who were hiking in the area. The students brought the remains to Mesa State College, where they were studied and later stored in the Geology Department. No known individuals were identified. No associated funerary objects are present.

Although the description of the original site location is not specific enough to determine land ownership status, most of the land in the general region was Federal land administered by the Bureau of Land Management at the time the remains were removed. Therefore, the Bureau of Land Management assumes control of the human remains for the purposes of NAGPRA compliance. Because provenience is limited to a regional area, and the remains were collected by Mesa State College students and stored by Mesa State College, the college has shared control with the Bureau of Land Management. After their discovery in the college's Geology Department, the remains were transported by Bureau of Land Management staff to the Museum of Western Colorado for secure storage pending repatriation.

The human remains consist of two adult individuals of considerable antiquity, and are likely Native Americans. Their reported burial within rock crevices correlates with Native American burial practices, particularly those of the Ute culture. Furthermore, the original location of the human remains lies within traditional Ute lands, and within proximity to Ute sites and historic trails.

Officials of the Bureau of Land Management and Mesa State College have determined that, pursuant to 25 U.S.C. 3001 (9)-(10), the human remains described above represent the physical remains of two individuals of Native American ancestry. Officials of the Bureau of Land Management and Mesa State College have also determined that, pursuant to 25 U.S.C. 3001 (2), there is a relationship of shared group identity that can be reasonably traced between the Native American human remains and the Ute Tribes - Southern Ute Indian Tribe of the Southern Ute Reservation, Colorado; Ute Mountain Tribe of the Ute Mountain Reservation, Colorado, New Mexico & Utah; and, in particular, the Ute Indian Tribe of the Uintah & Ouray Reservation, Utah.

Representatives of any other Indian tribe that believes itself to be culturally affiliated with the human remains should contact Dan Haas, State Archaeologist, Bureau of Land Management, Colorado State Office, 2850 Youngfield St., Lakewood, CO 80215–7076, telephone (303) 239–3647, before June 3, 2010. Repatriation of the human remains to the Ute Indian Tribe of the Uintah & Ouray Reservation, Utah, may proceed after that date if no additional claimants come forward.

The Bureau of Land Management is responsible for notifying the Hopi Tribe of Arizona; Jicarilla Apache Nation, New Mexico; Kiowa Indian Tribe of Oklahoma; Navajo Nation, Arizona, New Mexico & Utah; Ohkay Owingeh, New Mexico; Paiute Indian Tribe of Utah; Pueblo of San Ildefonso, New Mexico; Pueblo of Santa Ana, New Mexico; Pueblo of Santa Clara, New Mexico; Pueblo of Pojoaque, New Mexico; Shoshone-Bannock Tribes of the Fort Hall Reservation of Idaho; Southern Ute Indian Tribe of the Southern Ute Reservation, Colorado; Standing Rock Sioux Tribe of North & South Dakota; Ute Indian Tribe of the Uintah & Ouray Reservation, Utah; and Ute Mountain Tribe of the Ute Mountain Reservation, Colorado, New Mexico & Utah, that this notice has been published.

Dated: April 16, 2010.

David Tarler,

Acting Manager, National NAGPRA Program.

[FR Doc. 2010–10381 Filed 5–3–10; 8:45 am]

BILLING CODE 4312–50–S

DEPARTMENT OF THE INTERIOR

National Park Service

Notice of Inventory Completion: Wisconsin Historical Society, Museum Division, Madison, WI

AGENCY: National Park Service, Interior.

ACTION: Notice.

Notice is here given in accordance with the Native American Graves Protection and Repatriation Act (NAGPRA), 25 U.S.C. 3003, of the completion of an inventory of human remains in the possession of the Wisconsin Historical Society, Museum Division (aka State Historical Society of Wisconsin), Madison, WI. The human remains were removed from the Bell Site, Winnebago County, WI.

This notice is published as part of the National Park Service's administrative responsibilities under NAGPRA, 25 U.S.C. 3003(d)(3). The determinations in this notice are the sole responsibility of the museum, institution, or Federal agency that has control of the Native American human remains. The National Park Service is not responsible for the determinations in this notice.

An assessment of the human remains was made by the Wisconsin Historical Museum professional staff in consultation with representatives of the Sac & Fox Tribe of the Mississippi in Iowa.

In 1959, human remains representing a minimum of one individual were removed from a grave at the Bell Site, 47–Wn–0009, in Winnebago County, WI, during archeological excavations. The excavations were conducted by the Wisconsin Historical Society, the Wisconsin Archaeological Survey, and the Oshkosh Public Museum, all under the supervision of Warren Wittry. No known individual was identified. No associated funerary objects are present.

According to historical and archeological records, the Bell Site is the location of the historic Grand Village of the Meskwaki Nation, dating from approximately A.D. 1680 to 1730. Officials at the Wisconsin Historical Museum have determined that the human remains described above can be directly associated with the Sac & Fox Tribe of the Mississippi in Iowa, as the majority of the Meskwaki Nation resides in Iowa.

Officials of the Wisconsin Historical Society have determined that, pursuant to 25 U.S.C. 3001(9), the human remains described above represent the physical remains of one individual of Native American ancestry. Officials of the Wisconsin Historical Society also have

determined that, pursuant to 25 U.S.C. 3001(2), there is a relationship of shared group identity that can be reasonably traced between the Native American human remains and the Sac & Fox Tribe of the Mississippi in Iowa.

Representatives of any other Indian tribe that believes itself to be culturally affiliated with the human remains should contact Jennifer L. Kolb, Wisconsin Historical Museum, 30 N. Carroll St., Madison, WI 53703, telephone (608) 261–2461, before June 3, 2010. Repatriation of the human remains to the Sac & Fox Tribe of the Mississippi in Iowa may proceed after that date if no additional claimants come forward.

The Wisconsin Historical Society is responsible for notifying the Sac & Fox Tribe of the Mississippi in Iowa that this notice has been published.

Dated: April 12, 2010.

Sherry Hutt,

Manager, National NAGPRA Program.

[FR Doc. 2010–10380 Filed 5–3–10; 8:45 am]

BILLING CODE 4312–50–S

DEPARTMENT OF THE INTERIOR

National Park Service

Notice of Inventory Completion: Denver Museum of Nature & Science, Denver, CO

AGENCY: National Park Service, Interior.

ACTION: Notice.

Notice is here given in accordance with the Native American Graves Protection and Repatriation Act (NAGPRA), 25 U.S.C. 3003, of the completion of an inventory of human remains in the possession of the Denver Museum of Nature & Science, Denver, CO. The human remains were removed from Pettis County, MO.

This notice is published as part of the National Park Service's administrative responsibilities under NAGPRA, 25 U.S.C. 3003(d)(3). The determinations in this notice are the sole responsibility of the museum, institution, or Federal agency that has control of the Native American human remains. The National Park Service is not responsible for the determinations in this notice.

A detailed assessment of the human remains was made by the Denver Museum of Nature & Science professional staff in consultation with representatives of the Osage Nation, Oklahoma.

In 1933, human remains representing a minimum of two individuals were removed from a mound burial context four miles northwest of Sedalia, Pettis County, MO, by G.D. Householder. Householder donated the individuals to the museum at some point thereafter. In 1994, the human remains were found in the museum's collections during an inventory, and then formally accessioned (DMNS catalogue numbers A1991.1 and A1991.2). The human remains were originally determined to be culturally unidentifiable. No known individuals were identified. No associated funerary objects are present.

Based on physical analysis, the human remains are determined to be Native American. Archeological evidence suggests that Pettis County mound sites generally date to the Mississippian nucleation horizon (A.D. 1350–1650). Oral tradition and historical documentation–supported by geographical, linguistic, folkloric, archeological evidence, and expert opinion–indicate that Pettis County has long been a part of the Osage traditional ancestral homelands and hunting territory. After consultation with the Osage Nation, Oklahoma, the museum reasonably believes that there is a shared group identity between the Osage people and the people of these ancient mounds.

Officials of the Denver Museum of Nature & Science have determined that, pursuant to 25 U.S.C. 2001 (9)-(10), the human remains described above represent the physical remains of two individuals of Native American ancestry. Officials of the Denver Museum of Nature & Science also have determined that, pursuant to 25 U.S.C. 3001 (2), there is a relationship of shared group identity that can be reasonably traced between the Native American human remains and the Osage Nation, Oklahoma.

Representatives of any other Indian tribe that believes itself to be culturally affiliated with the human remains should contact Dr. Chip Colwell-Chanthaphonh, Denver Museum of Nature & Science, 2001 Colorado Blvd., Denver, CO 80205, telephone (303) 370–6378, before June 3, 2010. Repatriation of the human remains to the Osage Nation, Oklahoma may proceed after that date if no additional claimants come forward.

The Denver Museum of Nature & Science is responsible for notifying the Osage Nation, Oklahoma that this notice has been published.

Dated: April 14, 2010.

David Tarler,

Acting Manager, National NAGPRA Program.

[FR Doc. 2010–10367 Filed 5–3–10; 8:45 am]

BILLING CODE 4312–50–S

DEPARTMENT OF LABOR

Office of the Secretary

Submission for OMB Review: Comment Request

April 22, 2010.

The Department of Labor (DOL) hereby announces the submission of the following public information collection requests (ICR) to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995 (Pub. L. 104–13, 44 U.S.C. chapter 35). A copy of each ICR, with applicable supporting documentation; including among other things a description of the likely respondents, proposed frequency of response, and estimated total burden may be obtained from the RegInfo.gov Web site at *http://www.reginfo.gov/public/do/PRAMain* or by contacting Darrin King on 202–693–4129 (this is not a toll-free number)/e-mail: *DOL_PRA_PUBLIC@dol.gov*.

Interested parties are encouraged to send comments to the Office of Information and Regulatory Affairs, Attn: OMB Desk Officer for the Department of Labor—Employment and Training Administration (ETA), Office of Management and Budget, Room 10235, Washington, DC 20503, Telephone: 202–395–7316/Fax: 202–395–5806 (these are not toll-free numbers), E-mail: *OIRA_submission@omb.eop.gov* within 30 days from the date of this publication in the **Federal Register.** In order to ensure the appropriate consideration, comments should reference the OMB Control Number (see below).

The OMB is particularly interested in comments which:

- Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;
- Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
- Enhance the quality, utility, and clarity of the information to be collected; and
- Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

Agency: Employment and Training Administration.

Type of Review: Extension without change of a currently approved collection.

Title of Collection: Work Application/Job Order Recordkeeping.

OMB Control Number: 1205–0001.

Agency Form Number: N/A.

Affected Public State, Local, or Tribal Governments.

Total Estimated Number of Respondents: 52.

Total Estimated Annual Burden Hours: 416.

Total Estimated Annual Costs Burden (Operation and Maintenance): $0.

Description: Work applications (commonly referred to as the registrations) are used in One-Stop Career Centers for individuals seeking assistance in finding employment or employability development services. They are used to collect information such as: applicants' identification, qualifications, work experience, and desired pay. They also include services provided to applicants, such as job development, referral to supportive service.

Job orders are used in One-Stop Career Centers to obtain information on employer job vacancies. Information in the job orders include employer identification, job requirements, pay information as well as identification of persons referred, hired, or refused. The information is collected at the employer's request in order to publicize job vacancies. The information is collected by One-Stop Career Centers and posted on electronic job banks. 20 CFR 652.8(d)(5) specifies the one-year retention of information on work applications and job orders. For additional information, see related notice published in the **Federal Register** on January 5, 2010 (75 FR 450).

Agency: Employment and Training Administration.

Type of Review: Extension without change of a currently approved collection.

Title of Collection: Benefit Rights and Experience Report.

OMB Control Number: 1205–0177.

Agency Form Number: ETA–218.

Affected Public State, Local, or Tribal Governments.

Total Estimated Number of Respondents: 53.

Total Estimated Annual Burden Hours: 108.

Total Estimated Annual Costs Burden (Operation and Maintenance): $0.

Description: The Form ETA–218 provides information used in solvency studies, in budgeting projections and for evaluation of adequacy of benefit formulas to analyze effects or proposed changes in state law. For additional information, see related notice published in the **Federal Register** on January 25, 2010 (75 FR 3927).

Agency: Employment and Training Administration.

Type of Review: Extension without change of a currently approved collection.

Title of Collection: Transmittal of Unemployment Insurance Materials.

OMB Control Number: 1205–0222.

Agency Form Number: MA 8–7.

Affected Public: State, Local, or Tribal Governments.

Total Estimated Number of Respondents: 53.

Total Estimated Annual Burden Hours: 11.

Total Estimated Annual Costs Burden (Operation and Maintenance): $0.

Description: Section 303(a)(6), Social Security Act, Public Law 74–271, (SSA), requires, as a condition of receiving administrative grants, that State law contain provision for the "making of such reports, in such form and containing such information, as the Secretary of Labor may from time to time require, and compliance with such provisions as the Secretary of Labor may from time to time find necessary to ensure the correctness and verification of such reports." Departmental regulations at 20 CFR 601.3 in part implement this requirement by requiring the submission of "all relevant state materials, such as statutes, executive and administrative orders, legal opinions, rules, regulations, interpretations, court opinions, etc. * * *" Also, the regulations for the Unemployment Compensation (UC) for Federal Civilian Employees (UCFE) program at 20 CFR 609.1(d)(1) and for the UC for ex-service members (UCX) program at 20 CFR 614.1(d)(1) require submission of certain documents to assure that states are properly administering these programs. The Trade Adjustment Assistance (which includes Trade Readjustment Allowances) program (TAA/TRA) regulations provide similar requirements at 20 CFR 617.52(c)(1).

The Form MA 8–7 is the mechanism for implementing these submittal requirements, the purpose of which is to provide the Secretary with sufficient information to determine if (a) employers in a state qualify for tax credits under the Federal Unemployment Tax Act; (b) the state meets the requirements for obtaining administrative grants under Title III, SSA; and (c) the state is fulfilling it obligations under Federal UC programs. For additional information, see related notice published in the **Federal Register** on January 25, 2010 (75 FR 3926).

Darrin A. King,

Departmental Clearance Officer.

[FR Doc. 2010–10303 Filed 5–3–10; 8:45 am]

BILLING CODE 4510–FW–P

NUCLEAR REGULATORY COMMISSION

[NRC–2010–0169]

Biweekly Notice; Applications and Amendments to Facility Operating Licenses Involving No Significant Hazards Considerations

I. Background

Pursuant to section 189a. (2) of the Atomic Energy Act of 1954, as amended (the Act), the U.S. Nuclear Regulatory Commission (the Commission or NRC) is publishing this regular biweekly notice. The Act requires the Commission publish notice of any amendments issued, or proposed to be issued and grants the Commission the authority to issue and make immediately effective any amendment to an operating license upon a determination by the Commission that such amendment involves no significant hazards consideration, notwithstanding the pendency before the Commission of a request for a hearing from any person.

This biweekly notice includes all notices of amendments issued, or proposed to be issued from April 8, 2010 to April 21, 2010. The last biweekly notice was published on April 20, 2010 (75 FR 20627).

Notice of Consideration of Issuance of Amendments to Facility Operating Licenses, Proposed No Significant Hazards Consideration Determination, and Opportunity for a Hearing

The Commission has made a proposed determination that the following amendment requests involve no significant hazards consideration. Under the Commission's regulations in Title 10 of the Code of Federal Regulations (10 CFR), Section 50.92, this means that operation of the facility in accordance with the proposed amendment would not (1) involve a significant increase in the probability or consequences of an accident previously evaluated; or (2) create the possibility of a new or different kind of accident from any accident previously evaluated; or (3) involve a significant reduction in a margin of safety. The basis for this proposed determination for each amendment request is shown below.

The Commission is seeking public comments on this proposed determination. Any comments received within 30 days after the date of publication of this notice will be considered in making any final determination.

Normally, the Commission will not issue the amendment until the expiration of 60 days after the date of publication of this notice. The Commission may issue the license amendment before expiration of the 60-day period provided that its final determination is that the amendment involves no significant hazards consideration. In addition, the Commission may issue the amendment prior to the expiration of the 30-day comment period should circumstances change during the 30-day comment period such that failure to act in a timely way would result, for example in derating or shutdown of the facility. Should the Commission take action prior to the expiration of either the comment period or the notice period, it will publish in the **Federal Register** a notice of issuance. Should the Commission make a final No Significant Hazards Consideration Determination, any hearing will take place after issuance. The Commission expects that the need to take this action will occur very infrequently.

Written comments may be submitted by mail to the Chief, Rules, Announcements and Directives Branch (RADB), TWB–05–B01M, Division of Administrative Services, Office of Administration, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, and should cite the publication date and page number of this **Federal Register** notice. Written comments may also be faxed to the RADB at 301–492–3446. Documents may be examined, and/or copied for a fee, at the NRC's Public Document Room (PDR), located at One White Flint North, Public File Area O1F21, 11555 Rockville Pike (first floor), Rockville, Maryland.

Within 60 days after the date of publication of this notice, any person(s) whose interest may be affected by this action may file a request for a hearing and a petition to intervene with respect to issuance of the amendment to the subject facility operating license. Requests for a hearing and a petition for leave to intervene shall be filed in accordance with the Commission's "Rules of Practice for Domestic Licensing Proceedings" in 10 CFR part 2. Interested person(s) should consult a current copy of 10 CFR 2.309, which is available at the Commission's PDR, located at One White Flint North, Public File Area O1F21, 11555 Rockville Pike (first floor), Rockville, Maryland. Publicly available records will be accessible from the Agencywide Documents Access and Management System's (ADAMS) Public Electronic Reading Room on the Internet at the NRC Web site, *http://www.nrc.gov/reading-rm/doc-collections/cfr/*. If a request for a hearing or petition for leave to intervene is filed by the above date, the Commission or a presiding officer designated by the Commission or by the Chief Administrative Judge of the Atomic Safety and Licensing Board Panel, will rule on the request and/or petition; and the Secretary or the Chief Administrative Judge of the Atomic Safety and Licensing Board will issue a notice of a hearing or an appropriate order.

As required by 10 CFR 2.309, a petition for leave to intervene shall set forth with particularity the interest of the petitioner in the proceeding, and how that interest may be affected by the results of the proceeding. The petition should specifically explain the reasons why intervention should be permitted with particular reference to the following general requirements: (1) The name, address, and telephone number of the requestor or petitioner; (2) the nature of the requestor's/petitioner's right under the Act to be made a party to the proceeding; (3) the nature and extent of the requestor's/petitioner's property, financial, or other interest in the proceeding; and (4) the possible effect of any decision or order which may be entered in the proceeding on the requestor's/petitioner's interest. The petition must also identify the specific contentions which the requestor/petitioner seeks to have litigated at the proceeding.

Each contention must consist of a specific statement of the issue of law or fact to be raised or controverted. In addition, the requestor/petitioner shall provide a brief explanation of the bases for the contention and a concise statement of the alleged facts or expert opinion which support the contention and on which the requestor/petitioner intends to rely in proving the contention at the hearing. The requestor/petitioner must also provide references to those specific sources and documents of which the petitioner is aware and on which the requestor/petitioner intends to rely to establish those facts or expert opinion. The petition must include sufficient information to show that a genuine dispute exists with the applicant on a material issue of law or fact. Contentions shall be limited to matters within the scope of the amendment under consideration. The contention must be one which, if proven, would entitle the requestor/petitioner to relief. A requestor/petitioner who fails to satisfy these requirements with respect to at least one contention will not be permitted to participate as a party.

Those permitted to intervene become parties to the proceeding, subject to any limitations in the order granting leave to intervene, and have the opportunity to participate fully in the conduct of the hearing.

If a hearing is requested, the Commission will make a final determination on the issue of no significant hazards consideration. The final determination will serve to decide when the hearing is held. If the final determination is that the amendment request involves no significant hazards consideration, the Commission may issue the amendment and make it immediately effective, notwithstanding the request for a hearing. Any hearing held would take place after issuance of the amendment. If the final determination is that the amendment request involves a significant hazards consideration, any hearing held would take place before the issuance of any amendment.

All documents filed in NRC adjudicatory proceedings, including a request for hearing, a petition for leave to intervene, any motion or other document filed in the proceeding prior to the submission of a request for hearing or petition to intervene, and documents filed by interested governmental entities participating under 10 CFR 2.315(c), must be filed in accordance with the NRC E-Filing rule (72 FR 49139, August 28, 2007). The E-Filing process requires participants to submit and serve all adjudicatory documents over the Internet, or in some cases to mail copies on electronic storage media. Participants may not submit paper copies of their filings unless they seek an exemption in accordance with the procedures described below.

To comply with the procedural requirements of E-Filing, at least ten (10) days prior to the filing deadline, the participant should contact the Office of the Secretary by e-mail at *hearing.docket@nrc.gov*, or by telephone at (301) 415–1677, to request (1) a digital ID certificate, which allows the participant (or its counsel or representative) to digitally sign documents and access the E-Submittal server for any proceeding in which it is participating; and (2) advise the Secretary that the participant will be submitting a request or petition for hearing (even in instances in which the participant, or its counsel or

representative, already holds an NRC-issued digital ID certificate). Based upon this information, the Secretary will establish an electronic docket for the hearing in this proceeding if the Secretary has not already established an electronic docket.

Information about applying for a digital ID certificate is available on NRC's public Web site at *http://www.nrc.gov/site-help/e-submittals/apply-certificates.html*. System requirements for accessing the E-Submittal server are detailed in NRC's "Guidance for Electronic Submission," which is available on the agency's public Web site at *http://www.nrc.gov/site-help/e-submittals.html*. Participants may attempt to use other software not listed on the Web site, but should note that the NRC's E-Filing system does not support unlisted software, and the NRC Meta System Help Desk will not be able to offer assistance in using unlisted software.

If a participant is electronically submitting a document to the NRC in accordance with the E-Filing rule, the participant must file the document using the NRC's online, Web-based submission form. In order to serve documents through EIE, users will be required to install a Web browser plug-in from the NRC Web site. Further information on the Web-based submission form, including the installation of the Web browser plug-in, is available on the NRC's public Web site at *http://www.nrc.gov/site-help/e-submittals.html*.

Once a participant has obtained a digital ID certificate and a docket has been created, the participant can then submit a request for hearing or petition for leave to intervene. Submissions should be in Portable Document Format (PDF) in accordance with NRC guidance available on the NRC public Web site at *http://www.nrc.gov/site-help/e-submittals.html*. A filing is considered complete at the time the documents are submitted through the NRC's E-Filing system. To be timely, an electronic filing must be submitted to the E-Filing system no later than 11:59 p.m. Eastern Time on the due date. Upon receipt of a transmission, the E-Filing system time-stamps the document and sends the submitter an e-mail notice confirming receipt of the document. The E-Filing system also distributes an e-mail notice that provides access to the document to the NRC Office of the General Counsel and any others who have advised the Office of the Secretary that they wish to participate in the proceeding, so that the filer need not serve the documents on those participants separately. Therefore, applicants and other participants (or their counsel or representative) must apply for and receive a digital ID certificate before a hearing request/petition to intervene is filed so that they can obtain access to the document via the E-Filing system.

A person filing electronically using the agency's adjudicatory E-Filing system may seek assistance by contacting the NRC Meta System Help Desk through the "Contact Us" link located on the NRC Web site at *http://www.nrc.gov/site-help/e-submittals.html*, by e-mail at *MSHD.Resource@nrc.gov*, or by a toll-free call at (866) 672–7640. The NRC Meta System Help Desk is available between 8 a.m. and 8 p.m., Eastern Time, Monday through Friday, excluding government holidays.

Participants who believe that they have a good cause for not submitting documents electronically must file an exemption request, in accordance with 10 CFR 2.302(g), with their initial paper filing requesting authorization to continue to submit documents in paper format. Such filings must be submitted by: (1) First class mail addressed to the Office of the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, Attention: Rulemaking and Adjudications Staff; or (2) courier, express mail, or expedited delivery service to the Office of the Secretary, Sixteenth Floor, One White Flint North, 11555 Rockville Pike, Rockville, Maryland, 20852, Attention: Rulemaking and Adjudications Staff. Participants filing a document in this manner are responsible for serving the document on all other participants. Filing is considered complete by first-class mail as of the time of deposit in the mail, or by courier, express mail, or expedited delivery service upon depositing the document with the provider of the service. A presiding officer, having granted an exemption request from using E-Filing, may require a participant or party to use E-Filing if the presiding officer subsequently determines that the reason for granting the exemption from use of E-Filing no longer exists.

Documents submitted in adjudicatory proceedings will appear in NRC's electronic hearing docket which is available to the public at *http://ehd.nrc.gov/EHD_Proceeding/home.asp*, unless excluded pursuant to an order of the Commission, or the presiding officer. Participants are requested not to include personal privacy information, such as social security numbers, home addresses, or home phone numbers in their filings, unless an NRC regulation or other law requires submission of such information. With respect to copyrighted works, except for limited excerpts that serve the purpose of the adjudicatory filings and would constitute a Fair Use application, participants are requested not to include copyrighted materials in their submission.

Petitions for leave to intervene must be filed no later than 60 days from the date of publication of this notice. Non-timely filings will not be entertained absent a determination by the presiding officer that the petition or request should be granted or the contentions should be admitted, based on a balancing of the factors specified in 10 CFR 2.309(c)(1)(i)–(viii).

For further details with respect to this license amendment application, see the application for amendment which is available for public inspection at the Commission's PDR, located at One White Flint North, Public File Area O1F21, 11555 Rockville Pike (first floor), Rockville, Maryland. Publicly available records will be accessible from the ADAMS Public Electronic Reading Room on the Internet at the NRC Web site, *http://www.nrc.gov/reading-rm/adams.html*. Persons who do not have access to ADAMS or who encounter problems in accessing the documents located in ADAMS, should contact the NRC PDR Reference staff at 1–800–397–4209, 301–415–4737, or by e-mail to *pdr.resource@nrc.gov*.

Calvert Cliffs Nuclear Power Plant, LLC, Docket Nos. 50–317 and 50–318, Calvert Cliffs Nuclear Power Plant, Unit Nos. 1 and 2, Calvert County, Maryland

Date of amendments request: November 23, 2009.

Description of amendments request: The amendment would modify the licensing basis and the Technical Specifications by allowing for the transition from Westinghouse Turbo fuel to AREVA Advanced CE–14 High Thermal Performance (HTP) fuel in the Calvert Cliffs reactors. The licensee plans to refuel and operate with AREVA fuel beginning with the refueling outage in 2011 for Unit No. 2 and 2012 for Unit No. 1. The transition is planned to occur over three refueling cycles on each unit.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. Does the proposed amendment involve a significant increase in the probability or consequences of an accident previously evaluated?

No.

The reactor fuel and the analyses associated with it are not accident initiators. The response of the fuel to an accident is analyzed using conservative techniques and the results are compared to approved acceptance criteria. These evaluation results will show that the fuel response to an accident is within approved acceptance criteria for both cores loaded with the new AREVA Advanced CE–14 HTP fuel and cores loaded with both AREVA and Westinghouse Turbo fuel. Therefore, the change in fuel design does not affect accident or transient initiation or consequences.

The proposed change to the Safety Limit Technical Specification (2.1.1.2) does not require any physical change to any plant system, structure, or component. The change to establish the peak fuel centerline temperature as the safety limit is consistent with the Standard Review Plan (SRP) for ensuring that the fuel design limits are met. Operations and analysis will continue to be in compliance with Nuclear Regulatory Commission (NRC) regulations. The peak fuel centerline temperature is the basis for protecting the fuel and is consistent with the analogous wording for other pressurized water reactor (PWR) plants. Providing the peak fuel centerline melt temperature as the safety limit does not impact the initiation or the mitigation of an accident.

The proposed change to remove the total planar radial peaking factor (F^T_{XY}, Technical Specification 3.2.2) is based on a methodology change. During and after the transition to AREVA Advanced CE–14 HTP fuel, the core analyses are performed using AREVA methodologies. These methodologies do not use the total planar radial peaking factor (F^T_{XY}) as an initial value in the accident analyses. The linear heat rate algorithm limits are provided by the total integrated radial peaking factor, azimuthal power tilt, and axial shape index. The linear heat rate is evaluated in accordance with NRC-approved methodology and meets acceptance criteria. The total planar radial peaking factor is not an accident initiator and does not play a role in accident mitigation. A number of other changes are also made to remove references to Technical Specification 3.2.2 throughout the Technical Specifications.

Topical reports have been reviewed and approved by the NRC for use in determining core operating limits. The core operating limits to be developed using the new methodologies will be established in accordance with the applicable limitations as documented in the appropriate NRC Safety Evaluation reports. The proposed change to add and remove various topical reports to Technical Specification 5.6.5 enables the use of appropriate methodologies to re-analyze certain events. The proposed methodologies will ensure that the plant continues to meet applicable design criteria and safety analysis acceptance criteria.

The proposed change to the list of NRC-approved methodologies listed in Technical Specification 5.6.5 is administrative in nature and has no impact on any plant configuration or system performance relied upon to mitigate the consequences of an accident. The proposed change will update the listing of NRC-approved methodologies to remove methods no longer used and add new methods consistent with the transition to AREVA Advanced CE–14 HTP fuel. Changes to the calculated core operating limits may only be made using NRC-approved methods, must be consistent with all applicable safety analysis limits and are controlled by the 10 CFR 50.59 process. The list of methodologies in the Technical Specifications does not impact either the initiation of an accident or the mitigation of its consequences.

Therefore, the proposed change does not involve a significant increase in the probability or consequences of an accident previously evaluated.

2. Does the proposed amendment create the possibility of a new or different type of accident from any accident previously evaluated?

No.

Use of AREVA Advanced CE–14 HTP fuel in the Calvert Cliffs reactor cores is consistent with the current plant design bases and does not adversely affect any fission product barrier, nor does it alter the safety function of safety systems, structures, or components, or their roles in accident prevention or mitigation. The operational characteristics of AREVA Advanced CE–14 HTP fuel are bounded by the safety analyses. The AREVA Advanced CE–14 HTP fuel design performs within fuel design limits and does not create the possibility of a new or different type of accident.

The proposed change to the Safety Limit Technical Specification (2.1.1.2) does not require any physical change to any plant system, structure, or component, nor does it require any change in safety analysis methods or results. The existing analyses remain unchanged and do not affect any accident initiators that would create a new accident.

The proposed change to remove the total planar radial peaking factor (F^T_{XY}, Technical Specification 3.2.2) is based on a change in analytical methods needed to support the physical fuel change. These methodologies do not use the total planar radial peaking factor (F^T_{XY}) as an initial value in the accident analysis. The total planar radial peaking factor does not play a role in accident mitigation and cannot create the possibility of a new or different kind of accident. A number of other changes are made to remove references to Technical Specification 3.2.2 throughout the Technical Specifications.

The proposed change to the list of topical reports used to determine the core operating limits is administrative in nature and has no impact on any plant configuration or on system performance. It updates the list of NRC-approved topical reports used to develop the core operating limits. There is no change to the parameters within which the plant is normally operated. The possibility of a new or different accident is not created.

Therefore, the proposed change does not create the possibility of a new or different kind of accident from any accident previously evaluated.

3. Does the proposed amendment involve a significant reduction in a margin of safety?

No.

Use of AREVA Advanced CE–14 HTP fuel is consistent with the current plant design bases and does not adversely affect any fission product barrier, nor does it alter the safety function of safety systems, structures, or components, or their roles in accident prevention or mitigation. The operational characteristics of AREVA Advanced CE–14 HTP fuel are bounded by the safety analyses. The AREVA Advanced CE–14 HTP fuel design performs within fuel design limits. The proposed changes do not result in exceeding design basis limits. Therefore, all licensed safety margins are maintained.

The proposed change to the Safety Limit Technical Specification (2.1.1.2) does not require any physical change to any plant system, structure, or component, nor does it require any change in safety analysis methods or results. Therefore, by changing the safety limit from peak linear heat rate to peak fuel centerline temperature, the margin as established in the current licensing basis remains unchanged.

The proposed change to remove the total planar radial peaking factor (F^T_{XY}, Technical Specification 3.2.2) is based on a methodology change. The linear heat rate algorithm limits are provided by the total integrated radial peaking factor, azimuthal power tilt, and axial shape index. The linear heat rate is evaluated in accordance with NRC-approved methodology and meets acceptance criteria. Therefore, the margin as established for the linear heat rate remains unchanged. A number of other changes are made to remove references to Technical Specification 3.2.2 throughout the Technical Specifications.

The proposed change to the list of topical reports does not amend the cycle specific parameters presently required by the Technical Specifications. The individual Technical Specifications continue to require operation of the plant within the bounds of the limits specified in the COLR [Core Operating Limits Report]. The proposed change to the list of analytical methods referenced in the COLR is administrative in nature and does not impact the margin of safety.

Therefore, the proposed change does not involve a significant reduction in the margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendments request involves no significant hazards consideration.

Attorney for licensee: Carey Fleming, Sr. Counsel—Nuclear Generation, Constellation Generation Group, LLC, 750 East Pratt Street, 17th floor, Baltimore, MD 21202.

NRC Branch Chief: Nancy L. Salgado.

Entergy Nuclear Operations, Inc., Docket No. 50–293, Pilgrim Nuclear Power Station, Plymouth County, Massachusetts

Date of amendment request: March 15, 2010.

Description of amendment request: The proposed amendment would revise a Technical Specification (TS) to address the increased setpoints and setpoint tolerances for Safety Relief Valves (SRVs) and Spring Safety Valves (SSVs) and changes related to the replacement of four Target Rock two-stage SRVs with more reliable three-stage SRVs and two existing Dresser 3.749 inch throat diameter SSVs with Dresser 4.956 inch diameter SSVs.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration which is presented below:

1. Does the proposed change involve a significant increase in the probability or consequences of an accident previously evaluated?

Response: No.

The proposed change increases the allowable as-found SRV and SSV setpoint tolerance, determined by test after the valves have been removed from service, from ± 1% to ± 3%. The proposed change also increases the SRV and SSV setpoints. Analysis of these changes demonstrates that reactor pressure will be maintained below the applicable code overpressure limits. The proposed change increases the SSV discharge capacity due to its increased throat diameter. The proposed change does not alter the TS requirements for the number of SRVs and SSVs required to be operable, the allowable as-left lift setpoint tolerance, the testing frequency, or the manner in which the valves are operated. Consistent with current TS requirements, the proposed change continues to require that the safety valves be adjusted to within ± 1% of their nominal lift setpoints following testing. The proposed increase in the SRV and SSV setpoint complies with the ASME Boiler and Pressure Vessel (B&PV) Code (1965 Edition, including January 1966 Addendum) for the pressure vessel, USAS Piping Code Section B31.1 for the steam space piping, and ASME Section III for the reactor coolant system recirculation piping. Since the proposed change does not alter the manner in which the valves are operated, there is no significant impact on the reactor operation.

The proposed change does not involve a change to the safety function of the valves. The proposed TS revision involves no significant changes to the operation of any systems or components in normal or accident operating conditions. Therefore, these changes will not increase the probability of an accident previously evaluated.

Since an SSV setpoint increase and setpoint tolerance will increase the SSV safety valve opening pressure and an increase in the SSV throat size will increase the SSV flow capacity, the SSV dynamic loads are expected to increase. Entergy has evaluated the SSV dynamic loads for the associated piping. All piping and structures were found to meet Code requirements.

Since an SRV setpoint and the setpoint tolerance increase will increase the SRV valve opening pressure, the SRV discharge dynamic loads will increase. Entergy has evaluated the SRV dynamic load increases for the associated piping and torus submerged structures and the evaluation concluded that all piping and structures were found to meet Code requirements.

The proposed revision to the HPCI [high-pressure coolant injection] and RCIC [Reactor Core Isolation Cooling] pump operability determination surveillance follows the format of BWR Standard Technical Specification surveillance, and complies with in-service testing for pump operability determination in accordance with ASME OM Code requirement.

Generic considerations related to the change in setpoints and setpoint tolerance were addressed in NEDC–31753P, "BWROG In-Service Pressure Relief Technical Specification Revision Licensing Topical Report," and were reviewed and approved by the NRC in a safety evaluation dated March 8, 1993. General Electric Hitachi Company (GEH) completed plant-specific analyses to assess the impact of increase in SRV and SSV setpoints and increase in the setpoint tolerance from ± 1% to ± 3%. The impact of the increases in the SRV and SSV setpoints and increases in the setpoint tolerances, as addressed in this analysis, included vessel overpressure, Updated Final Safety Analysis Report (UFSAR) Chapter 14 events, ATWS [Anticipated Transient Without Scram], Loss of Coolant Accident (LOCA), containment response and dynamic loads, high-pressure systems performance, operating mode and equipment out of service. The proposed change is supported by GEH analysis of events that credit the SRVs and SSVs.

The plant specific evaluations, required by the NRC's safety evaluation and performed to support this proposed change, demonstrate that there is no change to the design core thermal limits and adequate margin to the reactor coolant system pressure limits exists. These analyses also demonstrate that operation of Core Standby Cooling Systems (CSCS) is not adversely affected and the containment response following a LOCA is acceptable. The plant systems associated with these proposed changes are capable of meeting applicable design basis requirements and retain the capability to mitigate the consequences of accidents described in the UFSAR. Therefore, these changes do not involve an increase in the consequences of an accident previously evaluated.

Therefore, the proposed change does not involve a significant increase in the probability or consequences of an accident previously evaluated.

2. Does the proposed change create the possibility of a new or different kind of accident from any accident previously evaluated?

Response: No.

The proposed change increases the allowable as-found lift setpoint tolerance for the Pilgrim SRV and SSV valves. The proposed change to increase the tolerance was developed in accordance with the provisions contained in the NRC safety evaluation for NEDC–31753P. SRVs and SSVs installed in the plant following testing will continue to meet the current tolerance acceptance criteria of ± 1% of the nominal setpoint. The proposed change does not affect the manner in which the overpressure protection system is operated; therefore, there are no new failure mechanisms for the overpressure protection system.

The proposed changes do not change the safety function of the SRVs and SSVs, or HPCI and RCIC systems. There is no alteration to the parameters within which the plant is normally operated. The increase in SRV and SSV setpoints, setpoint tolerance, and increased SSV discharge capacity are not precursors to new or different kinds of accidents and do not initiate new or different kinds of accidents. The impact of these changes have been analyzed and found to be acceptable within the design limits and plant operating procedures.

As a result, no new failure modes are being introduced. Therefore, the proposed change does not create the possibility of a new or different kind of accident from any previously evaluated.

3. Does the proposed change involve a significant reduction in a margin of safety?

Response: No.

The margin of safety is established through the design of the plant structures, systems, and components, the parameters within which the plant is operated and the establishment of the setpoints for the actuation of equipment relied upon to respond to an event. The proposed change modifies the setpoints at which protective actions are initiated, and [* * *] does not change the requirements governing operation or availability of safety equipment assumed to operate to preserve the margin of safety.

Establishment of the ± 3% SRV and SSV setpoint tolerance limit does not adversely affect the operation of any safety-related component or equipment. Evaluations performed in accordance with the NRC safety evaluation for NEDC–31753P have concluded that all design limits will continue to be met.

Therefore, the proposed change does not involve a significant reduction in the margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Attorney for licensee: Mr. William C. Dennis, Assistant General Counsel, Entergy Nuclear Operations, Inc., 400 Hamilton Avenue, White Plains, NY 10601.

NRC Branch Chief: Nancy Salgado.

Entergy Operations, Inc., Docket No. 50–382, Waterford Steam Electric Station, Unit 3, St. Charles Parish, Louisiana

Date of amendment request: February 22, 2010.

Description of amendment request: The proposed amendment will modify Technical Specification (TS) 3/4.9.4, "Containment Building Penetrations," to allow alternative means of penetration closure during Core Alterations or irradiated fuel movement while in refueling operations. Additional improvements to the TS are also being proposed, as well as the elimination of TS 3/4.9.9, "Containment Purge Valve Isolation System." The proposed changes are consistent with Revision 3 of NUREG–1432, "Standard Technical Specifications Combustion Engineering Plants."

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. Does the proposed change involve a significant increase in the probability or consequences of an accident previously evaluated?

Response: No.

TS 3/4.9.4 currently allows containment penetration flow paths to be open during Core Alterations or movement of irradiated fuel within containment under specific administrative controls. The proposed change would allow additional approved methods for ensuring positive penetration closure. The fuel handling accident (FHA) radiological analysis does not take credit for containment isolation or filtration. Therefore, the time required to close any open penetrations does not affect the radiological analysis dose calculations and the proposed change does not involve a significant increase in the consequences of an accident previously evaluated. The administrative controls for containment penetration closure are conservative even though not required by the accident analysis.

The proposed revision only provides alternate methods of penetration closure and does not alter any plant equipment where the probability of an accident would be increased. The incorporation of purge valve isolation surveillance requirements for assuring purge valve Operability has no effect on the probability or consequences of the analyzed accidents.

Therefore, this change does not involve a significant increase in the probability or consequences of an accident previously evaluated.

2. Does the proposed change create the possibility of a new or different kind of accident from any accident previously evaluated?

Response: No.

Alternative methods of providing penetration closure do not create accident initiators and do not represent a significant change in the configuration of the plant. The proposed allowance to secure containment penetrations during refueling operations will not adversely effect plant safety functions or equipment operating practices such that a new or different accident could be created.

Therefore, the proposed change does not create the possibility of a new or different kind of accident from any previously evaluated.

3. Does the proposed change involve a significant reduction in a margin of safety?

Response: No.

TS Limiting Condition for Operation (LCO) 3.9.4 closure requirements for containment penetrations ensure that the consequences of a postulated FHA inside containment during Core Alterations or fuel handling activities are minimized. The LCO establishes containment closure requirements, which limit the potential escape paths for fission products by ensuring that there is at least one barrier to the release of radioactive material. The proposed change to allow alternate methods of reaching containment penetration closure during Core Alterations or fuel movement does not affect the expected dose consequences of a FHA since it does not credit containment building closure. The proposed administrative controls provide assurance that prompt closure of the penetration flow paths will be accomplished in the event of a FHA inside containment thus minimizing the transmission of radioactive material from the containment to the outside environment. The incorporation of purge valve isolation surveillance requirements does not reduce any margins of safety.

Therefore, the proposed change does not involve a significant reduction in a margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Attorney for licensee: Joseph A. Aluise, Associate General Council—Nuclear, Entergy Services, Inc., 639 Loyola Avenue, New Orleans, Louisiana 70113.

NRC Branch Chief: Michael T. Markley.

Entergy Operations, Inc., Docket No. 50–382, Waterford Steam Electric Station, Unit 3, St. Charles Parish, Louisiana

Date of amendment request: February 24, 2010.

Description of amendment request: The proposed amendment deletes Operating License Condition 2.C.14 (Fuel Movement in the Fuel Handling Building) due to electing to comply with Section 50.68, "Criticality accident requirements," of Title 10 of the Code of Federal Regulations (10 CFR). The Operating License Condition 2.C.14, "no more than one fuel assembly shall be out of its shipping container or storage location at a given time," was one basis for the exemption from the criticality alarm system requirements of 10 CFR 70.24. The criticality accident requirements can be met either by complying with 10 CFR 70.24 or 10 CFR 50.68 requirements. The 10 CFR 50.68 criteria are now being used; therefore, Operating License Condition 2.C.14 is no longer applicable.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. Does the proposed change involve a significant increase in the probability or consequences of an accident previously evaluated?

Response: No.

The proposed amendment deletes Operating License Condition 2.C.14 (Fuel Movement in the Fuel Handling Building) due to electing to comply with 10 CFR 50.68 requirements.

The proposed changes will not alter the configuration of the storage racks or their environment. The fuel racks will not be operated outside of their design limits, and no additional loads will be imposed on them. Therefore, these changes will not affect fuel storage rack performance or reliability. No new equipment will be introduced into the plant. The accuracies and response characteristics of existing instrumentation will not be modified. The proposed changes will not require, or result in, a change in safety system operation, and will not affect any system interface with the fuel storage racks. Fuel assembly placement will continue to be controlled in accordance with approved fuel handling procedures. All the requirements of 10 CFR 50.68 continue to be met which ensures no significant increase in the probability or consequences of an accident previously evaluated.

The proposed changes will not affect any barrier that mitigates dose to the public, and will not result in a new release pathway being created. The functions of equipment designed to control the release of radioactive material will not be impacted, and no mitigating actions described or assumed for an accident in the UFSAR [Updated Final Safety Analysis Report] will be altered or prevented. No assumptions previously made in evaluating the consequences of an accident will need to be modified. Onsite dose will not be increased, so the access of plant personnel to vital areas of the plant will not be restricted, and mitigating actions will not be impeded.

Therefore, it is concluded that the proposed changes do not significantly increase either the probability or consequences of any accident previously evaluated.

2. Does the proposed change create the possibility of a new or different kind of

accident from any accident previously evaluated?

Response: No.

The proposed amendment deletes Operating License Condition 2.C.14 (Fuel Movement in the Fuel Handling Building) due to electing to comply with 10 CFR 50.68 requirements.

10 CFR 50.68(b)(1) provides the requirements to ensure that plant procedures shall prohibit the handling and storage at any one time of more fuel assemblies than have been determined to be safely subcritical under the most adverse moderation conditions feasible by unborated water. By meeting this criteria, the removal of Operating License Condition 2.C.14 will not create the possibility of a new or different kind of accident from any accident previously evaluated.

Therefore, it is concluded that 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 a margin of safety?

Response: No.

The proposed amendment deletes Operating License Condition 2.C.14 (Fuel Movement in the Fuel Handling Building) due to electing to comply with 10 CFR 50.68 requirements.

10 CFR 50.68(b)(1) provides similar requirements as that contained in Operating License Condition 2.C.14. The NRC has approved the [Waterford Steam Electric Station, Unit 3] use of 10 CFR 50.68 criteria. By meeting the 10 CFR 50.68(b)(1) requirements, there will not be a significant reduction in a margin of safety.

Therefore, it is concluded that the proposed changes do not involve a significant reduction in a margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Attorney for licensee: Joseph A. Aluise, Associate General Council—Nuclear, Entergy Services, Inc., 639 Loyola Avenue, New Orleans, Louisiana 70113.

NRC Branch Chief: Michael T. Markley.

Exelon Generation Company, LLC, Docket No. 50–461, Clinton Power Station, Unit No. 1, DeWitt County, Illinois

Date of amendment request: February 15, 2010.

Description of amendment request: The proposed amendment would relocate selected Surveillance Requirement frequencies from the Clinton Power Station, Unit No. 1 (Clinton) Technical Specifications (TSs) to a licensee-controlled program. This change is based on the NRC-approved Industry Technical Specifications Task Force (TSTF) change TSTF–425, "Relocate Surveillance Frequencies to Licensee Control—Risk Informed Technical Specification Task Force (RITSTF) Initiative 5b," Revision 3, (Agencywide Documents Access and Management System (ADAMS) Accession Package No. ML090850642). Plant-specific deviations from TSTF–425 are proposed to accommodate differences between the Clinton TSs and the model TSs originally used to develop TSTF–425.

The Nuclear Regulatory Commission (NRC) staff issued a Notice of Availability for TSTF–425 in the **Federal Register** on July 6, 2009 (74 FR 31996). The notice included a model safety evaluation (SE) and a model no significant hazards consideration (NSHC) determination. In its application dated February 15, 2010 (ADAMS Accession No. ML100470787), the licensee affirmed the applicability of the model NSHC determination which is presented below.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), an analysis of the issue of NSHC 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 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, Exelon will perform a probabilistic risk evaluation using the guidance contained in NRC approved NEI 04–01, Rev. 1. The methodology provides reasonable acceptance guidelines and methods for evaluating the risk increase of proposed changes to surveillance frequencies consistent with Regulatory Guide 1.177 [An Approach for Plant-Specific, Risk-Informed Decision-making: Technical Specifications].

Therefore, the proposed changes do not involve a significant reduction in a margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Attorney for licensee: Mr. Bradley J. Fewell, Associate General Counsel, Exelon Generation Company, LLC, 4300 Winfield Road, Warrenville, IL 60555.

NRC Branch Chief: Stephen J. Campbell.

Exelon Generation Company, LLC, Docket No. 50–461, Clinton Power Station, Unit No. 1, DeWitt County, Illinois

Date of amendment request: March 3, 2010.

Description of amendment request: The proposed amendment revises Technical Specification (TS) 3.1.7, "Standby Liquid Control (SLC) System," to extend the completion time (CT) for Condition B (*i.e.*, "Two SLC subsystems inoperable") from 8 hours to 72 hours.

Basis for proposed no significant hazards consideration: As required by 10 CFR 50.91(a), an analysis of the issue of no significant hazards consideration is presented below:

1. Does the proposed amendment involve a significant increase in the probability or

consequences of any accident previously evaluated?

Response: No.

The proposed amendment revises Technical Specification (TS) 3.1.7, "Standby Liquid Control (SLC) System," to extend the completion time (CT) for Condition B (*i.e.*, "Two SLC subsystems inoperable.") from eight hours to 72 hours.

The proposed change is based on a risk-informed evaluation performed in accordance with Regulatory Guides (RG) 1.174, "An Approach for Using Probabilistic Risk Assessment in Risk-Informed Decisions On Plant-Specific Changes to the Licensing Basis," and RG 1.177, "An Approach for Plant-Specific, Risk-Informed Decision-making: Technical Specifications."

The proposed amendment modifies an existing CT for a dual-train SLC system inoperability. The condition evaluated, the action requirements, and the associated CT do not impact any initiating conditions for any accident previously evaluated.

The proposed amendment does not increase postulated frequencies or the analyzed consequences of an Anticipated Transient Without Scram (ATWS). Requirements associated with 10 CFR 50.62 will continue to be met. In addition, the proposed amendment does not increase postulated frequencies or the analyzed consequences or a large-break loss-of-coolant accident for which the SLC system will be used for pH control. The extended CT provides additional time to implement actions in response to a dual-train SLC system inoperability, while also minimizing the risk associated with continued operation. Therefore, the proposed change does not involve a significant increase in the probability or consequences of an accident previously evaluated.

2. Does the proposed amendment create the possibility of a new or different kind of accident from any previously evaluated?

Response: No.

The proposed amendment revises TS 3.1.7 to extend the CT for Condition B from eight hours to 72 hours. The proposed amendment does not involve any change to plant equipment or system design functions. This proposed TS amendment does not change the design function of the SLC system and does not affect the system's ability to perform its design function. The SLC system provides a method to bring the reactor, at any time in a fuel cycle, from full power and minimum control rod inventory to a subcritical condition with the reactor in the most reactive xenon free state without taking credit for control rod movement. Required actions and surveillance requirements are sufficient to ensure that the SLC system functions are maintained. No new accident initiators are introduced by this amendment. Therefore, the proposed amendment does not create the possibility of a new or different kind of accident from any previously evaluated.

3. Does the proposed amendment involve a significant reduction in a margin of safety?

Response: No.

The proposed amendment revises TS 3.1.7 to extend the CT for Condition B from eight hours to 72 hours. The proposed amendment does not involve any change to plant equipment or system design functions. The margin of safety is established through the design of the plant structures, systems, and components, the parameters within which the plant is operated, and the setpoints for the actuation of equipment relied upon to respond to an event.

The proposed amendment does not modify the condition or point at which SLC is initiated, nor does it affect the system's ability to perform its design function. In addition, the proposed change complies with the intent of the defense-in-depth philosophy and the principle that sufficient safety margins are maintained, consistent with RG 1.177 requirements (i.e., Section C, "Regulatory Position," paragraph 2.2 "Traditional Engineering considerations").

Based on the above analysis, EGC concludes that the proposed amendment presents no significant hazards consideration under the standards set forth in 10 CFR 50.92(c), and, accordingly, a finding of "no significant hazards consideration" is justified.

The NRC staff has reviewed the analysis adopted by the licensee and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Attorney for licensee: Mr. Bradley J. Fewell, Associate General Counsel, Exelon Generation Company, LLC, 4300 Winfield Road, Warrenville, IL 60555.

NRC Branch Chief: Stephen J. Campbell.

Exelon Generation Company, LLC, and PSEG Nuclear, LLC, Docket Nos. 50–277 and 50–278, Peach Bottom Atomic Power Station (PBAPS), Units 2 and 3, York and Lancaster Counties, Pennsylvania

Date of amendment request: August 31, 2009.

Description of amendment request: The proposed amendment would modify the PBAPS Technical Specifications (TS) by relocating specific surveillance frequencies to a licensee-controlled program with the implementation of Nuclear Energy Institute (NEI) 04–10, "Risk-Informed Technical Specifications Initiative 5b, Risk-Informed Method for Control of Surveillance Frequencies." Additionally, the change would add a new program, the Surveillance Frequency Control Program, to TS Section 5, Administrative Controls. The changes are based on NRC-approved Industry Technical Specifications Task Force (TSTF) Traveler 425, Revision 3, "Relocate Surveillance Frequencies to Licensee Control—Risk Informed Technical Specification Task Force Initiative 5b," with optional changes and variations as described in Attachment 1, Section 2.2 of the licensee's submittal dated August 31, 2009.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. Do the proposed changes involve a significant increase in the probability or consequences of any accident previously evaluated?

Response: No.

The proposed changes relocate the specified frequencies for periodic surveillance requirements to licensee control under a new Surveillance Frequency Control Program [SFCP]. 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 changes do not involve a significant increase in the probability or consequences of an accident previously evaluated.

2. Do the proposed changes 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 changes. 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. Do the proposed changes involve a significant reduction in the margin of safety?

Response: No.

[* * * T]here is no impact to safety analysis acceptance criteria as described in the plant licensing basis. To evaluate a change in the relocated surveillance frequency, Exelon 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.

The NRC staff has reviewed the licensee's analysis and, based on this review, and with the changes noted above, it appears that the three standards of 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves NSHC.

Attorney for licensee: Mr. J. Bradley Fewell, Associate General Counsel, Exelon Generation Company LLC, 4300 Winfield Road, Warrenville, IL 60555.

NRC Branch Chief: Harold K. Chernoff.

FPL Energy Seabrook, LLC Docket No. 50–443, Seabrook Station, Unit No. 1, Rockingham County, New Hampshire

Date of amendment request: March 16, 2010.

Description of amendment request: The proposed changes would revise the Seabrook Technical Specifications requirement that the Operations Manager shall have held a senior reactor operator license for the Seabrook Station prior to assuming the Operations Manager position. Specifically, the proposed change would require the Operations Manager to meet one of the following: (1) Hold a senior operator license; (2) have held a senior operator license for a similar unit; or (3) have been certified for equivalent senior operator knowledge. In its application dated March 16, 2010, the licensee concluded that the no significant hazards consideration (NSHC) determination presented in the notice is applicable to Seabrook Station.

Basis for proposed NSHC determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of NSHC, which is presented below:

1. The proposed change does not involve a significant increase in the probability or consequences of an accident previously evaluated.

[The requested change would only affect the qualification requirements for the Operations Manager Position]. The proposed change does not impact the configuration or function of plant structures, systems, or components (SSCs) or the manner in which SSCs are operated, maintained, modified, tested, or inspected. No actual facility equipment or accident analyses will be affected by the proposed changes. Therefore, this request has no [significant] impact on the probability or consequences of an accident previously evaluated.

2. The proposed change does not create the possibility of a new or different kind of accident from any accident previously evaluated.

[The requested change would only affect the qualification requirements for the Operations Manager Position]. The proposed change does not alter the plant configuration, require new plant equipment to be installed, alter accident analysis assumptions, add any initiators, or affect the function of plant systems or the manner in which systems are operated, maintained, modified, tested, or inspected. Therefore, this request does not create the possibility of a new or different kind of accident from any accident previously evaluated.

3. The proposed change does not involve a significant reduction in a margin of safety.

Margin of safety is associated with confidence in the ability of the fission product barriers (i.e., fuel cladding, reactor coolant system pressure boundary, and containment structure) to limit the level of radiation dose to the public. [The requested change would only affect the qualification requirements for the Operations Manager Position]. No actual plant equipment or accident analyses will be affected by the proposed changes. Additionally, the proposed changes will not relax any criteria used to establish safety limits, will not relax any safety system settings, and will not relax the bases for any limiting conditions for operation. The safety analysis acceptance criteria are not affected by this change. The proposed change will not result in plant operation in a configuration outside the design basis. The proposed change does not adversely affect systems that respond to safely shutdown the plant and to maintain the plant in a safe shutdown condition. Therefore, these proposed changes do not involve a significant reduction in a margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, and with the changes noted above, it appears that the three standards of 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves NSHC.

Attorney for licensee: M.S. Ross, Florida Power & Light Company, P.O. Box 14000, Juno Beach, FL 33408–0420.

NRC Branch Chief: Harold K. Chernoff.

Northern States Power Company—Minnesota, Docket Nos. 50–282 and 50–306, Prairie Island Nuclear Generating Plant, Units 1 and 2 (PINGP), Goodhue County, Minnesota

Date of amendment request: November 24, 2009.

Description of amendment request: The proposed amendments would make changes to Technical Specification (TS) Section 4.2.1, Fuel Assemblies, and TS Section 5.6.5, Core Operating Limit Report, by revising the TS to allow the use of Optimized ZIRLO™ fuel rod cladding material.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. Does the proposed change involve a significant increase in the probability or consequences of an accident previously evaluated?

Response: No.

Westinghouse Electric Company, LLC (Westinghouse) topical report WCAP–12610–P–A and CENPD–404–P–A, Addendum 1–A "Optimized ZIRLO™", July 2006, provides the details and results of material testing of Optimized ZIRLO™ compared to standard ZIRLO™ as well as the material properties to be used in various models and methodologies when analyzing Optimized ZIRLO™. The Nuclear Regulatory Commission (NRC) has allowed use of Optimized ZIRLO™ fuel cladding material in Westinghouse fueled reactors provided that licensees ensure compliance with the conditions and limitations set forth in the NRC Safety Evaluation (SE) for the topical report. By satisfying the conditions and limitations of the NRC SE through completed actions and its approved reload safety evaluation process, the licensee ensures that the effects of Optimized ZIRLO™ on PINGP core performance are evaluated and that the probability or consequences of previously-evaluated accidents are not increased.

Therefore, the proposed change of adding a cladding material does not result in an increase to the probability or consequences of an accident previously evaluated.

2. Does the proposed change create the possibility of a new or different kind of accident from any accident previously evaluated?

Response: No.

Material properties of this fuel design have been evaluated in Westinghouse topical report WCAP–12610–P–A and CENPD–404–P–A, Addendum 1–A "Optimized ZIRLO™" July 2006. That report provides the details and results of material testing of Optimized ZIRLO™ compared to standard ZIRLO™ as well as the material properties to be used in various models and methodologies when analyzing Optimized ZIRLO™. Neither that topical report nor the associated NRC SE identifies the possibility of a new or different kind of accident resulting from this change for generic application in Westinghouse reactors. As demonstrated in that topical report and stated in the NRC SE, there is reasonable assurance that under both normal and accident conditions, the Optimized ZIRLO™ fuel cladding will be able to safely operate and comply with NRC regulations. By satisfying the conditions and limitations of the NRC SE by virtue of its completed actions and its approved reload safety evaluation process, the licensee ensures that the effects of Optimized ZIRLO™ are evaluated and will not create the possibility of a new or different kind of accident. Assurance that the possibility of new or different type of accidents will not be created on a site-specific basis is inherent to the reload safety evaluation process approved for use at the PINGP. Site specific evaluation of the PINGP core designs with Optimized ZIRLO™ will be performed programmatically and necessarily by the approved reload safety evaluation process.

Therefore, the proposed change of adding a cladding material does not create the possibility of a new or different kind of accident from any accident previously evaluated.

3. Does the proposed change involve a significant reduction in a margin of safety?

Response: No.

The cladding material used in the fuel rods is designed and tested to prevent excessive fuel temperatures, excessive internal rod gas pressure due to fission gas releases, and excessive cladding stresses and strains. Optimized ZIRLO™ was developed to meet these needs and provides a reduced corrosion rate while maintaining the benefits of mechanical strength and resistance to accelerated corrosion from abnormal chemistry conditions. Westinghouse topical report WCAP–12610–P–A and CENPD–404–P–A, Addendum 1–A "Optimized ZIRLO™, July 2006, provides the details and results of material testing of Optimized ZIRLO™ compared to standard ZIRLO™ as well as the material properties to be used in various models and methodologies when analyzing Optimized ZIRLO™. The NRC has allowed use of Optimized ZIRLO™ fuel cladding material detailed within this topical report as detailed within their SE. Therefore, the change in material does not result in a significant reduction in a margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment requests involve no significant hazards consideration.

Attorney for licensee: Peter M. Glass, Assistant General Counsel, Xcel Energy Services, Inc., 414 Nicollet Mall, Minneapolis, MN 55401.

NRC Branch Chief: Robert J. Pascarelli.

Northern States Power Company—Minnesota, Docket Nos. 50–282 and 50–306, Prairie Island Nuclear Generating Plant, Units 1 and 2, Goodhue County, Minnesota

Date of amendment request: January 27, 2010.

Description of amendment request: The proposed amendments would make changes to the Technical Specifications (TS) to revise TS 3.8.3, "Diesel Fuel Oil". The amendments would revise the diesel fuel oil (DFO) storage volumes applicable to Unit 1 in TS 3.8.3 Condition statements A and D, and increase the Unit 1 DFO supply required by surveillance requirement 3.8.3.1. The amendments would clarify wording in TS 3.8.3 Condition B statement which applies to both units.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. Does the proposed amendment involve a significant increase in the probability or consequences of an accident previously evaluated?

Response: No.

This license amendment request proposes to increase the emergency diesel generator fuel oil storage volumes specified in the Technical Specification Condition statements and Surveillance Requirements. Also a word was added to a Condition statement to clarify its meaning.

The emergency diesel generators and their supporting diesel fuel oil storage systems are not accident initiators and therefore the proposed fuel oil storage volume increases do not involve an increase in the probability of an accident.

The proposed increased diesel fuel oil storage volumes provide sufficient volumes to maintain the current licensing basis for emergency diesel generator operation. Thus the proposed fuel oil storage volume increases do not involve a significant increase in the consequences of an accident.

The proposed Technical Specification Condition statement wording clarification is administrative and thus does not involve an increase in the probability of an accident or an increase in the consequences of an accident.

Therefore, the proposed Technical Specification changes do not involve a significant increase in the probability or consequences of an accident previously evaluated.

2. Does the proposed amendment create the possibility of a new or different kind of accident from any accident previously evaluated?

Response: No.

This license amendment request proposes to increase the emergency diesel generator fuel oil storage volumes specified in the Technical Specification Condition statements and Surveillance Requirements. Also a word was added to a Condition statement to clarify its meaning.

The proposed Technical Specification changes which increase emergency diesel generator fuel oil storage volumes do not change any system operations or maintenance activities. The changes do not involve physical alteration of the plant, that is, no new or different type of equipment will be installed. The changes do not alter assumptions made in the safety analyses but ensures that the diesel generators operate as assumed in the accident analyses. These changes do not create new failure modes or mechanisms which are not identifiable during testing and no new accident precursors are generated.

The proposed Technical Specification Condition statement wording clarification is administrative and thus does not create the possibility of a new or different kind of accident.

Therefore, the proposed Technical Specification changes do not create the possibility of a new or different kind of accident from any previously evaluated.

3. Does the proposed amendment involve a significant reduction in a margin of safety?

Response: No.

This license amendment request proposes to increase the emergency diesel generator fuel oil storage volumes specified in the Technical Specification Condition statements and Surveillance Requirements. Also a word was added to a Condition statement to clarify its meaning.

Since this license amendment proposes Technical Specification changes which increase the required fuel oil storage volumes, margins of safety are increased and thus no margin of safety is reduced as part of this change.

The proposed Technical Specification Condition statement wording clarification is administrative and thus does not involve a significant reduction in a margin of safety.

Therefore, the proposed Technical Specification changes do not involve a significant reduction in a margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment requests involve no significant hazards consideration.

Attorney for licensee: Peter M. Glass, Assistant General Counsel, Xcel Energy Services, Inc., 414 Nicollet Mall, Minneapolis, MN 55401.

NRC Branch Chief: Robert J. Pascarelli.

Southern Nuclear Operating Company, Inc., Docket Nos. 50–424 and 50–425, Vogtle Electric Generating Plant, Units 1 and 2, Burke County, Georgia

Date of amendment request: February 2, 2010.

Description of amendment request: The proposed amendments would revise the verification requirements for the Reactor Trip System Instrumentation. Specifically, the amendment proposes the addition to Table 3.3.1–1 of a response time measurement for the verification of the Power Range Neutron High Positive Rate Trip (PFRT) function as recommended by Westinghouse Nuclear Safety Advisory Letter (NSAL–09–01) "Rod Withdrawal at Power Analysis for Reactor Coolant System Overpressure."

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. Does the proposed amendment involve a significant increase in the probability or consequences of an accident previously evaluated?

Response: No.

The proposed change to Vogtle Electric Generating Plant (VEGP) Technical Specification (TS) 3.3.1, "Reactor Trip

System (RTS) Instrumentation," Table 3.3.1–1, "Reactor Trip System Instrumentation" does not significantly increase the probability or consequences of an accident previously evaluated in the Updated Final Safety Analysis Report (UFSAR). The overall protection system performance will remain within the bounds of the accident analysis since there are no hardware changes. The design of the Reactor Trip System (RTS) instrumentation, specifically the positive range neutron flux high positive rate trip (PFRT) function, will be unaffected. The reactor protection system will continue to function in a manner consistent with the plant design basis. All design, material, and construction standards that were applicable prior to the request are maintained.

The proposed change adds an additional surveillance requirement to assure that the PFRT is verified to be consistent with the safety analysis and licensing basis. In this specific case, a response time verification requirement will be added to the PFRT function.

The proposed changes will not modify any system interface. The proposed changes will not affect the probability of any event initiators. There will be no degradation in the performance of or an increase in the number of challenges imposed on safety-related equipment assumed to function during an accident situation. There will be no change to normal plant operating parameters or accident mitigation performance. The proposed change will not alter any assumptions nor change any mitigation actions in the radiological consequences evaluations in the UFSAR.

The proposed change does not adversely affect accident initiators or precursors nor alter the design assumptions, conditions, or configuration of the facility or the manner in which the plant is operated and maintained. The proposed changes do not alter nor prevent the ability of SSCs from performing their intended function to mitigate the consequences of an initiating event within the assumed acceptance limits. The proposed change is consistent with the safety analyses assumptions and resultant consequences. The RCS overpressure limit listed in Specification 2.1.2 of the VEGP Technical Specifications (i.e., 2735 psig) is not violated.

2. Does the proposed amendment create the possibility of a new or different kind of accident from any previously evaluated?

Response: No.

There are no hardware changes nor are there any changes in the method by which any safety related plant system performs its safety function. This change will not affect the normal method of plant operation nor change any operating parameters.

No performance requirements will be affected; however, the proposed change adds an additional surveillance requirement. The additional surveillance requirement is consistent with assumptions made in the safety analyses and licensing basis.

No new accident scenarios, transient precursors, failure mechanisms, or limiting single failures are introduced as a result of this change. There will be no adverse effect or challenges imposed on any safety-related system as a result of this change.

Therefore, the proposed change does not create the possibility of a new or different accident from any accident previously evaluated.

3. Does the proposed amendment involve a significant reduction in a margin of safety?

Response: No.

The proposed change does not affect the acceptance criteria for any analyzed event nor is there a change to any Safety Limits. There will be no effect on the manner in which Safety Limits or Limiting Conditions of Operations are determined, nor will there be any effect on those plant systems necessary to assure the accomplishment of protection functions.

This change is consistent with the assumptions made in the safety analyses. The addition of a surveillance requirement increases the margin of safety by assuring that the associated safety analysis assumption on the PFRT response time is verified.

Therefore, the proposed change does not involve a significant reduction in the margin of safety.

Based on the above, SNC concludes that the proposed amendment does not involve a significant hazards consideration under the standard set forth in 10 CFR 50.92(c), and, accordingly, a finding of "no significant hazards consideration" is justified.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Previously Published Notices of Consideration of Issuance of Amendments to Facility Operating Licenses, Proposed No Significant Hazards Consideration Determination, and Opportunity for a Hearing

The following notices were previously published as separate individual notices. The notice content was the same as above. They were published as individual notices either because time did not allow the Commission to wait for this biweekly notice or because the action involved exigent circumstances. They are repeated here because the biweekly notice lists all amendments issued or proposed to be issued involving no significant hazards consideration.

For details, see the individual notice in the **Federal Register** on the day and page cited. This notice does not extend the notice period of the original notice.

Entergy Nuclear Operations, Inc., Docket No. 50–255, Palisades Nuclear Plant, Van Buren County, Michigan

Date of amendment request: March 31, 2010.

Brief description of amendment request: The proposed amendment would add new license condition 2.C(4) stating that performance of Technical Specification surveillance requirement 3.1.4.3, which verifies control rod freedom of movement, is not required for control rod drive 22 during cycle 21 until the next entry into Mode 3 in a maintenance or refueling outage, whichever is earlier.

Date of publication of individual notice in **Federal Register:** April 14, 2010 (75 FR 19428).

Expiration date of individual notice: June 13, 2010.

Union Electric Company, Docket No. 50–483, Callaway Plant, Unit 1, Callaway County, Missouri

Date of amendment request: March 29, 2010, as supplemented by letter dated March 29, 2010.

Brief description of amendment request: The proposed amendment would revise the Technical Specification (TS) 3.3.2, "Engineered Safety Feature Actuation System (ESFAS) Instrumentation," regarding function 6.g in TS Table 3.3.2–1. Function 6.g provides an auxiliary feedwater (AFW) start signal that is provided to the motor-driven AFW pumps in the event of a trip of both turbine-driven main feedwater pumps. The changes would revise Condition J for ESFAS instrumentation function 6.g to read, "One or more Main Feedwater Pumps trip channel(s) inoperable." The licensee will make corresponding changes to Required Action J.1 and the Note above Required Actions J.1 and J.2 for consistency with the revised Condition.

Date of publication of individual notice in **Federal Register:** April 14, 2010 (75 FR 19431).

Expiration date of individual notice: April 28, 2010, for public comments; June 14, 2010, for hearing requests.

Notice of Issuance of Amendments to Facility Operating Licenses

During the period since publication of the last biweekly notice, the Commission has issued the following amendments. The Commission has determined for each of these amendments that the application complies with the standards and requirements of the Atomic Energy Act of 1954, as amended (the Act), and the Commission's rules and regulations. The Commission has made appropriate findings as required by the Act and the Commission's rules and regulations in 10 CFR Chapter I, which are set forth in the license amendment.

Notice of Consideration of Issuance of Amendment to Facility Operating License, Proposed No Significant

Hazards Consideration Determination, and Opportunity for A Hearing in connection with these actions was published in the **Federal Register** as indicated.

Unless otherwise indicated, the Commission has determined that these amendments satisfy the criteria for categorical exclusion in accordance with 10 CFR 51.22. Therefore, pursuant to 10 CFR 51.22(b), no environmental impact statement or environmental assessment need be prepared for these amendments. If the Commission has prepared an environmental assessment under the special circumstances provision in 10 CFR 51.22(b) and has made a determination based on that assessment, it is so indicated.

For further details with respect to the action see (1) the applications for amendment, (2) the amendment, and (3) the Commission's related letter, Safety Evaluation and/or Environmental Assessment as indicated. All of these items are available for public inspection at the Commission's Public Document Room (PDR), located at One White Flint North, Public File Area 01F21, 11555 Rockville Pike (first floor), Rockville, Maryland. Publicly available records will be accessible from the Agencywide Documents Access and Management System (ADAMS) Public Electronic Reading Room on the internet at the NRC Web site, *http://www.nrc.gov/reading-rm/adams.html*. If you do not have access to ADAMS or if there are problems in accessing the documents located in ADAMS, contact the PDR Reference staff at 1–(800) 397–4209, (301) 415–4737 or by e-mail to *pdr.resource@nrc.gov*.

Entergy Nuclear Operations, Inc., Docket No. 50–333, James A. FitzPatrick Nuclear Power Plant, Oswego County, New York

Date of application for amendment: November 23, 2009, as supplemented by letter dated February 5, 2010.

Brief description of amendment: The amendment modified the Technical Specification (TS) 5.5.7, "Inservice Testing Program," by replacing the references from the American Society of Mechanical Engineers (ASME) Boiler and Pressure Vessel Code to the current Code of Record, the ASME Operation and Maintenance Nuclear Power Plants Code (ASME OM Code), the Code of Record for the James A. FitzPatrick Nuclear Power Plant (JAFNPP) Inservice Testing (IST) Program. This is an administrative amendment to maintain the TS current with the NRC accepted Code of Record for JAFNPP IST Program.

Date of issuance: April 12, 2010.

Effective date: As of the date of issuance, and shall be implemented within 30 days.

Amendment No.: 296.

Renewed Facility Operating License No. DPR–59: The amendment revised the License and the Technical Specifications.

Date of initial notice in **Federal Register:** January 26, 2010 (75 FR 4117).

The February 5, 2010, supplement provided additional information that clarified the application, did not expand the scope of the application as originally noticed, and did not change the NRC staff's original proposed no significant hazards consideration determination as published in the **Federal Register**.

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated April 12, 2010.

No significant hazards consideration comments received: No.

Exelon Generation Company, LLC, Docket Nos. STN 50–454 and STN 50–455, Byron Station (Byron), Unit Nos. 1 and 2, Ogle County, Illinois

Date of application for amendment: September 24, 2009, as supplemented by letters dated November 13, 2009; January 19, 2010; March 1, 2010; March 9, 2010 (two letters); and March 19, 2010.

Brief description of amendment: The amendments adds a new Completion Time (CT) of 144 hours to restore a unit-specific essential service water train to operable status associated with the Limiting Condition for Operation for Technical Specification (TS) 3.7.8, "Essential Service Water (SX) System." The new CT will be used for maintenance during the Byron, Unit No. 2, spring 2010, refueling outage. The licensee requested the new CT to replace two of the four SX pump suction isolation valves without having to shutdown Byron, Unit No. 1; maintenance history has shown that replacement of the SX pump suction isolation valves cannot be assured within the existing 72 hour CT window.

Date of issuance: April 9, 2010.

Effective date: As of the date of issuance and shall be implemented within 30 days.

Amendment Nos.: Unit No. 1—168; Unit No. 2—168.

Facility Operating License Nos. NPF–37 and NPF–66: The amendments revise the TSs and Licenses.

Date of initial notice in **Federal Register:** December 1, 2009 (74 FR 62835).

The supplemental letters provided additional information that clarified the application, did not expand the scope of the application as originally noticed, and did not change the NRC staff's original proposed no significant hazards consideration determination.

The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated April 9, 2010.

No significant hazards consideration comments received: No.

R.E. Ginna Nuclear Power Plant, LLC, Docket No. 50–244, R.E. Ginna Nuclear Power Plant, Wayne County, New York

Date of application for amendment: September 18, 2009.

Brief description of amendment: The amendment revises Technical Specification (TS) 5.5.7, "Inservice Testing Program," by incorporating TS Task Force Traveler (TSTF)-479, "Changes to Reflect Revision of 10 CFR 50.55a," and TSTF–497, "Limit Inservice Testing Program SR [Surveillance Requirement] 3.0.2 Application to Frequencies of 2 Years or Less." Specifically, the amendments (1) replace references to the American Society of Mechanical Engineers (ASME) Boiler and Pressure Vessel Code, Section XI with the ASME Code for Operation and Maintenance of Nuclear Power Plants for inservice testing activities, and (2) applies the extension allowance of SR 3.0.2 to other normal and accelerated inservice testing frequencies of 2 years or less that were not included in the frequencies listed in TS 5.5.7.a.

Date of issuance: April 8, 2010.

Effective date: As of the date of issuance to be implemented within 60 days.

Amendment No.: 110.

Renewed Facility Operating License No. DPR–18: Amendment revised the License and Technical Specifications.

Date of initial notice in **Federal Register:** November 3, 2009 (74 FR 56887).

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated April 8, 2010.

No significant hazards consideration comments received: No.

Dated at Rockville, Maryland, this 22nd day of April 2010.

For the Nuclear Regulatory Commission.

Robert A. Nelson,

Deputy Director, Division of Operating Reactor Licensing, Office of Nuclear Reactor Regulation.

[FR Doc. 2010–10105 Filed 5–3–10; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[Docket No. 72–10; NRC–2009–0534]

Notice of Docketing of Amendment Request for Materials License No. SNM–2506; Northern States Power Company, a Minnesota Corporation; Prairie Island Independent Spent Fuel Storage Installation

AGENCY: U.S. Nuclear Regulatory Commission.

ACTION: Notice of docketing of amendment request for materials license No. SNM–2506.

FOR FURTHER INFORMATION CONTACT: Pamela Longmire, Ph.D., Project Manager, Licensing Branch, Division of Spent Fuel Storage and Transportation, Office of Nuclear Material Safety and Safeguards, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001. Telephone: (301) 492–3562; fax number: (301) 492–3350; e-mail: *Pamela.Longmire@nrc.gov*.

SUPPLEMENTARY INFORMATION:

I. Introduction

The U.S. Nuclear Regulatory Commission (NRC or Commission) is considering an application dated March 28, 2008, as supplemented by letter dated August 29, 2008, from Nuclear Management Company, LLC (NMC; now Northern States Power Company, a Minnesota Corporation) to amend its Special Nuclear Materials License No. SNM–2506, under the provisions of 10 CFR part 72, for the receipt, possession, storage and transfer of spent fuel, reactor-related Greater than Class C waste and other radioactive materials associated with spent fuel storage at the Prairie Island Independent Spent Fuel Storage Installation (ISFSI), located at the Prairie Island Nuclear Generating Plant (PINGP), Unit Nos. 1 and 2, site in Goodhue County, Minnesota.

The TN–40 cask is currently used at the Prairie Island ISFSI for storage of spent fuel with characteristics defined in the existing technical specifications. The fuel characteristics limit the fuel that can be stored in the TN–40 cask to a maximum enrichment of 3.85 weight percent (w/o) U–235 and a maximum burnup of 45,000 MWd/MTU. Since the early 1990s, NMC has used fuel with initial enrichment up to 5.0 w/o U–235. These higher enriched fuels received burnup up to 60,000 MWd/MTU while in the PINGP reactor. After being removed from the PINGP reactor, these higher enriched, higher burnup spent fuels must be placed in, and must remain in, the reactor's spent fuel pool (i.e., wet storage) as the TN–40 cask design does not allow for dry storage of such higher enriched, higher burnup spent fuel. If granted, the amendment will approve the NMC's proposed modification of the TN–40 cask design (to be known as the TN–40HT) for dry storage of the higher enriched, higher burnup spent fuel used in the PINGP reactor as well as associated changes to the ISFSI's technical specifications and the reformatting of those technical specifications. The TN–40HT casks, once loaded with the higher enriched, higher burnup spent fuel, will be placed in the Prairie Island ISFSI.

There are currently 23 loaded TN–40 casks at the Prairie Island ISFSI. The ISFSI is licensed for a maximum of 48 casks. Roughly, 250 spent fuel assemblies meeting the TN–40 parameters remain in wet storage, so an additional 6 casks of the TN–40 design could still be loaded and placed on the ISFSI pad. At that point (in 2013, when the Unit 1 license, and the ISFSI license, are scheduled to expire), NMC would need a new cask design to accommodate additional dry storage of the higher enriched, higher burnup fuels used at Prairie Island to support continued plant operation. The dry storage of higher enriched, higher burnup spent fuel in the modified TN–40HT cask is also necessary to support continued operation of the PINGP following plant license renewal, if granted.

This application was docketed under 10 CFR 72.16; the ISFSI Docket No. is 72–10 and will remain the same for this action. The NRC inadvertently failed to promptly publish this notice of docketing in the **Federal Register** after the NRC's receipt of the NMC March 28, 2008, license amendment request. All other procedural requirements in Part 72 will be met as the NRC continues to process this license amendment request (see section II of this notice, "Opportunity to Request a Hearing").

On November 24, 2009, the Commission issued a "Notice of Availability of Environmental Assessment and Finding of No Significant Impact," for this action. This notice was published in the **Federal Register** on December 4, 2009 (74 FR 63798). The Commission will approve the license amendment if it determines that the application meets the standards and requirements of the Atomic Energy Act of 1954, as amended (the Act) and the Commission's regulations, and pursuant to 10 CFR 72.58, the findings required by 10 CFR 72.40. These findings will be documented in a Safety Evaluation Report.

II. Opportunity To Request a Hearing

The Commission may issue either a notice of hearing or a notice of proposed action and opportunity for hearing in accordance with 10 CFR 72.46(b)(1) or, if a determination is made that the amendment does not present a genuine issue as to whether public health and safety will be significantly affected, take immediate action on the amendment in accordance with 10 CFR 72.46(b)(2) and provide notice of the action taken and an opportunity for interested persons to request a hearing on whether the action should be rescinded or modified.

III. 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 ML081190039, ML081190040, ML081230257, ML101170260, ML101170254, ML082970575, ML090840025, ML090840028, ML101170235, ML093310293, ML093310303, and ML093080332. 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 PDR, O1 F21, One White Flint North, 11555 Rockville Pike, Rockville, MD 20852. The PDR reproduction contractor will copy documents for a fee.

Dated at Rockville, Maryland, this 27th day of April 2010.

For the Nuclear Regulatory Commission.

Pamela Longmire,

Project Manager, Licensing Branch, Division of Spent Fuel Storage and Transportation, Office of Nuclear Material Safety and Safeguards.

[FR Doc. 2010–10398 Filed 5–3–10; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[NRC–2009–0521]

Final License Renewal Interim Staff Guidance LR–ISG–2009–01: Aging Management of Spent Fuel Pool Neutron-Absorbing Materials Other Than Boraflex; Notice of Availability

AGENCY: Nuclear Regulatory Commission (NRC).

ACTION: Notice of availability.

SUMMARY: The NRC is issuing the final License Renewal Interim Staff Guidance (LR–ISG), LR–ISG–2009–01, "Aging Management of Spent Fuel Pool Neutron-Absorbing Materials other than Boraflex." This LR–ISG provides aging management guidance to address the potential loss of material and loss of neutron-absorbing capability of certain nuclear power plant spent fuel pool neutron-absorbing materials for compliance with part 54, "Requirements for Renewal of Operating Licenses for Nuclear Power Plants," of Title 10 of the Code of Federal Regulations (10 CFR part 54). The final LR–ISG revises the NRC staff's aging management recommendations currently described in NUREG–1801, Volumes 1 and 2, "Generic Aging Lessons Learned (GALL) Report," Revision 1, dated September 2005, which are available in the NRC's Agencywide Documents Access and Management System (ADAMS) under Accession Nos. ML052770419 and ML052780376. The final LR–ISG also includes revisions to the NRC staff's review procedures and acceptance criteria in NUREG–1800, Revision 1, "Standard Review Plan for Review of License Renewal Applications for Nuclear Power Plants" (SRP–LR), available under Accession No. ML052110007. The final LR–ISG–2009–01 is available under Accession No. ML100621321.

FOR FURTHER INFORMATION CONTACT: Mr. Matthew Homiack, Division of License Renewal, Office of Nuclear Reactor Regulation, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001; telephone 301–415–1683; or e-mail *Matthew.Homiack@nrc.gov*.

ADDRESSES: Documents created or received after November 1, 1999, are available electronically at the NRC's Public Electronic Reading Room on the Internet at *http://www.nrc.gov/reading-rm/adams.html*. From this site, the public can gain entry into ADAMS. If you do not have access to the Internet or if there are any problems in accessing the documents located in ADAMS, contact the NRC Public Document Room reference staff at 1–800–397–4209, 301–415–4737, or by e-mail at *PDR.Resource@nrc.gov*.

The NRC posts LR–ISGs on its public Web page under the "License Renewal" heading at *http://www.nrc.gov/reading-rm/doc-collections/isg*.

SUPPLEMENTARY INFORMATION:

Background

The NRC issues LR–ISGs to communicate insights and lessons learned and to address emergent issues that are not addressed in the guidance documents published to facilitate implementation of 10 CFR part 54. The NRC staff and stakeholders use LR–ISGs until their guidance is incorporated into a formal license renewal guidance document revision.

The NRC staff developed draft LR–ISG–2009–01, "Staff Guidance Regarding Plant-Specific Aging Management Review and Aging Management Program for the Neutron-Absorber Material in the Spent Fuel Pool Associated with License Renewal Applications," in light of recent operating experience concerning instances of degradation and deformation of neutron-absorbing materials in the spent fuel pools of nuclear power plants. Primarily, the draft LR–ISG proposed guidance for managing the potential loss of material and loss of neutron-absorbing capability aging effects for spent fuel pool neutron-absorbing materials other than Boraflex. A proposed aging management program was included in the draft LR–ISG to address these aging effects during the period of extended operation, as one approach acceptable to the NRC staff for meeting the requirements of 10 CFR part 54.

On December 1, 2009, the NRC requested public comments on the draft LR–ISG–2009–01 in the **Federal Register** (74 FR 62829). The public comment period ended on December 31, 2009. By letters dated December 17, 2009 (ML093570197), and December 28, 2009 (ML100060388), the NRC received comments from two nuclear power plant licensees, Southern Nuclear Operating Company, Inc., and Exelon Generation Company, LLC, respectively. The NRC also received comments from the Nuclear Energy Institute, an industry group, by letter dated December 31, 2009 (ML100060387). After the comment period closed, the NRC received additional comments from the Nuclear Energy Institute in an e-mail dated January 6, 2010 (ML100280648). No other comments were received. The NRC staff considered all the comments in developing the final LR–ISG–2009–01, as discussed in the "Comments and Responses" section of this notice.

Final Action

By this action, the NRC is making the final LR–ISG–2009–01 available. The NRC staff approves of the LR–ISG for NRC staff and stakeholder use. The NRC staff will also incorporate the approved LR–ISG into the next revision of the GALL Report and the SRP–LR.

The final LR–ISG revises the staff's aging management recommendations concerning spent fuel pool neutron-absorbing materials other than Boraflex, which are currently described in the GALL Report and SRP–LR. Specifically, the LR–ISG provides a program for managing the effects of aging on these spent fuel pool neutron-absorbing materials, whereas before, a plant-specific program was recommended. In addition, the corresponding aging management review line items in both documents are clarified and reference the recommended program instead of recommending further evaluation. The final LR–ISG also includes corresponding revisions to the SRP–LR for the staff's review procedures and acceptance criteria concerning these spent fuel pool components and materials. The title of the LR–ISG has been changed from the draft title, "Staff Guidance Regarding Plant-Specific Aging Management Review and Aging Management Program for the Neutron-Absorber Material in the Spent Fuel Pool Associated with License Renewal Applications," to the final, "Aging Management of Spent Fuel Pool Neutron-Absorbing Materials other than Boraflex," to clarify that the LR–ISG provides guidance concerning generic, not plant-specific, aging management recommendations.

Comments and Responses

The comment providers, in general, recommended clarifications to the draft LR–ISG. The NRC staff included these clarifications in the final LR–ISG as appropriate. One comment indicated that the aging management program in GALL Report, Volume 2, Section XI.M2, "Water Chemistry," should be credited to manage the loss of material aging effect. Another comment requested the NRC staff to provide the technical justification for the testing frequency in the proposed aging management program. Based on its technical evaluations, the NRC staff did not make substantive revisions to the LR–ISG in response to these two comments. Detailed NRC staff responses to all comments are in an appendix to the final LR–ISG document.

Dated at Rockville, Maryland, this 27th day of April, 2010.

For the Nuclear Regulatory Commission.

Brian E. Holian,

Director, Division of License Renewal, Office of Nuclear Reactor Regulation.

[FR Doc. 2010–10389 Filed 5–3–10; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[NRC–2010–0002]

Sunshine Federal Register Notice

DATES: Weeks of May 3, 10, 17, 24, 31, June 7, 2010.

PLACE: Commissioners' Conference Room, 11555 Rockville Pike, Rockville, Maryland.

STATUS: Public and closed.

Week of May 3, 2010

Tuesday, May 4, 2010

9:30 a.m. Briefing on Human Capital and Equal Employment Opportunity (Public Meeting). (Contact: Kristin Davis, 301–415–2673).

This meeting will be Webcast live at the Web address—*http://www.nrc.gov.*

10:30 a.m. Discussion of Management Issues (Closed—Ex. 2).

Week of May 10, 2010—Tentative

Tuesday, May 11, 2010

9:30 a.m. Briefing on Federal and State Materials and Environmental Management Programs (FSME) Programs, Performance, & Future Plans (Public Meeting). (Contact: George Deegan, 301–415–7834).

This meeting will be Webcast live at the Web address—*http://www.nrc.gov.*

Week of May 17, 2010—Tentative

There are no meetings scheduled for the week of May 17, 2010.

Week of May 24, 2010—Tentative

Thursday, May 27, 2010

9:30 a.m. Briefing on the Results of the Agency Action Review Meeting (AARM) (Public Meeting). (Contact: Nathan Sanfilippo, 301–415–3951).

This meeting will be Webcast live at the Web address—*http://www.nrc.gov.*

Week of May 31, 2010—Tentative

There are no meetings scheduled for the week of May 31, 2010.

Week of June 7, 2010—Tentative

Wednesday, June 9, 2010

1:30 p.m. Meeting with the Advisory Committee on Reactor Safeguards (Public Meeting). (Contact: Cayetano Santos, 301–415–7270).

This meeting will be Webcast live at the Web address—*http://www.nrc.gov.*

* * * * *

* The schedule for Commission meetings is subject to change on short notice. To verify the status of meetings, call (recording)—(301) 415–1292. Contact person for more information: Rochelle Bavol, (301) 415–1651.

* * * * *

Additional Information

By a vote of 4–0 on April 22, 2010, the Commission determined pursuant to U.S.C. 552b(e) and § 9.107(a) of the Commission's rules that Affirmation of: U.S. Department of Energy (High-Level Waste Repository), Docket No. 63–001–HLW; U.S. Department of Energy's Petition for Interlocutory Review be held on April 23, 2010, with less than one week notice to the public. The item was affirmed.

* * * * *

The NRC Commission Meeting Schedule can be found on the Internet at: *http://www.nrc.gov/about-nrc/policy-making/schedule.html.*

* * * * *

The NRC provides reasonable accommodation to individuals with disabilities where appropriate. If you need a reasonable accommodation to participate in these public meetings, or need this meeting notice or the transcript or other information from the public meetings in another format (*e.g.* braille, large print), please notify Angela Bolduc, Chief, Employee/Labor Relations and Work Life Branch, at 301–492–2230, TDD: 301–415–2100, or by e-mail at *angela.bolduc@nrc.gov.* Determinations on requests for reasonable accommodation will be made on a case-by-case basis.

* * * * *

This notice is distributed electronically to subscribers. If you no longer wish to receive it, or would like to be added to the distribution, please contact the Office of the Secretary, Washington, DC 20555 (301–415–1969), or send an e-mail to *darlene.wright@nrc.gov.*

Dated: April 29, 2010.

Rochelle C. Bavol,

Office of the Secretary.

[FR Doc. 2010–10535 Filed 4–30–10; 4:15 pm]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[NRC–2010–0170]

Notice of Opportunity for Public Comment on the Proposed Models for Plant-Specific Adoption of Technical Specifications Task Force Traveler TSTF–500, "DC Electrical Rewrite—Update to TSTF–360"

AGENCY: Nuclear Regulatory Commission (NRC).

ACTION: Notice of opportunity for public comment.

SUMMARY: The NRC is requesting public comment on the proposed model application (with model no significant hazards consideration determination) and model safety evaluation (SE) for plant-specific adoption of Technical Specifications Task Force (TSTF) Traveler TSTF–500, Revision 2, "DC Electrical Rewrite—Update to TSTF–360." The TSTF–500, Revision 2, is available in the Agencywide Documents Access and Management System (ADAMS) under Accession Number ML092670242. The proposed changes modify technical specification (TS) requirements related to direct current (DC) electrical systems in limiting condition for operation (LCO) 3.8.[4], ["DC Sources—Operating,"] LCO 3.8.[5], ["DC Sources—Shutdown,"] and LCO 3.8.[6], ["Battery Parameters."] A [new or revised] "Battery Monitoring and Maintenance Program" is being proposed for Section [5.5] ["Administrative Controls—Programs and Manuals."] This proposed model SE will facilitate expedited approval of plant-specific adoption of TSTF–500, Revision 2.

DATES: Comment period expires on June 3, 2010. Comments received after this date will be considered, if it is practical to do so, but the Commission is able to ensure consideration only for comments received on or before this date.

ADDRESSES: You may submit comments by any one of the following methods. Please include Docket ID NRC–2010–0170 in the subject line of your comments. Comments submitted in writing or in electronic form will be posted on the NRC Web site and on the Federal rulemaking website Regulations.gov. Because your comments will not be edited to remove any identifying or contact information, the NRC cautions you against including any information in your submission that you do not want to be publicly disclosed.

The NRC requests that any party soliciting or aggregating comments

received from other persons for submission to the NRC inform those persons that the NRC will not edit their comments to remove any identifying or contact information, and therefore, they should not include any information in their comments that they do not want publicly disclosed.

Federal Rulemaking Web site: Go to *http://www.regulations.gov* and search for documents filed under Docket ID NRC–2010–0170. Address questions about NRC dockets to Carol Gallagher 301–492–3668; e-mail *Carol.Gallagher@nrc.gov.*

Mail comments to: Michael T. Lesar, Chief, Rules, Announcements and Directives Branch (RADB), Division of Administrative Services, Office of Administration, Mail Stop: TWB–05–B01M, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, or by fax to RADB at 301–492–3446.

You can access publicly available documents related to this notice using the following methods:

NRC's Public Document Room (PDR): The public may examine and have copied for a fee publicly available documents at the NRC's PDR, Public File Area O1 F21, One White Flint North, 11555 Rockville Pike, Rockville, Maryland.

NRC's Agencywide Documents Access and Management System (ADAMS): Publicly available documents created or received at the NRC are available electronically at the NRC's Electronic Reading Room at *http://www.nrc.gov/reading-rm/adams.html.* From this page, the public can gain entry into ADAMS, which provides text and image files of NRC's public documents. If you do not have access to ADAMS or if there are problems in accessing the documents located in ADAMS, contact the NRC's PDR reference staff at 1–800–397–4209, 301–415–4737, or by e-mail to *pdr.resource@nrc.gov.* The proposed model application and SE for plant-specific adoption of TSTF–500, Revision 2, are available electronically under ADAMS Accession Number ML093340412.

Federal Rulemaking Web site: Public comments and supporting materials related to this notice can be found at *http://www.regulations.gov* by searching on Docket ID: NRC–2010–0170.

FOR FURTHER INFORMATION CONTACT: Ms. Michelle C. Honcharik, Senior Project Manager, Licensing Processes Branch, Mail Stop: O–12 D1, Division of Policy and Rulemaking, Office of Nuclear Reactor Regulation, U.S. Nuclear Regulatory Commission, Washington, DC, 20555–0001; telephone 301–415–1774 or e-mail at *michelle.honchqrik@nrc.gov.* For technical questions please contact Mr. Gerald Waig, Senior Reactor Systems Engineer, Technical Specifications Branch, Division of Inspection and Regional Support, Office of Nuclear Reactor Regulation, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001; telephone 301–415–2260 or e-mail at *gerald.waig@nrc.gov.*

SUPPLEMENTARY INFORMATION:

This notice provides an opportunity for the public to comment on proposed changes to the standard technical specifications (STS) after a preliminary assessment and finding by the NRC staff that the agency will likely offer the changes for adoption by licensees. This notice solicits comment on a proposed change to the STS, which if implemented by a licensee will modify the plant-specific TS. The NRC staff will evaluate any comments received for the proposed change to the STS and reconsider the change or announce the availability of the change for adoption by licensees. Licensees opting to apply for this TS change are responsible for reviewing the NRC staff's SE, referencing the applicable technical justifications, and providing any necessary plant-specific information. The NRC will process and note each amendment application responding to the notice of availability according to applicable NRC rules and procedures.

TSTF–500, Revision 2, is applicable to all nuclear power reactors. The Traveler modifies the STS requirements related to DC electrical systems.

The NRC staff requests that each licensee applying for the changes proposed in TSTF–500, Revision 2, include in their license amendment request (LAR) letter(s) from battery manufacturer(s) verifying the acceptability of using float current monitoring.

The proposed change does not prevent licensees from requesting an alternate approach or proposing changes other than those proposed in TSTF Traveler–500, Revision 2. However, significant deviations from the approach recommended in this notice or the inclusion of additional changes to the license require additional NRC staff review. This may increase the time and resources needed for the review or result in NRC staff rejection of the LAR. Licensees desiring significant deviations or additional changes should instead submit an LAR that does not claim to adopt TSTF Traveler–500, Revision 2.

Dated at Rockville, Maryland, this 27th day of April 2010.

For the Nuclear Regulatory Commission.

Eric E. Bowman,

Acting Chief, Licensing Processes Branch, Division of Policy and Rulemaking, Office of Nuclear Reactor Regulation.

[FR Doc. 2010–10388 Filed 5–3–10; 8:45 am]

BILLING CODE 7590–01–P

PACIFIC NORTHWEST ELECTRIC POWER AND CONSERVATION PLANNING COUNCIL

Sixth Northwest Electric Power and Conservation Plan

AGENCY: Pacific Northwest Electric Power and Conservation Planning Council (Northwest Power and Conservation Council; the Council).

ACTION: Notice of adoption of the Sixth Northwest Electric Power and Conservation Plan.

SUMMARY: The Pacific Northwest Electric Power Planning and Conservation Act of 1980 (16 U.S.C. 839 *et seq.*) requires the Council to adopt and periodically review and revise a regional power plan, the Northwest Electric Power and Conservation Plan. The Council first adopted the power and conservation plan in 1983, with significant amendments or complete revisions adopted in 1986, 1991, 1998 and 2004. The Council began a review of the power and conservation plan in December 2007, and in September 2009, the Council released for public review and comment the Draft Northwest Sixth Electric Power and Conservation Plan. During the comment period, the Council held public hearings in each of the four Northwest states, as required by the Northwest Power Act, engaged in consultations about the power and conservation plan with various governments, entities and individuals in the region, and accepted and considered substantial written and oral comments.

At the Council's regularly scheduled public meeting in February 2010 in Portland, Oregon, the Council formally adopted the revised power and conservation plan, called the Sixth Northwest Electric Power and Conservation Plan. The revised power and conservation plan meets the requirements of the Northwest Power Act, which specifies the components the power plan is to have, including an energy conservation program, a recommendation for research and development; a methodology for determining quantifiable environmental costs and benefits; a 20-year demand forecast; a forecast of power resources that the Bonneville Power Administration will need to meet its

obligations; and an analysis of reserve and reserve reliability requirements. The power and conservation plan also includes the Council's Columbia River Basin Fish and Wildlife Program, developed pursuant to other procedural requirements under the Northwest Power Act. The Council followed the adoption of the power and conservation plan with decisions at public meetings in March and April 2010, also in Portland, Oregon, to approve supporting technical appendices and a Statement of Basis and Purpose and Response to Comments to accompany the final plan.

A pre-publication version of the final power and conservation plan is available on the Council's Web site, at *http://www.nwcouncil.org/energy/powerplan/6/default.htm*. A formal version will be published in the near future.

FOR FURTHER INFORMATION CONTACT: If you would like more information, or assistance in obtaining a copy of the Sixth Power Plan, please contact the Council's central office. The Council's address is 851 SW. Sixth Avenue, Suite 1100, Portland, Oregon 97204. The Council's telephone numbers are 503–222–5161, and 800–452–5161; the Council's FAX is 503–820–2370, and the Council's Web site is: *http://www.nwcouncil.org*.

Stephen L. Crow,

Executive Director.

[FR Doc. 2010–10373 Filed 5–3–10; 8:45 am]

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POSTAL REGULATORY COMMISSION

[Docket No. MC2009–19; Order No. 449]

New Postal Products

AGENCY: Postal Regulatory Commission.

ACTION: Notice.

SUMMARY: The Commission is noticing a recently-filed Postal Service request to add postal products to the Mail Classification Schedule. This notice addresses procedural steps associated with this filing.

DATES: Comments are due: May 19, 2010.

ADDRESSES: Submit comments electronically via the Commission's Filing Online system at *http://www.prc.gov*. Commenters who cannot submit their views electronically should contact the person identified in the **FOR FURTHER INFORMATION CONTACT** section by telephone for advice on alternatives to electronic filing.

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

SUPPLEMENTARY INFORMATION: On January 13, 2010, the Commission issued an order approving the addition of certain postal services to the Mail Classification Schedule (MCS) product lists.[1] In approving these additions, the Commission directed the Postal Service to file product descriptions for eight additional services that were being added to the Market Dominant Product List as elements of Address Management Services (AMS). Order No. 391 at 31, Ordering Paragraph 4. In addition, Order No. 391 directed the Postal Service to file an appropriate request to add Stamp Fulfillment Services (SFS) to the MCS Market Dominant Product List.[2] Order No. 391 at 31, Ordering Paragraph 5.

As directed, the Postal Service has filed product descriptions for the eight additional elements of AMS that were being added to the Market Dominant Product List.[3] The Postal Service has also filed a request to add SFS to the Market Dominant Product List.[4]

In its First Response, the Postal Service has proposed AMS product description language based upon the Library Reference, but revised in several respects. First, language concerning one of the eight services that the Commission had directed be added to the Market Dominant Product List, Mailpiece Quality Control Certification, has been removed because the service is no longer being offered. Second, Address Management Services Prices have been edited to remove references to Cartridge pricing since this format is no longer available; to add a description of the Computerized Delivery Sequence (CDS) No Stat service to reflect the fact that the minimum price for this service is treated separately from the CDS service minimum; and to add a previously omitted price for retesting FASTforward MLOCR. Finally, the Postal Service adds information regarding two existing services or license types that were previously overlooked: 99 Percent Accurate Method and NCOA^{Link} Mail Processing Equipment.

In its Request, the Postal Service states that Stamp Fulfillment Services is an existing product and that the Request relates only to the charges for ordering stamps. Attachment A to the Request shows the proposed changes to the MCS in legislative format. Attachment B provides a statement of supporting justification for the Request. The Postal Service asserts these classification changes are consistent with the requirements of 39 U.S.C. 3642. Request at 2–3.

The Commission hereby provides notice of the Postal Service's First Response and its Request, and affords interested persons an opportunity to express views and offer comments on those filings. Comments are due May 19, 2010.

The Commission appoints Emmett Rand Costich to serve as Public Representative in this docket.

It is ordered:

1. Pursuant to 39 U.S.C. 505, Emmett Rand Costich is appointed to serve as officer of the Commission (Public Representative) to represent the interests of the general public in these proceedings.

2. Comments by interested persons in this proceeding are due no later than May 19, 2010.

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

By the Commission.

Shoshana M. Grove,

Secretary.

[FR Doc. 2010–10362 Filed 5–3–10; 8:45 am]

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POSTAL REGULATORY COMMISSION

[Docket No. MC2010–23; Order No. 450]

New Postal Products

AGENCY: Postal Regulatory Commission.

ACTION: Notice.

SUMMARY: The Commission is noticing a recently-filed Postal Service request to

[1] Order Approving Addition of Postal Services to the Mail Classification Schedule Product Lists, January 13, 2010 (Order No. 391). *See* Notice of Filing of Library Reference, January 13, 2010 (Library Reference).

[2] At the request of the Postal Service, the deadline for the SFS filing was subsequently extended to April 30, 2010. *See* Order Granting Extension of Time, March 24, 2010.

[3] First Response of the United States Postal Service to Order No. 391, Amending Requested MCS Language for Address Management Services, February 23, 2010 (First Response).

[4] Request of the United States Postal Service to Add Stamp Fulfillment Services to the Mail Classification Schedule in Response to Order No. 391, April 26, 2010 (Request). In its filing, the Postal Service states that it is filing separate requests to add charges for orders of philatelic items to the provisional Philatelic Sales nonpostal product and to add charges for personalized stamped envelopes to the Stamped Envelopes ancillary Special Services section of the Mail Classification Schedule. *See* Docket No. MC2009–20, Notice of the United States Postal Service of Amendment to Mail Classification Schedule Language for Nonpostal Activities Required to be Filed By Order No. 154, April 26, 2010; see *also* Docket No. MC2010–23, Notice of the United States Postal Service of Classification Change to Add Existing Shipping Charges to the Mail Classification Schedule Section for Stamped Envelopes, April 26, 2010.

add postal products to the Mail Classification Schedule. This notice addresses procedural steps associated with this filing.

DATES: Comments are due: May 19, 2010.

ADDRESSES: Submit comments electronically via the Commission's Filing Online system at *http://www.prc.gov*. Commenters who cannot submit their views electronically should contact the person identified in the **FOR FURTHER INFORMATION CONTACT** section by telephone for advice on alternatives to electronic filing.

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

SUPPLEMENTARY INFORMATION: On April 26, 2010, the Postal Service filed a notice of an amendment to the Mail Classification Schedule (MCS) language for the stamped envelope price category in the Ancillary Services product in Special Services.[1] In its filing, the Postal Service points out that the current MCS language for the stamped envelope price category includes pricing for personalized stamped envelopes, but omits applicable shipping charges. *Id.* at 1.

The Postal Service states that while orders for personalized stamped envelopes are placed with its Stamp Fulfillment Services office, orders are actually fulfilled by a private printer located in another state. Currently effective shipping charges for orders fulfilled by that printer are set forth in the Ordering Instructions for Personalized Stamped Envelopes (PS Form 3202–X, October 2009). *Id.*, Attachment A.

The Postal Service states further its belief that the appropriate place to include shipping charges for stamped envelopes is in the Stamped Envelope section of the MCS, rather than in the new Stamp Fulfillment Services product that it has requested be added to the MCS.[2] Attachment B to the Notice shows the proposed changes to the Stamped Envelope MCS language in section 1505.19 of the MCS. These charges are a continuation of the existing charges already being paid by customers.

The Commission hereby provides public notice of the Postal Service's filing and affords interested persons the opportunity to express views and offer comments on the proposed MCS classification change. Comments are due May 19, 2010.

The Commission appoints Emmett Rand Costich to serve as Public Representative in this docket.

It is ordered:

1. The Commission establishes Docket No. MC2010–23 for consideration of the matters raised in this docket.

2. Pursuant to 39 U.S.C. 505, Emmett Rand Costich is appointed to serve as officer of the Commission (Public Representative) to represent the interests of the general public in these proceedings.

3. Comments by interested persons in this proceeding are due no later than May 19, 2010.

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

By the Commission.

Shoshana M. Grove,

Secretary.

[FR Doc. 2010–10399 Filed 5–3–10; 8:45 am]

BILLING CODE S

[1] Notice of the United States Postal Service of Classification Change to Add Existing Shipping Charges to the Mail Classification Schedule for Stamped Envelopes, April 26, 2010 (Notice).

[2] *See* Docket No. MC2009–19, Request of the United States Postal Service to Add Stamp Fulfillment Services to the Mail Classification Schedule in Response to Order No. 391, April 26, 2010 (Request). The Request was filed at the direction of the Commission. *See* Order Approving Addition of Postal Services to the Mail Classification Schedule Product Lists, January 13, 2010 at 31, Ordering Paragraph 5.

SECURITIES AND EXCHANGE COMMISSION

Sunshine Act Meeting

Notice is hereby given, pursuant to the provisions of the Government in the Sunshine Act, Public Law 94–409, that the Securities and Exchange Commission will hold a Closed Meeting on Thursday, May 6, 2010 at 2 p.m.

Commissioners, Counsel to the Commissioners, the Secretary to the Commission, and recording secretaries will attend the Closed Meeting. Certain staff members who have an interest in the matters also may be present.

The General Counsel of the Commission, or his designee, has certified that, in his opinion, one or more of the exemptions set forth in 5 U.S.C. 552b(c)(5), (7), 9(B) and (10) and 17 CFR 200.402(a)(5), (7), 9(ii) and (10), permit consideration of the scheduled matters at the Closed Meeting.

Commissioner Paredes, as duty officer, voted to consider the items listed for the Closed Meeting in a closed session.

The subject matter of the Closed Meeting scheduled for Thursday, May 6, 2010 will be:

Settlement of injunctive actions;

A litigation matter;

An adjudicatory matter; and

Other matters relating to enforcement proceedings.

At times, changes in Commission priorities require alterations in the scheduling of meeting items.

For further information and to ascertain what, if any, matters have been added, deleted or postponed, please contact: The Office of the Secretary at (202) 551–5400.

Dated: April 29, 2010.

Elizabeth M. Murphy,

Secretary.

[FR Doc. 2010–10490 Filed 4–30–10; 11:15 am]

BILLING CODE 8010–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–61991; File No. SR–NASDAQ–2010–050]

Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by the NASDAQ Stock Market LLC Relating to the Opening of Trading in the NASDAQ Options Market

April 27, 2010.

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 April 15, 2010, The NASDAQ Stock Market LLC ("Nasdaq" or the "Exchange") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

Nasdaq is filing a proposal for the NASDAQ Options Market ("NOM" or "Exchange") to to [sic] modify Chapter VI, Section 8 of the Exchange's rules, dealing with the Nasdaq Opening Cross.

The text of the proposed rule change is available from Nasdaq's Web site at *http://nasdaq.cchwallstreet.com*, at Nasdaq's principal office, and at the Commission's Public Reference Room.

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, 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 proposes to modify Chapter VI, Section 8 of the rules governing NOM, and in particular governing the opening of trading in that market. Currently, pursuant to Chapter VI, Section 8(b) of NOM's rules, the Nasdaq Opening Cross occurs once certain preconditions are met. Section 8(b) of Chapter VI permits the Opening Cross to occur at or after 9:30 if there is no Imbalance [3], if the dissemination of a quote or trade by the Market for the Underlying Security [4] has occurred (or, in the case of index options, the Exchange has received the opening price of the underlying index) and if a certain number (as the Exchange may determine from time to time) of other options exchanges have disseminated a firm quote on the Options Price Reporting Authority ("OPRA").[5]

Section 8(c) of Chapter VI governs situations in which the requisite number of firm quotes have not been disseminated for an option by other options exchanges. No Opening Cross will occur if firm quotes are not disseminated for an option by the predetermined number of options exchanges until such time during the day that the Exchange determines. In that case, provided dissemination of a quote or trade by the Market for the Underlying Security has occurred (or, in the case of index options, the Exchange has received the opening price of the underlying index) the option will open for trading.[6]

The Exchange is proposing to amend both Section 8(b) and 8(c) of Chapter VI to clarify in each case that the dissemination of a quote or trade by the Market for the Underlying Security must occur during regular trading hours in order for the NOM opening cross to occur in that option. These amendments would establish clearly that this precondition for opening trading in an option on NOM would not be met if, for example, the Market for the Underlying Security were to both open and then halt trading prior to regular trading hours which currently begin at 9:30 a.m.

The Exchange is also proposing to amend Section 8(c)(2) of Chapter VI to clarify that if opening quotes or orders lock or cross each other such that an Opening Cross can be initiated, the Exchange may open for trading in that option even if the orders that would be executed in the Opening Cross are not cancelled or modified so that they no longer lock or cross each other, if and when the number of options exchanges required under the introductory language of Section 8(b) of Chapter VI for the opening of trading of System securities have disseminated a firm quote on OPRA. This amendment will not make a change in the operation of the trading system, but will merely clarify the intended NOM opening process.

2. Statutory Basis

The Exchange believes that its proposal is consistent with Section 6(b) of the Act [7] in general, and furthers the objectives of Section 6(b)(5) of the Act [8] in particular, in that it is designed to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general to protect investors and the public interest. Nasdaq believes that the proposal is consistent with this standard because the proposed rule change is designed to clarify its rules for the benefit of all market participants.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

No written comments were either solicited or received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The Exchange believes that the foregoing proposed rule change may take effect upon filing with the Commission pursuant to Section 19(b)(3)(A) of the Act [9] and Rule 19b–4(f)(6) [10] thereunder because the foregoing proposed rule change does not: (i) Significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) become operative for 30 days after the date of the filing, or such shorter time as the Commission may designate.

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–NASDAQ–2010–050 on the subject line.

[3] "Imbalance" is defined in Section 8(a)(1) of Chapter VI as the number of contracts of Eligible Interest that may not be matched with other order contracts at a particular price at any given time.

[4] Section 8(a)(5) of Chapter VI defines "Market for the Underlying Security" as meaning either the primary listing market, the primary volume market (defined as the market with the most liquidity in that underlying security for the previous two calendar months), or the first market to open the underlying security, as determined by the Exchange on an issue-by-issue basis and announced to the membership on the Exchange's Web site.

[5] If all the conditions specified in Section 8(b) of Chapter VI have been met *except* that there is an Imbalance, Section 8(b)(5) requires one additional Order Imbalance Indicator message to be disseminated, after which the Opening Cross occurs, executing the maximum number of contracts. Any remaining Imbalance that is not executable in the Opening Cross is canceled.

[6] If there is interest in the Opening Cross, the option will not open for trading in that option until the orders that would be executed in the Opening Cross are resolved through the cancellation or modification of the orders by the entering party or parties.

[7] 15 U.S.C. 78f(b).

[8] 15 U.S.C. 78f(b)(5).

[9] 15 U.S.C. 78s(b)(3)(A).

[10] 17 CFR 240.19b–4(f)(6). In addition, Rule 19b–4(f)(6) requires a self-regulatory organization to give the Commission written notice of its intent to file the proposed rule change at least five business days prior to the date of filing of the proposed rule change, or such shorter time as designated by the Commission. Nasdaq has satisfied this requirement.

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–2010–050. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission,[11] 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 Web site viewing and printing in the Commission's Public Reference Room, on official business days between the hours of 10 a.m. and 3 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–NASDAQ–2010–050 and should be submitted on or before May 25, 2010.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[12]

Elizabeth M. Murphy,

Secretary.

[FR Doc. 2010–10275 Filed 5–3–10; 8:45 am]

BILLING CODE 8010–01–P

[11] The text of the proposed rule change is available on the Commission's Web site at *http://www.sec.gov/rules/sro.shtml.*

[12] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–61993; File No. SR–BX–2010–029]

Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by NASDAQ OMX BX, Inc. To Amend the By-Laws of The NASDAQ OMX Group, Inc.

April 27, 2010.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")[1], and Rule 19b–4[2] thereunder, notice is hereby given that on April 9, 2010, NASDAQ OMX BX, Inc. ("BX" or "Exchange") filed with the Securities and Exchange Commission ("SEC" or "Commission") the proposed rule change as described in Items I and II below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to file a proposed rule change relating to the By-Laws of its parent corporation, The NASDAQ OMX Group, Inc. ("NASDAQ OMX").

The text of the proposed rule change is available on the Exchange's Web site at *http://www.nasdaqtrader.com/micro.aspx?id=BXRulefilings*, at the principal office of the Exchange, on the Commission's Web site at *http://www.sec.gov*, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

[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

NASDAQ OMX has proposed making certain amendments to its By-Laws to make improvements in its governance. In SR–NASDAQ–2010–025, The NASDAQ Stock Market LLC ("NASDAQ Exchange") sought Commission approval to adopt these By-Laws changes as part of the rules of NASDAQ Exchange, and the Commission granted approval to these changes in an order dated April 8, 2010.[3] The Exchange is now submitting this filing on an immediately effective basis to adopt the same By-Law changes as rules of the Exchange.

The NASDAQ OMX By-Laws previously provided that each director receiving a plurality of the votes at any election of directors at which a quorum is present is duly elected to the Board. Under Corporate Governance Guidelines adopted by the Board, however, any director in an uncontested election who received a greater number of votes "withheld" from his or her election than votes "for" such election was required to tender his or her resignation promptly following receipt of the certification of the stockholder vote. The NASDAQ OMX Nominating & Governance Committee then considered the resignation offer and recommended to the Board whether to accept it. Within 90 days after the certification of the election results, the Board determined whether to accept or reject the resignation. Promptly thereafter, the Board announced its decision by means of a press release. In a contested election (*i.e.*, where the number of nominees exceeds the number of directors to be elected), the unqualified plurality standard controls.

Uncontested Election

NASDAQ OMX recently amended its By-Laws to adopt a majority vote standard, specifically By-Law Article IV, Section 4.4 of the By-Laws was amended to provide that, in an uncontested election, directors shall be elected by holders of a majority of the votes cast at any meeting for the election of directors at which a quorum is present.[4] Under the majority voting standard, a nominee who fails to receive the requisite vote will not be duly

[3] *See* Securities Exchange Act Release No. 61876 (April 8, 2010), 75 FR 19436 (April 14, 2010) (SR–NASDAQ–2010–025).

[4] NASDAQ OMX also amended its Corporate Governance Guidelines to reflect the majority vote standard for uncontested director elections.

elected to the Board. The By-Laws require that any incumbent nominee, as a condition to his or her nomination for election, must submit in writing an irrevocable resignation, the effectiveness of which is conditioned upon the director's failure to receive the requisite vote in any uncontested election and the Board's acceptance of the resignation. The resignation will be considered by the Nominating & Governance Committee and acted upon by the Board in the same manner described above.[5] Acceptance of that resignation by the Board shall be in accordance with the policies and procedures adopted by the Board for such purpose. NASDAQ OMX specifies its policies and procedures pertaining to the election of its directors in its By-Laws. Specifically, the policies and procedures for the acceptance of the resignation of a director, by the Board, are proposed to be specified in By-Law Article IV, Section 4.4. There are no additional policies and procedures other than what is indicated in the By-Laws. In the event that NASDAQ OMX proposes to further amend its By-Laws with respect to the election of directors, including the adoption of any policies and procedure with respect to such election, NASDAQ OMX shall file a proposed rule change with the Commission to seek approval of those amendments.

Contested Election

NASDAQ OMX codified its process for a contested election. The directors will continue to be elected by a plurality vote in a contested election. There is no change to the process for contested elections because if a majority voting standard were to apply in a contested election, the likelihood of a "failed election" (*i.e.*, a situation in which no director receives the requisite vote) would be more pronounced. Moreover, the rationale underpinning the majority voting policy does not apply in contested elections where stockholders are offered a choice among competing candidates. Directors are elected by a plurality of votes present in person or represented by proxy at a meeting. The directors who receive the greatest number of votes cast for election of directors at the meeting will be elected.

General Election Requirements

The following applies to elections of directors and were not amended. Each share of common stock has one vote,[6] subject to the voting limitation in NASDAQ OMX's certificate of incorporation that generally prohibits a holder from voting in excess of 5% of the total voting power of NASDAQ OMX.[7] In addition, each note holder is entitled to the number of votes equal to the number of shares of common stock into which such note could be converted on the record date, subject to the 5% voting limitation contained in the certificate of incorporation.

The presence of owners of a majority (greater than 50%) of the votes entitled to be cast by holder of NASDAQ OMX voting securities constitutes a quorum. Presence may be in person or by proxy. Any securities not voted, by abstention, will not impact the vote.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with the provisions of Section 6 of the Act,[8] in general, and with Sections 6(b)(1) and (b)(5) of the Act,[9] in particular, in that the proposal enables the Exchange to be so organized as to have the capacity to be able to carry out the purposes of the Act and to comply with and enforce compliance by members and persons associated with members with provisions of the Act, the rules and regulations thereunder, and self-regulatory organization rules, and is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest. The proposed amendments adopting a majority vote standard would enable the directors to be elected in a manner reflective of the desires of shareholders and provide a mechanism to protect against the election of directors by less than a majority vote of the shareholders.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments were either solicited or received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Because the foregoing proposed rule change does not: (i) Significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) become operative for 30 days after the date of the filing, 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 19(b)(3)(A) of the Act [10] and Rule 19b–4(f)(6) [11] thereunder.

The Exchange has noted that the proposed rule change is identical to a proposed rule change recently approved by the Commission with respect to the NASDAQ Exchange [12] and has requested that the Commission waive the 30-day operative delay to ensure that NASDAQ OMX is able to implement the proposed rule change without undue delay. The Commission has determined that waiving the 30-day operative delay is consistent with the protection of investors and the public interest because such waiver will enable NASDAQ OMX to implement the proposed rule change without undue delay in a manner consistent with a proposed rule change previously approved by the Commission.[13] Therefore, the Commission designates the proposal operative upon filing.[14]

At any time within 60 days of the filing of the proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

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[5] *See* NASDAQ OMX By-Law Article IV, Section 4.5.

[6] *See* NASDAQ OMX Certificate of Incorporation at Article IV, C.1(a).

[7] *See* NASDAQ OMX Certificate of Incorporation at Article IV, C.1(b)2.

[8] 15 U.S.C. 78f.

[9] 15 U.S.C. 78f(b)(2)[sic], (5).

[10] 15 U.S.C. 78s(b)(3)(A).

[11] 17 CFR 240.19b–4(f)(6). In addition, Rule 19b–4(f)(6) requires a self-regulatory organization to give the Commission written notice of its intent to file the proposed rule change at least five business days prior to the date of filing of the proposed rule change, or such shorter time as designated by the Commission. The Exchange has satisfied this requirement.

[12] *See* Securities Exchange Act Release No. 61876 (April 8, 2010), 75 FR 19436 (April 14, 2010) (SR–NASDAQ–2010–025).

[13] *Id.*

[14] For purposes only of waiving the 30-day operative delay, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. *See* 15 U.S.C. 78c(f).

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–2010–029 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–2010–029. 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 Web site viewing and printing in the Commission's Public Reference Room, on official business days between the hours of 10 a.m. and 3 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–BX–2010–029 and should be submitted on or before May 25, 2010.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[15]

Elizabeth M. Murphy,

Secretary.

[FR Doc. 2010–10309 Filed 5–3–10; 8:45 am]

BILLING CODE 8010–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–61996; File No. SR–NSX–2010–04]

Self-Regulatory Organizations; National Stock Exchange, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Amend the Fee and Rebate Schedule Issued Pursuant to Exchange Rule 16.1(c) With Respect to the Liquidity Adding Rebate for Securities Priced Under One Dollar

April 28, 2010.

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 April 9, 2010, National Stock Exchange, Inc. filed with the Securities and Exchange Commission ("Commission") the proposed rule change, as described in Items I, II, and III below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comment on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of the Substance of the Proposed Rule Change

National Stock Exchange, Inc. ("NSX®" or "Exchange") is proposing to amend the Fee and Rebate Schedule (the "Fee Schedule") issued pursuant to Exchange Rule 16.1(c) to adjust the liquidity adding rebate for securities priced under one dollar.

The text of the proposed rule change is available on the Exchange's Web site at *http://www.nsx.com*, at the principal office of the Exchange, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant parts of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

With this rule change, the Exchange is proposing to modify the Fee Schedule to adjust the liquidity adding rebate for securities priced under one dollar in both the Automatic Execution mode of order interaction ("AutoEx") and the Order Delivery mode of order interaction ("Order Delivery").[3]

AutoEx Liquidity Adding Rebate For Securities Priced Under One Dollar

For orders in securities priced under one dollar that provide liquidity in AutoEx, the Fee Schedule currently provides that an ETP Holder receives a rebate of 0.25% of trade value, where "trade value" is defined as the dollar amount equal to the price per share multiplied by the number of shares executed.[4] The proposed rule change adjusts such rebate to be the lesser of the foregoing amount and 25% of the quote spread, where "quote spread" is defined as the dollar amount equal to the number of shares executed multiplied by the difference at the time of execution between (x) the price per share of the national best bid, and (y) the price per share of the national best offer.[5]

Order Delivery Liquidity Adding Rebate For Securities Priced Under One Dollar

For orders in securities priced under one dollar that provide liquidity in Order Delivery, the Fee Schedule currently provides that an ETP Holder receives a rebate of 0.20% of trade value. The proposed rule change adjusts such rebate to be the lesser of 0.20% of trade value and 20% of the quote spread.

In both Order Delivery and AutoEx, no quote spread rebate is payable in the event of locked or crossed quotations. Finally, the proposed rule change modifies for purposes of internal consistency the language in the Fee Schedule to make clear that Zero

[15] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] The Exchange's two modes of order interaction are described in NSX Rule 11.13(b).

[4] See Explanatory Endnote (6) to the Fee Schedule.

[5] See Explanatory Endnote (12) to the Fee Schedule.

Display Reserve Orders of sub-dollar securities in both AutoEx and Order Delivery remain ineligible to receive the liquidity adding rebate.[6]

Rationale

The Exchange has determined that these changes are necessary to maintain an appropriate incentive for ETP Holders to submit increased order volumes of sub-dollar securities in AutoEx and Order Delivery and, ultimately, to increase the revenues of the Exchange for the purpose of continuing to adequately fund its regulatory and general business functions. The Exchange has further determined that the proposed fee adjustments are necessary for competitive reasons. The Exchange believes that these rebate changes will not impair the Exchange's ability to fulfill its regulatory responsibilities.

The proposed modifications are reasonable and equitably allocated to those ETP Holders that opt to submit orders of sub-dollar securities, and are not discriminatory because ETP Holders are free to elect whether or not to send such orders. The proposed modifications continue to incentivize ETP Holders to submit liquidity adding displayed orders over Zero Display Reserve Orders, and AutoEx orders over orders in Order Delivery. Based upon the information above, the Exchange believes that the proposed rule change is consistent with the protection of investors and the public interest.

Operative Date and Notice

The Exchange intends to make the proposed modifications, which are effective on filing of this proposed rule, operative for trading on April 12, 2010. Pursuant to Exchange Rule 16.1(c), the Exchange will "provide ETP Holders with notice of all relevant dues, fees, assessments and charges of the Exchange" through the issuance of a Regulatory Circular of the changes to the Fee Schedule and will post a copy of the rule filing on the Exchange's Web site (*http://www.nsx.com*).

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with the provisions of Section 6(b) of the Act,[7] in general, and Section 6(b)(4) of the Act,[8] 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 the facilities of the Exchange. Moreover, the proposed fee rule change is not discriminatory in that all ETP Holders are eligible to submit (or not submit) trades and quotes at any price in AutoEx and Order Delivery in all tapes, as either displayed or undisplayed, liquidity adding or liquidity taking and sub-dollar or dollar-and-above, and may do so at their discretion.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any inappropriate burden on competition.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

The Exchange has neither solicited nor received written comments on the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The proposed rule change has taken effect upon filing pursuant to Section 19(b)(3)(A)(ii) of the Act[9] and subparagraph (f)(2) of Rule 19b–4[10] thereunder, because, as provided in (f)(2), it changes "a due, fee or other charge applicable only to a member" (known on the Exchange as an ETP Holder). At any time within sixty (60) days of the filing of such proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an e-mail to *rule-comments@sec.gov*. Please include File Number SR–NSX–2010–04 on the subject line.

Paper Comments

- Send paper comments in triplicate to Elizabeth M. Murphy, Secretary, Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–NSX–2010–04. This file number should be included on the subject line if e-mail is used.

To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml.*) Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for Web site viewing and printing in the Commission's Public Reference Room on official business days between the hours of 10 a.m. and 3 p.m. Copies of such filing also will be available for inspection and copying at the principal offices of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–NSX–2010–04, and should be submitted on or before May 25, 2010.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[11]

Elizabeth M. Murphy,

Secretary.

[FR Doc. 2010–10363 Filed 5–3–10; 8:45 am]

BILLING CODE 8011–01–P

[6] Specifically, the parenthetical "(except for Zero Display Orders)" is deleted in the Fee Schedule text describing the amounts of the sub-dollar liquidity adding rebates and, consistent with the discussion of dollar-and-higher securities, the word "Displayed" is being added to the types of orders under discussion. The net result (that Zero Display Reserve Orders are not eligible to receive rebates for adding liquidity in sub-dollar securities) remains unchanged.

[7] 15 U.S.C. 78f(b).

[8] 15 U.S.C. 78f(b)(4).

[9] 15 U.S.C. 78s(b)(3)(A)(ii).

[10] 17 CFR 240.19b–4.

[11] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–61992; File No. SR–NASDAQ–2010–048]

Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by The NASDAQ Stock Market, LLC To Amend the By-Laws of The NASDAQ OMX Group, Inc.

April 27, 2010.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),[1] and Rule 19b–4 [2] thereunder, notice is hereby given that on April 9, 2010, The NASDAQ Stock Market LLC (the "NASDAQ Exchange") filed with the Securities and Exchange Commission ("SEC" or "Commission") the proposed rule change as described in Items I and II below, which Items have been prepared by the NASDAQ Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The NASDAQ Exchange is filing with the Securities and Exchange Commission ("Commission") a proposed rule change relating to the By-Laws of its parent corporation, The NASDAQ OMX Group, Inc. ("NASDAQ OMX").

The text of the proposed rule change is available on the Exchange's Web site at *http://www.nasdaq.cchwallstreet.com,* at the principal office of the NASDAQ Exchange, on the Commission's Web site at *http://www.sec.gov,* and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the NASDAQ Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The NASDAQ Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

NASDAQ OMX has proposed making certain amendments to its By-Laws to make improvements in its governance. In SR–NASDAQ–2010–025, The NASDAQ Stock Market LLC ("NASDAQ Exchange") sought Commission approval to adopt these By-Laws changes as part of the rules of NASDAQ Exchange, and the Commission granted approval to these changes in an order dated April 8, 2010.[3] The NASDAQ Exchange is now submitting this filing on an immediately effective basis to adopt the same By-Law changes as rules of the Exchange.

The NASDAQ OMX By-Laws previously provided that each director receiving a plurality of the votes at any election of directors at which a quorum is present is duly elected to the Board. Under Corporate Governance Guidelines adopted by the Board, however, any director in an uncontested election who received a greater number of votes "withheld" from his or her election than votes "for" such election was required to tender his or her resignation promptly following receipt of the certification of the stockholder vote. The NASDAQ OMX Nominating & Governance Committee then considered the resignation offer and recommended to the Board whether to accept it. Within 90 days after the certification of the election results, the Board determined whether to accept or reject the resignation. Promptly thereafter, the Board announced its decision by means of a press release. In a contested election (i.e., where the number of nominees exceeds the number of directors to be elected), the unqualified plurality standard controls.

Uncontested Election

NASDAQ OMX recently amended its By-Laws to adopt a majority vote standard, specifically By-Law Article IV, Section 4.4 of the By-Laws was amended to provide that, in an uncontested election, directors shall be elected by holders of a majority of the votes cast at any meeting for the election of directors at which a quorum is present.[4] Under the majority voting standard, a nominee who fails to receive the requisite vote will not be duly elected to the Board. The By-Laws require that any incumbent nominee, as a condition to his or her nomination for election, must submit in writing an irrevocable resignation, the effectiveness of which is conditioned upon the director's failure to receive the requisite vote in any uncontested election and the Board's acceptance of the resignation. The resignation will be considered by the Nominating & Governance Committee and acted upon by the Board in the same manner described above.[5] Acceptance of that resignation by the Board shall be in accordance with the policies and procedures adopted by the Board for such purpose. NASDAQ OMX specifies its policies and procedures pertaining to the election of its directors in its By-Laws. Specifically, the policies and procedures for the acceptance of the resignation of a director, by the Board, are proposed to be specified in By-Law Article IV, Section 4.4. There are no additional policies and procedures other than what is indicated in the By-Laws. In the event that NASDAQ OMX proposes to further amend its By-Laws with respect to the election of directors, including the adoption of any policies and procedure with respect to such election, NASDAQ OMX shall file a proposed rule change with the Commission to seek approval of those amendments.

Contested Election

NASDAQ OMX codified its process for a contested election. The directors will continue to be elected by a plurality vote in a contested election. There is no change to the process for contested elections because if a majority voting standard were to apply in a contested election, the likelihood of a "failed election" (*i.e.,* a situation in which no director receives the requisite vote) would be more pronounced. Moreover, the rationale underpinning the majority voting policy does not apply in contested elections where stockholders are offered a choice among competing candidates. Directors are elected by a plurality of votes present in person or represented by proxy at a meeting. The directors who receive the greatest number of votes cast for election of directors at the meeting will be elected.

General Election Requirements

The following applies to elections of directors and were not amended. Each share of common stock has one vote,[6] subject to the voting limitation in

[3] *See* Securities Exchange Act Release No. 61876 (April 8, 2010), 75 FR 19436 (April 14, 2010) (SR–NASDAQ–2010–025).

[4] NASDAQ OMX also amended its Corporate Governance Guidelines to reflect the majority vote standard for uncontested director elections.

[5] *See* NASDAQ OMX By-Law Article IV, Section 4.5.

[6] *See* NASDAQ OMX Certificate of Incorporation at Article IV, C.1(a).

NASDAQ OMX's certificate of incorporation that generally prohibits a holder from voting in excess of 5% of the total voting power of NASDAQ OMX.[7] In addition, each note holder is entitled to the number of votes equal to the number of shares of common stock into which such note could be converted on the record date, subject to the 5% voting limitation contained in the certificate of incorporation.

The presence of owners of a majority (greater than 50%) of the votes entitled to be cast by holder of NASDAQ OMX voting securities constitutes a quorum. Presence may be in person or by proxy. Any securities not voted, by abstention, will not impact the vote.

2. Statutory Basis

The NASDAQ Exchange believes that the proposed rule change is consistent with the provisions of Section 6 of the Act,[8] in general, and with Sections 6(b)(1) and (b)(5) of the Act,[9] in particular, in that the proposal enables the NASDAQ Exchange to be so organized as to have the capacity to be able to carry out the purposes of the Act and to comply with and enforce compliance by members and persons associated with members with provisions of the Act, the rules and regulations thereunder, and self-regulatory organization rules, and is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest. The proposed amendments adopting a majority vote standard would enable the directors to be elected in a manner reflective of the desires of shareholders and provide a mechanism to protect against the election of directors by less than a majority vote of the shareholders.

B. Self-Regulatory Organization's Statement on Burden on Competition

The NASDAQ Exchange does not believe that the proposed rule change will impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments were either solicited or received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Because the foregoing proposed rule change does not: (i) Significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) become operative for 30 days after the date of the filing, 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 19(b)(3)(A) of the Act[10] and Rule 19b–4(f)(6)[11] thereunder.

The NASDAQ Exchange has noted that the proposed rule change is identical to a proposed rule change recently approved by the Commission with respect to the NASDAQ Exchange[12] and has requested that the Commission waive the 30-day operative delay to ensure that NASDAQ OMX is able to implement the proposed rule change without undue delay. The Commission has determined that waiving the 30-day operative delay is consistent with the protection of investors and the public interest because such waiver will enable NASDAQ OMX to implement the proposed rule change without undue delay in a manner consistent with a proposed rule change previously approved by the Commission.[13] Therefore, the Commission designates the proposal operative upon filing.[14]

At any time within 60 days of the filing of the proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an e-mail to *rule-comments@sec.gov*. Please include File Number SR–NASDAQ–2010–048 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–2010–048. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for Web site viewing and printing in the Commission's Public Reference Room, on official business days between the hours of 10 a.m. and 3 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the NASDAQ Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–NASDAQ–2010–048 and should be submitted on or before May 25, 2010.

[7] *See* NASDAQ OMX Certificate of Incorporation at Article IV, G.1(b)2.

[8] 15 U.S.C. 78f.

[9] 15 U.S.C. 78f(b)(2)[sic], (5).

[10] 15 U.S.C. 78s(b)(3)(A).

[11] 17 CFR 240.19b–4(f)(6). In addition, Rule 19b–4(f)(6) requires a self-regulatory organization to give the Commission written notice of its intent to file the proposed rule change at least five business days prior to the date of filing of the proposed rule change, or such shorter time as designated by the Commission. The NASDAQ Exchange has satisfied this requirement.

[12] *See* Securities Exchange Act Release No. 61876 (April 8, 2010), 75 FR 19436 (April 14, 2010) (SR–NASDAQ–2010–025).

[13] *Id.*

[14] For purposes only of waiving the 30-day operative delay, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. *See* 15 U.S.C. 78c(f).

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[15]

Elizabeth M. Murphy,

Secretary.

[FR Doc. 2010–10301 Filed 5–3–10; 8:45 am]

BILLING CODE 8010–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–61959; File No. SR–ISE–2010–33]

Self-Regulatory Organizations; International Securities Exchange, LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Establish Strike Price Intervals and Trading Hours for Options on Index-Linked Securities

April 22, 2010.

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 April 16, 2010, the International Securities Exchange, LLC (the "Exchange" or the "ISE") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I, II, and III below, which items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to establish strike price intervals and trading hours for options on index-linked securities. The text of the proposed rule change is as follows (deletions are in [brackets]; additions are in italics):

* * *

Rule 504. Series of Options Contracts Open for Trading

(a)–(h) No change.

Supplementary Material to Rule 504

.01–.05 No change.

.06 Notwithstanding Supplementary Material .01 above, the interval between strike prices of series of options on Index-Linked Securities, as defined in Rule 502(k)(1), will be $1 or greater when the strike price is $200 or less and $5 or greater when the strike price is greater than $200.

* * *

Rule 700. Days and Hours of Business

No change.

(a)–(c) No change.

(d) *Options on Index-Linked Securities, as defined in Rule 502(k)(1), may be traded on the Exchange until 4:15 p.m. each business day.*

[(d)]*(e)* The Exchange shall not be open for business on the following holidays: New Year's Day, Martin Luther King, Jr. Day, Presidents' Day, Good Friday, Memorial Day, Independence Day, Labor Day, Thanksgiving Day or Christmas Day. When any holiday observed by the Exchange falls on a Saturday, the Exchange will not be open for business on the preceding Friday. When any holiday observed by the Exchange falls on a Sunday, the Exchange will not be open for business on the following Monday, unless unusual business conditions exist at the time.

* * *

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

Prior to the commencement of trading options on Index-Linked Securities, the Exchange is proposing to establish strike price intervals and trading hours for these new products.

The Securities and Exchange Commission (the "Commission") has approved ISE's and other option exchanges' proposals to enable the listing and trading of options on Index-Linked Securities.[3] Options trading has not commenced to date and is contingent upon the Commission's approval of The Options Clearing Corporation's ("OCC") proposed supplement to the Options Disclosure Document ("ODD") that will provide disclosure regarding options on Index-Linked Securities.[4]

$1 Strikes for Options on Index-Linked Securities

Prior to the commencement of trading options on Index-Linked Securities, the Exchange is proposing to establish that strike price intervals of $1 will be permitted where the strike price is less than $200. Where the strike price is greater than $200, $5 strikes will be permitted. These proposed changes are reflected by the proposed addition of new .06 of the Supplementary Material to Rule 504.

Without discounting the differences between exchange-traded funds ("ETFs") and Index-Linked Securities, the Exchange seeks to extend the trading conventions applicable to options on ETFs to options on Index-Linked Securities. ISE contends that the proposed strike price intervals for options on Index-Linked Securities are consistent with the strike price intervals currently permitted for options on ETFs. The Exchange believes that $1 strike price intervals for options on Index-Linked Securities will provide investors with greater flexibility by allowed [sic] them to establish positions that are better tailored to meet their investment objectives. ISE has analyzed its capacity and represents that it and the Options Price Reporting Authority have the necessary systems capacity to handle the additional traffic associated with the listing and trading of an expanded number of series as proposed by this filing.

Trading Hours for Options on Index-Linked Securities

Similar to the trading hours for ETF options, the Exchange proposes to amend Rule 700 by renumbering the current subparagraph (d) to (e) and adding a new subparagraph (d) to provide that options on Index-Linked Securities, as defined under .06 of the Supplementary Material to Rule 504, may be traded on the Exchange until 4:15 p.m. each business day.

2. Statutory Basis

The basis under the Securities Exchange Act of 1934 (the "Act") for this proposed rule change is the requirement under Section 6(b)(5) that an exchange have rules that are designed to promote

[15] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] See Securities Exchange Act Release Nos. 58985 (November 10 [sic], 2008), 73 FR 72538 (November 28, 2008) (approving SR–ISE–2008–86); 58204 (July 22, 2008), 73 FR 43807 (July 28, 2008) (approving SR–CBOE–2008–64); 58203 (July 22, 2008). 73 FR 43812 (July 28, 2008) (approving SR–NYSEArca-2008–57).

[4] OCC previously received Commission approval to clear options based on Index-Linked Securities. See Securities Exchange Act Release No. 60872 (October 23, 2009), 74 FR 55878 (October 29, 2009) (SR–OCC–2009–14).

just and equitable principles of trade, and to remove impediments to and perfect the mechanism for a free and open market and a national market system, and in general, to protect investors and the public interest. In particular, the proposal will lessen investor confusion by having strike price intervals and trading hours established prior to the commencement of trading in options on Index-Linked Securities.

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.

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 does not: (i) Significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) become operative for 30 days after the date of the filing, or such shorter time as the Commission may designate, it has become effective pursuant to Section 19(b)(3)(A) of the Act [5] and Rule 19b–4(f)(6) thereunder.[6]

The Exchange believes the proposed rule change is non-controversial in that it is similar to a Chicago Board Options Exchange rule change recently approved by the Commission.[7] Further, the Exchange believes the proposed rule change may eliminate confusion for investors by establishing strike price intervals and trading hours for options on Index-Linked Securities prior to the commencement of trading. The Exchange also believes that the proposed rule change does not raise any new, unique or substantive issues, and is beneficial for competitive purposes and to promote a free and open market for the benefit of investors.

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–2010–33 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–2010–33. 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 Web site viewing and printing 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–ISE–2010–33 and should be submitted on or before May 25, 2010.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[8]

Elizabeth M. Murphy,

Secretary.

[FR Doc. 2010–10300 Filed 5–3–10; 8:45 am]

BILLING CODE 8011–01–P

[5] 15 U.S.C. 78s(b)(3)(A).

[6] 17 CFR 240.19b–4(f)(6). In addition, Rule 19b4(f)(6)(iii) requires the Exchange to give the Commission written notice of the Exchange's intent to file the proposed rule change along with a brief description and text of the proposed rule change, or such shorted time as designated by the Commission. The Exchange provided a copy of this rule filing to the Commission at least five business days prior to the date of this filing.

[7] *See* Securities and Exchange Act Release No. 61696 (March 12, 2010), 75 FR 13174 (March 18, 2010) (approving SR–CBOE 2010–005).

[8] 17 CFR 200.30–3(a)(12).

SOCIAL SECURITY ADMINISTRATION

[Docket No. SSA–2010–0018]

Occupational Information System

AGENCY: Social Security Administration (SSA).

ACTION: Request for comments.

SUMMARY: We are requesting comments on the recommendations submitted to us by the Occupational Information Development Advisory Panel (Panel) in its report entitled "Content Model and Classification Recommendations for the Social Security Administration Occupational Information System, September 2009." The complete Panel report (including appendices) is available online at: *http://www.socialsecurity.gov/oidap/Documents/FinalReportRecommendations.pdf.*

DATES: To ensure that we receive your feedback in a timely manner for consideration as the project develops, please submit your comments no later than June 30, 2010.

ADDRESSES: You may submit comments by any one of three methods—Internet, fax, or mail. Do not submit the same comments multiple times or by more than one method. Regardless of which method you choose, please state that your comments refer to Docket No. SSA–2010–0018 so that we may associate your comments with the correct document.

Caution: You should be careful to include in your comments only information that you wish to make publicly available. We strongly urge you not to include in your comments any personal information, such as Social Security numbers or medical information.

1. *Internet:* We strongly recommend that you submit your comments via the

Internet. Please visit the Federal eRulemaking portal at *http://www.regulations.gov*. Use the Search function of the Web page to find docket number SSA–2010–0018. The system will issue a tracking number to confirm your submission. You will not be able to view your comment immediately because we must post each comment manually. It may take up to a week for your comment to be viewable.

2. *Fax:* Fax comments to (410) 597–0825.

3. *Mail:* Address your comments to the Office of Program Development and Research, Occupational Information Development Project, Social Security Administration, 3–E–26 Operations Building, 6401 Security Boulevard, Baltimore, MD 21235–6401.

Comments are available for public viewing on the Federal eRulemaking portal at *http://www.regulations.gov* or in person, during regular business hours, by sending a request to the project staff at *OIDAP@ssa.gov*.

FOR FURTHER INFORMATION CONTACT: Occupational Information Development Advisory Panel, Social Security Administration, 6401 Security Boulevard, 3–E–26 Operations, Baltimore, MD 21235–0001. Fax: 202–410–597–0825. E-mail to *OIDAP@ssa.gov*. For additional information, please visit the Panel Web site at *http://www.ssa.gov/oidap*.

For information on eligibility or filing for benefits, call our national toll-free number, 1–800–772–1213 or TTY 1–800–325–0778, or visit our Internet site, Social Security Online, at *http://www.socialsecurity.gov*.

SUPPLEMENTARY INFORMATION:

Electronic Version

The electronic file of this document is available on the date of publication of this notice in the **Federal Register** at *http://www.gpoaccess.gov/fr/index.html*.

Background

In 2008, we established the Occupational Information Development Advisory Panel to provide independent advice and recommendations on creating an occupational information system tailored specifically for our disability programs and adjudicative needs. The Panel's advice and recommendations will relate to our disability programs in the following areas:

1. Medical and vocational analysis of disability claims;

2. Occupational analysis, including definitions, ratings, and capture of physical and mental/cognitive demands of work;

3. Occupational information critical to our disability programs;

4. Data collection; and,

5. Other area(s) that will enable us to develop an occupational information system (OIS) and improve our medical-vocational adjudication policies and processes.

Request for Comments

In the first year, the Panel presented general recommendations regarding an occupational information system and also identified attributes of occupations and people that we should measure for purposes of disability adjudication. For occupations, these attributes included the work activities and related demands that a job requires of workers. For people, these attributes described characteristics that each worker brings to the job situation that may be involved when performing the job successfully. The Panel presented the full report, including the following seven general recommendations, to the Commissioner in September 2009. Both the recommendations and the proposed OIS are specific to our disability program needs.

1. A New Occupational Information System: Technical, Legal, and Data Requirements

The Panel recommended that SSA develop a new OIS to replace the Dictionary of Occupational Titles for use in our disability adjudication process. The Panel recommended that we design the new OIS to assure its data are not only useful, but also reliable, valid, and able to withstand any legal challenges.

Characteristics to support these requirements include: (a) Grouping of occupations at a level to support individualized disability assessment; (b) a cross-reference to the Standard Occupational Classification; (c) precise occupationally-specific data; (d) core work activities; (e) minimum levels of requirements needed to perform work; (f) discrete, observable measures of both work activities and worker characteristics; (g) a manageable number of data elements; (h) sampling methodology capturing the full range of work; (i) measures that are psychometrically sound; (j) collection of high quality data; (k) valid, accurate, and reproducible data; (l) information about whether core work activities could be performed in alternative ways; and, (m) terminology that is consistent with medical practice and human function.

2. Data Elements for the New Occupational Information System

Based upon previous research related to job analytic techniques, the Panel recommended a list of work activities applicable to all occupations and recommended that this list serve as a stimulus to develop SSA-specific instruments that measure the requirements of work. The Panel also recommended that new instruments include not only work activities, but also the physical and psychological abilities required to do work, work context, and any other attributes appropriate to disability adjudication.

3. The Classification of Occupations

The Panel recommended that once a large database representative of all work in the national economy is available, we should use various methods to classify jobs based upon work activities and identify work activities that we can use as a common language to match the abilities of people to appropriate work available within the economy.

4. Development of Internal and External Expertise for the Creation and Maintenance of the New Occupational Information System

The Panel recommended that we make the creation and continued maintenance of an up-to-date and legally defensible OIS a priority and, to support that effort, we should develop an independent, internal unit staffed with experts on work analysis and other related disability research needs. The Panel also recommended that we develop and maintain online research and professional communities to inform the unit's emerging and ongoing ideas, research, and methods.

5. Need for Basic & Applied Research

The Panel acknowledged that developing a new OIS requires significant research and recommended that early efforts should focus on the development and pilot-tests of measures of work requirements, usability analysis of these measures, and creation of an appropriate sampling plan. The Panel recommended that we conduct research to determine the most accurate and defensible sources of data for the OIS, the best methods for measuring the required work attributes, and if any other attributes are appropriate for study due to their potential for use in the adjudication process. They also cited the need to perform research focused on exploring and validating the link between the work requirements and attributes of the person, the environment, and other job-related factors. Finally, the Panel recommended

applied research examining user needs and the effects of new instruments on our disability process and programs.

6. Measurement Considerations

In addition to the research needs described in Recommendation 5, the Panel recommended that we should consider research related to appropriate scales for inclusion in any new instruments that we develop. The Panel further stated that we should use scales that are legally defensible for our needs and focus on observable, discrete, characteristics such as frequency and duration.

7. Communication with Users, the Public & the Scientific Community

The Panel recommended that we use both traditional and emerging government and private media outlets to inform or solicit input from various audiences about all activities regarding the OIS development.

Dated: April 26, 2010.

Debra Tidwell-Peters,

Designated Federal Officer, Occupational Information Development Advisory Panel.

[FR Doc. 2010–10297 Filed 5–3–10; 8:45 am]

BILLING CODE 4191–02–P

SUSQUEHANNA RIVER BASIN COMMISSION

Notice of Actions Taken at March 18, 2010, Meeting

AGENCY: Susquehanna River Basin Commission.

ACTION: Notice of Commission actions.

SUMMARY: At its regular business meeting on March 18, 2010, in State College, Pennsylvania, the Commission held a public hearing as part of its regular business meeting. At the public hearing, the Commission: (1) Approved and tabled certain water resources projects; (2) rescinded approval for a water resources project; and (3) approved settlements involving three water resources projects. Details concerning these and other matters addressed at the public hearing and business meeting are contained in the Supplementary Information section of this notice.

DATES: March 18, 2010.

ADDRESSES: Susquehanna River Basin Commission, 1721 N. Front Street, Harrisburg, PA 17102–2391.

FOR FURTHER INFORMATION CONTACT: Richard A. Cairo, General Counsel, telephone: (717) 238–0423, ext. 306; fax: (717) 238–2436; e-mail: *rcairo@srbc.net;* or Stephanie L. Richardson, Secretary to the Commission, telephone: (717) 238–0423, ext. 304; fax: (717) 238–2436; e-mail: *srichardson@srbc.net.* Regular mail inquiries may be sent to the above address.

SUPPLEMENTARY INFORMATION: In addition to the public hearing and its related action items identified below, the following items were also presented or acted on at the business meeting: (1) A presentation by Pennsylvania Department of Conservation and Natural Resources Deputy Secretary for Parks & Forestry James Grace on Marcellus Shale natural gas leasing in Pennsylvania state forests; (2) an update on the implementation of the SRBC Remote Water Quality Monitoring Network; (3) a report on hydrologic conditions in the Susquehanna Basin with an emphasis on National Flood Safety Week; (4) approval/ratification of one grant related to the Susquehanna Flood Forecast and Warning System, and five contracts related to ArcGIS, establishment of an SRBC satellite office in Sayre, PA, consulting services for instream flow studies, aquatic resource surveys, and flood mapping; (5) ratified the Executive Director's retention of outside counsel and other professional services regarding the relicensing proceedings for lower Susquehanna River hydroelectric projects; and (6) approved a revision of the FY–2011 Budget. The Commission also heard counsel's report on legal matters affecting the Commission and recognized retiring Chief Administrative Officer Duane A. Friends for his 25 years of valuable service. The Commission convened a public hearing and took the following actions:

Public Hearing—Compliance Actions

The Commission approved a settlement in lieu of civil penalties for the following projects:

1. Chesapeake Energy Corporation—Eastern Division. Pad ID: Ward (ABR–20090519), Burlington Township, and Sullivan 1 (ABR–20080715), Athens Township, Bradford County, Pa.—$20,000.

2. Novus Operating, LLC. Pad ID: Sylvester 1H and North Fork 1H, Brookfield Township, Tioga County, Pa.—$100,000.

3. Southwestern Energy Production Company. Pad ID: Ferguson, Wyalusing Township, Bradford County, Pa.—$50,000.

Public Hearing—Projects Approved

1. Project Sponsor and Facility: Carrizo Oil & Gas, Inc. (Mosquito Creek—Hoffman), Karthaus Township, Clearfield County, Pa. Surface water withdrawal of up to 0.720 mgd.

2. Project Sponsor and Facility: EQT Production Company (West Branch Susquehanna River—Kuntz), Greenwood Township, Clearfield County, Pa. Surface water withdrawal of up to 0.900 mgd.

3. Project Sponsor and Facility: EXCO–North Coast Energy, Inc. (West Branch Susquehanna River—Johnson), Clinton Township, Lycoming County, Pa. Surface water withdrawal of up to 0.999 mgd.

4. Project Sponsor and Facility: Fortuna Energy Inc. (Fall Brook—Bense), Troy Township, Bradford County, Pa. Surface water withdrawal of up to 1.000 mgd.

5. Project Sponsor and Facility: Fortuna Energy Inc. (Unnamed Tributary to North Branch Sugar Creek—Besley), Columbia Township, Bradford County, Pa. Surface water withdrawal of up to 2.000 mgd.

6. Project Sponsor and Facility: Fortuna Energy Inc. (South Branch Sugar Creek—Shedden), Troy Township, Bradford County, Pa. Surface water withdrawal of up to 0.900 mgd.

7. Project Sponsor and Facility: Fortuna Energy Inc. (Sugar Creek—Hoffman), West Burlington Township, Bradford County, Pa. Surface water withdrawal modification increase from 0.250 mgd up to 2.000 mgd (Docket No. 20090327).

8. Project Sponsor: Graymont (PA), Inc. Project Facility: Pleasant Gap Facility, Spring Township, Centre County, Pa. Groundwater withdrawal of 0.050 mgd (30-day average) from the Plant Make-up Well.

9. Project Sponsor and Facility: Harley-Davidson Motor Company Operations, Inc., Springettsbury Township, York County, Pa. Modification to project features of the withdrawal approval (Docket No. 19900715).

10. Project Sponsor and Facility: Harley-Davidson Motor Company Operations, Inc., Springettsbury Township, York County, Pa. Modification to add a groundwater withdrawal of 0.585 mgd (30-day average) from Well CW–20 to the remediation system, without any increase to total system withdrawal quantity (Docket No. 19980901).

11. Project Sponsor and Facility: Healthy Properties, Inc. (Sugar Creek—owner), North Towanda Township, Bradford County, Pa. Surface water withdrawal of up to 0.450 mgd.

12. Project Sponsor and Facility: Mountain Energy Services, Inc. (Tunkhannock Creek—Deer Park Lumber, Inc.), Tunkhannock Township, Wyoming County, Pa. Surface water withdrawal of up to 0.999 mgd.

13. Project Sponsor and Facility: Randy M. Wiernusz (Bowman Creek—owner), Eaton Township, Wyoming County, Pa. Surface water withdrawal of up to 0.249 mgd.

14. Project Sponsor and Facility: TerrAqua Resource Management (Tioga River—Losey), Lawrenceville Borough, Tioga County, Pa. Surface water withdrawal of up to 0.375 mgd and consumptive water use of up to 0.375 mgd.

15. Project Sponsor and Facility: XTO Energy, Inc. (Lick Run—Dincher), Shrewsbury Borough, Lycoming County, Pa. Surface water withdrawal of up to 0.249 mgd.

16. Project Sponsor and Facility: XTO Energy, Inc. (Little Muncy Creek—Temple), Moreland Township, Lycoming County, Pa. Surface water withdrawal of up to 0.249 mgd.

Public Hearing—Projects Tabled

1. Project Sponsor: Chester County Solid Waste Authority. Project Facility: Lanchester Landfill, Salisbury and Caernarvon Townships, Lancaster County, Pa. Application for groundwater withdrawal of 0.190 mgd (30-day average) from two wells and three collection sumps.

2. Project Sponsor: Chester County Solid Waste Authority. Project Facility: Lanchester Landfill, Salisbury and Caernarvon Townships, Lancaster County, Pa. Application for consumptive water use of up to 0.075 mgd.

3. Project Sponsor: Chester County Solid Waste Authority. Project Facility: Lanchester Landfill, Salisbury and Caernarvon Townships, Lancaster County, Pa. Application for an existing into-basin diversion of up to 0.050 mgd from the Delaware River Basin.

4. Project Sponsor and Facility: Sunnyside Ethanol, LLC (West Branch Susquehanna River—1—owner), Curwensville Borough, Clearfield County, Pa. Application for surface water withdrawal of up to 1.270 mgd.

5. Project Sponsor and Facility: Sunnyside Ethanol, LLC (West Branch Susquehanna River—2—owner), Curwensville Borough, Clearfield County, Pa. Application for surface water withdrawal of up to 0.710 mgd.

6. Project Sponsor and Facility: Sunnyside Ethanol, LLC, Curwensville Borough, Clearfield County, Pa. Application for consumptive water use of up to 1.980 mgd.

7. Project Sponsor and Facility: Walker Township Water Association, Walker Township, Centre County, Pa. Modification to increase the total groundwater system withdrawal limit (30-day average) from 0.523 mgd to 0.962 mgd (Docket No. 20070905).

Public Hearing—Rescission of Project Approval

1. Project Sponsor and Facility: Chesapeake Appalachia, LLC (Susquehanna River) (Docket No. 20080907), Oakland Township, Susquehanna County, Pa.

Authority: Pub. L. 91–575, 84 Stat. 1509 *et seq.*, 18 CFR parts 806, 807, and 808.

Dated: April 20, 2010.

Thomas W. Beauduy,

Deputy Director.

[FR Doc. 2010–10395 Filed 5–3–10; 8:45 am]

BILLING CODE 7040–01–P

SUSQUEHANNA RIVER BASIN COMMISSION

Notice of Projects Approved for Consumptive Uses of Water

AGENCY: Susquehanna River Basin Commission.

ACTION: Notice of approved projects.

SUMMARY: This notice lists the projects approved by rule by the Susquehanna River Basin Commission during the period set forth in **DATES.**

DATES: February 1, 2010, through March 31, 2010.

ADDRESSES: Susquehanna River Basin Commission, 1721 North Front Street, Harrisburg, PA 17102–2391.

FOR FURTHER INFORMATION CONTACT: Richard A. Cairo, General Counsel, telephone: (717) 238–0423, ext. 306; fax: (717) 238–2436; e-mail: *rcairo@srbc.net* or Stephanie L. Richardson, Secretary to the Commission, telephone: (717) 238–0423, ext. 304; fax: (717) 238–2436; e-mail: *srichardson@srbc.net.* Regular mail inquiries may be sent to the above address.

SUPPLEMENTARY INFORMATION: This notice lists the projects, described below, receiving approval for the consumptive use of water pursuant to the Commission's approval by rule process set forth in 18 CFR 806.22(e) and 18 CFR 806.22(f) for the time period specified above:

Approvals By Rule Issued Under 18 CFR § 806.22(e):

1. Allegheny Energy Supply Company, LLC, Hunlock Creek Unit 4, ABR–20100316, Hunlock Township, Luzerne County, Pa.; Approval Date: March 9, 2010.

Approvals By Rule Issued Under 18 CFR 806.22(f):

1. Southwestern Energy Company, Pad ID: Ferguson; ABR–20100201, Herrick Township, Bradford County, Pa.; Approval Date: February 1, 2010.

2. Chief Oil & Gas, LLC, Pad ID: Bacon Drilling Pad #1; ABR–20100202, Burlington Township, Bradford County, Pa.; Approval Date: February 2, 2010.

3. XTO Energy Incorporated, Pad ID: TLT, ABR–20100203, Jordan Township, Lycoming County, Pa.; Approval Date: February 2, 2010.

4. Alta Operating Company, LLC, Pad ID: Blye Pad Site, ABR–20100204, Middletown Township, Susquehanna County, Pa.; Approval Date: February 8, 2010.

5. Chief Oil & Gas, LLC, Pad ID: Kensinger 3H Drilling Pad #1, ABR–20100205, Penn Township, Lycoming County, Pa.; Approval Date: February 9, 2010.

6. Chesapeake Appalachia, LLC, Pad ID: Yengo, ABR–20100206, Cherry Township, Sullivan County, Pa.; Approval Date: February 9, 2010.

7. Anadarko E&P Company, LP, Pad ID: Texas Blockhouse F&G Pad B, ABR–20100207, Pine Township, Lycoming County, Pa.; Approval Date: February 9, 2010.

8. Seneca Resources Corporation; Pad ID: Wilcox Pad F, ABR–20090505.1, Covington Township, Tioga County, Pa.; Approval Date: February 9, 2010.

9. Seneca Resources Corporation, Pad ID: DCNR 595 Pad D, ABR–20090827.1, Bloss Township, Tioga County, Pa.; Approval Date: February 9, 2010, including a partial waiver of 18 CFR 806.15.

10. East Resources, Inc., Pad ID: Ackley 806, ABR–20100208, Clymer Township, Tioga County, Pa.; Approval Date: February 11, 2010.

11. XTO Energy, Incorporated, Pad ID: Kepner 8503H, ABR–20100209, Shrewsbury Township, Lycoming County, Pa.; Approval Date: February 11, 2010.

12. Chesapeake Appalachia, LLC, Pad ID: Dan Ellis, ABR–20100210, Monroe Township, Bradford Township, Pa.; Approval Date: February 11, 2010.

13. XTO Energy, Incorporated, Pad ID: Hazlak 8504, ABR–20100211, Shrewsbury Township, Lycoming County, Pa.; Approval Date: February 12, 2010.

14. Fortuna Energy, Inc., Pad ID: Putnam 01 077, ABR–20100212, Armenia Township, Bradford County, Pa.; Approval Date: February 12, 2010.

15. Fortuna Energy, Inc., Pad ID: Lutz 01 015, ABR–20100213, Troy Township, Bradford County, Pa.; Approval Date: February 12, 2010.

16. Chief Oil & Gas, LLC, Pad ID: Dale Bower Drilling Pad #1, ABR–20100214, Penn Township, Lycoming County, Pa.; Approval Date: February 15, 2010.

17. Cabot Oil & Gas Corporation, Pad ID: BerryD P1, ABR–20100215, Dimock Township, Susquehanna County, Pa.; Approval Date: February 17, 2010.

18. Chesapeake Appalachia, LLC, Pad ID: Masso, ABR–20100216, Auburn Township, Susquehanna Township, Pa.; Approval Date: February 18, 2010.

19. Chesapeake Appalachia, LLC, Pad ID: Welles 5, ABR–20100217, Terry Township, Bradford Township, Pa.; Approval Date: February 19, 2010.

20. WhitMar Exploration Company, Pad ID: Farrell 1H, ABR–20100218, Lake Township, Luzerne County, Pa.; Approval Date: February 19, 2010.

21. Fortuna Energy, Inc., Pad ID: DCNR 587 02 018, ABR–20100219, Ward Township, Tioga County, Pa.; Approval Date: February 19, 2010.

22. Seneca Resources Corporation, Pad ID: J. Pino Pad G, ABR–20090717.1, Covington Township, Tioga County, Pa.; Approval Date: February 19, 2010.

23. Seneca Resources Corporation, Pad ID: D. M. Pino Pad H, ABR–20090933.1, Covington Township, Tioga County, Pa.; Approval Date: February 19, 2010.

24. Fortuna Energy, Inc., Pad ID: DCNR 587 02 008, ABR–20100220, Ward Township, Tioga County, Pa.; Approval Date: February 22, 2010.

25. East Resources, Inc., Pad ID: Burt 518, ABR–20100221, Richmond Township, Tioga County, Pa.; Approval Date: February 22, 2010.

26. East Resources, Inc., Pad ID: Cascarino 443, ABR–20100222, Shippen Township, Tioga County, Pa.; Approval Date: February 22, 2010.

27. Fortuna Energy, Inc., Pad ID: Longenecker 03 008, ABR–20100223, Columbia Township, Bradford County, Pa.; Approval Date: February 22, 2010.

28. Chief Oil & Gas, LLC, Pad ID: Kupscznk Drilling Pad #1H, ABR–20100224, Springville Township, Susquehanna County, Pa.; Approval Date: February 22, 2010.

29. Fortuna Energy, Inc., Pad ID: Harvest Holdings 01 036, ABR–20100225, Canton Township, Bradford County, Pa.; Approval Date: February 22, 2010.

30. East Resources, Inc., Pad ID: Salese 802, ABR–20100226, Clymer Township, Tioga County, Pa.; Approval Date: February 23, 2010.

31. WhitMar Exploration Company, Pad ID: Lansberry Perry 1V, ABR–20100227, Lehman Township, Luzerne County, Pa.; Approval Date: February 23, 2010.

32. Chief Oil & Gas, LLC, Pad ID: Stone Drilling Pad #1, ABR–20100228, Springville Township, Susquehanna County, Pa.; Approval Date: February 25, 2010.

33. East Resources, Inc., Pad ID: Sharretts 805, ABR–20100229, Clymer Township, Tioga County, Pa.; Approval Date: February 25, 2010.

34. Fortuna Energy, Inc., Pad ID: Barrett 03 009, ABR–20100230, Columbia Township, Bradford County, Pa.; Approval Date: February 25, 2010.

35. Cabot Oil and Gas Corporation, Pad ID: RussoB P1, ABR–20100231, Springville Township, Susquehanna County, Pa.; Approval Date: February 26, 2010.

36. Fortuna Energy, Inc., Pad ID: Boor 03 015, ABR–20100232, Columbia Township, Bradford County, Pa.; Approval Date: February 26, 2010.

37. Fortuna Energy, Inc., Pad ID: Putnam 01 076, ABR–20100233, Armenia Township, Bradford County, Pa.; Approval Date: February 26, 2010.

38. WhitMar Exploration Company, Pad ID: Buda 1H, ABR–20100301, Fairmount Township, Luzerne County, Pa.; Approval Date: March 1, 2010.

39. Talisman Energy USA, Inc., Pad ID: Morgan 01 074, ABR–20100302, Armenia Township, Bradford County, Pa.; Approval Date: March 1, 2010.

40. Anadarko E&P Company, LP, Pad ID: COP Tract 255A, ABR–20100303, Snow Shoe Township, Centre County, Pa.; Approval Date: March 1, 2010, including a partial waiver of 18 CFR 806.15.

41. Anadarko E&P Company, LP, Pad ID: COP Tract 231C, ABR–20100304, Boggs Township, Centre County, Pa.; Approval Date: March 1, 2010, including a partial waiver of 18 CFR 806.15.

42. Chesapeake Appalachia, LLC, Pad ID: Updike, ABR–20100305, West Burlington Township, Bradford County, Pa.; Approval Date: March 1, 2010.

43. EXCO Resources (PA), Inc., Pad ID: Bogumil, ABR–20100306, North Abington Township, Lackawanna County, Pa.; Approval Date: March 1, 2010.

44. Seneca Resources Corporation, Pad ID: DCNR 595 Pad E, ABR–20100307, Blossburg Borough, Tioga County, Pa.; Approval Date: March 1, 2010, including a partial waiver of 18 CFR 806.15.

45. Talisman Energy USA, Inc., Pad ID: DCNR 587 02 013, ABR–20100308, Ward Township, Tioga County, Pa.; Approval Date: March 1, 2010.

46. Talisman Energy USA, Inc., Pad ID: DCNR 587 02 014, ABR–20100309, Ward Township, Tioga County, Pa.; Approval Date: March 1, 2010.

47. Cabot Oil and Gas Corporation, Pad ID: KellyP P1, ABR–20100310, Dimock Township, Susquehanna County, Pa.; Approval Date: March 3, 2010.

48. East Resources, Inc., Pad ID: Parthemer 284, ABR–20100311, Charleston Township, Tioga County, Pa.; Approval Date: March 3, 2010.

49. Chesapeake Appalachia, LLC, Pad ID: Cappucci, ABR–20100312, Mehoopany Township, Wyoming County, Pa.; Approval Date: March 5, 2010.

50. Novus Operating, LLC, Pad ID: Austinburg 1H, ABR–20100313, Brookfield Township, Tioga County, Pa.; Approval Date: March 8, 2010.

51. Ultra Resources, Inc., Pad ID: Paul 906, ABR–20100314, West Branch Township, Potter County, Pa.; Approval Date: March 8, 2010.

52. XTO Energy Incorporated, Pad ID: Dietterick, ABR–20100315, Jordan Township, Lycoming County, Pa.; Approval Date: March 9, 2010.

53. Seneca Resources Corporation, Pad ID: Murray Pad A, ABR–2010317, Richmond Township, Tioga County, Pa.; Approval Date: March 10, 2010.

54. Chesapeake Appalachia, LLC, Pad ID: Otis, ABR–20100318, Herrick Township, Bradford County, Pa.; Approval Date: March 10, 2010.

55. Chesapeake Appalachia, LLC, Pad ID: Claude, ABR–20100319, Auburn Township, Susquehanna County, Pa.; Approval Date: March 10, 2010.

56. Chesapeake Appalachia, LLC, Pad ID: Sivers, ABR–20100320, Tuscarora Township, Bradford County, Pa.; Approval Date: March 10, 2010.

57. Chesapeake Appalachia, LLC, Pad ID: Marbaker, ABR–20100321, Auburn Township, Susquehanna County, Pa.; Approval Date: March 11, 2010.

58. Cabot Oil and Gas Corporation, Pad ID: HinkleyR P1, ABR–20100322, Springville Township, Susquehanna County, Pa.; Approval Date: March 12, 2010.

59. Chesapeake Appalachia, LLC, Pad ID: Engelke, ABR–20100323, Troy Township, Bradford County, Pa.; Approval Date: March 12, 2010.

60. Chesapeake Appalachia, LLC, Pad ID: Acla, ABR–20100324, Terry Township, Bradford County, Pa.; Approval Date: March 15, 2010.

61. Cabot Oil and Gas Corporation, Pad ID: BlaisureJo P1, ABR–20100325, Jessup Township, Susquehanna County, Pa.; Approval Date: March 15, 2010.

62. Cabot Oil and Gas Corporation, Pad ID: RussoB P2, ABR–20100326, Springville Township, Susquehanna County, Pa.; Approval Date: March 15, 2010.

63. Chesapeake Appalachia, LLC, Pad ID: Rose, ABR–20100327, Towanda Township, Bradford County, Pa.; Approval Date: March 16, 2010.

64. Chesapeake Appalachia, LLC, Pad ID: Hoffman, ABR–20100328, Towanda Township, Bradford County, Pa.; Approval Date: March 17, 2010.

65. Chesapeake Appalachia, LLC, Pad ID: Walt, ABR–20100329, Albany Township, Bradford County, Pa.; Approval Date: March 17, 2010.

66. East Resources, Inc., Pad ID: Waskiewicz 445, ABR–20100330, Delmar Township, Tioga County, Pa.; Approval Date: March 17, 2010.

67. Cabot Oil and Gas Corporation, Pad ID: WarnerA P1, ABR–20100331, Dimock Township, Susquehanna County, Pa.; Approval Date: March 17, 2010.

68. Chesapeake Appalachia, LLC, Pad ID: Kalinowski, ABR–20100332, West Burlington Township, Bradford County, Pa.; Approval Date: March 18, 2010.

69. Cabot Oil and Gas Corporation, Pad ID: GrosvenorD P1, ABR–20100333, Dimock Township, Susquehanna County, Pa.; Approval Date: March 18, 2010.

70. Chief Oil & Gas, LLC, Pad ID: Duane Jennings Drilling Pad #1, ABR–20100334, Granville Township, Bradford County, Pa.; Approval Date: March 22, 2010.

71. East Resources, Inc., Pad ID: Webster 549, ABR–20100335, Delmar Township, Tioga County, Pa.; Approval Date: March 22, 2010.

72. Chief Oil & Gas, LLC, Pad ID: Kingsley Drilling Pad #1, ABR–20100336, Monroe Township, Bradford County, Pa.; Approval Date: March 23, 2010.

73. Chief Oil & Gas, LLC, Pad ID: Sechrist Drilling Pad #1, ABR–20100337, Canton Township, Bradford County, Pa.; Approval Date: March 23, 2010.

74. Chief Oil & Gas, LLC, Pad ID: Ransom Drilling Pad #1, ABR–20100338, Lenox Township, Susquehanna County, Pa.; Approval Date: March 23, 2010.

75. Chesapeake Appalachia, LLC, Pad ID: Elevation, ABR–20100339, North Towanda Township, Bradford County, Pa.; Approval Date: March 24, 2010.

76. Chesapeake Appalachia, LLC, Pad ID: Lundy, ABR–20100340, Standing Stone Township, Bradford County, Pa.; Approval Date: March 24, 2010.

77. Chesapeake Appalachia, LLC, Pad ID: Plymouth, ABR–20100341, Terry Township, Bradford County, Pa.; Approval Date: March 24, 2010.

78. Chesapeake Appalachia, LLC, Pad ID: Leaman, ABR–20100342, West Burlington Township, Bradford County, Pa.; Approval Date: March 24, 2010.

79. Cabot Oil & Gas Corporation, Pad ID: Depaola P1, ABR–20100343, Dimock Township, Susquehanna County, Pa.; Approval Date: March 25, 2010.

80. Ultra Resources, Inc., Pad ID: 808 Thomas, ABR–20100344, Elk Township, Tioga County, Pa.; Approval Date: March 26, 2010.

81. Chesapeake Appalachia, LLC, Pad ID: Schoonover, ABR–20100345, Wysox Township, Bradford County, Pa.; Approval Date: March 26, 2010.

82. Penn Virginia Oil & Gas Corporation, Pad ID: Kibbe #1, ABR–20100346, Harrison Township, Potter County, Pa.; Approval Date: March 27, 2010.

83. Talisman Energy USA, Inc., Pad ID: Moretz 03 036, ABR–20100347, Wells Township, Bradford County, Pa.; Approval Date: March 27, 2010.

84. Chesapeake Appalachia, LLC, Pad ID: Rosalie, ABR–20100348, Windham Township, Wyoming County, Pa.; Approval Date: March 29, 2010.

85. Anadarko E&P Company, LP, Pad ID: COP Tract 342 D, ABR–20100349, Beech Creek Township, Clinton Township, Pa.; Approval Date: March 29, 2010, including a partial waiver of 18 CFR 806.15.

86. East Resources, Inc., Pad ID: Cummings 823, ABR–20100350, Chatham Township, Tioga County, Pa.; Approval Date: March 29, 2010.

87. East Resources, Inc., Pad ID: Bartlett 531, ABR–20100351, Richmond Township, Tioga County, Pa.; Approval Date: March 29, 2010.

88. EOG Resources, Inc., Pad ID: PHC Pad B, ABR–20100352, Lawrence Township, Clearfield County, Pa.; Approval Date: March 29, 2010.

89. EOG Resources, Inc., Pad ID: PHC Pad A, ABR–20100353, Lawrence Township, Clearfield County, Pa.; Approval Date: March 29, 2010.

90. Talisman Energy USA, Inc., Pad ID: DCNR 587 02 005, ABR–20100354, Ward Township, Tioga County, Pa.; Approval Date: March 30, 2010.

91. Talisman Energy USA, Inc., Pad ID: DCNR 587 02 006, ABR–20100355, Ward Township, Tioga County, Pa.; Approval Date: March 30, 2010.

92. Turm Oil, Inc., Pad ID: J. Bowen, ABR–20100356, Rush Township, Susquehanna County, Pa.; Approval Date: March 30, 2010.

93. Turm Oil, Inc., Pad ID: L. Hardic, ABR–20100357, Rush Township, Susquehanna County, Pa.; Approval Date: March 30, 2010.

94. Turm Oil, Inc., Pad ID: B Poulsen, ABR–20100358, Auburn Township, Susquehanna County, Pa.; Approval Date: March 30, 2010.

95. Turm Oil, Inc., Pad ID: La Rue, ABR–20100359, Rush Township, Susquehanna County, Pa.; Approval Date: March 30, 2010.

96. Turm Oil, Inc., Pad ID: MJ Barlow, ABR–20100360, Auburn Township, Susquehanna County, Pa.; Approval Date: March 30, 2010.

Authority: Pub. L. 91–575, 84 Stat. 1509 *et seq.*, 18 CFR parts 806, 807, and 808.

Dated: April 26, 2010.

Stephanie L. Richardson,

Secretary to the Commission.

[FR Doc. 2010–10393 Filed 5–3–10; 8:45 am]

BILLING CODE 7040–01–P

DEPARTMENT OF TRANSPORTATION

Federal Railroad Administration

[Docket No. FRA–2010–0005–N–10]

Proposed Agency Information Collection Activities; Comment Request

AGENCY: Federal Railroad Administration, DOT.

ACTION: Notice.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995 and its implementing regulations, the Federal Railroad Administration (FRA) hereby announces that it is seeking renewal of the following currently approved information collection activities. Before submitting these information collection requirements for clearance by the Office of Management and Budget (OMB), FRA is soliciting public comment on specific aspects of the activities identified below.

DATES: Comments must be received no later than July 6, 2010.

ADDRESSES: Submit written comments on any or all of the following proposed activities by mail to either: Mr. Robert Brogan, Office of Safety, Planning and Evaluation Division, RRS–21, Federal Railroad Administration, 1200 New Jersey Ave., SE., Mail Stop 17, Washington, DC 20590, or Ms. Kimberly Toone, Office of Information Technology, RAD–20, Federal Railroad Administration, 1200 New Jersey Ave., SE., Mail Stop 35, Washington, DC 20590. Commenters requesting FRA to acknowledge receipt of their respective comments must include a self-addressed stamped postcard stating, "Comments on OMB control number ___." Alternatively, comments may be transmitted via facsimile to (202) 493–6216 or (202) 493–6497, or via e-mail to Mr. Brogan at *Robert.Brogan@dot.gov*, or to Ms. Toone at *Kimberly.Toone@dot.gov*. Please refer to the assigned OMB control number in any correspondence submitted. FRA will summarize comments received in

response to this notice in a subsequent notice and include them in its information collection submission to OMB for approval.

FOR FURTHER INFORMATION CONTACT: Mr. Robert Brogan, Office of Planning and Evaluation Division, RRS–21, Federal Railroad Administration, 1200 New Jersey Ave., SE., Mail Stop 25, Washington, DC 20590 (telephone: (202) 493–6292) or Ms. Kimberly Toone, Office of Information Technology, RAD–20, Federal Railroad Administration, 1200 New Jersey Ave., SE., Mail Stop 35, Washington, DC 20590 (telephone: (202) 493–6132). (These telephone numbers are not toll-free.)

SUPPLEMENTARY INFORMATION:

The Paperwork Reduction Act of 1995 (PRA), Public Law 104–13, section 2, 109 Stat. 163 (1995) (codified as revised at 44 U.S.C. 3501–3520), and its implementing regulations, 5 CFR part 1320, require Federal agencies to provide 60-days notice to the public for comment on information collection activities before seeking approval for reinstatement or renewal by OMB. 44 U.S.C. 3506(c)(2)(A); 5 CFR 1320.8(d)(1), 1320.10(e)(1), 1320.12(a). Specifically, FRA invites interested respondents to comment on the following summary of proposed information collection activities regarding (i) whether the information collection activities are necessary for FRA to properly execute its functions, including whether the activities will have practical utility; (ii) the accuracy of FRA's estimates of the burden of the information collection activities, including the validity of the methodology and assumptions used to determine the estimates; (iii) ways for FRA to enhance the quality, utility, and clarity of the information being collected; and (iv) ways for FRA to minimize the burden of information collection activities on the public by automated, electronic, mechanical, or other technological collection techniques or other forms of information technology (*e.g.*, permitting electronic submission of responses). *See* 44 U.S.C. 3506(c)(2)(A)(i)–(iv); 5 CFR 1320.8(d)(1)(i)–(iv). FRA believes that soliciting public comment will promote its efforts to reduce the administrative and paperwork burdens associated with the collection of information mandated by Federal regulations. In summary, FRA reasons that comments received will advance three objectives: (i) Reduce reporting burdens; (ii) ensure that it organizes information collection requirements in a "user friendly" format to improve the use of such information; and (iii) accurately assess the resources expended to retrieve and produce information requested. *See* 44 U.S.C. 3501.

Below are brief summaries of the two currently approved information collection activities that FRA will submit for clearance by OMB as required under the PRA:

Title: Foreign Railroads' Foreign-Based (FRFB) Employees Who Perform Train or Dispatching Service in the United States.

OMB Control Number: 2130–0555.

Abstract: The collection of information is used by FRA to determine compliance of FRFB train and dispatching service employees and their employers with the prohibition against the abuse of alcohol and controlled substances. Because of the increase in cross-border train operations and the increased risk posed to the safety of train operations in the United States, FRA seeks to apply all of the requirements of 49 CFR part 219 to FRFB train and dispatching service employees. The basic information—evidence of unauthorized use of drugs and alcohol—is used by FRA to help prevent accidents/incidents by screening FRFB who perform safety-sensitive functions for unauthorized drug or alcohol use. FRFB train and dispatching service employees testing positive for unauthorized use of alcohol and drugs are removed from service, thereby enhancing safety and serving as a deterrent to other FRFB train and dispatching service employees who might be tempted to engage in the unauthorized use of drugs or alcohol.

Form Number(s): None.

Respondent Universe: 2 Railroads.

Frequency of Submission: On occasion.

Affected Public: Foreign-Based Railroads and Their Employees.

Reporting Burden:

CFR section	Respondent universe	Total annual responses	Average time per response	Total annual burden hours
219.4—Recognition of Foreign Railroads' Workplace Testing Programs: Petitions to Agency.	2 railroads	1 petition	10 hours	10
Comments on Petition	2 railroads/public	2 comments + 2 comment copies	2 hours	4
219.403/405—Evaluation by Substance Abuse Professional.	2 railroads	3 reports/referrals	2 hours	6
219.405(c)(1)—Report by a Coworker.	2 railroads	1 report	5 minutes	.08
219.609—Notice by Employee Asking to be Excused from Random Alcohol Testing.	200 employees	2 excuses	15 minutes	.5
219.903—Retention of Urine Drug Testing Records.	2 railroads	80 records	5 minutes	7

Total Responses: 91.

Total Estimated Total Annual Burden: 28 hours.

Type of Request: Extension of a Currently Approved Collection.

Title: Special Notice For Repairs.

OMB Control Number: 2130–0504.

Abstract: The Special Notice For Repairs is issued to notify the carrier in writing of an unsafe condition involving a locomotive, car, or track. The carrier must return the form after repairs have been made. The collection of information is used by State and Federal inspectors to remove freight cars or locomotives until they can be restored to a serviceable condition. It is also used by State and Federal inspectors to reduce the maximum authorized speed on a section of track until repairs can be made.

Form Number(s): FRA F 6180.8; FRA F 6180.8a.

Affected Public: Businesses.

Respondent Universe: 728 railroads.

Frequency of Submission: On occasion.

Total Responses: 41.

Total Estimated Annual Burden: 11 hours.

Type of Request: Extension of a Currently Approved Collection.

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 April 28, 2010.

Kimberly Coronel,

Director, Office of Financial Management, Federal Railroad Administration.

[FR Doc. 2010–10446 Filed 5–3–10; 8:45 am]

BILLING CODE 4910–06–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Notice of Intent To Rule on Request To Release Airport Property at the Reading Regional Airport, Reading, PA

AGENCY: Federal Aviation Administration (FAA) DOT.

ACTION: Notice of request to release airport property.

SUMMARY: The FAA proposes to rule and invite public comment on the release of land at the Reading Regional Airport, Reading, Pennsylvania under the provisions of Section 47125(a) of Title 49 United States Code (U.S.C.).

DATES: Comments must be received on or before June 3, 2010.

ADDRESSES: Comments on this application may be mailed or delivered to the following address:

Terry P. Sroka, Manager, Reading Regional Airport Authority, 2501 Bernville Road, Reading, PA 19605,

and at the FAA Harrisburg Airports District Office:

Lori K. Pagnanelli, Manager, Harrisburg Airports District Office, 3905 Hartzdale Dr., Suite 508, Camp Hill, PA 17011.

FOR FURTHER INFORMATION CONTACT: Rick Harner, Program Manager Harrisburg Airports District Office location listed above. The request to release property may be reviewed in person at this same location.

SUPPLEMENTARY INFORMATION: The FAA invites public comment on the request to release property at the Reading Regional Airport under the provisions of Section 47125(a) of Title 49 U.S.C. On March 30, 2010, the FAA determined that the request to release property at the Reading Regional Airport submitted by the Reading Regional Airport Authority (Authority) met the procedural requirements.

The following is a brief overview of the request:

The Reading Regional Airport Authority requests the release of real property totaling 154.93 acres (Lot #1), excluding 2.54 acres (Lot #5 Reading Regional Airport Waste Water Treatment Plant), of non-aeronautical airport property to Berks County Industrial Development Authority. The property was transferred to the City of Reading through the Surplus Property Act of 1944 via the Quit Claim Deed. A portion of the property is currently leased to a private company, which will be transferred to the buyer. The property is located on the east side of the airport and is bordered by Aviation Road running east and turning north. The purpose of this release is to allow the Reading Regional Airport Authority to sell the subject land that does not serve any aeronautical purpose at the airport. There are no impacts to the Airport and the land is not needed for airport development as shown on the Airport Layout Plan. Any proceeds from the sale of property are to be used for the capital and operating costs of the airport.

Any person may inspect the request by appointment at the FAA office address listed above. Interested persons are invited to comment on the proposed release from obligations. All comments will be considered by the FAA to the extent practicable.

Issued in Camp Hill, Pennsylvania, April 26, 2010.

Lori K. Pagnanelli,

Manager, Harrisburg Airports District Office.

[FR Doc. 2010–10319 Filed 5–3–10; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Commercial Space Transportation Grant Program

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of request for grant proposals for the Commercial Space Transportation Grant Program.

SUMMARY: The FAA's Office of Commercial Space Transportation (AST) requests grant proposals pursuant to its newly funded Commercial Space Transportation Grant Program. This program has an initial appropriation of $500,000 to be used for space transportation infrastructure projects. The FAA desires to award the appropriated funds before the end of fiscal year 2010. The FAA will review and evaluate all applications for a grant under 49 U.S.C. chapter 703 (Chapter 703). The FAA may make one or more grant awards based upon its evaluations of the grant proposals. All grants awarded under this program are discretionary awards.

DATES: Commercial Space Transportation Grant applications are due on or before July 6, 2010.

ADDRESSES: You can get more information about the Commercial Space Transportation Grant Program by:

1. Accessing the Office of Commercial Space Transportation Web site at *http://www.faa.gov/go/ast;* and

2. Contacting Glenn Rizner or Michael McElligott, AST–100, or, for legal questions, Laura Montgomery, AGC–200, 800 Independence Avenue, SW., Washington, DC 20591;

	Phone	Email	FAX
Glenn Rizner	202–267–3194	*Glenn.H.Rizner@faa.gov*	202–267–5463
Michael McElligott	202–267–7859	*Michael.McElligott@faa.gov*	202–267–5463
Laura Montgomery	202–267–3150	*Laura.Montgomery@faa.gov*	202–267–7971

SUPPLEMENTARY INFORMATION:

Background

One of the main purposes of the Commercial Space Transportation Grant Program is to ensure the resiliency of the space transportation infrastructure in the United States. To help further the United States' goals, Congress established a Space Transportation Infrastructure Grant program under 49 U.S.C. Subtitle IX—Commercial Space Transportation—Chapter 703—Space Transportation Infrastructure Matching Grants, Section 70305, Authorization of appropriations. Public Law (Pub. L.) 103–272, Sec. 1(e), 108 Stat. 1345 (July 5, 1994). This legislation authorizes the use of Federal monies in conjunction with matching state, local government, and private funds.

Although the Congressional authorization has been in effect for some

time, FY 2010 is the first year Federal funds have been appropriated. The Consolidated Appropriations Act for 2010 (Pub. L. 111–117) appropriated $500,000.00 for the FAA's Commercial Space Transportation Grant program. The FAA's Office of Commercial Space Transportation is responsible for overseeing the program. Although the FAA will be developing more detailed guidance to administer this program, the FAA intends to disburse these funds on or before August 31, 2010. Accordingly, applicants must submit their grant proposals by July 6, 2010, which will fall before more detailed guidance becomes available.

The Commercial Space Transportation Grant Program

The Commercial Space Transportation Grant Program is intended to "ensure the resiliency of the space transportation infrastructure of the United States * * *" 49 U.S.C. 70302. Development projects eligible for funding include technical and environmental studies; construction, improvement, and design and engineering of space transportation infrastructure, including facilities and associated equipment; and real property to meet the needs of the United States commercial space transportation industry.

Who May Apply for a Commercial Space Transportation Grant

The FAA may make project grants to sponsors. 49 U.S.C. 70303(a). Chapter 703 defines a sponsor as a public agency that submits an application for a project grant. 49 U.S.C. 70301(6). A public agency is a State or an agency of a State, a political subdivision of a State, or a tax-supported organization. 49 U.S.C. 70301(5).

How To Apply for a Commercial Space Transportation Grant

Applicants for grants under the Commercial Space Transportation Grant Program must submit grant proposals to the FAA AST. A complete SF–424, Application for Federal Assistance (OMB Number 4040–0004) is a component of all grant proposals. SF–424 forms are available on the Grants.gov Web site: *http://www.grants.gov/agencies/aforms_repository_information.jsp*. In addition, a grant applicant should use SF–424A for non-construction proposals or SF–424C for construction proposals. These forms request specific applicant information, proposed project information, and an estimate of project funding and duration. The grant proposal should detail how the proposed project meets the requirements of Chapter 703. In addition, the forms request detailed and thorough project budget information. The Commercial Space Transportation Grant Program will not fund more than 50% of the total project cost, and project financing must include a private component of at least 10% of the total project cost. 49 U.S.C. 70302.

Given that the FAA may award multiple grants, the grant proposals may include multiple or alternative funding proposals for financing the proposed project. Applicants may submit multiple grant proposals.

The grant proposal should also indicate how applicable environmental requirements were or will be satisfied. *See Guidelines for Compliance with the National Environmental Policy Act and Related Environmental Review Statutes for the Licensing of Commercial Launches and Launch Sites; http://www.faa.gov/about/office_org/headquarters_offices/ast/environmental/review.*

Applicants must submit an original plus three copies of the completed grant proposal to: Federal Aviation Administration, Office of Commercial Space Transportation, Space Systems Development Division (AST–100), 800 Independence Avenue, SW., Suite 331, Washington, DC 20591.

Grant proposals are due on or before July 6, 2010. Given the time constraints on the FAA to award its grants, there will be no allowance for extensions of time.

Grant Application Review

The FAA will review grant proposals using the criteria of Chapter 703 and will consider the following factors in its evaluation:

1. The contribution of the project to industry capabilities that serve the United States Government's space transportation needs;
2. The extent of industry's financial contribution to the project;
3. The extent of industry's participation in the project;
4. The positive impact of the project on the international competitiveness of the United States space transportation industry;
5. The extent of State contributions to the project; and
6. The impact of the project on launch operations and other activities at Government launch ranges.

49 U.S.C. 70303(b). All grant awards made under this program are discretionary. The FAA may approve an application only if satisfied that—

1. The project will contribute to ensuring the resiliency of the space transportation infrastructure of the United States;
2. The project is reasonably consistent with plans of public agencies that are authorized by the State in which the project is located and responsible for development of the surrounding area;
3. The consent of the head of the appropriate agency for the use of any government property has been obtained;
4. The project will be completed without unreasonable delay;
5. The sponsor has the legal authority to engage in the project.

49 U.S.C. 70303(c). Additionally, the FAA may make a project grant only if at least 10 percent of the total cost of the project will be paid by the private sector and the grant will not be for more than 50 percent of the total cost of the project. 49 U.S.C. 70302(b). Applicants should submit the information necessary for the FAA to make these determinations as part of their applications.

Environmental Requirements

Approval of grant funding is a federal action subject to review under the National Environmental Policy Act of 1969, 42 U.S.C. 4321 *et seq.*, as implemented by the regulations of the Council on Environmental Quality at 40 CFR part 1500 and FAA Order 1050.1E, and other Federal environmental laws. Because of this, the FAA anticipates that it may be most cost-effective for applicants who have already undergone a NEPA review to apply for a grant this fiscal year. For example, a launch site that has already received a license to operate will have conducted a NEPA review. The launch site operator could seek a grant for projects that the FAA approved as part of that license.

Under 49 U.S.C. 70304, infrastructure development projects selected for a Commercial Space Transportation Grant must meet three additional environmental requirements. First, such projects must provide for the protection and enhancement of the natural resources and the quality of the environment of the United States. Specifically, if a project will have a significant adverse environmental impact, the FAA shall approve the grant application only after finding that no feasible and prudent alternative to the project exists and that all reasonable steps have been taken to minimize the adverse effect. Second, the project sponsor must certify that an opportunity for a public hearing has been provided to consider potential environmental impacts of the project and its consistency with the goals of any planning carried out by the community. Third, the Governor of the State in

which the project is located, or his or her designee, must certify that there is reasonable assurance the project will be located, designed, constructed, and operated to comply with applicable air and water quality standards.

Planning projects such as technical and environmental studies normally qualify for categorical exclusion under NEPA and would not trigger the requirements under 49 U.S.C. 70304 and as set forth above. If, absent consideration of section 70304, the project normally qualifies for a categorical exclusion from environmental review, the grant proposal should reference the relevant paragraph in FAA Order 1050.1E, *Policies and Procedures for Considering Environmental Impacts,* and address whether extraordinary circumstances exist that warrant preparation of an environmental assessment.

For more details about the environmental review for commercial space transportation activities see *Guidelines for Compliance with the National Environmental Policy Act and Related Environmental Review Statutes for the Licensing of Commercial Launches and Launch Sites. http://www.faa.gov/about/office_org/headquarters_offices/ast/environmental/review.*

Grant Award

The FAA Office of Commercial Space Transportation intends to award Commercial Space Transportation Grants on or before August 31, 2010. An FAA grant offer letter may contain requirements for assurances to ensure the grants are consistent with Chapter 703. These grant assurances are currently in development and not finalized at the date of this publication. The FAA anticipates that the Commercial Space Transportation Grant Assurances will be similar in nature and purpose to those required under the Airport Improvement Program.

Issued in Washington, DC, on April 28, 2010.

George C. Nield,

Associate Administrator for Commercial Space Transportation.

[FR Doc. 2010–10320 Filed 5–3–10; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Transit Administration

Discretionary Bus and Bus Facilities Program

AGENCY: Federal Transit Administration (FTA), DOT.

ACTION: Notice of Availability of FTA State of Good Repair Bus and Bus Facilities Initiative Funds: Solicitation of Project Proposals.

SUMMARY: The Federal Transit Administration (FTA) announces the availability of discretionary Section 5309 Bus and Bus Facilities grant funds in support of its "State of Good Repair" initiative. The State of Good Repair (SGR) Bus initiative will be funded with up to $775 million in unallocated Fiscal Year (FY) 2010 discretionary Bus and Bus Facilities Program funds, authorized by 49 USC 5309(b) of the Safe, Accountable, Flexible, Efficient, Transportation Equity Act: A Legacy For Users (SAFETEA–LU), Public Law 109–59, August 10, 2005. FTA may use additional Bus and Bus Facilities program funding that becomes available in the future to further support this initiative.

The SGR Bus initiative will make funds available to public transit providers to finance capital projects to replace, rehabilitate, and purchase buses and related equipment and to construct/rehabilitate bus-related facilities, including programs of bus and bus-related projects which may include assistance to subrecipients that are public agencies, private companies engaged in public transportation, or private non-profit organizations. This Notice includes priorities established by FTA for these discretionary funds, the criteria FTA will use to identify meritorious projects for funding, and describes how to apply.

This announcement is available on the FTA Web site at: *http://www.fta.dot.gov.* FTA will announce final selections on the Web site and in the **Federal Register**. A synopsis of this announcement will be posted in the FIND module of the government-wide electronic grants Web site at *http://www.grants.gov.*

DATES: Complete proposals for the SGR Bus initiative must be submitted by June 18, 2010. All proposals must be submitted electronically through the GRANTS.GOV APPLY function. In order to apply through GRANTS.GOV, proposers should initiate the process of registering on the GRANTS.GOV site immediately to ensure completion of registration before the deadline for submission. Proposers will receive two confirmation e-mails. The first email will confirm that the application was received and a subsequent e-mail will be sent indicating whether the application was validated or rejected by the system.

FOR FURTHER INFORMATION CONTACT: Contact the appropriate FTA Regional Administrator (see Appendix) for proposal-specific information and issues. For information on the SGR Bus initiative, contact Darren Jaffe, Office of Program Management, (202) 366–4008, e-mail: *darren.jaffe@dot.gov.* A TDD is available at 1–800–877–8339 (TDD/FIRS).

SUPPLEMENTARY INFORMATION:

Table of Contents

I. Funding Opportunity Description

A. Authority

The bus and bus facilities program is authorized under 49 U.S.C. 5309(b), as amended by section 3011 of SAFETEA–LU:

> "The Secretary may make grants under this section to assist State and local governmental authorities in financing capital projects * * * to replace, rehabilitate, and purchase buses and related equipment and to construct bus-related facilities, including programs of bus and bus-related projects for assistance to subrecipients that are public agencies, private companies engaged in public transportation, or private non-profit organizations."

B. Background

Maintaining the nation's public transportation fleet, infrastructure, and equipment in a state of good repair is essential to providing reliable, high-quality, and safe transit services to the tens of millions of Americans who depend on it daily. Transit not only provides mobility options for the American public, but contributes to the livability of our nation's communities and to environmental and energy sustainability. However, given recent limitations in State and local resources and the need to meet projected growth in demand for transit service, many local transit agencies are finding it difficult to meet their basic re-investment needs. FTA's April 2009 *Rail Modernization Study* estimated a combined $50 billion repair and replacement backlog in the bus and rail systems of the seven oldest and largest U.S. transit agencies.

The state of repair of transit infrastructure is an important issue for both large and small systems across the country. According to the U.S. Department of Transportation's *2008*

Status of the Nation's Highways, Bridges, and Transit Conditions and Performance Report to Congress, over 36 percent of urban bus maintenance facilities were estimated to be in marginal or poor condition in 2006, five percent higher than in 2004. This report also found that nearly 50 percent of the nation's bus facilities were over 20 years old and that 18 percent of the nation's bus fleet was in need of replacement. The average bus age and condition have stabilized recently and are even expected to improve due to the number of vehicles purchased recently with American Recovery and Reinvestment Act funds. Buses are relatively short-lived assets, however, and some 8,000 must be replaced each year.

Preliminary FTA research indicates that while most transit agencies employ maintenance management systems and have capital improvement plans, few possess asset management plans and systems that support prioritization of asset replacement, as practiced by most state highway agencies and other major public infrastructure managers. Indications are that potential improvements in investment efficiency from better asset management can considerably outweigh the cost of implementation.

Recognizing growing investment needs and the large backlog of transit assets needing repair or replacement, the FTA proposed a $2.9 billion Bus and Rail State of Good Repair formula program in the President's FY 2011 budget. In advance of the implementation of this program, this notice makes available up to $775 million in FY 2010 Section 5309 bus and bus discretionary program resources for a "State of Good Repair Bus" (SGR Bus) grant initiative.

C. Program Purpose

Improving and maintaining America's buses and bus facilities so that the nation's public transportation systems are in good physical condition and successfully accomplish their performance objectives is a key strategic goal of the DOT and FTA. The SGR Bus initiative is intended to contribute to the improvement of the condition of transit capital assets by providing financial assistance for recapitalization of buses and bus facilities. In addition, funding under this SGR Bus initiative may be used for the development and implementation of new, or improvement of existing, transit asset management systems. Transportation asset management is a strategic and systematic process of operating, maintaining, improving, and expanding physical assets effectively throughout their life cycle. Successful systems focus on good business and engineering policy, practices and procedures for resource allocation and utilization with the objective of better decision-making based upon quality information and well defined objectives.

II. Award Information

Federal transit funds are available to State or local governmental authorities as recipients and other public transportation providers as subrecipients. There is no floor or upper limit for any single grant under this program; however, FTA intends to fund as many meritorious projects as possible. In addition, FTA will take into consideration the geographic diversity of its award decisions.

Consistent with 49 U.S.C. 5309(m)(8), the Secretary shall consider the age and condition of buses, bus fleets, bus-related facilities and equipment of applicants in its award of State of Good Repair Bus grants.

III. Eligibility Information

A. Eligible Proposers

Eligible proposers and eventual grant applicants under this initiative are Direct Recipients under the Section 5307 Urbanized Area Formula program, States, and Indian Tribes. Proposals for funding eligible projects in rural (nonurbanized) areas must be submitted as part of a consolidated State proposal with the exception of nonurbanized projects to Indian Tribes. Tribes, States, and Direct Recipients may also submit consolidated proposals for projects in urbanized areas.

Proposals shall contain projects to be implemented by the Recipient or its subrecipients. Eligible subrecipients include public agencies, private non-profit organizations, and private providers engaged in public transportation.

B. Eligible Expenses

SAFETEA–LU grants authority to the Secretary to make grants to assist State and local governmental authorities in financing capital projects to replace, rehabilitate, and purchase buses and related equipment and to construct or rehabilitate bus-related facilities, including programs of bus and bus-related projects for assistance to subrecipients that are public agencies, private companies engaged in public transportation, or private non-profit organizations.

Projects eligible for funding under the SGR Bus initiative are capital projects such as: purchase, replacement, or rehabilitation of, buses and vans and related equipment (including Intelligent Transportation Systems (ITS), fare equipment, communication devices that are FCC mandatory narrow-banding compliant); replacement or the modernization of bus maintenance and revenue service (passenger) facilities; and the development and implementation of transit asset management systems that address the objectives identified in the Program Purpose subsection above.

C. Cost Sharing

Costs will be shared at the following ratio: 80 percent FTA/20 percent local contribution, unless the grantee requests a lower Federal share. FTA will not approve deferred local share requests under this program.

The Federal share may exceed 80 percent for certain projects related to the Americans with Disabilities Act (ADA) and the Clean Air Act (CAA) as follows: ADA—The Federal share is 90 percent for the cost of vehicle-related equipment or facilities attributable to compliance with the ADA of 1990 (42 U.S.C. 12101 *et seq*); CAA—The Federal share is 90 percent for the cost of vehicle related equipment or facilities (including clean-fuel or alternative-fuel vehicle related equipment or facilities) attributable to compliance with the CAA (42 U.S.C. 7401 *et seq*). For administrative simplicity, FTA allows recipients to compute the Federal share at 83 percent for eligible ADA and CAA vehicle purchases.

The FY 2010 Appropriations Act allows a 90 percent Federal share for the total cost of a biodiesel bus. The Act also allows a 90 percent Federal share for the net capital cost of factory installed or retrofitted hybrid electric propulsion systems and any equipment related to such a system. For administrative simplicity, FTA allows recipients to compute the Federal share at 83 percent for eligible vehicle purchases.

IV. Proposal Submission Information

A. Proposal Submission Process

Project proposals must be submitted electronically through *http://www.grants.gov*. Mail and fax submissions will not be accepted except for supplemental information that cannot be sent electronically.

B. Proposal Content

1. Proposal Information

Proposals should provide basic sponsor identifying information, including:

a. Proposer's name and FTA recipient ID number.

b. Contact information for notification of project selection (including contact name, title, address, congressional district, email, fax and phone number).

c. A general description of services provided by the agency including ridership, fleet size, areas served, etc.

d. A description of the agency's technical, legal, and financial capacity to implement the proposed project. Some of this information is included in Standard Form 424 when applying through GRANTS.GOV.

2. Project Information

Every proposal must:

a. Describe concisely, but completely, the project scope to be funded. As FTA may elect to only partially fund some project proposals (see below), the scope should be "scalable" with specific components of independent utility clearly identified.

b. Address each of the evaluation criteria separately, demonstrating how the project responds to each criterion.

c. Provide a line-item budget for the total project, with enough detail to describe the various key components of the project. As FTA may elect to only partially fund some project proposals, the budget should provide for the minimum amount necessary to fund specific project components of independent utility.

d. Provide the Federal amount requested.

e. Document the matching funds, including amount and source of the match, demonstrating strong local or private sector financial participation in the project.

f. Provide support documentation, including audited financial statements, bond-ratings, and documents supporting the commitment of non-federal funding to the project, or a timeframe upon which those commitments would be made.

g. Provide a project time-line, including significant milestones such as the date anticipated to issue a request for proposals for vehicles, or contract for purchase of vehicle(s), and actual or expected delivery date of vehicles, or notice of request for proposal and notice to proceed for capital construction/rehabilitation projects.

C. Submission Dates and Times

Complete proposals for the State of Good Repair Bus initiative must be submitted June 18, 2010 electronically through the GRANTS.GOV Web site by the same date. Proposers are encouraged to begin the process of registration on the GRANTS.GOV site well in advance of the submission deadline. Registration is a multi-step process, which may take several weeks to complete before a proposal application can be submitted. FTA will announce project selections when the competitive selection process is complete. Successful proposers must then apply for a grant in FTA's Web-based grant system, TEAM, for the scope and amount approved.

D. Funding Restrictions

Only proposals from eligible recipients for eligible activities will be considered for funding (see Section III). Due to funding limitations, proposers that are selected for funding may receive less than the amount originally requested.

E. Other Submission Requirements

Proposers should submit three (3) copies of any supplemental information that cannot be submitted electronically to the appropriate regional office. Supplemental information submitted in hardcopy must be postmarked by June 18, 2010.

V. Proposal Review, Selection, and Notification

A. Project Evaluation Criteria

Projects will be evaluated by FTA based on the proposals submitted according to the following criteria. Each proposer is encouraged to demonstrate the responsiveness of a project to any and all of the selection criteria with the most relevant information that the proposer can provide, regardless of whether such information has been specifically requested, or identified, in this notice. FTA will assess the extent to which a project addresses the following criteria.

1. Planning and prioritization at the local/regional level:

a. Project is consistent with the transit priorities identified in the long range plan and/or contingency/illustrative projects. Proposer should note if project could not be included in the financially constrained Transportation Improvement Program (TIP)/Statewide Transportation Improvement Program (STIP) due to lack of funding (if selected, project must be in TIP before grant award).

b. Local support is demonstrated by availability of local match and letters of support for project.

c. In an area with more than one transit operator, the proposal demonstrates coordination with, and support of, other transit operators, or other related projects within the proposer's MPO or the geographic region within which the proposed project will operate.

2. The project is ready to implement:

a. Any required environmental work has been initiated for construction projects requiring an Environmental Assessment (EA) or Environmental Impact Statement (EIS).

b. Project implementation plans are complete, including initial design of facilities projects.

c. TIP/STIP can be amended (evidenced by MPO/State endorsement).

d. Project funds can be obligated and the project implemented quickly, if selected.

3. Technical, legal, and financial capacity to implement the particular project proposed:

a. The proposer has the technical capacity to administer the project.

b. There are no outstanding legal, technical, or financial issues with the grantee that would make this a high-risk project to implement quickly.

c. Source of local match is identified and is available for prompt project implementation if selected (no deferred local share will be allowed).

In addition, for each of the project types below, the following criteria will apply:

1. For bus projects:

a. The age of the asset to be replaced or rehabilitated by the proposed project, relative to its useful life.

b. The degree to which the proposed project addresses a demonstrated and verifiable backlog of deferred maintenance.

c. Consistency with the proposer's bus fleet management plan.

d. Condition and performance of the asset to be replaced by the proposed project, as ascertained through field inspections or otherwise, if available.

e. Demonstrated positive impact on air quality.

f. The degree to which the proposed project supports emerging or advanced technologies for transit buses.

g. The project conforms to FTA's spare ratio guidelines.

2. For bus facility and equipment projects:

a. The age of the asset to be rehabilitated or replaced relative to its useful life.

b. The degree to which proposed project addresses a demonstrated and verifiable backlog of deferred maintenance.

c. Supports emerging or advanced technologies for transit facilities and equipment.

d. For facilities, evidence of proposed project compliance with "Green Building" certification.

3. For transit asset management system projects:

If asset management system development or upgrades are proposed,

the proposal shall describe, as applicable, the system element(s) the proposer is seeking to improve; including:

a. How asset management plans/systems will be developed or upgraded.

b. How asset inventories will be maintained physically and fiscally.

c. How assets initial condition will be assessed.

d. How assets will be inspected and monitored, and at what frequency.

e. How logistical decision support tools (including options and tradeoff analysis) will be used in the proposer's day-to-day operations.

f. Demonstrated long-term financial and management commitment of the proposer to using the asset management system.

B. Review and Selection Process

Proposals will be evaluated by the appropriate FTA regional office using the criteria above. The FTA Administrator will determine the final selection and amount of funding for each project. Selected projects will be announced in September 2010. FTA will publish the list of all selected projects and funding levels in the Federal Register. Regional offices will also notify successful proposers and the amount of funding to be awarded to the project.

VI. Award Administration

A. Award Notices

FTA will award grants for the selected projects to the proposer through the FTA electronic grants management and award system, TEAM, after receipt of a complete application in TEAM. These grants will be administered and managed by the FTA regional offices in accordance with the Federal requirements of the Section 5309 Bus program. At the time the project selections are announced, FTA will extend pre-award authority for the selected projects. There is no blanket pre-award authority for these projects before announcement.

B. Administrative and National Policy Requirements

1. Grant Requirements

If selected, applicants will apply for a grant through TEAM and adhere to the customary FTA grant requirements of the Section 5309 Bus and Bus Facilities program, including those of FTA C 9300.1B Circular and C 5010.1D and S. 5333(b) labor protections. Discretionary grants greater than $500,000 will be subject to the Congressional Notification and release process. Technical assistance regarding these requirements is available from each FTA regional office.

2. Planning

Applicants are encouraged to notify the appropriate State Departments of Transportation and MPO in areas likely to be served by the project funds made available under this program. Incorporation of funded projects in the long-range plans and transportation improvement programs of States and metropolitan areas is required of all funded projects.

3. Standard Assurances

The applicant assures that it will comply with all applicable Federal statutes, regulations, executive orders, FTA circulars, and other Federal administrative requirements in carrying out any project supported by the FTA grant. The applicant acknowledges that it is under a continuing obligation to comply with the terms and conditions of the grant agreement issued for its project with FTA. The applicant understands that Federal laws, regulations, policies, and administrative practices might be modified from time to time and affect the implementation of the project. The applicant agrees that the most recent Federal requirements will apply to the project, unless FTA issues a written determination otherwise. The applicant must submit the Certifications and Assurances before receiving a grant if it does not have current certifications on file.

C. Reporting

Post-award reporting requirements include submission of Financial Status Reports and Milestone Reports in TEAM on a quarterly basis for all projects. Documentation is required for payment. In addition, project sponsors receiving grants for asset management systems and innovative technologies may be required to report on the performance of these systems and technologies.

VII. Agency Contacts

Contact the appropriate FTA Regional Administrator (Appendix A) for proposal specific information and issues. For information on the SGR Bus and Bus Facilities Initiative, contact Darren Jaffe, Office of Program Management, (202) 366–4008, e-mail: *darren.jaffe@dot.gov*. A TDD is available at 1–800–877–8339 (TDD/FIRS).

Issued in Washington, DC this 29th day of April, 2010.

Peter Rogoff,

Administrator.

APPENDIX A—FTA REGIONAL AND METROPOLITAN OFFICES

Richard H. Doyle, Regional Administrator, Region 1–Boston, Kendall Square, 55 Broadway, Suite 920, Cambridge, MA 02142–1093, Tel. 617–494–2055 States served: Connecticut, Maine, Massachusetts, New Hampshire, Rhode Island, and Vermont	Robert C. Patrick, Regional Administrator, Region 6–Ft. Worth, 819 Taylor Street, Room 8A36, Ft. Worth, TX 76102, Tel. 817–978–0550. States served: Arkansas, Louisiana, Oklahoma, New Mexico and Texas.
Brigid Hynes-Cherin, Regional Administrator, Region 2–New York, One Bowling Green, Room 429, New York, NY 10004–1415, Tel. 212–668–2170 States served: New Jersey, New York New York Metropolitan Office, Region 2–New York, One Bowling Green, Room 428, New York, NY 10004–1415, Tel. 212–668–2202.	Mokhtee Ahmad, Regional Administrator, Region 7–Kansas City, MO, 901 Locust Street, Room 404, Kansas City, MO 64106, Tel. 816–329–3920. States served: Iowa, Kansas, Missouri, and Nebraska.
Letitia Thompson, Regional Administrator, Region 3–Philadelphia, 1760 Market Street, Suite 500, Philadelphia, PA 19103–4124, Tel. 215–656–7100 States served: Delaware, Maryland, Pennsylvania, Virginia, West Virginia, and District of Columbia Philadelphia Metropolitan Office, Region 3–Philadelphia, 1760 Market Street, Suite 500, Philadelphia, PA 19103–4124, Tel. 215–656–7070 Washington, D.C. Metropolitan Office, 1990 K Street, NW., Room 510, Washington, DC 20006, Tel. 202–219–3562	Terry Rosapep, Regional Administrator, Region 8–Denver, 12300 West Dakota Ave., Suite 310, Lakewood, CO 80228–2583, Tel. 720–963–3300. States served: Colorado, Montana, North Dakota, South Dakota, Utah, and Wyoming.

APPENDIX A—FTA REGIONAL AND METROPOLITAN OFFICES—Continued

Yvette Taylor, Regional Administrator, Region 4–Atlanta, 230 Peachtree Street, NW., Suite 800, Atlanta, GA 30303, Tel. 404–865–5600 States served: Alabama, Florida, Georgia, Kentucky, Mississippi, North Carolina, Puerto Rico, South Carolina, Tennessee, and Virgin Islands	Leslie T. Rogers, Regional Administrator, Region 9–San Francisco, 201 Mission Street, Room 1650, San Francisco, CA 94105–1926, Tel. 415–744–3133. States served: American Samoa, Arizona, California, Guam, Hawaii, Nevada, and the Northern Mariana Islands. Los Angeles Metropolitan Office, Region 9–Los Angeles, 888 S. Figueroa Street, Suite 1850, Los Angeles, CA 90017–1850, Tel. 213–202–3952.
Marisol Simon, Regional Administrator, Region 5–Chicago, 200 West Adams Street, Suite 320, Chicago, IL 60606, Tel. 312–353–2789 States served: Illinois, Indiana, Michigan, Minnesota, Ohio, and Wisconsin Chicago Metropolitan Office, Region 5–Chicago, 200 West Adams Street, Suite 320, Chicago, IL 60606, Tel. 312–353–2789	Rick Krochalis, Regional Administrator, Region 10–Seattle, Jackson Federal Building, 915 Second Avenue, Suite 3142, Seattle, WA 98174–1002, Tel. 206–220–7954. States served: Alaska, Idaho, Oregon, and Washington.

[FR Doc. 2010–10430 Filed 4–30–10; 11:15 am]
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DEPARTMENT OF THE TREASURY

Office of Foreign Assets Control

Blocking of Specially Designated National Pursuant to Executive Order 13413

AGENCY: Office of Foreign Assets Control, Treasury.

ACTION: Notice.

SUMMARY: The Treasury Department's Office of Foreign Assets Control ("OFAC") is publishing the name of five individuals whose property and interests in property have been blocked pursuant to Executive Order 13413 of October 27, 2006, "Blocking Property of Certain Persons Contributing to the Conflict in the Democratic Republic of Congo".

DATES: The designation by the Director of OFAC of the five individuals identified in this notice, pursuant to Executive Order 13413 of October 27, 2006, is effective on April 28, 2010.

FOR FURTHER INFORMATION CONTACT: Assistant Director, Compliance Outreach & Implementation, Office of Foreign Assets Control, Department of the Treasury, Washington, DC 20220, tel.: 202/622–2490.

SUPPLEMENTARY INFORMATION:

Electronic and Facsimile Availability

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

Background

On October 27, 2006, the President signed Executive Order 13413 (the "Order") pursuant to, inter alia, the International Emergency Economic Powers Act (50 U.S.C. 1701 *et seq.*) (IEEPA), section 5 of the United Nations Participation Act, as amended (22 U.S.C. 287c) (UNPA), and section 301 of title 3, United States Code. In the Order, the President found that the situation in the Democratic Republic of the Congo constitutes an unusual and extraordinary threat. The President identified seven individuals as subject to the economic sanctions in the Annex to the Order.

Section 1 of the Order blocks, with certain exceptions, all property and interests in property that are in, or thereafter come within, the United States, or within the possession or control of United States persons, of the persons listed in the Annex, as well as those persons determined by the Secretary of the Treasury, after consultation with the Secretary of State, to meet any of the criteria set forth in subparagraphs (a)(i)–(a)(ii)(G) of Section 1.

On April 28, 2010, the Director of OFAC exercised the Secretary of the Treasury's authority to designate, pursuant to one or more of the criteria set forth in Section 1 of the Order, the individuals listed below, whose property and interests in property are blocked pursuant to E.O. 13413.

The listing of the blocked individuals is as follows:

NTAGANDA, Bosco (a.k.a. BAGANDA, Bosco; a.k.a. NTAGANDA, Jean Bosco; a.k.a. NTAGENDA, Bosco; a.k.a. NTANGANA, Bosco; a.k.a. NTANGANDA, Bosco; a.k.a. TAGANDA, Bosco; a.k.a. TANGANDA, Bosco), Runyoni, Rutshuru, North Kivu, Congo, Democratic Republic of the; DOB 1973; POB Nord-Kivu, DRC; alt. POB Rwanda; nationality Congo, Democratic Republic of the (individual) [DRCONGO]

LUBANGA, Thomas (a.k.a. DYILO, Thomas Lubanga); DOB 29 Dec 1960; POB Djiba, Utcha Sector, Djugu Territory, Ituri District, Orientale Province, DRC; nationality Congo, Democratic Republic of the (individual) [DRCONGO]

KATANGA, Germain; DOB 28 Apr 1978; POB Mambasa, Mambasa Territory, Ituri District, DRC; nationality Congo, Democratic Republic of the (individual) [DRCONGO]

NGUDJOLO, Matthieu Cui (a.k.a. CUI NGUDJOLO; a.k.a. NGUDJOLO CHUI, Mathieu; a.k.a. NGUDJOLO, Cui Cui; a.k.a. NGUDJOLO, Mathieu; a.k.a. TCHUI, Mathieu Ngudjolo); DOB 8 Oct 1970; POB Bunia, Ituri District, DRC; nationality Congo, Democratic Republic of the (individual) [DRCONGO]

MUTEBUTSI, Jules (a.k.a. COLONEL MUTEBUTSI; a.k.a. MUTEBUSI, Jules; a.k.a. MUTEBUZI, Jules), Rwanda; DOB 6 Jul 1960; POB South Kivu, DRC; nationality Congo, Democratic Republic of the (individual) [DRCONGO]

Dated: April 28, 2010.

Adam J. Szubin,

Director, Office of Foreign Assets Control.

[FR Doc. 2010–10298 Filed 5–3–10; 8:45 am]
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DEPARTMENT OF VETERANS AFFAIRS

Joint Biomedical Laboratory Research and Development and Clinical Science Research and Development Services Scientific Merit Review Board; Notice of Meetings

The Department of Veterans Affairs gives notice under Public Law 92–463 (Federal Advisory Committee Act), that the panels of the Joint Biomedical Laboratory Research and Development and Clinical Science Research and

Development Services Scientific Merit Review Board will meet from 8 a.m. to 5 p.m. on the dates indicated below:

Panel	Date(s)	Location
Cardiovascular Studies	May 24, 2010	St. Gregory Hotel & Suites.
Immunology-A	May 25, 2010	L'Enfant Plaza Hotel.
Mental Hlth & Behav Sci-B	May 26, 2010	Embassy Suites—Chevy Chase.
Neurobiology-E	May 26, 2010	*VA Central Office.
Hematology	May 28, 2010	*VA Central Office.
Epidemiology	June 2, 2010	*VA Central Office.
Neurobiology-A	June 4, 2010	Embassy Suites—Chevy Chase.
Nephrology	June 4, 2010	Hotel Palomar.
Infectious Diseases-B	June 4, 2010	L'Enfant Plaza Hotel.
Endocrinology-B	June 4, 2010	*VA Central Office.
Cellular & Molecular Medicine	June 7, 2010	Hotel Palomar.
Surgery	June 7, 2010	Crowne Plaza.
Endocrinology-A	June 7, 2010	L'Enfant Plaza Hotel.
Mental Hlth & Behav Sci-A	June 7, 2010	L'Enfant Plaza Hotel.
Clinical Research Program	June 9, 2010	*VA Central Office.
Oncology	June 10–11, 2010	L'Enfant Plaza Hotel.
Neurobiology-C	June 10–11, 2010	L'Enfant Plaza Hotel.
Gastroenterology	June 10, 2010	L'Enfant Plaza Hotel.
Neurobiology-D	June 10, 2010	L'Enfant Plaza Hotel.
Respiration	June 11, 2010	L'Enfant Plaza Hotel.
Infectious Diseases-A	June 11, 2010	L'Enfant Plaza Hotel.
Eligibility	July 19, 2010	The Ritz-Carlton.

The addresses of the hotels and VA Central Office are:
Crowne Plaza Washington DC/Silver Spring, 8777 Georgia Avenue, Silver Spring, MD.
Embassy Suites at the Chevy Chase Pavilion, 4300 Military Road, NW., Washington, DC.
Hotel Palomar, 2121 P Street, NW., Washington, DC.
L'Enfant Plaza Hotel, 480 L'Enfant Plaza, SW., Washington, DC.
St. Gregory Hotel & Suites, 2033 M Street, NW., Washington, DC.
The Ritz-Carlton, 1150—22nd Street, NW., Washington, DC.
* VA Central Office, 1722 Eye Street, NW., Washington, DC.
* Teleconference.

The purpose of the Merit Review Board is to provide advice on the scientific quality, budget, safety and mission relevance of investigator-initiated research proposals submitted for VA merit review consideration. Proposals submitted for review by the Board involve a wide range of medical specialties within the general areas of biomedical, behavioral and clinical science research.

The panel meetings will be open to the public for approximately one hour at the start of each meeting to discuss the general status of the program. The remaining portion of each panel meeting will be closed to the public for the review, discussion, and evaluation of initial and renewal research proposals.

The closed portion of each meeting involves discussion, examination, reference to staff and consultant critiques of research proposals. During this portion of each meeting, discussion and recommendations will deal with qualifications of personnel conducting the studies, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy, as well as research information, the premature disclosure of which could significantly frustrate implementation of proposed agency action regarding such research proposals.

As provided by subsection 10(d) of Public Law 92–463, as amended, closing portions of these panel meetings is in accordance with 5 U.S.C., 552b(c) (6) and (9)(B). Those who plan to attend or would like to obtain a copy of minutes of the panel meetings and rosters of the members of the panels should contact Leroy G. Frey, Ph.D., Chief, Program Review (121F), Department of Veterans Affairs, 810 Vermont Avenue, NW., Washington, DC 20420 at (202) 461–1664.

Dated: April 29, 2010.

By Direction of the Secretary.

Vivian Drake,

Acting Committee Management Officer.

[FR Doc. 2010–10394 Filed 5–3–10; 8:45 am]

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DEPARTMENT OF VETERANS AFFAIRS

Special Medical Advisory Group; Notice of Meeting

The Department of Veterans Affairs (VA) gives notice under Public Law 92–463 (Federal Advisory Committee Act) that the Special Medical Advisory Group will meet on May 14, 2010, in Room 830 at VA Central Office, 810 Vermont Avenue, NW., Washington, DC, from 8:30 a.m. to 3 p.m. The meeting is open to the public.

The purpose of the Group is to advise the Secretary of Veterans Affairs and the Under Secretary for Health on the care and treatment of disabled Veterans, and other matters pertinent to the Department's Veterans Health Administration (VHA).

The agenda for the meeting will include discussions of the Vision for VHA, the Group's charter, update on Blue Ribbon Panel on VA-Medical School Affiliations Report Implementation, update on Transformational Initiatives, and VA/DoD Interoperability.

Any member of the public wishing to attend should contact Juanita Leslie, Office of Administrative Operations (10B2), at (202) 461–7019 or *j.t.leslie@va.gov*. No time will be set aside at this meeting for receiving oral presentations from the public. Statements, in written form, may be submitted to Ms. Leslie before the meeting or within 10 days after the meeting.

Dated: April 29, 2010.

By Direction of the Secretary.

Vivian Drake,

Committee Management Officer.

[FR Doc. 2010–10411 Filed 5–3–10; 8:45 am]

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