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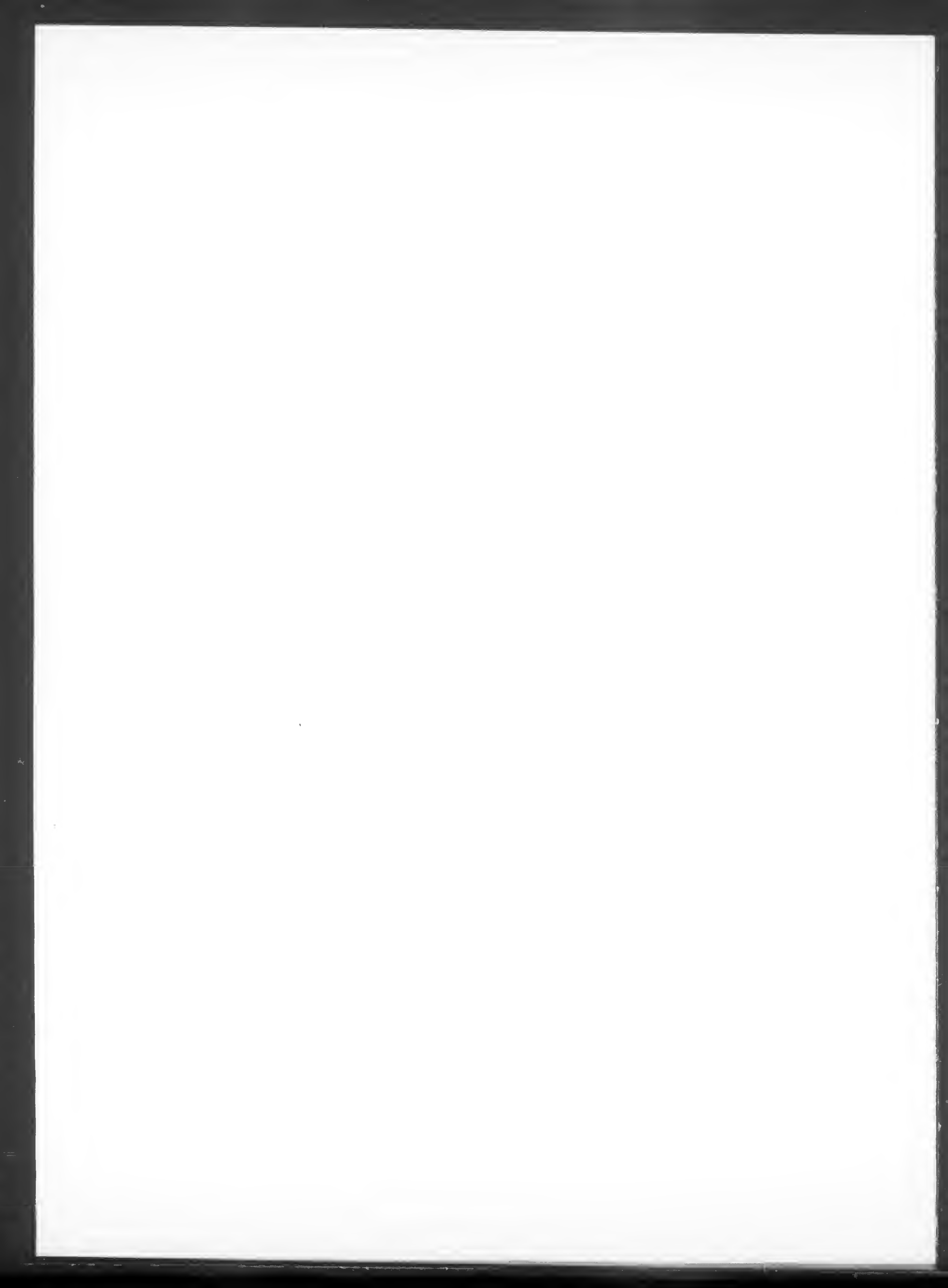

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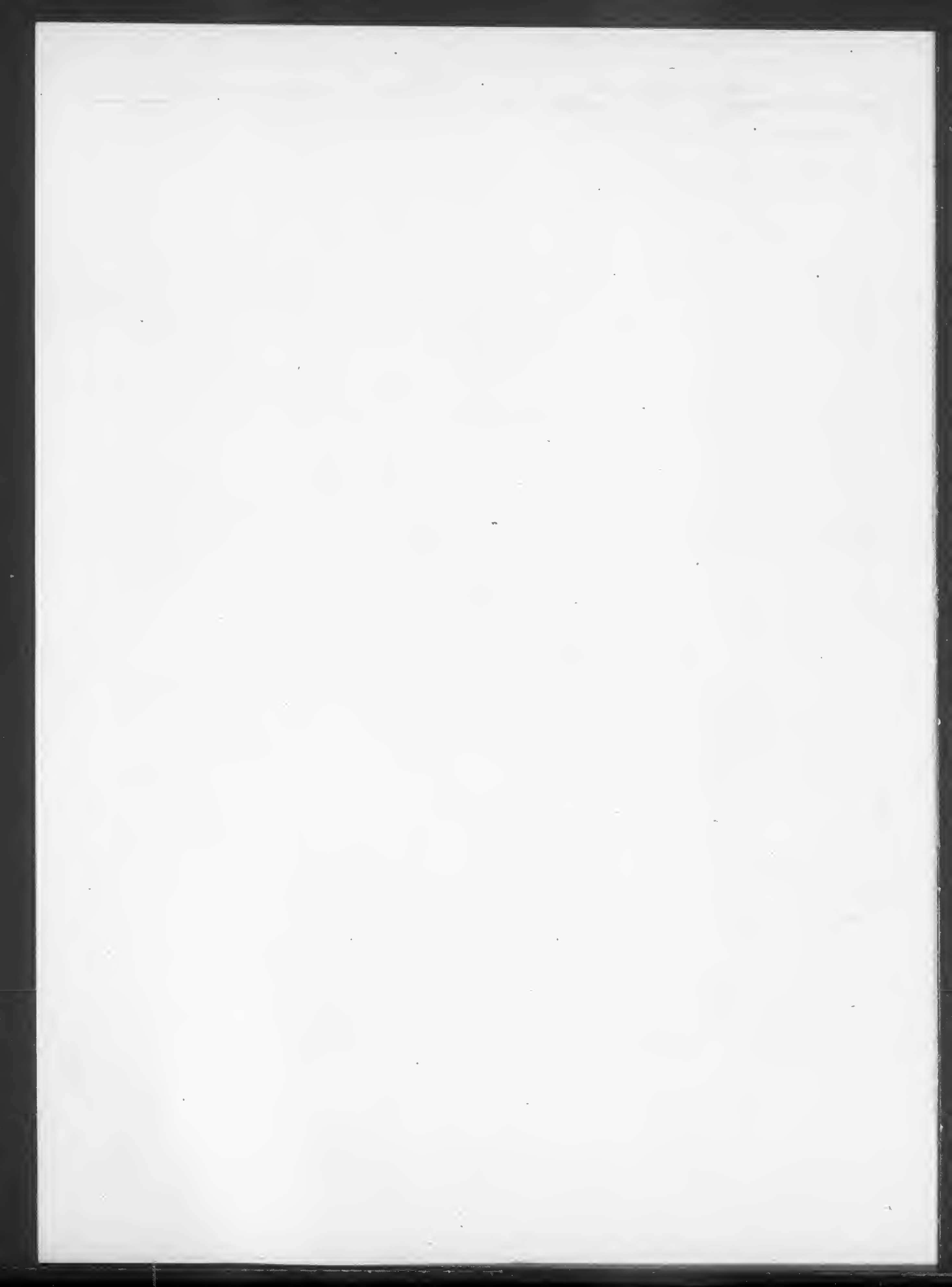

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The Code of Federal Regulations is sold by the Superintendent of Documents. Prices of new books are listed in the first FEDERAL REGISTER issue of each week.

FEDERAL LABOR RELATIONS AUTHORITY

5 CFR Parts 2411 and 2417

Testimony by FLRA Employees and Production of Official Records in Legal Proceedings

AGENCY: Federal Labor Relations Authority.

ACTION: Final rule.

SUMMARY: This final rule amends the Federal Labor Relations Authority's (FLRA) rules by setting out procedures for requesters to follow when making demands on or requests to an employee of the FLRA, the General Counsel of the FLRA (General Counsel) or the Federal Service Impasses Panel (Panel) to produce official records or provide testimony relating to official information in connection with a civil legal proceeding in which the FLRA is not named as a party. The final rule establishes procedures to respond to such demands and requests in an orderly and consistent manner. The final rule promotes uniformity in decisions, protects confidential information, provides guidance to requesters, and reduces the potential for both inappropriate disclosures of official information and wasteful allocation of agency resources.

DATES: This final rule is effective March 19, 2009.

FOR FURTHER INFORMATION CONTACT: Rosa M. Koppel, Solicitor, Federal Labor Relations Authority, 1400 K Street, NW., Washington, DC 20424; (202) 218–7999; fax: (202) 343–1007; or e-mail *rkoppel@flra.gov*.

SUPPLEMENTARY INFORMATION: The FLRA is amending and relocating to a new Part 2417 what was § 2411.11. Section 2411.11 prohibited employees from producing documents or giving testimony in response to a subpoena or other request without the written consent of the FLRA, the General Counsel or the Panel, as appropriate. Under § 2411.11, any employee served with a subpoena or request who was not given the requisite written consent was instructed to move to have the subpoena invalidated "on the ground that the evidence sought is privileged against disclosure by this rule." This approach incorrectly treated the regulations as though they created a privilege against disclosure.

The FLRA is amending the regulations to set out specific procedures that must be followed by persons who submit demands or requests for non-public FLRA information. The new Part 2417 also sets out factors that the FLRA will consider when deliberating on demands or requests for non-public FLRA information. Non-public information, as that term is used in this proposal, is information, confidential or otherwise, not available to the public pursuant to the Freedom of Information Act.

Responding to such demands and requests may result in a significant disruption of an FLRA employee's work schedule and possibly involve the FLRA in issues unrelated to its responsibilities. In order to resolve these problems, many agencies have issued regulations, similar to these new regulations, governing the circumstances and manner in which an employee may respond to demands for testimony or for the production of documents. The United States Supreme Court upheld this type of regulation in *United States ex rel. Touhy* v. *Ragen*, 340 U.S. 462 (1951).

This rule applies to a range of matters in any civil legal proceeding in which the FLRA is not a named party. It also applies to former and current FLRA employees (as well as to FLRA consultants and advisors). Former FLRA employees are prohibited from testifying about specific matters for which they had responsibility during their active employment unless permitted to testify as provided in the regulations. They would not be prohibited from testifying about general matters unconnected with the specific FLRA matters for which they had responsibility.

This rule will ensure a more efficient use of the FLRA's resources, minimize the possibility of involving the FLRA in issues unrelated to its responsibilities, promote uniformity in responding to such subpoenas and requests, and maintain the impartiality of the FLRA in matters that are in dispute between other parties. It will also serve the FLRA's interest in protecting sensitive, confidential, and privileged information and records that are generated in fulfillment of the FLRA's statutory responsibilities.

The charges for witnesses are the same as those provided in Federal courts; and the fees related to production of records are the same as those charged under the Freedom of Information Act. The charges for time spent by an employee to prepare for testimony and for searches, copying, and certification of records by the FLRA are authorized under 31 U.S.C. 9701, which permits an agency to charge for services or things of value that are provided by the agency.

This rule is internal and procedural rather than substantive. It does not create a right to obtain official records or the official testimony of an FLRA employee nor does it create any additional right or privilege not already available to FLRA to deny any demand or request for testimony or documents. Failure to comply with the procedures set out in these regulations would be a basis for denying a demand or request submitted to the FLRA.

On December 24, 2008, the FLRA published a proposed rule with request for comments that proposed to amend 5 CFR, chapter XIV (73 FR 79024). The FLRA received no comments during the 30 days allowed for public comment and this final rule makes no changes to the previously published proposed rule. *See* 73 FR 79024 for additional information concerning this amendment of 5 CFR, chapter XIV.

List of Subjects in 5 CFR Parts 2411 and 2417

Administrative practice and procedure; Government employees.

■ For the reasons stated in the preamble, the Federal Labor Relations Authority amends 5 CFR part 2411 and adds part 2417 as set forth below:

PART 2411—AVAILABILITY OF OFFICIAL INFORMATION

■ 1. The authority citation for part 2411 continues to read as follows:

Authority: 5 U.S.C. 552

§ 2411.11 [Removed]

■ 2. Section 2411.11 is removed.

§ 2411.12 [Amended]

■ 3. Section 2411.12 is redesignated as § 2411.11.

■ 4. Part 2417 is added to read as follows:

PART 2417—TESTIMONY BY EMPLOYEES RELATING TO OFFICIAL INFORMATION AND PRODUCTION OF OFFICIAL RECORDS IN LEGAL PROCEEDINGS

Subpart A—General Provisions

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2417.301 Fees.

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2417.401 Penalties.

Authority: 5 U.S.C. 7105; 31 U.S.C. 9701; 44 U.S.C. 3101–3107.

Subpart A—General Provisions

§ 2417.101 Scope and purpose.

(a) These regulations establish policy, assign responsibilities and prescribe procedures with respect to:

(1) The production or disclosure of official information or records by employees, members, advisors, and consultants of the Federal Labor Relations Authority, the General Counsel of the Federal Labor Relations Authority or the Federal Service Impasses Panel; and

(2) The testimony of current and former employees, members, advisors, and consultants of the Authority, the General Counsel or the Panel relating to official information, official duties or official records, in connection with civil federal or state litigation in which the Authority, the General Counsel or the Panel is not a party.

(b) The FLRA intends these provisions to:

(1) Conserve the time of employees for conducting official business;

(2) Minimize the involvement of employees in issues unrelated to the mission of the FLRA;

(3) Maintain the impartiality of employees in disputes between private litigants; and

(4) Protect sensitive, confidential information and the deliberative processes of the FLRA.

(c) In providing for these requirements, the FLRA does not waive the sovereign immunity of the United States.

(d) This part provides guidance for the internal operations of the FLRA. It does not create any right or benefit, substantive or procedural, that a party may rely upon in any legal proceeding against the United States.

§ 2417.102 Applicability.

This part applies to demands and requests to current and former employees, members, advisors, and consultants for factual or expert testimony relating to official information or official duties or for production of official records or information, in civil legal proceedings in which the Authority, the General Counsel or the Panel is not a named party. This part does not apply to:

(a) Demands upon or requests for an employee to testify as to facts or events that are unrelated to his or her official duties or that are unrelated to the functions of the Authority, the General Counsel or the Panel;

(b) Demands upon or requests for a former employee to testify as to matters in which the former employee was not directly or materially involved while at the Authority, the General Counsel or the Panel;

(c) Requests for the release of records under the Freedom of Information Act, 5 U.S.C. 552, or the Privacy Act, 5 U.S.C. 552a;

(d) Congressional demands and requests for testimony, records or information; or

(e) Demands or requests for testimony, records or information by any Federal, state, or local agency in furtherance of an ongoing investigation of possible violations of criminal law.

§ 2417.103 Definitions.

The following definitions apply to this part.

(a) *Demand* means an order, subpoena, or other command of a court or other competent authority for the production, disclosure, or release of records or for the appearance and testimony of an employee in a civil legal proceeding.

(b) *Legal proceeding* means any matter before a court of law, administrative board or tribunal, commission, administrative law judge, hearing officer or other body that conducts a civil legal or administrative proceeding. Legal proceeding includes all phases of litigation.

(c) *Employee* means:

(i) Any current or former employee or member of the Authority, the General Counsel or the Federal Service Impasses Panel;

(ii) Any other individual hired through contractual agreement by or on behalf of the Authority or who has performed or is performing services under such an agreement for the Authority; and

(iii) Any individual who served or is serving in any consulting or advisory capacity to the Authority whether formal or informal.

This definition does not include: Persons who are no longer employed by the Authority, the General Counsel or the Panel and who agree to testify about general matters, matters available to the public or matters with which they had no specific involvement or responsibility during their employment with the Authority, the General Counsel or the Panel.

(d) *Records or official records and information* means: All information in the custody and control of the Authority, the General Counsel or the Panel, relating to information in the custody and control thereof, or acquired by an employee while in the performance of his or her official duties or because of his or her official status, while the individual was employed by or on behalf of the Authority, the General Counsel or the Panel.

(e) *Request* means any informal request, by whatever method, for the production of records and information or for testimony which has not been ordered by a court or other competent authority.

(f) *Testimony* means any written or oral statements, including depositions, answers to interrogatories, affidavits, declarations, interviews, and statements made by an individual in connection with a legal proceeding.

Subpart B—Demands or Requests for Testimony and Production of Documents

§ 2417.201 General prohibition.

No employee of the Authority, the General Counsel or the Panel may produce official records and information or provide any testimony relating to

official information in response to a demand or request without the prior, written approval of the Chairman of the FLRA or the Chairman's designee.

§ 2417.202 Factors the FLRA will consider.

The Chairman or the Chairman's designee, in his or her sole discretion, may grant an employee permission to testify on matters relating to official information, or produce official records and information, in response to a demand or request. Among the relevant factors that the Chairman may consider in making this decision are whether:

(a) The purposes of this part are met;

(b) Allowing such testimony or production of records would be necessary to prevent a miscarriage of justice;

(c) Allowing such testimony or production of records would assist or hinder the FLRA in performing its statutory duties;

(d) Allowing such testimony or production of records would be in the best interest of the FLRA;

(e) The records or testimony can be obtained from other sources;

(f) The demand or request is unduly burdensome or otherwise inappropriate under the applicable rules of discovery or the rules of procedure governing the case or matter in which the demand or request arose;

(g) Disclosure would violate a statute, Executive Order or regulation;

(h) Disclosure would reveal confidential, sensitive, or privileged information, trade secrets or similar, confidential or financial information, otherwise protected information, or information which would otherwise be inappropriate for release;

(i) Disclosure would impede or interfere with an ongoing law enforcement investigation or proceeding, or compromise constitutional rights or national security interests;

(j) Disclosure would result in the FLRA appearing to favor one litigant over another;

(k) The request was served before the demand;

(l) A substantial Government interest is implicated;

(m) The demand or request is within the authority of the party making it;

(n) The demand or request is sufficiently specific to be answered; and

(o) Any other factor deemed relevant under the circumstances of the particular request.

§ 2417.203 Filing requirements for litigants seeking documents or testimony.

A litigant must comply with the following requirements when filing a request for official records and information or testimony under part 2417. A request should be filed before a demand.

(a) The request must be in writing and must be submitted to the Office of the Solicitor.

(b) The written request must contain the following information:

(1) The caption of the legal proceeding, docket number, and name and address of the court or other authority involved;

(2) A copy of the complaint or equivalent document setting forth the assertions in the case and any other pleading or document necessary to show relevance;

(3) A list of categories of records sought, a detailed description of how the information sought is relevant to the issues in the legal proceeding, and a specific description of the substance of the testimony or records sought;

(4) A statement as to how the need for the information outweighs any need to maintain the confidentiality of the information and outweighs the burden on the FLRA to produce the records or provide testimony;

(5) A statement indicating that the information sought is not available from another source, from other persons or entities or from the testimony of someone other than an employee, such as a retained expert;

(6) If testimony is requested, the intended use of the testimony, and a showing that no document could be provided and used in lieu of testimony;

(7) A description of all prior decisions, orders or pending motions in the case that bear upon the relevance of the requested records or testimony;

(8) The name, address, and telephone number of counsel to each party in the case; and

(9) An estimate of the amount of time that the requester and other parties will require for each employee for time spent by the employee to prepare for testimony, in travel, and for attendance in the legal proceeding.

(c) The Office of the Solicitor reserves the right to require additional information to complete the request where appropriate.

(d) The request should be submitted at least 30 days before the date that records or testimony is required. Requests submitted in less than 30 days before records or testimony is required must be accompanied by a written explanation stating the reasons for the late request and the reasons for expedited processing.

(e) Failure to cooperate in good faith to enable the FLRA to make an informed decision may serve as the basis for a determination not to comply with the request.

(f) The request should state that the requester will provide a copy of the employee's statement free of charge and that the requester will permit the FLRA to have a representative present during the employee's testimony.

§ 2417.204 Where to submit a request.

(a) Requests or demands for official records or information or testimony under this part must be served on the Office of the Solicitor at the following address: Office of the Solicitor, Federal Labor Relations Authority, 1400 K Street, NW., Suite 201, Washington, DC 20424–0001; *telephone:* (202) 218–7999; *fax:* (202) 343–1007. The request must be sent by mail, fax, or e-mail and clearly marked "Part 2417 Request for Testimony or Official Records in Legal Proceedings."

(b) A person requesting public FLRA information and non-public FLRA information under this part may submit a combined request for both to the Office of the Solicitor. If a requester decides to submit a combined request under this section, the FLRA will process the combined request under this part and not under part 2411 (FOIA).

§ 2417.205 Consideration of requests or demands.

(a) After receiving service of a request or demand for testimony, the FLRA will review the request and, in accordance with the provisions of this part, determine whether, or under what conditions, to authorize the employee to testify on matters relating to official information and/or produce official records and information.

(b) Absent exigent circumstances, the FLRA will issue a determination within 30 days from the date the request is received.

(c) The FLRA may grant a waiver of any procedure described by this part where a waiver is considered necessary to promote a significant interest of the FLRA or the United States or for other good cause.

(d) *Certification (authentication) of copies of records.* The FLRA may certify that records are true copies in order to facilitate their use as evidence. If a requester seeks certification, the requester must request certified copies from the Solicitor at least 30 days before the date they will be needed.

§ 2417.206 Final determination.

The Chairman of the FLRA, or the Chairman's designee, makes the final determination on demands or requests to employees thereof for production of official records and information or

testimony in litigation in which the FLRA is not a party. All final determinations are within the sole discretion of the Chairman or the Chairman's designee. The Chairman or designee will notify the requester and, when appropriate, the court or other competent authority of the final determination, the reasons for the grant or denial of the request, and any conditions that may be imposed on the release of records or information, or on the testimony of an employee. This final determination exhausts administrative remedies for discovery of the information.

§ 2417.207 Restrictions that apply to testimony.

(a) Conditions or restrictions may be imposed on the testimony of employees including, for example:

(1) Limiting the areas of testimony;

(2) Requiring the requester and other parties to the legal proceeding to agree that the transcript of the testimony will be kept under seal;

(3) Requiring that the transcript will be used or made available only in the particular legal proceeding for which testimony was requested. The requester may also be required to provide a copy of the transcript of testimony at the requester's expense.

(b) The employee's written declaration may be provided in lieu of testimony.

(c) If authorized to testify pursuant to this part, an employee may testify as to facts within his or her personal knowledge, but, unless specifically authorized to do so by the Chairman or the Chairman's designee, the employee shall not:

(1) Disclose confidential or privileged information; or

(2) For a current employee, testify as an expert or opinion witness with regard to any matter arising out of the employee's official duties or the functions of the FLRA unless testimony is being given on behalf of the United States (*see* also 5 CFR 2635.805).

(d) The scheduling of an employee's testimony, including the amount of time that the employee will be made available for testimony, will be subject to the approval of the Chairman or the Chairman's designee.

§ 2417.208 Restrictions that apply to released records.

(a) The Chairman or the Chairman's designee may impose conditions or restrictions on the release of official records and information, including the requirement that parties to the proceeding obtain a protective order or execute a confidentiality agreement to limit access and any further disclosure. The terms of the protective order or of a confidentiality agreement must be acceptable to the Chairman or the Chairman's designee. In cases where protective orders or confidentiality agreements have already been executed, the Chairman or the Chairman's designee may condition the release of official records and information on an amendment to the existing protective order or confidentiality agreement.

(b) If the Chairman or the Chairman's designee so determines, original records may be presented for examination in response to a request, but they may not be presented as evidence or otherwise used in a manner by which they could lose their identity as official records, nor may they be marked or altered. In lieu of the original records, certified copies may be presented for evidentiary purposes.

§ 2417.209 Procedure when a decision is not made prior to the time a response is required.

If a response to a demand or request is required before the Chairman or the Chairman's designee can make the determination referred to in § 2417.206, the Chairman or the Chairman's designee, when necessary, will provide the court or other competent authority with a copy of this part, inform the court or other competent authority that the request is being reviewed, provide an estimate as to when a decision will be made, and seek a stay of the demand or request pending a final determination.

§ 2417.210 Procedure in the event of an adverse ruling.

If the court or other competent authority fails to stay a demand or request, the employee upon whom the demand or request is made, unless otherwise advised by the Chairman or the Chairman's designee, will appear, if necessary, at the stated time and place, produce a copy of this part, state that the employee has been advised by counsel not to provide the requested testimony or produce documents, and respectfully decline to comply with the demand or request, citing *United States ex rel. Touhy* v. *Ragen,* 340 U.S. 462 (1951).

Subpart C—Schedule of Fees

§ 2417.301 Fees.

(a) *Generally.* The Chairman or the Chairman's designee may condition the production of records or appearance for testimony upon advance payment of a reasonable estimate of the costs thereto.

(b) *Fees for records.* Fees for producing records will include fees for searching, reviewing, and duplicating records, costs of employee time spent in reviewing the request, and expenses generated by materials and equipment used to search for, produce, and copy the responsive information. These fees and costs will be calculated and charged as are like fees and costs arising from requests made pursuant to the Freedom of Information Act regulations in Part 2411.

(c) *Witness fees.* Fees for attendance by a witness will include fees, expenses, and allowances prescribed by the court's rules. If no such fees are prescribed, witness fees will be determined based upon the rule of the Federal district court closest to the location where the witness will appear and on 28 U.S.C. 1821, as applicable. Such fees will include cost of time spent by the witness to prepare for testimony, in travel and for attendance in the legal proceeding, plus travel costs.

(d) *Payment of fees.* A requester must pay witness fees for current employees and any record certification fees by submitting to the Office of the Solicitor a check or money order for the appropriate amount made payable to the Treasury of the United States. In the case of testimony of former employees, the requester must pay applicable fees directly to the former employee in accordance with 28 U.S.C. 1821 or other applicable statutes.

(e) *Waiver or reduction of fees.* The Chairman or the Chairman's designee, in his or her sole discretion, may, upon a showing of reasonable cause, waive or reduce any fees in connection with the testimony, production, or certification of records.

(f) *De minimis fees.* Fees will not be assessed if the total charge would be $10.00 or less.

Subpart D—Penalties

§ 2417.401 Penalties.

(a) An employee who discloses official records or information or gives testimony relating to official information, except as expressly authorized by the Chairman or the Chairman's designee, or as ordered by a Federal court after the FLRA has had the opportunity to be heard, may face the penalties provided in 18 U.S.C. 641 and other applicable laws. Additionally, former employees are subject to the restrictions and penalties of 18 U.S.C. 207 and 216.

(b) A current employee who testifies or produces official records and information in violation of this part may be subject to disciplinary action.

Dated: March 11, 2009.

Carol Waller Pope,

Acting Chairman.

[FR Doc. E9–5694 Filed 3–18–09; 8:45 am]

BILLING CODE 6727–01–P

DEPARTMENT OF AGRICULTURE

Federal Crop Insurance Corporation

7 CFR Parts 400, 407, 457

RIN 0563–AB73

General Administrative Regulations; Administrative Remedies for Non-Compliance; Correcting Amendments

AGENCY: Federal Crop Insurance Corporation, USDA.

ACTION: Final rule; correcting amendment.

SUMMARY: This document contains correcting amendments to the final regulations that were published December 18, 2008 (73 FR 76868–76891). These regulations pertain to Administrative Remedies for Non-Compliance and provide clarification of existing remedies.

DATES: *Effective Date:* March 19, 2009.

FOR FURTHER INFORMATION CONTACT: Cynthia Simpson, Director, Appeals, Litigation and Legal Liaison Staff, Risk Management Agency, United States Department of Agriculture, 1400 Independence Avenue, SW., Room 6603, Stop 0806, Washington, DC 20250, telephone (202) 720–0642.

SUPPLEMENTARY INFORMATION:

Background

The final regulation that is the subject of these correcting amendments was intended to add additional administrative remedies that are available as a result of the enactment of section 515(h) of the Federal Crop Insurance Act (Act) (7 U.S.C. 1515(h)), make such other changes as are necessary to implement the provisions of section 515(h) of the Act, and to clarify existing administrative remedies.

Need for Corrections

As published, the final regulation contained an error that may prove to be misleading and needs to be clarified.

On page 73 FR 76891 in § 407.9 item 22(a)(1) and § 457.8 item 27(e)(1)(i) the term "requirement of this title" is incorrect and should read "requirement of FCIC." Section 515(h) of the Act authorizes disqualification and the assessment of civil fine of persons who willfully and intentionally provide false or inaccurate information or fails to comply with a requirement of FCIC. The term "requirement of this title" is confusing and provides no reference to a specific requirement.

List of Subjects in 7 CFR Parts 407 and 457

Administrative practice and procedures; Administrative remedies for non-compliance.

■ Accordingly, the 7 CFR part 407 and 457 is amended as follows:

■ 1. The authority citation for 7 CFR part 407 and 457 is revised to read as follows:

Authority: 7 U.S.C. 1506(l) and 1506(o).

PART 407—GROUP RISK PLAN OF INSURANCE REGULATIONS

■ 2. In § 407.9 amend item 22 by revising paragraph (a)(1) to read as follows:

§ 407.9 Group risk plan common policy.

* * * * *

22. Remedial Sanctions

* * * * *

(a) * * *

(1) The amount of the pecuniary gain obtained as a result of the false or inaccurate information provided or the noncompliance with a requirement of FCIC; or

* * * * *

PART 457—COMMON CROP INSURANCE REGULATIONS

■ 3. In § 457.8 amend item 27 by revising paragraph (e)(1)(i) to read as follows:

§ 457.8 The application and policy.

* * * * *

27. Concealment, Misrepresentation or Fraud.

* * * * *

(e) * * *

(1) * * *

(i) The amount of the pecuniary gain obtained as a result of the false or inaccurate information provided or the noncompliance with a requirement of FCIC; or

* * * * *

Signed in Washington, DC, on March 11, 2009.

William J. Murphy,

Acting Manager, Federal Crop Insurance Corporation.

[FR Doc. E9–5793 Filed 3–18–09; 8:45 am]

BILLING CODE 3410–08–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 522

[Docket No. FDA–2009–N–0665]

Implantation or Injectable Dosage Form New Animal Drugs; Tylosin

AGENCY: Food and Drug Administration, HHS.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is amending the animal drug regulations to reflect approval of a supplemental new animal drug application (NADA) filed by Elanco Animal Health. The supplemental NADA provides for changing scientific nomenclature for a bovine pathogen on labeling for tylosin injectable solution.

DATES: This rule is effective March 19, 2009.

FOR FURTHER INFORMATION CONTACT: Cindy L. Burnsteel, Center for Veterinary Medicine (HFV–130), Food and Drug Administration, 7500 Standish Pl., Rockville, MD 20855, 240–276–8341, e-mail: *cindy.burnsteel@fda.hhs.gov.*

SUPPLEMENTARY INFORMATION: Elanco Animal Health, A Division of Eli Lilly & Co., Lilly Corporate Center, Indianapolis, IN 46285, filed a supplement to NADA 12–965 for TYLAN (tylosin) Injection, an injectable solution used for the treatment of animal diseases associated with several bacterial pathogens. The supplemental NADA provides for changing a bovine pathogen name on product labeling. The supplemental NADA is approved as of February 24, 2009, and the regulations in 21 CFR 522.2640 and 522.2640a are amended to reflect the approval.

Approval of this supplemental NADA did not require review of additional safety or effectiveness data or information. Therefore, a freedom of information summary is not required.

The agency has determined under 21 CFR 25.33(a)(1) that this action is of a type that does not individually or cumulatively have a significant effect on the human environment. Therefore, neither an environmental assessment nor an environmental impact statement is required.

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

List of Subjects in 21 CFR Part 522

Animal drugs.

■ Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs and redelegated to the Center for Veterinary Medicine, 21 CFR part 522 is amended as follows:

PART 522—IMPLANTATION OR INJECTABLE DOSAGE FORM NEW ANIMAL DRUGS

■ 1. The authority citation for 21 CFR part 522 continues to read as follows:

Authority: 21 U.S.C. 360b.

§ 522.2640 [Removed]

■ 2. Remove § 522.2640.

§ 522.2640a [Redesignated as § 522.2640]

■ 3. Redesignate § 522.2640a as § 522.2640.

§ 522.2640 [Amended]

■ 4. In the newly redesignated § 522.2640, remove "injection" from the section heading; remove and reserve paragraph (c); and in paragraph (e)(1)(ii), remove "*Corynebacterium pyogenes*" both times it appears and in its place add "*Arcanobacterium pyogenes*".

Dated: March 13, 2009.

Steven D. Vaughn,

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

[FR Doc. E9–6009 Filed 3–18–09; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 1

[TD 9441]

RIN 1545–BI46

Section 482: Methods To Determine Taxable Income in Connection With a Cost Sharing Arrangement; Correction

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Correcting amendment.

SUMMARY: This document contains a correction to a correcting amendment for final and temporary regulations (TD 9441) that were published in the **Federal Register** on Thursday, March 5, 2009 (74 FR 9570) providing further guidance and clarification regarding methods under section 482 to determine taxable income in connection with a cost sharing arrangement in order to address issues that have arisen in administering the current regulations. The temporary regulations affect domestic and foreign entities that enter into cost sharing arrangements described in the temporary regulations.

DATES: This correction is effective March 19, 2009, and is applicable on January 5, 2009.

FOR FURTHER INFORMATION CONTACT: Kenneth P. Christman, (202) 435–5265 (not a toll-free number).

SUPPLEMENTARY INFORMATION:

Background

The final and temporary regulations that are the subject of this document are under sections 367 and 482 of the Internal Revenue Code.

Need for Correction

As published, final and temporary regulations (TD 9441) contains an error that may prove to be misleading and is in need of clarification.

List of Subjects in 26 CFR Part 1

Income taxes, Reporting and recordkeeping requirements.

Correction of Publication

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

PART 1—INCOME TAXES

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

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

■ **Par. 2.** Section 1.482–0T is amended by removing and reserving the entry of § 1.482–7T(h)(3)(vi)(B) and revising the entry of § 1.482–7T(i)(6)(vi)(B) to read as follows:

§ 1.482–0T Outline of regulations under section 482 (temporary).

* * * * *

§ 1.482–7T Methods to determine taxable income in connection with a cost sharing arrangement (temporary).

* * * * *

(i) * * *

(6) * * *

(vi) * * *

(B) Circumstances in which Periodic Trigger deemed not to occur.

* * * * *

LaNita Van Dyke,

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

[FR Doc. E9–5950 Filed 3–18–09; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Parts 1 and 54

[TD 9447]

RIN 1545–BG80

Automatic Contribution Arrangements; Correction

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Correction to final regulations.

SUMMARY: This document contains a correction to final regulations (TD 9447) that were published in the **Federal Register** on Tuesday, February 24, 2009 (74 FR 8200) relating to automatic contribution arrangements. These regulations affect administrators of, employers maintaining, participants in, and beneficiaries of section 401(k) plans and other eligible plans that include an automatic contribution arrangement.

DATES: This correction is effective on March 19, 2009, and is applicable on February 24, 2009.

FOR FURTHER INFORMATION CONTACT: R. Lisa Mojiri-Azad, Dana Barry, or William D. Gibbs at (202) 622–3860 (not a toll-free number).

SUPPLEMENTARY INFORMATION:

Background

The final regulations that are the subject of this document are under sections 401, 402, 411, 414, and 4979 of the Internal Revenue Code.

Need for Correction

As published, final regulations (TD 9447) contains an error that may prove to be misleading and is in need of clarification.

Correction of Publication

Accordingly, the publication of the final regulations (TD 9447), which was the subject of FR Doc. E9–3716, is corrected as follows:

On page 8206, column 1, in the preamble, under the paragraph heading "*D. Permissible Withdrawal*", fourth paragraph of the column, last line of the paragraph, the language "section 3405(a)." is corrected to read "section 3405(b).".

LaNita Van Dyke,

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

[FR Doc. E9–5952 Filed 3–18–09; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 117

[USCG–2009–0155]

Drawbridge Operation Regulations; Annisquam River, Gloucester, MA, Maintenance

AGENCY: Coast Guard, DHS.

ACTION: Notice of temporary deviation from regulations.

SUMMARY: The Commander, First Coast Guard District, has issued a temporary deviation from the regulation governing the operation of the Blynman SR127 Bridge across the Annisquam River at mile 0.0, at Gloucester, Massachusetts. This temporary deviation allows the SR127 Bridge to remain in the closed position for four days to facilitate bridge maintenance.

DATES: This deviation is effective from 6 a.m. on March 16, 2009 through 6 p.m. on March 25, 2009.

ADDRESSES: Documents indicated in this preamble as being available in the docket are part of docket USCG–2009–0155 and are available online at *www.regulations.gov*. They are also available for inspection or copying at two locations: the Docket Management Facility (M–30), U.S. Department of Transportation, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue, SE., Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays, and the First Coast Guard District, Bridge Branch Office, 408 Atlantic Avenue, Boston, Massachusetts 02110, between 7 a.m. and 3 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: John McDonald, Project Officer, First Coast Guard District, at (617) 223–8364.

SUPPLEMENTARY INFORMATION: The Blynman SR127 Bridge, across the Annisquam River at mile 0.0, at Gloucester, Massachusetts, has a vertical clearance in the closed position of 7 feet at mean high water and 16 feet at mean low water. The existing drawbridge operation regulations are listed at 33 CFR 117.586.

The waterway predominantly supports recreational vessels of various sizes, tour boats, whale watch boats and commercial fishing boats.

The bridge owner, Massachusetts Highway department (MHD), requested a temporary deviation to facilitate emergency bridge maintenance to repair broken pinion bolts.

The bridge owner did not provide the thirty days notice to the Coast Guard for this deviation; however, this deviation was approved because the repairs are time critical and must be performed without undue delay in order to assure the continued safe reliable operation of the bridge.

Under this temporary deviation the Blynman SR127 Bridge may remain in the closed position from 6 a.m. through 6 p.m. on March 16, 2009 to make a template to fabricate new bolts and from 6 a.m. on March 23, 2009 through 6 p.m. on March 25, 2009, to install the new pinion cap bolts. Vessels that can pass under the bridge without a bridge opening may do so at all times.

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

Dated: March 9, 2009.

Gary Kassof,

Bridge Program Manager, First Coast Guard District.

[FR Doc. E9–5988 Filed 3–18–09; 8:45 am]

BILLING CODE 4910–15–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 117

[USCG–2009–0001]

Drawbridge Operation Regulations; East River, New York City, NY, Maintenance

AGENCY: Coast Guard, DHS.

ACTION: Notice of temporary deviation from regulations.

SUMMARY: The Commander, First Coast Guard District, has issued a temporary deviation from the regulation governing the operation of the Roosevelt Island Bridge across the East River, mile 6.4, at New York City, New York. Under this temporary deviation the bridge may remain in the closed position for three months to facilitate bridge maintenance. Vessels that can pass under the draw without a bridge opening may do so at all times.

DATES: This deviation is effective from April 15, 2009 through July 14, 2009.

ADDRESSES: Documents indicated in this preamble as being available in the docket are part of docket USCG–2009–0001 and are available online at *http://www.regulations.gov*. They are also available for inspection or copying at two locations: the Docket Management Facility (M–30), U.S. Department of Transportation, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue, SE., Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays, and the First Coast Guard District, Bridge Branch Office, 408 Atlantic Avenue, Boston, Massachusetts, 02110, between 7 a.m. and 3 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: Joe Arca, Project Officer, First Coast Guard District, at (212) 668–7165.

SUPPLEMENTARY INFORMATION: The Roosevelt Island Bridge, across the East River, mile 3.1, at New York City, New York, has a vertical clearance in the closed position of 40 feet at mean high water and 47 feet at mean low water. The existing drawbridge operation regulations are listed at 33 CFR 117.781(c).

The East River at the bridge location is a secondary channel not normally used by the local seasonal recreational vessels, and commercial vessels that can transit around Roosevelt Island on the other side.

The owner of the bridge, New York City Department of Transportation, requested a temporary deviation to facilitate a major rehabilitation of the bridge.

Under this temporary deviation the Roosevelt Island Bridge may remain in the closed position from April 15, 2009 through July 14, 2009. Vessels that can pass under the bridge without a bridge opening may do so at all times.

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

Dated: March 6, 2009.

Gary Kassof,

Bridge Program Manager, First Coast Guard District.

[FR Doc. E9–5986 Filed 3–18–09; 8:45 am]

BILLING CODE 4910–15–P

DEPARTMENT OF VETERANS AFFAIRS

38 CFR Part 3

RIN 2900–AN19

Termination of Phase-In Period for Full Concurrent Receipt of Military Retired Pay and Veterans Disability Compensation Based on a VA Determination of Individual Unemployability

AGENCY: Department of Veterans Affairs.

ACTION: Final rule.

SUMMARY: The Department of Veterans Affairs (VA) is amending its adjudication regulations regarding entitlement to full concurrent receipt of military retired pay and veterans disability compensation based on a VA determination of individual unemployability (IU). This rulemaking is intended to implement section 642 of the National Defense Authorization Act for Fiscal Year 2008, which provides that veterans who are entitled to receive veterans disability compensation based on a VA determination of individual unemployability are no longer subject to a phase-in period. This regulatory amendment is necessary to conform to statutory provisions.

DATES: *Effective Date:* March 19, 2009.

FOR FURTHER INFORMATION CONTACT: Nancy Copeland, Regulations Staff (211D), Compensation and Pension Service, Veterans Benefits Administration, Department of Veterans Affairs, 810 Vermont Avenue, NW., Washington, DC 20420, (202) 461–9685. (This is not a toll-free number.)

SUPPLEMENTARY INFORMATION: Beginning in 2004, 10 U.S.C. 1414(a) authorized concurrent receipt of retired pay and VA disability compensation for certain veterans. However, rather than immediately authorizing full concurrent receipt, Congress imposed a "phase-in" period permitting partial concurrent receipt for the period from January 1, 2004, to December 31, 2013.

Section 642 of the Ronald W. Reagan National Defense Authorization Act for Fiscal Year 2005, Public Law 108–375, amended section 1414 of title 10, United States Code, by eliminating the phase-in period for qualified retirees receiving veterans' disability compensation for a disability rated as 100-percent. Section 663 of the National Defense Authorization Act for Fiscal Year 2006, Public Law 109–163, further provided that veterans entitled to receive disability compensation based on a VA determination of IU were subject to the phase-in period only until September 30, 2009.

Section 642 of the National Defense Authorization Act for Fiscal Year 2008, Public Law 110–181, has further amended section 1414 of title 10, United States Code. Effective December 31, 2004, qualified retirees receiving veterans' disability compensation at the rate payable for a 100-percent disability based on a VA determination of IU are no longer subject to a phase-in period. Any benefits due based on termination of the phase-in are payable from January 1, 2005.

Based on this statutory change, VA is amending 38 CFR 3.750 by removing language that provides that qualified retirees who receive disability compensation based on a VA determination of IU are subject to a phase-in period. This is no longer required based on the statutory change. To avoid confusion, we are clarifying that both veterans who are rated 100 percent disabled under the VA rating schedule and veterans who are entitled to receive 100 percent disability compensation based on a VA determination of IU need not file waivers of military retired pay.

Administrative Procedures Act

This final rule is an interpretive rule and the changes made by this rule merely reflect VA's interpretation of statutory requirements. The primary purpose of the amendment is to implement VA's statutory interpretation of 10 U.S.C. 1414 and to align § 3.750 to the statute. Section 553(b) of title 5, U.S. Code, does not apply to interpretive rules. Accordingly, there is a basis for dispensing with prior notice and opportunity to comment. Moreover, under section 553(d), interpretive rules do not require 30 days prior notice before they may become effective. Therefore, because the amendment to § 3.750 is an interpretive rule, the amendment may have an immediate effect. Accordingly, there is a basis for dispensing with the delayed effective date provisions of 5 U.S.C. 553(d).

Paperwork Reduction Act

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

Regulatory Flexibility Act

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

Executive Order 12866

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

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

Unfunded Mandates

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

Catalog of Federal Domestic Assistance Numbers and Titles

The Catalog of Federal Domestic Assistance program number and title for this rule is Veterans Compensation for Service-Connected Disability; 64.116.

List of Subjects in 38 CFR Part 3

Administrative practice and procedure, Claims, Disability benefits,

Health care, Pensions, Radioactive materials, Veterans, Vietnam.

Approved: February 24, 2009.

John R. Gingrich,

Chief of Staff, Department of Veterans Affairs.

■ For the reasons set out in the preamble, VA amends 38 CFR part 3 as follows:

PART 3—ADJUDICATION

■ 1. The authority citation for part 3, subpart A continues to read as follows:

Authority: 38 U.S.C. 501(a), unless otherwise noted.

■ 2. Amend § 3.750 by:
■ a. Revising paragraph (b)(1).
■ b. Revising paragraph (c)(1)(ii).
■ c. Redesignating paragraph (c)(2) as paragraph (c)(3).
■ d. Adding new paragraph (c)(2).
■ 3. The revisions and addition read as follows:

§ 3.750 Entitlement to concurrent receipt of military retired pay and disability compensation.

* * * * *

(b) * * *

(1) *Compensation.* Subject to paragraphs (b)(2) and (b)(3) of this section, a veteran who is entitled to military retired pay and disability compensation for a service-connected disability rated 50 percent or more, or a combination of service-connected disabilities rated 50 percent or more, under the schedule for rating disabilities (38 CFR part 4, subpart B), is entitled to receive both payments subject to the phase-in period described in paragraph (c) of this section.

* * * * *

(c) * * *

(1) * * *

(ii) Except as provided in paragraph (c)(2) of this section, all veterans who are eligible to receive both military retired pay and disability compensation at the same time under paragraphs (b)(1) or (b)(2) of this section must file a waiver in order to receive the maximum allowable amount of disability compensation during the phase-in period. The phase-in period ends on December 31, 2013. After the phase-in period, veterans retired under 10 U.S.C. chapter 61 who are eligible for concurrent receipt must still file a waiver under the circumstances described in paragraph (b)(2)(ii) of this section.

(2) *When a waiver is not necessary.* Unless paragraph (b)(2)(ii) of this section applies, veterans who are entitled to receive disability compensation based on a VA determination of individual unemployability as well as veterans rated 100-percent disabled under the VA schedule for rating disabilities need not file waivers of military retired pay. The phase-in period does not apply to this group of veterans.

* * * * *

[FR Doc. E9–5954 Filed 3–18–09; 8:45 am]

BILLING CODE 8320–01–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[MD202–3118; FRL–8775–2]

Approval and Promulgation of Air Quality Implementation Plans; Maryland; Update to Materials Incorporated by Reference

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule; notice of administrative change.

SUMMARY: EPA is updating the materials submitted by Maryland that are incorporated by reference (IBR) into the State implementation plan (SIP). The regulations affected by this update have been previously submitted by the Maryland Department of the Environment (MDE) and approved by EPA. This update affects the SIP materials that are available for public inspection at the National Archives and Records Administration (NARA), the Air and Radiation Docket and Information Center located at EPA Headquarters in Washington, DC, and the Regional Office.

DATES: *Effective Date:* This action is effective March 19, 2009.

ADDRESSES: SIP materials which are incorporated by reference into 40 CFR part 52 are available for inspection at the following locations: Air Protection Division, U.S. Environmental Protection Agency, Region III, 1650 Arch Street, Philadelphia, Pennsylvania 19103; the Air and Radiation Docket and Information Center, EPA Headquarters Library, Room Number 3334, EPA West Building, 1301 Constitution Ave., NW., Washington, DC 20460, and the National Archives and Records Administration. If you wish to obtain materials from a docket in the EPA Headquarters Library, please call the Office of Air and Radiation (OAR) Docket/Telephone number: (202) 566–1742; or 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.*

FOR FURTHER INFORMATION CONTACT: Harold A. Frankford, (215) 814–2108 or by e-mail at *frankford.harold@epa.gov.*

SUPPLEMENTARY INFORMATION: The SIP is a living document which the State revises as necessary to address the unique air pollution problems in the State. Therefore, EPA from time to time must take action on SIP revisions containing new and/or revised regulations to make them part of the SIP. On May 22, 1997 (62 FR 27968), EPA revised the procedures for incorporating by reference federally-approved SIPs, as a result of consultations between EPA and the Office of the Federal Register (OFR). The description of the revised SIP document, IBR procedures and "Identification of plan" format are discussed in further detail in the May 22, 1997 **Federal Register** document. On November 29, 2004 (69 FR 69304), EPA published a document in the **Federal Register** beginning the new IBR procedure for Maryland. On February 2, 2006 (71 FR 5607) and May 18, 2007 (72 FR 27957), EPA published an update to the IBR material for Maryland. On March 11, 2008 (73 FR 12895), EPA published a correction update to the IBR material pertaining to source-specific requirements. In this document, EPA is doing the following:

1. Announcing the update to the IBR material as of December 1, 2008.

2. Making corrections to the following entries listed in the paragraph 52.1070(c) chart, as described below:

a. COMAR 26.11.01.01B(53)—moving the text from the "State effective date" and the "EPA approval date" columns to the "EPA approval date" and "Additional explanation/citation at 40 CFR 52.1100" columns respectively; and adding new text to the "State effective date column."

b. COMAR 26.11.06.02—correcting the regulatory citation in the "Additional explanation/citation at 40 CFR 52.1100" column.

c. COMAR 26.11.13.08—correcting the page citation in the "EPA approval date" column.

d. COMAR 26.11.17.01 and .03—correcting the text in the "State effective date" and "EPA approval date" columns.

e. COMAR 26.11.24.05–1—adding explanatory text to the "Additional explanation/citation at 40 CFR § 52.1100" column.

f. COMAR 26.11.32.13—revising the explanatory text in the "Additional explanation/citation at 40 CFR 52.1100" column.

g. TM81–04 and TM83–05—removing these entries from the chart. EPA had approved revisions to COMAR 26.11.10.07 on September 7, 2001 (66 FR 46727) and November 7, 2001 (66 FR 56222), indicating that TM91–01 had replaced TM81–04 and TM83–05 as the SIP enforceable test method document for iron and steel production facilities. *See currently,* §§ 52.1100(c)(153)(B)(*1*) and 52.1100(c)(163)(B)(*3*). Thus, EPA has determined that the inclusion of entries for TM81–04 and TM91–1 in paragraph 52.1070(c) published on or after November 29, 2004 has been in error.

3. Correcting minor miscellaneous typographical errors in the paragraph (c) and (d) charts.

4. Making corrections to the following entries listed in the paragraph 52.1070(d) chart, as described below:

a. PEPCO Chalk Point Units #1 and #2—Adding "Potomac Electric Power Company" to the "Name of source" column.

b. Kaydon Ring and Seal—removing text describing the SIP effective date from the "Additional explanation" column.

5. Making corrections to typographical errors of the **Federal Register** citations for the following entries listed in the paragraph 52.1070(e) chart:

a. 1990 Base Year Emissions Inventory—Kent & Queen Anne's Counties.

b. 1990 Base Year Emissions Inventory—Metropolitan Baltimore Ozone Nonattainment Area.

c. 1990 Base Year Emissions Inventory—Philadelphia-Wilmington-Trenton OzoneNonattainment Area (Cecil County).

d. Post-1996 Rate of Progress Plan & contingency measures—Philadelphia-Wilmington-Trenton Ozone Nonattainment Area (Cecil County).

EPA has determined that today's rule falls under the "good cause"'' exemption in section 553(b)(3)(B) of the Administrative Procedures Act (APA) which, upon finding "good cause" authorizes agencies to dispense with public participation, and section 553(d)(3) which allows an agency to make a rule effective immediately (thereby avoiding the 30-day delayed effective date otherwise provided for in the APA). Today's rule simply codifies provisions which are already in effect as a matter of law in Federal and approved State programs. Under section 553 of the APA, an agency may find good cause where procedures are "impractical, unnecessary, or contrary to the public interest." Public comment is "unnecessary" and "contrary to the public interest" since the codification only reflects existing law. Immediate notice in the CFR benefits the public by removing outdated citations and incorrect chart entries.

Statutory and Executive Order Reviews

A. General Requirements

Under the Clean Air Act, the Administrator is required to approve a SIP submission that complies with the provisions of the Act and applicable Federal regulations. 42 U.S.C. 7410(k); 40 CFR 52.02(a). Thus, in reviewing SIP submissions, EPA's role is to approve state choices, provided that they meet the criteria of the Clean Air Act. Accordingly, this action merely approves state law as meeting Federal requirements and does not impose additional requirements beyond those imposed by state law. For that reason, this action:

- Is not a "significant regulatory action" subject to review by the Office of Management and Budget under Executive Order 12866 (58 FR 51735, October 4, 1993);
- Does not impose an information collection burden under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*);
- Is certified as not having a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*);
- Does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4);
- Does not have Federalism implications as specified in Executive Order 13132 (64 FR 43255, August 10, 1999);
- Is not an economically significant regulatory action based on health or safety risks subject to Executive Order 13045 (62 FR 19885, April 23, 1997);
- Is not a significant regulatory action subject to Executive Order 13211 (66 FR 28355, May 22, 2001);
- Is not subject to requirements of Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) because application of those requirements would be inconsistent with the Clean Air Act; and
- Does not provide EPA with the discretionary authority to address, as appropriate, disproportionate human health or environmental effects, using practicable and legally permissible methods, under Executive Order 12898 (59 FR 7629, February 16, 1994).

B. Submission to Congress and the Comptroller General

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. This rule is not a "major rule" as defined by 5 U.S.C. 804(2).

C. Petitions for Judicial Review

EPA has also determined that the provisions of section 307(b)(1) of the Clean Air Act pertaining to petitions for judicial review are not applicable to this action. Prior EPA rulemaking actions for each individual component of the Maryland SIP compilations had previously afforded interested parties the opportunity to file a petition for judicial review in the United States Court of Appeals for the appropriate circuit within 60 days of such rulemaking action. Thus, EPA sees no need in this action to reopen the 60-day period for filing such petitions for judicial review for this "Identification of plan" reorganization update action for Maryland.

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Carbon monoxide, Incorporation by reference, Intergovernmental relations, Lead, Nitrogen dioxide, Ozone, Particulate matter, Reporting andrecordkeeping requirements, Sulfur oxides, Volatile organic compounds.

Dated: February 2, 2009.

William T. Wisniewski,

Acting Regional Administrator, Region III.

■ 40 CFR part 52 is amended as follows:

PART 52—[AMENDED]

■ 1. The authority for citation for part 52 continues to read as follows:

Authority: 42.U.S.C. 7401 *et seq.*

Subpart V—Maryland

■ 2. Section 52.1070 is amended by revising paragraphs (b), (c), (d), and (e) to read as follows:

§ 52.1070 Identification of plan.

* * * * *

(b) *Incorporation by reference.* (1) Material listed as incorporated by reference in paragraphs (c) and (d) was approved for incorporation by reference by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Material incorporated as it exists on the date of the approval, and notice of any change in the material will be published in the **Federal Register**. Entries in paragraphs (c) and (d) of this section with EPA approval dates on or after December 1, 2008 will be incorporated by reference in the next update to the SIP compilation.

(2) EPA Region III certifies that the rules/regulations provided by EPA at the addresses in paragraph (b)(3) of this section are an exact duplicate of the officially promulgated State rules/regulations which have been approved as part of the State implementation plan as of December 1, 2008.

(3) Copies of the materials incorporated by reference may be inspected at the EPA Region III Office at 1650 Arch Street, Philadelphia, PA 19103. For further information, call (215) 814–2108; the EPA, Air and Radiation Docket and Information Center, Room Number 3334, EPA West Building, 1301 Constitution Avenue, NW., Washington, DC 20460. For further information, call (202) 566–1742; 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/code_of_federal_regulations/ibr_locations.html.*

(c) *EPA approved regulations.*

EPA-APPROVED REGULATIONS IN THE MARYLAND SIP

Code of Maryland Administrative Regulations (COMAR) citation	Title/subject	State effective date	EPA approval date	Additional explanation/citation at 40 CFR 52.1100
	26.11.01 General Administrative Provisions			
26.11.01.01A., .01B *Exceptions:* .01B(3), (13), (21) through (23), (25).	Definitions	10/10/01	5/28/02, 67 FR 36810	(c)(171); Additional EPA approvals are codified at §§ 52.1100(c)(119), (c)(122), (c)(143), (c)(148), (c)(158), (c)(159), and (c)(164).
26.11.01.01B(53)	Definitions—definition of volatile organic compound (VOC).	10/8/07	3/31/08, 73 FR 10673	Definition reflects the version of 40 CFR 51.100(s), as amended.
26.11.01.02	Relationship of Provisions in this Subtitle.	8/1/88	11/3/92, 57 FR 49651	(c)(90)(i)(B)(*1*).
26.11.01.03	Delineation of Areas	8/1/88	11/3/92, 57 FR 49651	(c)(90)(i)(B)(*1*).
26.11.01.04	Testing and Monitoring	6/19/06	1/3/07, 72 FR 18	Paragraph .04C(2) is added. The SIP effective date is 3/6/07.
26.11.01.05	Records and Information	6/30/97, 12/10/01	5/28/02, 67 FR 36810	(c)(172).
26.11.01.05–1	Emission Statements	12/7/92	10/12/94, 59 FR 51517.	(c)(109).
26.11.01.06	Circumvention	8/1/88	11/3/92, 57 FR 49651	(c)(90)(i)(B)(*1*).
26.11.01.07	Malfunctions and Other Temporary Increases in Emissions.	8/1/88	11/3/92, 57 FR 49651	(c)(90)(i)(B)(*1*).
26.11.01.08	Determination of Ground Level Concentrations—Acceptable Techniques.	8/1/88	11/3/92, 57 FR 49651	(c)(90)(i)(B)(*5*).
26.11.01.09	Vapor Pressure of Gasoline	8/1/88	11/3/92, 57 FR 49651	(c)(90)(i)(B)(*5*)
26.11.01.10	Continuous Emission Monitoring (CEM) Requirements.	7/22/91	2/28/96, 61 FR 7418	(c)(106); TM90–01 was approved as "additional material", but not IBR'd.
	26.11.02 Permits, Approvals, and Registration			
26.11.02.01	Definitions	5/8/95	2/27/03, 68 FR 9012	(c)(182); Exceptions: 26.11.02.01B(1), (1–1), (4)–(6), (10), (15), (16), (22), (29)–(33), (37), (39), (42), (46), (49), (50), (54).
26.11.02.02	General Provisions	5/8/95	2/27/03, 68 FR 9012	(c)(182); Exception: .02D.
26.11.02.03	Federally Enforceable Permits to Construct and State Permits to Operate.	5/8/95	2/27/03, 68 FR 9012	(c)(182).
26.11.02.04	Duration of Permits	5/8/95	2/27/03, 68 FR 9012	(c)(182); Exception: .04C(2).
26.11.02.05	Violation of Permits and Approvals.	5/8/95	2/27/03, 68 FR 9012	(c)(182).
26.11.02.06	Denial of Applications for State Permits and Approvals.	5/8/95, 6/16/97	2/27/03, 68 FR 9012	(c)(182).
26.11.02.07	Procedures for Denying, Revoking, or Reopening and Revising a Permit or Approval.	5/8/95	2/27/03, 68 FR 9012	(c)(182).
26.11.02.08	Late Applications and Delays in Acting on Applications.	5/8/95	2/27/03, 68 FR 9012	(c)(182).

EPA-APPROVED REGULATIONS IN THE MARYLAND SIP—Continued

Code of Maryland Administrative Regulations (COMAR) citation	Title/subject	State effective date	EPA approval date	Additional explanation/citation at 40 CFR 52.1100
26.11.02.09	Sources Subject to Permits to Construct and Approvals.	5/8/95, 5/4/98	2/27/03, 68 FR 9012	(c)(182).
26.11.02.10	Sources Exempt from Permits to Construct and Approvals.	5/8/95, 6/16/97, 9/22/97, 3/22/99	2/27/03, 68 FR 9012	(c)(182).
26.11.02.11	Procedures for Obtaining Permits to Construct Certain Significant Sources.	5/8/95, 6/16/97	2/27/03, 68 FR 9012	(c)(182); Exception: .11C.
26.11.02.12	Procedures for Obtaining Approvals of PSD Sources and NSR Sources, Permits to Construct, Permits to Construct MACT Determinations on a Case-by-Case Basis in Accordance with 40 CFR Part 63, Subpart B, and Certain 100-Ton Sources.	5/8/95	2/27/03, 68 FR 9012	(c)(182).
26.11.02.13	Sources Subject to State Permits to Operate.	5/8/95	2/27/03, 68 FR 9012	(c)(182).
26.11.02.14	Procedures for Obtaining State Permits to Operate and Permits to Construct Certain Sources and Permits to Construct Control Equipment on Existing Sources.	5/8/95, 6/16/97	2/27/03, 68 FR 9012	(c)(182).
26.11.04 Ambient Air Quality Standards				
26.11.04.02	State-Adopted National Ambient Air Quality Standards.	5/8/95	8/20/01, 66 FR 43485	(c)(165).
26.11.04.03	Definitions, Reference Conditions, and Methods of Measurement.	2/28/05	6/14/06, 71 FR 34257	
26.11.04.04	Particulate Matter	2/28/05	6/14/06, 71 FR 34257	Addition of ambient air quality standard for $PM_{2.5}$.
26.11.04.05	Sulfur Oxides	2/28/05	6/14/06, 71 FR 34257	
26.11.04.06	Carbon Monoxide	1/5/88; recodified, 8/1/88	4/7/93, 58 FR 18010	(c)(92).
26.11.04.07	Ozone	2/28/05	6/14/06, 71 FR 34257	Addition of an 8-hour ambient air quality standard for ozone.
26.11.04.08	Nitrogen Dioxide	2/28/05	6/14/06, 71 FR 34257	
26.11.04.09	Lead	8/1/88	11/3/92, 57 FR 49651	(c)(90)(i)(B)(*3*).
26.11.05 Air Quality Episode System				
26.11.05.01	Definitions	6/18/90	4/14/94, 59 FR 17698	(c)(100).
26.11.05.02	General Requirements	6/18/90	4/14/94, 59 FR 17698	(c)(100).
26.11.05.03	Air Pollution Episode Criteria	6/18/90	4/14/94, 59 FR 17698	(c)(100).
26.11.05.04	Standby Emissions Reduction Plan.	8/1/88	11/3/92, 57 FR 49651	(c)(90)(i)(B)(*4*).
26.11.05.05	Control Requirements and Standby Orders.	6/18/90	4/14/94, 59 FR 17698	(c)(100).
26.11.05.06	Tables	8/1/88	11/3/92, 57 FR 49651	(c)(90)(i)(B)(*4*).
26.11.06 General Emissions Standards, Prohibitions, and Restrictions				
26.11.06.01	Definitions	5/8/91	11/29/94, 59 FR 60908.	(c)(102)(i)(B)(*14*).
26.11.06.02 [*Except*: .02A(1)(e), (1)(g), (1)(h), (1)(i)].	Visible Emissions	11/24/03	8/1/07, 72 FR 41891	Revised paragraph 26.11.06.02A(2).
26.11.06.03	Particulate Matter	11/11/02	8/6/03, 68 FR 46487	(c)(181).
26.11.06.04	Carbon Monoxide in Areas III and IV.	1/5/88; recodified, 8/1/88	4/7/93, 58 FR 18010	(c)(92).
26.11.06.05	Sulfur Compounds from Other than Fuel Burning Equipment.	11/11/02	8/6/03, 68 FR 46487	(c)(181).

EPA-APPROVED REGULATIONS IN THE MARYLAND SIP—Continued

Code of Maryland Administrative Regulations (COMAR) citation	Title/subject	State effective date	EPA approval date	Additional explanation/citation at 40 CFR 52.1100
26.11.06.06	Volatile Organic Compounds	9/22/97	5/7/01, 66 FR 22924	(c)(156) Note: On 2/27/03 (68 FR 9012), EPA approved a revised rule citation with a State effective date of 5/8/95 [(c)(182)(i)(C)].
26.11.06.10	Refuse Burning Prohibited in Certain Installations.	8/1/88	11/3/92, 57 FR 49651	(c)(90)(i)(B)(*5*).
26.11.06.14	Control of PSD sources	10/10/01	5/28/02, 67 FR 36810	(c)(171).
26.11.06.15	Nitrogen Oxides from Nitric Acid Plants.	8/1/88	11/3/92, 57 FR 49651	(c)(90)(i)(B)(*5*).
26.11.06.16	Tables	8/1/88	11/3/92, 57 FR 49651	(c)(90)(i)(B)(*5*).
26.11.07 Open Fires				
26.11.07.01	Definitions	5/22/95	6/11/02, 67 FR 39856	(c)(173).
26.11.07.02	General	5/22/95	2/25/97, 62 FR 8380	(c)(120).
26.11.07.03	Control Officer May Authorize Certain Open Fires.	8/11/97	6/11/02, 67 FR 39856	(c)(173).
26.11.07.04	Public Officers May Authorize Certain Fires.	5/22/95	2/25/97, 62 FR 8380	(c)(120).
26.11.07.05	Open Fires Allowed Without Authorization of Control Officer or Public Officer.	5/22/95	2/25/97, 62 FR 8380	(c)(120) .05A(3) & (4), and .05B(3) are State-enforceable only.
26.11.07.06	Safety Determinations at Federal Facilities.	8/11/97	6/11/02, 67 FR 39856	(c)(173).
10.18.08/26.11.08 Control of Incinerators				
10.18.08/26.11.08.01	Definitions	9/12/05	9/15/08, 73 FR 53130	Definition of "crematory" is added.
10.18.08.02	Applicability	7/18/80	8/5/81, 46 FR 39818	(c)(45).
10.18.08.03	Prohibition of Certain Incinerators in Areas III and IV.	6/8/81	5/11/82, 47 FR 20126	(c)(58).
10.18.08/26.11.08.04	Visible Emissions	11/24/03	8/1/07, 72 FR 41891	Revised paragraph 26.11.08.04C.
10.18.08/26.11.08.05	Particulate Matter	9/12/05	9/15/08, 73 FR 53130	Sections .05A(3) and .05B(2)(a) are revised.
10.18.08.06	Prohibition of Unapproved Hazardous Waste Incinerators.	3/25/84	7/2/85, 50 FR 27245	(c)(82).
26.11.09 Control of Fuel Burning Equipment and Stationary Internal Combustion Engines, and Certain Fuel-Burning Installations				
26.11.09.01	Definitions	9/12/05	6/13/06, 71 FR 34014	Revised definition of "interruptible gas service" in 26.11.09.01B(4).
26.11.09.02	Applicability	8/1/88	11/3/92, 57 FR 49651	(c)(90)(i)(B)(*7*).
26.11.09.03	General Conditions for Fuel Burning Equipment.	6/21/04	7/6/05, 70 FR 38774	Revised paragraphs 26.11.09.03C(1) and .03C(2).
26.11.09.04	Prohibition of Certain New Fuel Burning Equipment.	8/1/88	11/3/92, 57 FR 49651	(c)(90)(i)(B)(*7*).
26.11.09.05	Visible Emissions	11/24/03	8/1/07, 72 FR 41891	Revised paragraph 26.11.09.05A(3).
26.11.09.06	Control of Particulate Matter	6/21/04	7/6/05, 70 FR 38774	Addition of paragraph 26.11.09.06C.
26.11.09.07	Control of Sulfur Oxides from Fuel Burning Equipment.	8/1/88	11/3/92, 57 FR 49651	(c)(90)(i)(B)(*7*).
26.11.09.08	Control of NO_X Emissions for Major Stationary Sources.	11/24/03	9/20/04, 69 FR 56170	(c)(191).
26.11.09.09	Tables and Diagrams	11/11/02	5/1/03, 68 FR 23206	(c)(183); Revised Table 1.
26.11.10 Control of Iron and Steel Production Installations				
26.11.10.01	Definitions	12/25/00	11/7/01, 66 FR 56222	(c)(163).
26.11.10.02	Applicability	11/2/98	9/7/01, 66 FR 46727	(c)(153).
26.11.10.03	Visible Emissions	11/24/03	8/1/07, 72 FR 41891	Revised paragraph 26.11.10.03A(2).
26.11.10.04	Control of Particulate Matter	11/2/98	9/7/01, 66 FR 46727	(c)(153).
26.11.10.05	Sulfur Content Limitations for Coke Oven Gas.	11/2/98	9/7/01, 66 FR 46727	(c)(153).

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26.11.10.06[1]	Control of Volatile Organic Compounds from Iron and Steel Production Installations.	12/25/00	11/7/01, 66 FR 56222	(c)(163).
26.11.10.06[2]	Carbon Monoxide	8/1/88	11/3/92, 57 FR 49651	(c)(90)(i)(B)(*8*).
26.11.10.07	Testing and Observation Procedures.	12/25/00	11/7/01, 66 FR 56222	(c)(163).
26.11.11 Control of Petroleum Products Installations, including Asphalt Paving, Asphalt Concrete Plants, and Use of Waste Oils				
26.11.11.01	Applicability	8/1/88	11/3/92, 57 FR 49651	(c)(90)(i)(B)(*9*).
26.11.11.02	Asphalt Paving	4/26/93	1/6/95, 60 FR 2018	(c)(113)(i)(B)(*1*).
26.11.11.03	Asphalt Concrete Plants in Areas I, II, V, and VI.	8/1/88	11/3/92, 57 FR 49651	(c)(90)(i)(B)(9).
26.11.11.06	Use of Waste Oils as Fuel	8/1/88	11/3/92, 57 FR 49651	(c)(90)(i)(B)(*9*).
26.11.12 Control of Batch Type Hot-Dip Galvanizing Installations				
26.11.12.01	Definitions	5/8/95	7/25/00, 64 FR 45743	(c)(149).
26.11.12.02	Applicability	5/8/95	7/25/00, 64 FR 45743	(c)(149).
26.11.12.03	Prohibitions and Exemptions	5/8/95	7/25/00, 64 FR 45743	(c)(149).
26.11.12.04	Visible Emissions	8/1/88	11/3/92, 57 FR 49651	(c)(90)(i)(B)(*10*).
26.11.12.05	Particulate Matter	8/1/88	11/3/92, 57 FR 49651	(c)(90)(i)(B)(*10*).
26.11.12.06	Reporting Requirements	8/1/88	11/3/92, 57 FR 49651	(c)(90)(i)(B)(*10*).
26.11.13 Control of Gasoline and Volatile Organic Compound Storage and Handling				
26.11.13.01	Definitions	10/18/07	7/18/08, 73 FR 41268	
26.11.13.02	Applicability and Exemption	4/26/93	1/6/95, 60 FR 2018	(c)(113)(i)(B)(*3*).
26.11.13.03	Large Storage Tanks	8/1/88	11/3/92, 57 FR 49651	(c)(90)(i)(B)(*12*).
26.11.13.04	Loading Operations	8/11/97	12/22/98, 63 FR 70667.	(c)(132).
26.11.13.05	Gasoline Leaks from Tank Trucks.	2/15/93	1/6/95, 60 FR 2018	(c)(112).
26.11.13.06	Plans for Compliance	4/26/93	1/6/95, 60 FR 2018	(c)(113)(i)(B)(*5*).
26.11.13.07	Control of Gasoline and VOC Emissions from Portable Fuel Containers.	6/18/07	7/17/08, 73 FR 40970	
26.11.13.08	Control of VOC Emissions from Marine Vessel Loading.	10/18/07	7/18/08, 73 FR 41268	New Regulation.
26.11.14 Control of Emissions From Kraft Pulp Mills				
26.11.14.01	Definitions	1/8/01, 10/15/01	11/7/01, 66 FR 56220	(c)(170).
26.11.14.02	Applicability	1/8/01	11/7/01, 66 FR 56220	(c)(170).
26.11.14.06	Control of Volatile Organic Compounds.	1/8/01, 10/15/01	11/7/01, 66 FR 56220	(c)(170).
26.11.17 Requirements for Major New Sources and Modifications				
26.11.17.01	Definitions	11/24/03	9/20/04, 69 FR 56170	52.1070(c)(191).
26.11.17.02	Applicability	4/26/93, 10/2/00	2/12/01, 66 FR 9766	52.1070(c)(148).
26.11.17.03	General Conditions	11/24/03	9/20/04, 69 FR 56170	52.1070(c)(191).
26.11.17.04	Baseline for Determining Credit for Emission and Air Quality Offsets.	4/26/93, 10/2/00	2/12/01, 66 FR 9766	52.1070(c)(148).
26.11.17.05	Administrative Procedures	4/26/93, 10/2/00	2/12/01, 66 FR 9766	52.1070(c)(148).
26.11.19 Volatile Organic Compounds From Specific Processes				
26.11.19.01	Definitions	6/5/95	9/2/97, 62 FR 46199	(c)(126) Note: On 5/13/1998 (63 FR 26462), EPA approved the revised definition of "major stationary source of VOC " with a State effective date of 5/8/1995 [(c)(128)].

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26.11.19.02	Applicability, Determining Compliance, Reporting, and General Requirements.	5/4/98, 12/10/01	2/3/03, 68 FR 5228	(c)(174), (c)(175) 1. Limited approval of paragraph .02G (9/4/98, 63 FR 47174) [(c)(131)–(c)(133)]. 2. On 2/27/03 (68 FR 9012), EPA approved a revised rule citation with a State effective date of 5/8/95 [(c)(182)(i)(D)].
26.11.19.03	Automotive and Light-Duty Truck Coating.	9/22/97	11/5/98, 63 FR 59720	(c)(140).
26.11.19.04	Can Coating	8/1/88	11/3/92, 57 FR 49651	(C)(90)(i)(B)(*12*).
26.11.19.05	Coil Coating	8/1/88	11/3/92, 57 FR 49651	(C)(90)(i)(B)(*12*).
26.11.19.06	Large Appliance Coating	8/1/88	11/3/92, 57 FR 49651	(C)(90)(i)(B)(*12*).
26.11.19.07	Paper, Fabric, Vinyl and Other Plastic Parts Coating.	8/24/98	1/14/2000, 64 FR 2334.	(c)(147).
26.11.19.07–1	Control of VOC Emissions from solid Resin Decorative Surface Manufacturing.	6/15/98	6/17/99, 64 FR 32415	(c)(142).
26.11.19.08	Metal Furniture Coating	8/1/88	11/3/92, 57 FR 49651	(C)(90)(i)(B)(*12*).
26.11.19.09	Control of Volatile Organic Compounds (VOC) Emissions from cold and Vapor Degreasing.	6/5/95	8/4/97, 62 FR 41853	(c)(123).
26.11.19.10	Flexographic and Rotogravure Printing.	6/5/95	9/2/97, 62 FR 46199	(c)(126).
26.11.19.11	Control of Volatile Organic Compounds (VOC) Emissions from Sheet-Fed and Web Lithographic Printing.	6/5/95	9/2/97, 62 FR 46199	(c)(126).
26.11.19.12	Dry Cleaning Installations	9/22/97	9/2/98, 63 FR 46662	(c)(131).
26.11.19.13	Miscellaneous Metal Coating	5/8/91	11/29/94, 59 FR 60908.	(c)(102)(i)(B)(*6*).
26.11.19.13–1	Aerospace Coating Operations	10/2/00, 10/15/01	11/7/01, 66 FR 56220	(c)(169).
26.11.19.13–2	Brake Shoe Coating Operations.	8/24/98	6/17/99, 64 FR 32415	(c)(142).
26.11.19.13–3	Control of VOC Emissions from Structural Steel Coating Operations.	6/29/98	6/17/99, 64 FR 32415	(c)(142).
26.11.19.14	Manufacture of Synthesized Pharmaceutical Products.	5/8/91	11/29/94, 59 FR 60908.	(c)(102)(i)(B)(*14*).
26.11.19.15	Paint, Resin, and Adhesive Manufacturing and Adhesive Application.	5/4/98, 3/22/99	10/28/99, 64 FR 57989.	(c)(145).
26.11.19.16	Control of VOC Equipment Leaks.	8/19/91	9/7/94, 59 FR 46180	(c)(103)(i)(B)(*9*).
26.11.19.17	Control of Volatile Organic Compounds (VOC) Emissions from Yeast Manufacturing.	9/12/05	3/31/06, 71 FR 16237	
26.11.19.18	Control of Volatile Organic Compounds (VOC) Emissions from Screen Printing and Digital Imaging.	6/10/02	1/15/03, 68 FR 1972	(c)(177).
26.11.19.19	Control of Volatile Organic Compounds (VOC) Emissions from Expandable Polystyrene Operations.	10/2/00	5/7/01, 66 FR 22924	(c)(156).
26.11.19.21	Control of Volatile Organic Compounds (VOC) Emissions from Commercial Bakery Ovens.	7/3/95	10/15/97, 62 FR 53544.	(c)(125)(i)(B)(*4*).
26.11.19.22	Control of Volatile Organic Compounds (VOC) Emissions from Vinegar Generators.	8/11/97	9/23/99, 64 FR 41445	(c)(137).
26.11.19.23	Control of VOC Emissions from Vehicle Refinishing.	5/22/95	8/4/97, 62 FR 41853	(c)(124).
26.11.19.24	Control of VOC Emissions from Leather Coating Operations.	8/11/97	9/23/99, 64 FR 41445	(c)(137).

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26.11.19.25	Control of Volatile Organic Compounds from Explosives and Propellant Manufacturing.	8/11/97	1/26/99, 64 FR 3852	(c)(141).
26.11.19.26	Control of Volatile Organic Compound Emissions from Reinforced Plastic Manufacturing.	8/11/97	8/19/99, 64 FR 45182	(c)(139).
26.11.19.27	Control of Volatile Organic Compounds from Marine Vessel Coating Operations.	10/20/97	9/5/01, 66 FR 46379	(c)(166).
26.11.19.28	Control of Volatile Organic Compounds from Bread and Snack Food Drying Operations.	10/2/00	5/7/01, 66 FR 22924	(c)(157).
26.11.19.29	Control of Volatile Organic Compounds from Distilled Spirits Facilities.	10/2/00, 10/15/01	11/7/01, 66 FR 56220	(c)(160).
26.11.19.30	Control of Volatile Organic Compounds from Organic Chemical Production and Polytetrafluoroethylene Installations.	12/10/01, 11/11/02	6/3/03, 68 FR 33000	(c)(176).
26.11.19.31	Control of Volatile Organic Compounds from Medical Device Manufacturing.	6/5/06	1/11/07, 72 FR 1289	
26.11.20 Mobile Sources				
26.11.20.02	Motor Vehicle Emission Control Devices.	8/1/88	11/3/92, 57 FR 49651	(c)(90)(i)(B)(*13*) [as 26.11.20.06].
26.11.20.03	Motor Vehicle Fuel Specifications.	10/26/92	6/10/94, 59 FR 29957	(c)(101)(i)(B)(*3*).
26.11.20.04	National Low Emission Vehicle Program.	3/22/99	12/28/99, 64 FR 72564.	(c)(146).
26.11.24 Stage II Vapor Recovery at Gasoline Dispensing Facilities				
26.11.24.01	Definitions	1/29/07	1/17/08, 73 FR 3187	Addition of "Certified Inspector" and "'Vapor Recovery System."
26.11.24.01–1	Incorporation by Reference	4/15/02	5/7/03, 68 FR 24363	(c)(178).
26.11.24.02	Applicability, Exemptions, and Effective Date.	4/15/02	5/7/03, 68 FR 24363	(c)(178).
26.11.24.03	General Requirements	4/15/02	5/7/03, 68 FR 24363	(c)(178).
26.11.24.04	Testing Requirements	02/28/05	5/8/06, 71 FR 26688	
26.11.24.05	Inspection Requirements	2/15/93	6/9/94, 59 FR 29730	(c)(107).
26.11.24.05–1	Inspections by a Certified Inspector.	1/29/07	1/17/08, 73 FR 3187	Added Section.
26.11.24.06	Training Requirements for Operation and Maintenance of Approved Systems.	2/15/93	6/9/94, 59 FR 29730	(c)(107).
26.11.24.07	Record-Keeping and Reporting Requirements.	2/28/05	5/8/06, 71 FR 26688	
26.11.24.08	Instructional Signs	2/15/93	6/9/94, 59 FR 29730	(c)(107).
26.11.24.09	Sanctions	2/15/93	6/9/94, 59 FR 29730	(c)(107).
26.11.25 Control of Glass Melting Furnaces				
26.11.25.01	Definitions	10/5/98	10/19/05, 70 FR 60738.	
26.11.25.02	Applicability and Exemptions	10/5/98	10/19/05, 70 FR 60738.	
26.11.25.03	Visible Emissions from Glass Melting Furnaces.	10/5/98	10/19/05, 70 FR 60738.	
26.11.25.04	Particulate Matter Emissions from Glass Melting Furnaces.	10/5/98	10/19/05, 70 FR 60738.	

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26.11.26 Conformity				
26.11.26.01	Definitions	5/15/95, 6/5/95	12/9/98, 63 FR 67782	(c)(136); definitions of Applicable implementation plan, Governor, State, and State air agency.
26.11.26.03	General Conformity	5/15/95, 6/5/95	12/9/98, 63 FR 67782	(c)(136); current COMAR citation is 26.11.26.04.
26.11.27 Emission Limitations for Power Plants				
26.11.27.01	Definitions	7/16/07	9/4/08, 73 FR 51599	
26.11.27.02	Applicability and Exceptions	7/16/07	9/4/08, 73 FR 51599	
26.11.27.03	General Requirements	7/16/07	9/4/08, 73 FR 51599	Exceptions: Paragraphs .03B(7)(a)(iii) and .03D; the word "and" at the end of paragraph .03B(7)(a)(ii).
26.11.27.05	Monitoring and Reporting Requirements.	7/16/07	9/4/08, 73 FR 51599	
26.11.27.06	Judicial Review of Penalty Waivers.	7/16/07	9/4/08, 73 FR 51599	
26.11.29 NO_X Reduction and Trading Program				
26.11.29.01	Definitions	5/1/00	1/10/01, 66 FR 1866	(c)(154)(i)(B)(*1*).
26.11.29.02	Incorporation by Reference	5/1/00	1/10/01, 66 FR 1866	(c)(154)(i)(B)(*1*).
26.11.29.03	Scope and Applicability	5/1/00	1/10/01, 66 FR 1866	(c)(154)(i)(B)(*1*).
26.11.29.04	General Requirements for Affected Trading Sources.	5/1/00	1/10/01, 66 FR 1866	(c)(154)(i)(B)(*1*).
26.11.29.05	NO_X Allowance Allocations	5/1/00	1/10/01, 66 FR 1866	(c)(154)(i)(B)(*1*).
26.11.29.06	Compliance Supplement Pool	5/1/00	1/10/01, 66 FR 1866	(c)(154)(i)(B)(*1*).
26.11.29.07	Allowance Banking	5/1/00	1/10/01, 66 FR 1866	(c)(154)(i)(B)(*1*).
26.11.29.08	Emission Monitoring	5/1/00	1/10/01, 66 FR 1866	(c)(154)(i)(B)(*1*).
26.11.29.09	Requirements for New Sources and Set-Aside Pool.	11/24/03	3/22/04, 69 FR 13236	(c)(184)(i)(C)(1)–(5).
26.11.29.10	Reporting	5/1/00	1/10/01, 66 FR 1866	(c)(154)(i)(B)(*1*).
26.11.29.11	Recordkeeping	5/1/00	1/10/01, 66 FR 1866	(c)(154)(i)(B)(*1*).
26.11.29.12	End-of-Season Reconciliation	5/1/00	1/10/01, 66 FR 1866	(c)(154)(i)(B)(*1*).
26.11.29.13	Compliance Certification	5/1/00	1/10/01, 66 FR 1866	(c)(154)(i)(B)(*1*).
26.11.29.14	Penalties	5/1/00	1/10/01, 66 FR 1866	(c)(154)(i)(B)(*1*).
26.11.29.15	Requirements for Affected Nontrading Sources.	5/1/00	1/10/01, 66 FR 1866	(c)(154)(i)(B)(*1*).
26.11.30 Policies and Procedures Relating to Maryland's NO_X Reduction and Trading Program				
26.11.30.01	Scope and Applicability	5/1/00	1/10/01, 66 FR 1866	(c)(154)(i)(B)(*2*).
26.11.30.02	Definitions	5/1/00	1/10/01, 66 FR 1866	(c)(154)(i)(B)(*2*).
26.11.30.03	Procedures Relating to Compliance Accounts and Overdraft Accounts.	5/1/00	1/10/01, 66 FR 1866	(c)(154)(i)(B)(*2*).
26.11.30.04	Procedures Relating to General Accounts.	5/1/00	1/10/01, 66 FR 1866	(c)(154)(i)(B)(*2*).
26.11.30.05	Allowance Banking	5/1/00	1/10/01, 66 FR 1866	(c)(154)(i)(B)(*2*).
26.11.30.06	Allowance Transfers	5/1/00	1/10/01, 66 FR 1866	(c)(154)(i)(B)(*2*).
26.11.30.07	Early Reductions	5/1/00	1/10/01, 66 FR 1866	(c)(154)(i)(B)(*2*).
26.11.30.08	Opt-In Procedures	5/1/00	1/10/01, 66 FR 1866	(c)(154)(i)(B)(*2*).
26.11.30.09	Allocation of Allowances	6/19/06	11/03/06, 71 FR 64647.	New column for 2008 allocations.
26.11.32 Control of Emissions of Volatile Organic Compounds From Consumer Products				
26.11.32.01	Applicability and Exemptions	06/18/07	12/10/07, 72 FR 69621.	
26.11.32.02	Incorporation by Reference	06/18/07	12/10/07, 72 FR 69621.	
26.11.32.03	Definitions	06/18/07	12/10/07, 72 FR 69621.	
26.11.32.04	Standards—General	06/18/07	12/10/07, 72 FR 69621.	
26.11.32.05	Standards—Requirements for Charcoal Lighter Materials.	08/18/03	12/09/03, 68 FR 68523.	(c)(185).

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26.11.32.06	Standards—Requirements for Aerosol Adhesives.	06/18/07	12/10/07, 72 FR 69621.	
26.11.32.07	Standards—Requirements for Floor Wax Strippers.	08/18/03	12/09/03, 68 FR 68523.	(c)(185).
26.11.32.08	Requirements for Contact Adhesives, Electronic Cleaners, Footwear, or Leather Care Products, and General Purpose Cleaners.	06/18/07	12/10/07, 72 FR 69621.	New Regulation.
26.11.32.09	Requirements for Adhesive Removers, Electrical Cleaners, and Graffiti Removers.	06/18/07	12/10/07, 72 FR 69621.	New Regulation.
26.11.32.10	Requirements for Solid Air Fresheners and Toilet and Urinal Care Products.	06/18/07	12/10/07, 72 FR 69621.	New Regulation.
26.11.32.11	Innovative Products—CARB Exemption.	06/18/07	12/10/07, 72 FR 69621.	Recodification of existing Regulation .08.
26.11.32.12	Innovative Products—Department Exemption.	06/18/07	12/10/07, 72 FR 69621.	
26.11.32.13	Administrative Requirements	06/18/07	12/10/07, 72 FR 69621.	Recodification of existing Regulation .10; Amended.
26.11.32.14	Reporting Requirements	06/18/07	12/10/07, 72 FR 69621.	Recodification of existing Regulation .11; Amended.
26.11.32.15	Variances	06/18/07	12/10/07, 72 FR 69621.	Recodification of existing Regulation .12; Amended.
26.11.32.16	Test Methods	06/18/07	12/10/07, 72 FR 69621.	Recodification of existing Regulation .13; Amended.
26.11.32.17	Alternative Control Plan (ACP)	06/18/07	12/10/07, 72 FR 69621.	Recodification of existing Regulation .14; Amended.
26.11.32.18	Approval of an ACP Application	06/18/07	12/10/07, 72 FR 69621.	Recodification of existing Regulation .15; Amended.
26.11.32.19	Recordkeeping and Availability of Requested Information.	06/18/07	12/10/07, 72 FR 69621.	Recodification of existing Regulation .16.
26.11.32.20	Violations	06/18/07	12/10/07, 72 FR 69621.	Recodification of existing Regulation .17.
26.11.32.21	Surplus Reduction and Surplus Trading.	06/18/07	12/10/07, 72 FR 69621.	Recodification of existing Regulation .18; Amended.
26.11.32.22	Limited-use surplus reduction credits for early formulations of ACP Products.	06/18/07	12/10/07, 72 FR 69621.	Recodification of existing Regulation .19; Amended.
26.11.32.23	Reconciliation of Shortfalls	06/18/07	12/10/07, 72 FR 69621.	Recodification of existing Regulation .20; Amended.
26.11.32.24	Modifications to an ACP	06/18/07	12/10/07, 72 FR 69621.	Recodification of existing Regulation .21; Amended.
26.11.32.25	Cancellation of an ACP	06/18/07	12/10/07, 72 FR 69621.	Recodification of existing Regulation .22; Amended.
26.11.32.26	Transfer of an ACP	06/18/07	12/10/07, 72 FR 69621.	Recodification of existing Regulation .23.
26.11.33 Architectural Coatings				
26.11.33.01	Applicability and Exemptions	3/29/04	5/12/05, 70 FR 24979	
26.11.33.02	Test Methods—Incorporation by Reference.	3/29/04	5/12/05, 70 FR 24979	
26.11.33.03	Definitions	3/29/04	5/12/05, 70 FR 24979	
26.11.33.04	General Standard—VOC Content Limits.	3/29/04	5/12/05, 70 FR 24979	
26.11.33.05	VOC Content Limits	3/29/04	5/12/05, 70 FR 24979	
26.11.33.06	Most Restrictive VOC Limit	2/28/05	10/19/05, 70 FR 60740.	Addition of sections B(15) through B(19).
26.11.33.07	Painting Restrictions	3/29/04	5/12/05, 70 FR 24979	
26.11.33.08	Thinning	3/29/04	5/12/05, 70 FR 24979	
26.11.33.09	Rust Preventive Coatings	3/29/04	5/12/05, 70 FR 24979	
26.11.33.10	Coatings Not Listed in Regulation .05.	2/28/05	10/19/05, 70 FR 60740.	
26.11.33.11	Lacquers	3/29/04	5/12/05, 70 FR 24979	
26.11.33.12	Container Labeling Requirements.	2/28/05	10/19/05, 70 FR 60740.	Deleted section K.
26.11.33.13	Record Keeping Requirements	2/28/05	10/19/05, 70 FR 60740.	

EPA-APPROVED REGULATIONS IN THE MARYLAND SIP—Continued

Code of Maryland Administrative Regulations (COMAR) citation	Title/subject	State effective date	EPA approval date	Additional explanation/citation at 40 CFR 52.1100
26.11.33.14	Compliance Provisions and Test Methods.	3/29/04	5/12/05, 70 FR 24979	
11.14.08 Vehicle Emissions Inspection Program				
11.14.08.01	Title	1/02/95	10/29/99, 64 FR 58340.	(c)(144).
11.14.08.02	Definitions	1/02/95, 10/19/98	10/29/99, 64 FR 58340.	(c)(144).
11.14.08.03	Applicability	6/10/02	1/16/03, 68 FR 2208	(c)(179).
11.14.08.04	Exemptions	1/02/95	10/29/99, 64 FR 58340.	(c)(144).
11.14.08.05	Schedule of the Program	1/02/95, 12/16/96	10/29/99, 64 FR 58340.	(c)(144).
11.14.08.06	Certificates	6/10/02	1/16/03, 68 FR 2208	(c)(179).
11.14.08.07	Extensions	1/02/95, 10/19/98	10/29/99, 64 FR 58340.	(c)(144).
11.14.08.08	Enforcement	1/02/95	10/29/99, 64 FR 58340.	(c)(144).
11.14.08.09	Inspection Standards	6/10/02	1/16/03, 68 FR 2208	(c)(179).
11.14.08.10	General Requirements for Inspection and Preparation for Inspection.	1/02/95, 12/16/96, 10/19/98	10/29/99, 64 FR 58340.	(c)(144).
11.14.08.11	Idle Exhaust Emissions Test and Equipment Checks.	10/18/98	10/29/99, 64 FR 58340.	(c)(144).
11.14.08.11–1	Transient Exhaust Emissions Test and Evaporative Purge Test Sequence.	12/16/96, 10/19/98	10/29/99, 64 FR 58340.	(c)(144).
11.14.08.12	Evaporative Integrity Test, Gas Cap Leak Test, and On-Board Diagnostics Interrogation Procedures.	6/10/02	1/16/03, 68 FR 2208	(c)(179).
11.14.08.13	Failed Vehicle and Reinspection Procedures.	1/02/95	10/29/99, 64 FR 58340.	(c)(144).
11.14.08.14	Dynamometer System Specifications.	1/02/95	10/29/99, 64 FR 58340.	(c)(144).
11.14.08.15	Constant Volume Sampler, Analysis System, and Inspector Control Specifications.	1/02/95, 10/19/98	10/29/99, 64 FR 58340.	(c)(144).
11.14.08.16	Evaporative Test Equipment, Gas Cap Leak Test Equipment, and On-Board Diagnostics Interrogation Equipment Specifications.	6/10/02	1/16/03, 68 FR 2208	(c)(179).
11.14.08.17	Quality Assurance and Maintenance—General Requirements.	1/02/95	10/29/99, 64 FR 58340.	(c)(144).
11.14.08.18	Test Assurance Procedures	1/02/95	10/29/99, 64 FR 58340.	(c)(144).
11.14.08.19	Dynamometer Periodic Quality Assurance Checks.	1/02/95	10/29/99, 64 FR 58340.	(c)(144).
11.14.08.20	Constant Volume Sampler Periodic Quality Assurance Checks.	1/02/95	10/29/99, 64 FR 58340.	(c)(144).
11.14.08.21	Analysis System Periodic Quality Assurance Checks.	1/02/95	10/29/99, 64 FR 58340.	(c)(144).
11.14.08.22	Evaporative Test Equipment, Gas Cap Leak Test Equipment and On-board Diagnostics Interrogation Equipment Periodic Quality Assurance Checks.	1/02/95, 10/19/98	10/29/99, 64 FR 58340.	(c)(144).
11.14.08.23	Overall System Performance Quality Assurance.	1/02/95	10/29/99, 64 FR 58340.	(c)(144).
11.14.08.24	Control Charts	1/02/95	10/29/99, 64 FR 58340.	(c)(144).
11.14.08.25	Gas Specifications	1/02/95	10/29/99, 64 FR 58340.	(c)(144).

EPA-APPROVED REGULATIONS IN THE MARYLAND SIP—Continued

Code of Maryland Administrative Regulations (COMAR) citation	Title/subject	State effective date	EPA approval date	Additional explanation/citation at 40 CFR 52.1100
11.14.08.26	Vehicle Emissions Inspection Station.	1/02/95	10/29/99, 64 FR 58340.	(c)(144).
11.14.08.27	Technician's Vehicle Report	1/02/95, 10/19/98	10/29/99, 64 FR 58340.	(c)(144).
11.14.08.28	Feedback Reports	1/02/95, 10/19/98	10/29/99, 64 FR 58340.	(c)(144).
11.14.08.29	Certified Emissions Technician	1/02/95, 12/16/96	10/29/99, 64 FR 58340.	(c)(144).
11.14.08.30	Certified Emissions Repair Facility.	1/02/95, 12/16/96	10/29/99, 64 FR 58340.	(c)(144).
11.14.08.31	On-Highway Emissions Test	1/02/95	10/29/99, 64 FR 58340.	(c)(144).
11.14.08.32	Fleet Inspection Station	1/02/95, 12/16/96, 10/19/98	10/29/99, 64 FR 58340.	(c)(144).
11.14.08.33	Fleet Inspection Standards	1/02/95	10/29/99, 64 FR 58340.	(c)(144).
11.14.08.34	Fleet Inspection and Reinspection Methods.	1/02/95	10/29/99, 64 FR 58340.	(c)(144).
11.14.08.35	Fleet Equipment and Quality Assurance Requirements.	1/02/95	10/29/99, 64 FR 58340.	(c)(144).
11.14.08.36	Fleet Personnel Requirements	1/02/95	10/29/99, 64 FR 58340.	(c)(144).
11.14.08.37	Fleet Calibration Gas Specifications and Standard Reference Materials.	1/02/95	10/29/99, 64 FR 58340.	(c)(144).
11.14.08.38	Fleet Recordkeeping Requirements.	1/02/95	10/29/99, 64 FR 58340.	(c)(144).
11.14.08.39	Fleet Fees	1/02/95	10/29/99, 64 FR 58340.	(c)(144).
11.14.08.40	Fleet License Suspension and Revocation.	1/02/95	10/29/99, 64 FR 58340.	(c)(144).
11.14.08.41	Audits	1/02/95	10/29/99, 64 FR 58340.	(c)(144).
11.14.08.42	Fleet Inspection After 1998	1/02/95, 2/16/96, 10/19/98	10/29/99, 64 FR 58340.	(c)(144).
03.03.05 Motor Fuel Inspection [Contingency SIP Measure]				
03.03.05.01	Definitions	12/18/95	1/30/96, 61 FR 2982	(c)(101)(i)(B)(*4*); Approved as a contingency SIP measure as part of the CO Maintenance Plans for Baltimore and DC. [(c)(117) and (c)(118)].
03.03.05.01–1	Standard Specifications for Gasoline.	12/18/95	1/30/96, 61 FR 2982	
03.03.05.02–1	Other Motor Vehicle Fuels	10/26/92	6/10/94, 58 FR 29957	
03.03.05.05	Labeling of Pumps	12/18/95	1/30/96, 61 FR 2982	
03.03.05.08	Samples and Test Tolerance	10/26/92	6/10/94, 58 FR 29957	
03.03.05.15	Commingled Products	10/26/92	6/10/94, 58 FR 29957	
03.03.06 Emissions Control Compliance [Contingency SIP Measure]				
03.03.06.01	Definitions	12/18/95	1/30/96, 61 FR 2982	(c)(101)(i)(B)(*5*); Approved as a contingency SIP measure as part of the CO Maintenance Plans for Baltimore and DC. [(c)(117) and (c)(118)].
03.03.06.02	Vapor Pressure Determination	10/26/92	6/10/94, 58 FR 29957	
03.03.06.03	Oxygen Content Determination	12/18/95	1/30/96, 61 FR 2982	
03.03.06.04	Registration	10/26/92	6/10/94, 58 FR 29957	
03.03.06.05	Record Keeping	10/26/92	6/10/94, 58 FR 29957	
03.03.06.06	Transfer Documentation	12/18/95	1/30/96, 61 FR 2982	
TM Technical Memoranda				
TM91–01 [Except Methods 1004A through E].	Test Methods and Equipment Specifications for Stationary Sources.	11/2/98	9/7/01, 66 FR 46727	(c)(153)(i)(D)(*5*) (Supplement 3 is added).

(d) *EPA approved state source-specific requirements.*

Name of source	Permit number/type	State effective date	EPA approval date	Additional explanation
Potomac Electric Power Company (PEPCO)—Chalk Point Units #1 and #2.	#49352, Amended Consent Order.	1/27/78	4/2/79, 44 FR 19192 ...	52.1100(c)(22); FRN republished 5/3/79 (44 FR 25840).
Potomac Electric Power Company (PEPCO)—Dickerson.	#49352, Amended Consent Order.	7/26/78	12/6/79, 44 FR 70141	52.1100(c)(25).
Beall Jr./Sr. High School	Consent Order	1/30/79	3/18/80, 45 FR 17144	52.1100(c)(26).
Mt. Saint Mary's College	Consent Order	3/8/79	3/18/80, 45 FR 17144	52.1100(c)(26).
Potomac Electric Power Company (PEPCO)—Chalk Point.	Secretarial Order	7/19/79	9/3/80, 45 FR 58340 ...	52.1100(c)(34).
Maryland Slag Co	Consent Agreement (Order).	10/31/80	9/8/81, 41 FR 44757 ...	52.1100(c)(49).
Northeast Maryland Waste Disposal Authority ...	Secretarial Order	11/20/81	7/7/82, 47 FR 29531 ...	52.1100(c)(65) (Wheelabrator-Frye, Inc.).
Northeast Maryland Waste Disposal Authority and Wheelabrator-Frye, Inc. and the Mayor and City Council of Baltimore and BEDCO Development Corp.	Secretarial Order	2/25/83	8/24/83, 45 FR 55179	52.1100(c)(70) (Shutdown of landfill for offsets).
Westvaco Corp	Consent Order	9/6/83; Rev. 1/26/84	12/20/84, 49 FR 49457	52.1100(c)(74).
Potomac Electric Power Company (PEPCO)	Administrative Consent Order.	9/13/99	12/15/00, 65 FR 78416	52.1100(c)(151).
Thomas Manufacturing Corp	Consent Decree	2/15/01	11/15/01, 66 FR 57395	52.1100(c)(167).
Constellation Power Source Generation, Inc.—Brandon Shores Units #1 & 2; Gould Street Unit #3; H.A. Wagner Units #1, 2, 3 & 4; C.P. Crane Units #1 & 3; and Riverside Unit #4.	Consent Order and NO_X RACT Averaging Plan Proposal.	4/25/01	2/27/02, 67 FR 8897 ...	52.1100(c)(168).
Kaydon Ring and Seal, Inc	Consent Order	3/5/04	8/31/04, 69 FR 53002	(c)(190).
Perdue Farms, Inc	Consent Order	2/1/05	1/11/07, 72 FR 1291 ...	52.1070(d)(1).

(e) *EPA-approved nonregulatory and quasi-regulatory material.*

Name of non-regulatory SIP revision	Applicable geographic area	State submittal date	EPA approval date	Additional explanation
Base Year Emissions Inventory.	Metropolitan Baltimore Ozone Nonattainment Area 1990.	9/20/95	10/30/95, 60 FR 55321	52.1075(a) CO.
1990 Base Year Emissions Inventory.	Metropolitan Washington Ozone Nonattainment Area.	3/21/94 10/12/95	1/30/96, 61 FR 2931	52.1075(b) CO.
1990 Base Year Emissions Inventory.	All ozone nonattainment areas.	3/21/94	9/27/96, 61 FR 50715	52.1075(c) VOC, NO_X, CO.
1990 Base Year Emissions Inventory.	Kent & Queen Anne's Counties.	3/21/94	9/27/96, 61 FR 50715	52.1075(d) VOC, NO_X, CO.
1990 Base Year Emissions Inventory.	Metropolitan Washington Ozone Nonattainment Area.	3/21/94	4/23/97, 62 FR 19676	52.1075(e) VOC, NO_X, CO.
1990 Base Year Emissions Inventory.	Metropolitan Washington Ozone Nonattainment Area.	12/24/97	7/8/98, 63 FR 36854	52.1075(f) VOC, NO_X.
1990 Base Year Emissions Inventory.	Metropolitan Baltimore Ozone Nonattainment Area.	12/24/97	2/3/00, 65 FR 5245	52.1075(g) VOC, NO_X.
1990 Base Year Emissions Inventory.	Philadelphia-Wilmington-Trenton Ozone Nonattainment Area (Cecil County).	12/24/97, 4/29/98, 12/21/99, 12/28/00.	2/3/00, 65 FR 5252, 9/19/01, 66 FR 48209.	52.1075(h) VOC, NO_X.
15% Rate of Progress Plan ...	Philadelphia-Wilmington-Trenton Ozone Nonattainment Area (Cecil County).	7/12/95, #95–20	7/29/97, 62 FR 40457	52.1076(a).
Stage II Vapor Recovery Comparability Plan.	Western Maryland & Eastern Shore Counties.	11/5/97	12/9/98, 63 FR 67780	52.1076(b).
15% Rate of Progress Plan ...	Metropolitan Baltimore Ozone Nonattainment Area.	10/7/98	2/3/00, 65 FR 5245	52.1076(c).
15% Rate of Progress Plan ...	Metropolitan Washington Ozone Nonattainment Area.	5/5/98	7/19/00, 65 FR 44686	52.1076(d).
Post-1996 Rate of Progress Plan & contingency measures.	Philadelphia-Wilmington-Trenton Ozone Nonattainment Area (Cecil County).	12/24/97, 4/24/98.	2/3/00, 65 FR 5252	52.1076(f).
		8/18/98, 12/21/99.	9/19/01, 66 FR 44809	

Name of non-regulatory SIP revision	Applicable geographic area	State submittal date	EPA approval date	Additional explanation
		12/28/00, 3/8/04	4/15/04, 69 FR 19939	52.1076(f)(3).
Ozone Attainment Plan	Philadelphia-Wilmington-Trenton Ozone Nonattainment Area (Cecil County).	4/29/98, 8/18/98, 12/21/99, 12/28/00, 8/31/01.	10/29/01, 66 FR 54578	52.1076(h).
		9/2/03	10/27/03, 68 FR 61103	
Transportation Conformity Budgets.	Philadelphia-Wilmington-Trenton Ozone Nonattainment Area (Cecil County).	4/29/98, 8/18/98, 12/21/99, 12/28/00.	10/29/01, 66 FR 54578	52.1076(i).
Post-1996 Rate of Progress Plan & contingency measures.	Metropolitan Baltimore Ozone Nonattainment Area.	12/24/97, 4/24/98, 8/18/98, 12/21/99, 12/28/00.	9/26/01, 66 FR 49108	52.1076(j).
Ozone Attainment Plan	Metropolitan Baltimore Ozone Nonattainment Area.	4/29/98, 8/18/98, 12/21/99, 12/28/00, 8/31/01.	10/30/01, 66 FR 54666	52.1076(k).
		9/2/03	10/27/03, 68 FR 61103	52.1076(k).
Mobile budgets	Metropolitan Baltimore Ozone Nonattainment Area.	8/31/01	10/30/01, 66 FR 54666	52.1076(l).
		9/2/03	10/27/03, 68 FR 61103	
Mobile budgets (2005)	Metropolitan Baltimore Ozone Nonattainment Area. Philadelphia-Wilmington-Trenton Ozone Nonattainment Area (Cecil County).	9/2/03	10/27/03, 68 FR 61103	52.1076(m).
Mobile budgets (2005 Rate of Progress Plan).	Metropolitan Baltimore Ozone Nonattainment Area.	11/3/03	2/13/04, 69 FR 7133	52.1076(n).
Extension for incorporation of the on-board diagnostics (OBD) testing program into the Maryland I/M SIP.	All ozone nonattainment areas.	7/9/02	1/16/03, 68 FR 2208	52.1078(b).
Photochemical Assessment Monitoring Stations (PAMS) Program.	Metropolitan Baltimore and Metropolitan Washington Ozone Nonattainment Areas.	3/24/94	9/11/95, 60 FR 47081	52.1080.
Consultation with Local Officials (CAA Sections 121 & 127).	All nonattainment & PSD areas.	10/8/81	4/8/82, 47 FR 15140	52.1100(c)(63).
Lead (Pb) SIP	City of Baltimore	10/23/80	2/23/82, 47 FR 7835	52.1100(c)(60), (61).
TM#90–01—"Continuous Emission Monitoring Policies and Procedures"—October 1990.	Statewide	9/18/91	2/28/96, 61 FR 7418	52.1100(c)(106); approved into SIP as "additional material", but not IBR'd.
Carbon Monoxide Maintenance Plan.	City of Baltimore-Regional Planning District 118.	9/20/95	10/31/95, 60 FR 55321	52.1100(c)(117).
		7/15/04	04/04/05, 70 FR 16958	Revised Carbon Monoxide Maintenance Plan Base Year Emissions Inventory using MOBILE6.
Carbon Monoxide Maintenance Plan.	Montgomery County Election Districts 4, 7, and 13; Prince Georges County Election Districts 2, 6, 16, 16, 17 and 18.	10/12/95	1/30/96, 61 FR 2931	52.1100(c)(118).
		3/3/04	04/04/05, 70 FR 16958	Revised Carbon Monoxide Maintenance Plan Base Year Emissions Inventory using MOBILE6.
Ozone Maintenance Plan	Kent and Queen Anne's Counties.	2/4/04	10/21/04, 69 FR 61766	52.1100(c)(187); SIP effective date is 11/22/04.
1996–1999 Rate-of-Progress Plan SIP and the Transportation Control Measures (TCMs) in Appendix H.	Washington DC 1-hour ozone nonattainment area.	12/20/97, 5/20/99.	5/16/05, 70 FR 25688	Only the TCMs in Appendix H of the 5/20/1999 revision.
				1999 motor vehicle emissions budgets of 128.5 tons per day (tpy) of VOC and 196.4 tpy of NO_X.
1990 Base Year Inventory Revisions.	Washington DC 1-hour ozone nonattainment area.	9/2/03, 2/24/04	5/16/05, 70 FR 25688	

Name of non-regulatory SIP revision	Applicable geographic area	State submittal date	EPA approval date	Additional explanation
1999–2005 Rate-of-Progress Plan SIP Revision and the Transportation Control Measures (TCMs) in Appendix J.	Washington DC 1-hour ozone nonattainment area.	9/2/03, 2/24/04	5/16/05, 70 FR 25688	Only the TCMs in Appendix J of the 2/24/2004 revision 2002 motor vehicle emissions budgets (MVEBs) of 125.2 tons per day (tpy) for VOC and 290.3 tpy of NO_X, and, 2005 MVEBs of 97.4 tpy for VOC and 234.7 tpy of NO_X.
VMT Offset SIP Revision	Washington DC 1-hour ozone nonattainment area.	9/2/03, 2/24/04	5/16/05, 70 FR 25688	
Contingency Measure Plan	Washington, DC Area	9/2/03, 2/24/04	5/16/05, 70 FR 25688	
1-hour Ozone Modeled Demonstration of Attainment.	Washington DC 1-hour ozone nonattainment area.	9/2/03, 2/24/04	5/16/05, 70 FR 25688	
Attainment Demonstration and Early Action Plan for the Washington County Ozone Early Action Compact Area.	Washington County	12/20/04, 2/28/05.	8/17/05, 70 FR 48283	
1-hour Ozone Attainment Plan.	Washington DC 1-hour ozone nonattainment area.	9/2/2003, 2/24/2004.	11/16/05, 70 FR 69440	
8–Hour Ozone Maintenance Plan for the Kent and Queen Anne's Area.	Kent and Queen Anne's Counties.	05/2/06, 05/19/06.	12/22/06, 71 FR 76920	

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ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R03–OAR–2007–0200; FRL–8773–1]

Approval and Promulgation of Air Quality Implementation Plans; Virginia; Amendments to the Open Burning Regulation

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: EPA is approving a State Implementation Plan (SIP) revision submitted by the Commonwealth of Virginia. This SIP revision pertains to the amendments of Virginia's open burning regulation. EPA is approving this SIP revision in accordance with the Clean Air Act (CAA).

DATES: *Effective Date:* This final rule is effective on April 20, 2009.

ADDRESSES: EPA has established a docket for this action under Docket ID Number EPA–R03–OAR–2007–0200. All documents in the docket are listed in the *http://www.regulations.gov* Web site. Although listed in the electronic docket, some information is not publicly available, i.e., confidential business information (CBI) or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available either electronically through *http://www.regulations.gov* or in hard copy for public inspection during normal business hours at the Air Protection Division, U.S. Environmental Protection Agency, Region III, 1650 Arch Street, Philadelphia, Pennsylvania 19103. Copies of the State submittal are available at Virginia Department of Environmental Quality, 629 East Main Street, Richmond, Virginia 23219.

FOR FURTHER INFORMATION CONTACT: Rose Quinto, (215) 814–2182, or by e-mail at *quinto.rose@epa.gov*.

SUPPLEMENTARY INFORMATION:

I. Background

On June 7, 2007 (72 FR 31493), EPA published a notice of proposed rulemaking (NPR) for the Commonwealth of Virginia. The NPR proposed approval of the amendments to Virginia's open burning regulation (9 VAC 5, Chapter 40, Part II, Article 40, Sections 5–40–5600 through 5–40–5630). The formal SIP revision was submitted by the Virginia Department of Environmental Quality (VADEQ) on February 5, 2007. The provisions of Virginia's open burning regulation and the rationale for EPA's proposed action are explained in the NPR and will not be restated here. On July 9, 2007, EPA received comments from VADEQ on the June 7, 2007 NPR. The comments state that they are not to be considered adverse to EPA's proposed action; rather, VADEQ requests that EPA revise the preamble to the rule where the preamble is arguably inconsistent with Virginia's submittal. A summary of those comments and EPA's responses are provided in Section II of this document.

II. Summary of Public Comments and EPA Responses

Comment: The commenter requests to correct the following under the "Summary of SIP Revision," the list of volatile organic compound (VOC) emission control areas:

1. Western Virginia Emissions Control Area: Add "Roanoke City;" change "Salem County" to "Salem City;" and change "Winchester County" to "Winchester City."
2. Hampton Roads Emissions Control Area: Add "Gloucester County" and "Isle of Wight County" and change "Suffolk County" to Suffolk City."
3. Richmond Emissions Control Area: Add "Prince George County" and "Petersburg City."

Response: EPA acknowledges that the June 7, 2007 proposal inadvertently omitted the above-referenced geographic areas, which were included in Virginia's submittal.

Comment: The commenter requests that the seasonal restrictions in 9 VAC 5–40–5630(A)(8) and 9 VAC 5–40–5630(A)(10) as applying in the County of Gloucester and the County of Isle of Wight not become part of Virginia SIP until 2009.

Response: The effective date of this approval is 2009; therefore this comment is moot.

Comment: The commenter requests to remove the terms "landfill," "local

landfill" and "salvage operation" from the list of definitions affected by this SIP approval, since no changes were made to these definitions. The commenter requests to add the term "junkyard" in the list of definitions, since a change was made to this definition.

Response: EPA agrees that Virginia's submittal did not change the definitions of the terms "landfill," "local landfill" and "salvage operation," which were inadvertently included in the June 7, 2007 notice as having been changed. EPA also agrees that Virginia added the term "junkyard" although this term was inadvertently omitted from the list of changes in the SIP Revision Summary of the notice.

Comment: The commenter requests to replace the following statement contained in the preamble: "This SIP revision provides for the control of open burning and use of special incineration devices for destruction of rubber tires, asphaltic materials, crankcase oil, impregnated wood or other rubber or petroleum based materials except when conducting bona fide fire fighting instruction at fire fighting training schools having permanent facilities. This SIP revision also provides for the control of open burning and use of special incineration device for the destruction of hazardous waste or containers for such materials. In addition, this SIP revision provides for the control of open burning and use of special incineration device for the purpose of salvage operation or for the destruction of commercial/industrial waste."

The commenter suggests replacing that statement with: "The destruction of rubber tires, asphaltic materials, crankcase oil, impregnated wood or other rubber or petroleum based materials is prohibited by open burning or the use of special incineration devices except when conducting bona fide fire fighting instruction at firefighting training schools having permanent facilities. Open burning or the use of special incinerator devices is also prohibited for the destruction of hazardous waste or containers for such materials as well as for salvage operations or for the destruction of commercial/industrial waste."

Response: EPA agrees that VADEQ's suggested replacement statement is an accurate synopsis of the rule, and should replace EPA's statement from the rule proposal.

III. General Information Pertaining to SIP Submittals From the Commonwealth of Virginia

In 1995, Virginia adopted legislation that provides, subject to certain conditions, for an environmental assessment (audit) "privilege" for voluntary compliance evaluations performed by a regulated entity. The legislation further addresses the relative burden of proof for parties either asserting the privilege or seeking disclosure of documents for which the privilege is claimed. Virginia's legislation also provides, subject to certain conditions, for a penalty waiver for violations of environmental laws when a regulated entity discovers such violations pursuant to a voluntary compliance evaluation and voluntarily discloses such violations to the Commonwealth and takes prompt and appropriate measures to remedy the violations. Virginia's Voluntary Environmental Assessment Privilege Law, Va. Code Sec. 10.1–1198, provides a privilege that protects from disclosure documents and information about the content of those documents that are the product of a voluntary environmental assessment. The Privilege Law does not extend to documents or information (1) That are generated or developed before the commencement of a voluntary environmental assessment; (2) that are prepared independently of the assessment process; (3) that demonstrate a clear, imminent and substantial danger to the public health or environment; or (4) that are required by law.

On January 12, 1998, the Commonwealth of Virginia Office of the Attorney General provided a legal opinion that states that the Privilege law, Va. Code Sec. 10.1–1198, precludes granting a privilege to documents and information "required by law," including documents and information "required by Federal law to maintain program delegation, authorization or approval," since Virginia must "enforce Federally authorized environmental programs in a manner that is no less stringent than their Federal counterparts. * * *" The opinion concludes that "[r]egarding § 10.1–1198, therefore, documents or other information needed for civil or criminal enforcement under one of these programs could not be privileged because such documents and information are essential to pursuing enforcement in a manner required by Federal law to maintain program delegation, authorization or approval."

Virginia's Immunity law, Va. Code Sec. 10.1–1199, provides that "[t]o the extent consistent with requirements imposed by Federal law," any person making a voluntary disclosure of information to a state agency regarding a violation of an environmental statute, regulation, permit, or administrative order is granted immunity from administrative or civil penalty. The Attorney General's January 12, 1998 opinion states that the quoted language renders this statute inapplicable to enforcement of any federally authorized programs, since "no immunity could be afforded from administrative, civil, or criminal penalties because granting such immunity would not be consistent with Federal law, which is one of the criteria for immunity."

Therefore, EPA has determined that Virginia's Privilege and Immunity statutes will not preclude the Commonwealth from enforcing its program consistent with the Federal requirements. In any event, because EPA has also determined that a state audit privilege and immunity law can affect only state enforcement and cannot have any impact on Federal enforcement authorities, EPA may at any time invoke its authority under the CAA, including, for example, sections 113, 167, 205, 211 or 213, to enforce the requirements or prohibitions of the state plan, independently of any state enforcement effort. In addition, citizen enforcement under section 304 of the CAA is likewise unaffected by this, or any, state audit privilege or immunity law.

IV. Final Action

EPA is approving the amendments to the open burning regulation (9 VAC 5, Chapter 40, Part II, Article 40, Sections 5–40–5600 through 5–40–5630) as a revision to the Virginia SIP submitted on February 5, 2007.

V. Statutory and Executive Order Reviews

A. General Requirements

Under the CAA, the Administrator is required to approve a SIP submission that complies with the provisions of the CAA and applicable Federal regulations. 42 U.S.C. 7410(k); 40 CFR 52.02(a). Thus, in reviewing SIP submissions, EPA's role is to approve state choices, provided that they meet the criteria of the CAA. Accordingly, this 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 action:

- Is not a "significant regulatory action" subject to review by the Office of Management and Budget under

Executive Order 12866 (58 FR 51735, October 4, 1993);

- Does not impose an information collection burden under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*);
- Is certified as not having a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*);
- Does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4);
- Does not have Federalism implications as specified in Executive Order 13132 (64 FR 43255, August 10, 1999);
- Is not an economically significant regulatory action based on health or safety risks subject to Executive Order 13045 (62 FR 19885, April 23, 1997);
- Is not a significant regulatory action subject to Executive Order 13211 (66 FR 28355, May 22, 2001);
- Is not subject to requirements of Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) because application of those requirements would be inconsistent with the CAA; and
- Does not provide EPA with the discretionary authority to address, as appropriate, disproportionate human health or environmental effects, using practicable and legally permissible methods, under Executive Order 12898 (59 FR 7629, February 16, 1994).

In addition, this rule does not have tribal implications as specified by Executive Order 13175 (65 FR 67249, November 9, 2000), because the SIP is not approved to apply in Indian country located in the state, and EPA notes that it will not impose substantial direct costs on tribal governments or preempt tribal law.

B. Submission to Congress and the Comptroller General

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this action and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. A major rule cannot take effect until 60 days after it is published in the **Federal Register**. This action is not a "major rule" as defined by 5 U.S.C. 804(2).

C. Petitions for Judicial Review

Under section 307(b)(1) of the CAA, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by May 18, 2009. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this action for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action.

This action, approving the amendments of Virginia's open burning regulation, may not be challenged later in proceedings to enforce its requirements. (*See* section 307(b)(2).)

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Incorporation by reference, Nitrogen dioxide, Ozone, Reporting and recordkeeping requirements, Volatile organic compounds.

January 22, 2009.

William T. Wisniewski,

Acting Regional Administrator, Region III.

■ 40 CFR Part 52 is amended as follows:

PART 52—[AMENDED]

■ 1. The authority citation for 40 CFR part 52 continues to read as follows:

Authority: 42 U.S.C. 7401 *et seq.*

Subpart VV—Virginia

■ 2. In § 52.2420, the table in paragraph (c) is amended by revising the entries for 9 VAC 5, Chapter 40, Part II, Article 40, Sections 5–40–5600 through 5–40–5630 to read as follows:

§ 52.2420 Identification of plan.

* * * * *

(c) * * *

EPA-APPROVED VIRGINIA REGULATIONS AND STATUTES

State citation (9 VAC 5)	Title/subject	State effective date	EPA approval date	Explanation [former SIP citation]
*	*	*	*	* * *
Chapter 40 Existing Stationary Sources				
*	*	*	*	* * *
Part II Emission Standards				
*	*	*	*	* * *
Article 40 Open Burning (Rule 4–40)				
5–40–5600	Applicability	10/18/06	March 19, 2009 [Insert page number where the document begins].	Provisions of Article 40 expanded to new localities in the emissions control areas.
5–40–5610	Definitions	10/18/06	March 19, 2009 [Insert page number where the document begins].	Terms added: "Air curtain incinerator," "Clean lumber," "Wood waste," and "Yard waste."

EPA-APPROVED VIRGINIA REGULATIONS AND STATUTES—Continued

State citation (9 VAC 5)	Title/subject	State effective date	EPA approval date	Explanation [former SIP citation]
				Terms revised: "Clean burning waste," "Clean wood," "Commercial waste," "Construction waste," "Debris waste," "Demolition waste," "Garbage," "Hazardous waste," "Household waste," "Industrial waste," "Junkyard," "Open burning," "Open pit incinerator," "Refuse," "Sanitary landfill," and "Special incineration device."
5–40–5620	Open burning prohibitions.	10/18/06	March 19, 2009 [Insert page number where the document begins].	
5–40–5630	Permissible open burning.	10/18/06	March 19, 2009 [Insert page number where the document begins].	
*	*	*	*	* * *

* * * * *

[FR Doc. E9–5822 Filed 3–18–09; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[DC103–2051; FRL–8775–3]

Approval and Promulgation of Air Quality Implementation Plans; District of Columbia; Update to Materials Incorporated by Reference

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule; Notice of administrative change.

SUMMARY: EPA is updating the materials submitted by the District of Columbia that are incorporated by reference (IBR) into the State implementation plan (SIP). The regulations affected by this update have been previously submitted by the District of Columbia Department of the Environment and approved by EPA. This update affects the SIP materials that are available for public inspection at the National Archives and Records Administration (NARA), the Air and Radiation Docket and Information Center located at EPA Headquarters in Washington, DC, and the EPA Regional Office.

DATES: *Effective Date:* This action is effective March 19, 2009.

ADDRESSES: SIP materials which are incorporated by reference into 40 CFR part 52 are available for inspection at the following locations: Air Protection Division, U.S. Environmental Protection Agency, Region III, 1650 Arch Street, Philadelphia, Pennsylvania 19103; the Air and Radiation Docket and Information Center, U.S. Environmental Protection Agency, 1301 Constitution Avenue, NW., Room B108, Washington, DC 20460; or 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.*

FOR FURTHER INFORMATION CONTACT: Harold A. Frankford, (215) 814–2108 or by e-mail at *frankford.harold@epa.gov.*

SUPPLEMENTARY INFORMATION:

I. Background

The SIP is a living document which the state can revise as necessary to address the unique air pollution problems in the State. Therefore, EPA from time to time must take action on SIP revisions containing new and/or revised regulations as being part of the SIP. On May 22, 1997 (62 FR 27968), EPA revised the procedures for incorporating by reference Federally-approved SIPs, as a result of consultations between EPA and Office of the Federal Register (OFR). The description of the revised SIP document, IBR procedures and "Identification of plan" format are discussed in further detail in the May 22, 1997 **Federal Register** document. On December 7, 1998, (63 FR 67407) EPA published a document in the **Federal Register** beginning the new IBR procedure for the District of Columbia. On August 6, 2004 (69 FR 47773) and September 6, 2005 (70 FR 52919), EPA published updates to the IBR material for the District of Columbia.

II. EPA Action

In this action, EPA is doing the following:

1. Announcing the update to the IBR material as of December 1, 2008.
2. Making corrections to text in the "Title/subject" column to the following entries listed in the § 52.470(c) table: Section 702; Section 703.2, 703.3; Section 703.1, 703.4 through 703.7; Section 705.1 through 705.3, and Section 705.4 through 14.

EPA has determined that today's rule falls under the "good cause" exemption in section 553(b)(3)(B) of the Administrative Procedures Act (APA) which, upon finding "good cause," authorizes agencies to dispense with public participation and section 553(d)(3) which allows an agency to make a rule effective immediately (thereby avoiding the 30-day delayed effective date otherwise provided for in the APA). Today's rule simply codifies provisions which are already in effect as a matter of law in Federal and approved State programs. Under section 553 of the APA, an agency may find good cause where procedures are "impractical, unnecessary, or contrary to the public interest." Public comment is "unnecessary" and "contrary to the public interest" since the codification only reflects existing law. Immediate notice in the CFR benefits the public by removing outdated citations and incorrect chart entries.

III. Statutory and Executive Order Reviews

A. General Requirements

Under the Clean Air Act, the Administrator is required to approve a SIP submission that complies with the provisions of the Act and applicable

Federal regulations. 42 U.S.C. 7410(k); 40 CFR 52.02(a). Thus, in reviewing SIP submissions, EPA's role is to approve state choices, provided that they meet the criteria of the Clean Air Act. Accordingly, this action merely approves state law as meeting Federal requirements and does not impose additional requirements beyond those imposed by state law. For that reason, this action:

- Is not a "significant regulatory action" subject to review by the Office of Management and Budget under Executive Order 12866 (58 FR 51735, October 4, 1993);
- Does not impose an information collection burden under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*);
- Is certified as not having a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*);
- Does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4);
- Does not have Federalism implications as specified in Executive Order 13132 (64 FR 43255, August 10, 1999);
- Is not an economically significant regulatory action based on health or safety risks subject to Executive Order 13045 (62 FR 19885, April 23, 1997);
- Is not a significant regulatory action subject to Executive Order 13211 (66 FR 28355, May 22, 2001);
- Is not subject to requirements of Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) because application of those requirements would be inconsistent with the Clean Air Act; and
- Does not provide EPA with the discretionary authority to address, as appropriate, disproportionate human health or environmental effects, using practicable and legally permissible methods, under Executive Order 12898 (59 FR 7629, February 16, 1994).

B. Submission to Congress and the Comptroller General

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. This rule is not a "major rule" as defined by 5 U.S.C. 804(2).

C. Petitions for Judicial Review

EPA has also determined that the provisions of section 307(b)(1) of the Clean Air Act pertaining to petitions for judicial review are not applicable to this action. Prior EPA rulemaking actions for each individual component of the District of Columbia SIP compilations had previously afforded interested parties the opportunity to file a petition for judicial review in the United States Court of Appeals for the appropriate circuit within 60 days of such rulemaking action. Thus, EPA sees no need in this action to reopen the 60-day period for filing such petitions for judicial review for this "Identification of plan" update action for the District of Columbia.

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Carbon monoxide, Incorporation by reference, Intergovernmental relations, Lead, Nitrogen dioxide, Ozone, Particulate matter, Reporting and record keeping requirements, Sulfur oxides, Volatile organic compounds.

Dated: February 2, 2009

William T. Wisniewski,

Acting Regional Administrator, Region III.

■ 40 CFR part 52 is amended as follows:

PART 52—[AMENDED]

■ 1. The authority for citation for part 52 continues to read as follows:

Authority: 42.U.S.C. 7401 *et seq.*

Subpart J—District of Columbia

■ 2. Section 52.470 is amended by revising paragraphs (b) and (c) to read as follows:

§ 52.470 Identification of plan.

* * * * *

(b) *Incorporation by reference.* (1) Material listed as incorporated by reference in paragraphs (c) and (d) was approved for incorporation by reference by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. The material incorporated is as it exists on the date of the approval, and notice of any change in the material will be published in the **Federal Register**. Entries in paragraphs (c) and (d) of this section with EPA approval dates on or after December 1, 2008 will be incorporated by reference in the next update to the SIP compilation.

(2) EPA Region III certifies that the rules/regulations and source-specific requirements provided by EPA at the addresses in paragraph (b)(3) of this section are an exact duplicate of the officially promulgated State rules/regulations and source-specific requirements which have been approved as part of the State implementation plan as of December 1, 2008.

(3) Copies of the materials incorporated by reference may be inspected at the EPA Region III Office at 1650 Arch Street, Philadelphia, PA 19103. For further information, call (215) 814–2108; the EPA, Air and Radiation Docket and Information Center, Room Number 3334, EPA West Building, 1301Constitution Avenue NW., Washington, DC 20460. For further information, call (202) 566–1742; 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/code_of_federal_regulations/ibr_locations.html.*

(c) *EPA-approved regulations.*

EPA-APPROVED DISTRICT OF COLUMBIA REGULATIONS

State citation	Title/subject	State effective date	EPA approval date	Additional explanation
District of Columbia Municipal Regulations (DCMR), Title 20—Environment				
Chapter 1 General				
Section 100	Purpose, Scope and Construction.	3/15/85	8/28/95, 60 FR 44431.	
Section 101	Inspection	3/15/85	8/28/95, 60 FR 44431.	
Section 102	Orders for Compliance	3/15/85	8/28/95, 60 FR 44431.	
Section 104	Hearings	3/15/85	8/28/95, 60 FR 44431.	
Section 105	Penalty	3/15/85	8/28/95, 60 FR 44431.	
Section 106	Confidentiality of Reports	3/15/85	8/28/95, 60 FR 44431.	
Section 107	Control Devices or Practices	3/15/85	8/28/95, 60 FR 44431.	
Section 199	Definitions and Abbreviations	4/29/97	7/31/97, 62 FR 40937.	
Section 199	Definitions and Abbreviations	4/29/97	12/7/99, 62 FR 68293	Definitions of the terms Actual emissions, allowable emissions, begin actual construction, commence, complete, major modification, necessary preconstruction approvals or permits, net emissions increase, new source, potential to emit, shutdown, and significant.
Section 199	Definitions and Abbreviations	12/8/00	5/9/01, 66 FR 23614	Definition of "carrier".
Section 199	Definitions and Abbreviations	4/16/04	12/28/04, 69 FR 77647.	Revised Definition of Major Stationary Source.
Section 8–2: 702	Definitions; Definition of "stack"	7/7/72	9/22/72, 37 FR 19806.	
Section 8–2: 724	Variances	7/7/72	9/22/72, 37 FR 19806.	
Chapter 2 General and Non-attainment Area Permits				
Section 200	General Permit Requirements	4/29/97	7/31/97, 62 FR 40937.	
Section 201	General Requirements for Permit Issuance.	4/29/97	7/31/97, 62 FR 40937.	
Section 202	Modification, Revocation and Termination of Permits.	4/29/97	7/31/97, 62 FR 40937.	
Section 204	Permit Requirements for Sources Affecting Nonattainment Areas.	4/16/04	12/28/04, 69 FR 77647.	Revised Paragraph 204.4.
Section 206	Notice and Comment Prior To Permit Issuance.	4/29/97	7/31/97, 62 FR 40937.	
Section 299	Definitions and Abbreviations	4/29/97	7/31/97, 62 FR 40937.	
Section 8–2:720(c)	Permits to Construct or Modify; Permits to Operate.	7/7/72	9/22/72, 37 FR 19806	Requirement for Operating Permit.
Chapter 3 Operating Permits				
Section 307	Enforcement for Severe Ozone Nonattainment Areas.	4/16/04	12/28/04, 69 FR 77639.	Provision allowing for the District to collect penalty fees from major stationary sources if the nonattainment area does not attain the ozone standard by the statutory attainment date.
Chapter 4 Ambient Monitoring, Emergency Procedures, Chemical Accident Prevention and Conformity				
Section 400	Air Pollution Reporting Index	3/15/85	8/28/95, 60 FR 44431.	
Section 401	Emergency Procedures	3/15/85	8/28/95, 60 FR 44431.	
Section 403	Determining Conformity of Federal Actions to State or Federal Implementation Plans.	11/6/98	6/5/03, 68 FR 33638.	
Section 499	Definitions and Abbreviations	3/15/85	8/28/95, 60 FR 44431.	
Chapter 5 Source Monitoring and Testing				
Sections 500.1 through 500.3.	Records and Reports	3/15/85	8/28/95, 60 FR 44431.	
Sections 500.4, 500.5	Records and Reports	9/30/93	1/26/95, 60 FR 5134.	
Section 500.6	Records and Reports	9/30/93	10/27/99, 64 FR 57777.	

EPA-APPROVED DISTRICT OF COLUMBIA REGULATIONS—Continued

State citation	Title/subject	State effective date	EPA approval date	Additional explanation
Section 500.7	Records and Reports—Emission Statements.	9/30/93	5/26/95, 60 FR 27944.	
Section 501	Monitoring Devices	3/15/85	8/28/95, 60 FR 44431.	
Sections 502.1 through 502.15.	Sampling, Tests and Measurements.	3/15/85	8/28/95, 60 FR 44431	Exceptions: Paragraphs 502.11, 502.12 and 502.14 are not part of the SIP.
Section 502.17	Sampling Tests, and Measurements.	09/30/93	10/27/99, 64 FR 57777.	
Section 502.18	Sampling, Tests and Measurements.	12/8/00	5/9/01, 66 FR 23614.	
Section 599	Definitions and Abbreviations	9/30/93	10/27/99, 64 FR 57777.	
Chapter 6 Particulates				
Section 600	Fuel-Burning Particulate Emissions.	4/16/04	12/28/04, 69 FR 77645.	Revision to paragraph 600.1.
Section 601	Rotary Cup Burners	3/15/85	8/28/95, 60 FR 44431.	
Section 602	Incinerators	3/15/85	8/28/95, 60 FR 44431.	
Section 603	Particulate Process Emissions	3/15/85	8/28/95, 60 FR 44431.	
Section 604	Open Burning	3/15/85	8/28/95, 60 FR 44431.	
Section 605	Control of Fugitive Dust	3/15/85	8/28/95, 60 FR 44431.	
Section 606	Visible Emissions	3/15/85	8/28/95, 60 FR 44431.	
Section 699	Definitions and Abbreviations	3/15/85	8/28/95, 60 FR 44431.	
Chapter 7 Volatile Organic Compounds				
Section 700	Organic Solvents	3/15/85	10/27/99, 64 FR 57777.	
Section 701.1 through 701.13.	Storage of Petroleum Products	3/15/85	10/27/99, 64 FR 57777.	
Section 702	Control of Volatile Organic Compound leaks from Petroleum Refinery Equipment.	3/15/85	10/27/99, 64 FR 57777.	
Section 703.2, 703.3	Terminal Vapor Recovery—Gasoline or Volatile Organic Compound.	3/15/85	10/27/99, 64 FR 57777.	
Section 703.1, 703.4 through 703.7.	Terminal Vapor Recovery—Gasoline or Volatile Organic Compound.	9/30/93	10/27/99, 64 FR 57777.	
Section 704	Stage I Vapor Recovery	3/15/85	10/27/99, 64 FR 57777.	
Section 705.1 through 705.3.	Stage II Vapor Recovery	9/30/93	10/27/99, 64 FR 57777.	
Section 705.4 through 705.14.	Stage II Vapor Recovery	3/15/85	10/27/99, 64 FR 57777.	
Section 706	Petroleum Dry Cleaners	3/15/85	10/27/99, 64 FR 57777.	
Section 707	Perchloroethylene Dry Cleaning.	3/15/85	10/27/99, 64 FR 57777.	
Section 708	Solvent Cleaning (Degreasing)	3/15/85	10/27/99, 64 FR 57777.	
Section 709	Asphalt Operations	3/15/85	10/27/99, 64 FR 57777.	
Section 710	Engraving and Plate Printing	3/15/85	8/4/92, 57 FR 34249.	
Section 711	Pumps and Compressors	3/15/85	10/27/99, 64 FR 57777.	
Section 712	Waste Gas Disposal from Ethylene Producing Plant.	3/15/85	10/27/99, 64 FR 57777.	
Section 713	Waste Gas Disposal from Vapor Blow-down Systems.	3/15/85	10/27/99, 64 FR 57777.	
Section 715	Reasonably Available Control Technology.	4/16/04	12/28/04, 69 FR 77647.	Revised paragraphs 715.2, 715.3, and 715.4(b).
Section 716	Offset Lithography	10/2/98	10/27/99, 64 FR 57777.	
Section 718	Mobile Equipment Repair and Refinishing.	11/26/04	12/23/05, 69 FR 76855.	
Section 719	Consumer Products—General Requirements.	04/16/04, 11/26/04	12/28/04, 69 FR 77642.	
Section 720	Consumer Products—VOC Standards.	04/16/04, 11/28/04	12/28/04, 69 FR 77642.	

EPA-APPROVED DISTRICT OF COLUMBIA REGULATIONS—Continued

State citation	Title/subject	State effective date	EPA approval date	Additional explanation
Section 721	Consumer Products—Exemptions from VOC Standards.	04/16/04, 11/28/04	12/28/04, 69 FR 77642.	
Section 722	Consumer Products—Registered Under FIFRA.	04/16/04, 11/28/04	12/28/04, 69 FR 77642.	
Section 723	Consumer Products—Products Requiring Dilution.	04/16/04, 11/28/04	12/28/04, 69 FR 77642.	
Section 724	Consumer Products—Ozone Depleting Compounds.	04/16/04, 11/28/04	12/28/04, 69 FR 77642.	
Section 725	Consumer Products—Aerosol Adhesives.	04/16/04, 11/28/04	12/28/04, 69 FR 77642.	
Section 726	Consumer Products—Antiperspirants or Deodorants.	04/16/04, 11/28/04	12/28/04, 69 FR 77642.	
Section 727	Consumer Products—Charcoal Lighter Materials.	04/16/04, 11/28/04	12/28/04, 69 FR 77642.	
Section 728	Consumer Products—Floor Wax Strippers.	04/16/04, 11/28/04	12/28/04, 69 FR 77642.	
Section 729	Consumer Products—Labeling of Contents.	04/16/04, 11/28/04	12/28/04, 69 FR 77642.	
Section 730	Consumer Products—Reporting Requirements.	04/16/04, 11/28/04	12/28/04, 69 FR 77642.	
Section 731	Consumer Products—Test Methods.	04/16/04, 11/28/04	12/28/04, 69 FR 77642.	
Section 732	Consumer Products—Alternative Control Plans.	04/16/04, 11/28/04	12/28/04, 69 FR 77642.	
Section 733	Consumer Products—Innovative Products Exemption.	04/16/04, 11/28/04	12/28/04, 69 FR 77642.	
Section 734	Consumer Products—Variance Requests.	04/16/04, 11/28/04	12/28/04, 69 FR 77642.	
Section 735	Portable Fuel Containers and Spouts—General Requirements.	4/16/04, 11/26/04	12/29/04, 69 FR 77903.	
Section 736	Portable Fuel Containers and Spouts—Performance Standards.	4/16/04, 11/26/04	12/29/04, 69 FR 77903.	
Section 737	Portable Fuel Containers and Spouts—Exemptions From Performance Standards.	4/16/04, 11/26/04	12/29/04, 69 FR 77903.	
Section 738	Portable Fuel Containers and Spouts—Labeling Requirements.	4/16/04, 11/26/04	12/29/04, 69 FR 77903.	
Section 739	Portable Fuel Containers and Spouts—Testing Procedures.	4/16/04, 11/26/04	12/29/04, 69 FR 77903.	
Section 740	Portable Fuel Containers and Spouts—Innovative Product Exemption.	4/16/04, 11/26/04	12/29/0469 FR 77903.	
Section 741	Portable Fuel Containers and Spouts—Variance.	4/16/04, 11/26/04	12/29/04, 69 FR 77903.	
Section 742	Solvent Cleaning—General Requirements.	4/16/04, 11/26/04	12/29/04, 69 FR 77906.	
Section 743	Solvent Cleaning—Cold Cleaning.	4/16/04, 11/26/04	12/29/04, 69 FR 77906.	
Section 744	Solvent Cleaning—Batch Vapor Cleaning.	4/16/04, 11/26/04	12/29/04, 69 FR 77906.	
Section 745	Solvent Cleaning—In-Line Vapor Cleaning.	4/16/04, 11/26/04	12/29/04, 69 FR 77906.	
Section 746	Solvent Cleaning—Airless and Air-Tight Cleaning.	4/16/04, 11/26/04	12/29/04, 69 FR 77906.	
Section 747	Solvent Cleaning—Alternative Compliance.	4/16/04, 11/26/04	12/29/04, 69 FR 77906.	
Section 748	Solvent Cleaning—Recordkeeping and Monitoring.	4/16/04, 11/26/04	12/29/04, 69 FR 77906.	
Section 749	Architectural and Industrial Maintenance Coating—General Requirements.	04/16/04, 11/26/04	5/12/05, 70 FR 24959	Correction FRN published 5/19/05 (70 FR 28988)
Section 750	Architectural and Industrial Maintenance Coating—Standards.	04/16/04, 11/26/04	5/12/05, 70 FR 24959.	
Section 751	Architectural and Industrial Maintenance Coating—Exemptions.	04/16/04, 11/26/04	5/12/05, 70 FR 24959.	

EPA-APPROVED DISTRICT OF COLUMBIA REGULATIONS—Continued

State citation	Title/subject	State effective date	EPA approval date	Additional explanation
Section 752	Architectural and Industrial Maintenance Coating—Labeling Requirement.	04/16/04, 11/26/04	5/12/05, 70 FR 24959.	
Section 753	Architectural and Industrial Maintenance Coating—Reporting Requirements.	04/16/04, 11/26/04	5/12/05, 70 FR 24959.	
Section 754	Architectural and Industrial Maintenance Coating—Testing Requirements.	04/16/04, 11/26/04	5/12/05, 70 FR 24959.	
Section 799	Definitions and Abbreviations	09/30/93	10/27/99, 64 FR 57777.	
		11/26/04	12/23/04, 69 FR 76855.	Definitions related to Section 718.
		4/16/04, 11/26/04	12/28/04, 69 FR 77642.	Definitions related to Sections 719 through 734.
		4/16/04, 11/26/04	12/29/04, 69 FR 77903.	Definitions related to Sections 735 through 741.
		4/16/04, 11/26/04	12/29/04, 69 FR 77906.	Definitions related to Sections 742 through 748.
		04/16/04, 11/26/04	5/12/05, 70 FR 24959	Definitions related to Sections 748 through 754. Correction FRN published 5/19/05 (70 FR) 28988.
Chapter 8 Asbestos, Sulfur and Nitrogen Oxides				
Section 801	Sulfur Content of Fuel Oils	3/15/85	8/28/95, 60 FR 44431.	
Section 802	Sulfur Content of Coal	3/15/85	8/28/95, 60 FR 44431.	
Section 803	Sulfur Process Emissions	3/15/85	8/28/95, 60 FR 44431.	
Section 804	Nitrogen Oxide Emissions	3/15/85	8/28/95, 60 FR 44431.	
Section 805	Reasonably Available Control Technology for Major Stationary Sources of Oxides of Nitrogen.	4/16/04	12/28/04, 69 FR 77645, 69 FR 77647.	Revised paragraphs 805.1(a), 805.1(a)(3) and (4), 805.1(b) and (c), 805.5(b) and (c), 805.6, and 805.7.
Section 899	Definitions and Abbreviations	3/15/85	8/28/95, 60 FR 44431.	
Chapter 9 Motor Vehicle Pollutants, Lead, Odors, and Nuisance Pollutants				
Section 904	Oxygenated Fuels	7/25/97	5/9/01, 66 FR 23614	Addition of subsection 904.3 to make the oxygenated gasoline program a CO contingency measure.
Section 915	National Low Emissions Vehicle Program.	2/11/00	7/20/00, 65 FR 44981.	
Section 999	Definitions and Abbreviations	2/11/00	7/20/00, 65 FR 44981.	
Chapter 10 Nitrogen Oxides Emissions Budget Program				
Section 1000	Applicability	12/8/00	12/22/00, 65 FR 80783.	
Section 1001	General Provisions	12/8/00	12/22/00, 65 FR 80783.	
Section 1002	Allowance Allocation	12/8/00	12/22/00, 65 FR 80783.	
Section 1003	Permits	12/8/00	12/22/00, 65 FR 80783.	
Section 1004	Allowance Transfer and Use	12/8/00	12/22/00, 65 FR 80783.	
Section 1005	Allowance Banking	12/8/00	12/22/00, 65 FR 80783.	
Section 1006	NO_X Allowance Tracking system.	12/8/00	12/22/00, 65 FR 80783.	
Section 1007	Emission Monitoring	12/8/00	12/22/00, 65 FR 80783.	
Section 1008	Record Keeping	12/8/00	12/22/00, 65 FR 80783.	
Section 1009	Reporting	12/8/00	12/22/00, 65 FR 80783.	
Section 1010	End-of-Season Reconciliation	12/8/00	12/22/00, 65 FR 80783.	

EPA-APPROVED DISTRICT OF COLUMBIA REGULATIONS—Continued

State citation	Title/subject	State effective date	EPA approval date	Additional explanation
Section 1011	Compliance Certification	12/8/00	12/22/00, 65 FR 80783.	
Section 1012	Penalties	12/8/00	12/22/00, 65 FR 80783.	
Section 1013	Program Audit	12/8/00	12/22/00, 65 FR 80783.	
Section 1014	NO_X Budget Trading Program for State Implementation Plans.	5/1/01	11/1/01, 66 FR 55099.	
Section 1099	Definitions and Abbreviations	12/8/00	12/22/00, 65 FR 80783.	
Appendices				
Appendix 1	Emission Limits for Nitrogen Oxide.	3/15/85	8/28/95, 60 FR 44431.	
Appendix 2	Table of Allowable Particulate Emissions from Process Sources.	3/15/85	8/28/95, 60 FR 44431.	
Appendix 3	Graphic Arts Sources	3/15/85	8/28/95, 60 FR 44431.	
Appendix 5	Test Methods for Sources of Volatile Organic Compounds.	09/30/93	10/27/99, 64 FR 57777.	
District of Columbia Municipal Regulations (DCMR), Title 18—Vehicles and Traffic				
Chapter 4 Motor Vehicle Title and Registration				
Section 411	Registration of Motor Vehicles: General Provisions.	10/10/86	6/11/99, 64 FR 31498.	
Section 412	Refusal of Registration	10/17/97	6/11/99, 64 FR 31498.	
Section 413	Application for Registration	9/16/83	6/11/99, 64 FR 31498.	
Section 429	Enforcement of Registration and Reciprocity Requirements.	3/4/83	6/11/99, 64 FR 31498.	
Chapter 6 Inspection of Motor Vehicles				
Section 600	General Provisions	4/23/82	6/11/99, 64 FR 31498.	
Section 602	Inspection Stickers	3/15/85	6/11/99, 64 FR 31498.	
Section 603	Vehicle Inspection: Approved Vehicles.	6/29/74; Recodified 4/1/81.	6/11/99, 64 FR 31498.	
Section 604	Vehicle Inspection: Rejected Vehicles.	11/23/84	4/10/86, 51 FR 12322.	
Section 606	Vehicle Inspection: Condemned Vehicles.	6/29/74; Recodified 4/1/81.	6/11/99, 64 FR 31498.	
Section 607	Placement of Inspection Stickers on Vehicles.	4/7/77; Recodified 4/1/81.	6/11/99, 64 FR 31498.	
Section 608	Lost, Mutilated or Detached Inspection Stickers.	6/30/72; Recodified 4/1/81.	6/11/99, 64 FR 31498.	
Section 609	Inspection of Non-Registered Motor Vehicles.	6/30/72; Recodified 4/1/81.	6/11/99, 64 FR 31498.	
Section 617	Inspector Certification	7/22/94	6/11/99, 64 FR 31498.	
Section 618	Automotive Emissions Repair Technician.	7/22/94	6/11/99, 64 FR 31498.	
Section 619	Vehicle Emission Recall Compliance.	10/17/97	6/11/99, 64 FR 31498.	
Chapter 7 Motor Vehicle Equipment				
Section 701	Historic Motor Vehicles	2/25/78; Recodified 4/1/81.	6/11/99, 64 FR 31498.	
Section 750	Exhaust Emission Systems	4/26/77; Recodified 4/1/81.	6/11/99, 64 FR 31498.	
Section 751	Compliance with Exhaust Emission Standards.	7/22/94	6/11/99, 64 FR 31498.	
Section 752	Maximum Allowable Levels of Exhaust Components.	10/17/97	6/11/99, 64 FR 31498.	
Section 753	Inspection of Exhaust Emission Systems.	5/23/83	4/10/86, 51 FR 12322.	
Section 754	Federal Transient Emissions Test: Testing Procedures.	7/22/94	6/11/99, 64 FR 31498.	

EPA-APPROVED DISTRICT OF COLUMBIA REGULATIONS—Continued

State citation	Title/subject	State effective date	EPA approval date	Additional explanation
Section 755	Federal Transient Emissions Test: Equipment.	7/22/94	6/11/99, 64 FR 31498.	
Section 756	Federal Transient Emissions Test: Quality Assurance Procedures.	7/22/94	6/11/99, 64 FR 31498.	
Chapter 11 Motor Vehicle Offenses and Penalties				
Section 1101	Offenses Related to Title, Registration, and Identification Tags.	6/30/72; Recodified 4/1/81.	6/11/99, 64 FR 31498.	
Section 1103	Offenses Related to Inspection Stickers.	6/30/72; Recodified 4/1/81.	6/11/99, 64 FR 31498.	
Section 1104	False Statements, Alterations, Forgery, and Dishonored Checks.	11/29/91	6/11/99, 64 FR 31498.	
Section 1110	Penalties for Violations	11/29/91	6/11/99, 64 FR 31498.	
Chapter 26 Civil Fines for Moving and Non-Moving Violations				
Section 2600.1	Infraction: Inspection, Registration Certificate, Tags.	8/31/90	6/11/99, 64 FR 31498.	
Chapter 99 Definitions				
Section 9901	Definitions	10/17/97	6/11/99, 64 FR 31498	Definition of "Emission Recall Notice".

* * * * *

[FR Doc. E9–5866 Filed 3–18–09; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52 and 81

[EPA–R03–OAR–2007–0176; FRL–8777–3]

Approval and Promulgation of Air Quality Implementation Plans; Pennsylvania; Redesignation of the Greene County 8-Hour Ozone Nonattainment Area to Attainment and Approval of the Maintenance Plan and 2002 Base-Year Inventory

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: EPA is approving a State Implementation Plan (SIP) revision submitted by the Commonwealth of Pennsylvania. The Pennsylvania Department of Environmental Protection (PADEP) is requesting that the Greene County ozone nonattainment area (Greene County Area) be redesignated as attainment for the 1997 8-hour ozone national ambient air quality standard (NAAQS). EPA is approving the ozone redesignation request for the Greene County Area. In conjunction with its redesignation request, PADEP submitted a SIP revision consisting of a maintenance plan for the Greene County Area that provides for continued attainment of the 1997 8-hour ozone NAAQS for at least 10 years after redesignation. EPA is approving the 8-hour maintenance plan. PADEP also submitted a 2002 base year inventory for the Greene County Area, which EPA is approving. In addition, EPA is approving the adequacy determination for the motor vehicle emission budgets (MVEBs) that are identified in the Greene County Area maintenance plan for purposes of transportation conformity, and is approving those MVEBs. EPA is approving the redesignation request, the maintenance plan, and the 2002 base year emissions inventory as revisions to the Pennsylvania SIP in accordance with the requirements of the Clean Air Act (CAA or the Act).

DATES: *Effective Date:* This final rule is effective on April 20, 2009.

ADDRESSES: EPA has established a docket for this action under Docket ID Number EPA–R03–OAR–2007–0176. All documents in the docket are listed in the *http://www.regulations.gov* Web site. Although listed in the electronic docket, some information is not publicly available, i.e., confidential business information (CBI) or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available either electronically through *http://www.regulations.gov* or in hard copy for public inspection during normal business hours at the Air Protection Division, U.S. Environmental Protection Agency, Region III, 1650 Arch Street, Philadelphia, Pennsylvania 19103. Copies of the State submittal are available at the Pennsylvania Department of Environment Protection, Bureau of Air Quality Control, P.O. Box 8468, 400 Market Street, Harrisburg, Pennsylvania 17105.

FOR FURTHER INFORMATION CONTACT: Melissa Linden, (215) 814–2096, or by e-mail at *linden.melissa@epa.gov*.

SUPPLEMENTARY INFORMATION:

I. Background

On July 16, 2008 (73 FR 40813), EPA published a notice of proposed rulemaking (NPR) for the Commonwealth of Pennsylvania. The NPR proposed approval of Pennsylvania's redesignation request and maintenance plan SIP revisions for the Greene County Area that provide for continued attainment of the 1997 8-hour ozone NAAQS for at least 10 years after redesignation. The NPR also proposed approval of a 2002 base year emissions inventory for the Greene County Area. The formal SIP revisions were submitted by PADEP on January 25, 2007, with one significant change

submitted on May 23, 2008 explaining a new methodology used to project future emissions of nitrogen oxides (NO_X) from electric generating units (EGUs). Other specific requirements of Pennsylvania's redesignation request and maintenance plan SIP revisions, and the rationale for EPA's proposed actions, are explained in the NPR and will not be restated here. No public comments were received on the NPR.

The holdings in two lawsuits potentially impact this redesignation action. As we explain below, we believe neither lawsuit precludes the redesignation of the Greene County Area.

On December 22, 2006, the U.S. Court of Appeals for the District of Columbia Circuit (D.C. Circuit) vacated EPA's Phase 1 Implementation Rule for the 1997 8-Hour Ozone Standard. (69 FR 23591, April 30, 2004). *South Coast Air Quality Management Dist.* v. *EPA*, 472 F.3d 882 (D.C. Cir. 2006). On June 8, 2007, in *South Coast Air Quality Management Dist.* v. *EPA*, Docket No. 04–1201, in response to several petitions for rehearing, the D.C. Circuit clarified that the Phase 1 Rule was vacated only with regard to those parts of the rule that had been successfully challenged. Therefore, the Phase 1 Rule provisions related to classifications for areas currently classified under subpart 2 of Title I, part D of the Act as 8-hour nonattainment areas, the 8-hour attainment dates, and the timing for emissions reductions needed for attainment of the 8-hour ozone NAAQS remain effective. The June 8, 2007 decision left intact the Court's rejection of EPA's reasons for implementing the 8-hour standard in certain nonattainment areas under subpart 1 in lieu of subpart 2. By limiting the vacatur, the Court let stand EPA's revocation of the 1-hour standard and those anti-backsliding provisions of the Phase 1 Rule that had not been successfully challenged. The June 8, 2007 decision reaffirmed the December 22, 2006 decision that EPA had improperly failed to retain measures required for 1-hour nonattainment areas under the anti-backsliding provisions of the regulations: (1) Nonattainment area New Source Review (NSR) requirements based on an area's 1-hour nonattainment classification; (2) Section 185 penalty fees for the 1-hour severe or extreme nonattainment areas; and (3) measures to be implemented pursuant to section 172(c)(9) or 182(c)(9) of the CAA, on the contingency of an area not making reasonable further progress toward attainment of the 1-hour NAAQS, or for failure to attain NAAQS. In addition, the June 8, 2007 decision clarified that the Court's reference to conformity requirements for anti-backsliding purposes was limited to requiring the continued use of the 1-hour motor vehicle emissions budgets until 8-hour budgets were available for 8-hour conformity determinations, which is already required under EPA's conformity regulations. The Court thus clarified the 1-hour conformity determinations are not required for anti-backsliding purposes.

For the reasons set forth in the proposal, EPA does not believe that the Court's rulings alter any requirements relevant to this redesignation action so as to preclude redesignation, and do not prevent EPA from finalizing this redesignation. EPA believes that the Court's December 22, 2006 and June 8, 2007 decisions impose no impediment to moving forward with redesignation of this area to attainment, because even in the light of the Court's decisions, redesignation is appropriate under the relevant redesignation provisions of the CAA and longstanding policies regarding redesignation requests.

The second lawsuit relates to EPA's Clean Air Interstate Rule (CAIR). On July 11, 2008, the D.C. Circuit ruled on various challenges to EPA's CAIR, and issued an order vacating CAIR in its entirety. 531 F.3d 896 (D.C. Cir. 2008). This order did not become final before December 23, 2008, when the Court granted partial rehearing as to the remedy set forth in its July 11 decision and issued an opinion remanding CAIR to EPA without vacating. During the pendency of the remand, CAIR will remain in place. *North Carolina* v. *EPA*, 550 F.3d 1176 (D.C. Cir. 2008). The Court stated, however, in its December 23, 2008 opinion that EPA was still under an obligation to remedy what the Court characterized as "flaws" with CAIR, though the Court declined to impose a deadline for EPA to finalize that remedy.

EPA believes that the maintenance plan for Greene County demonstrates that the NAAQS will be maintained for at least 120 months (ten years), and through 10 ozone seasons, as required by section 175A(a) of the Act, 42 U.S.C. 7505a(a), whether or not CAIR and its specific, associated emissions reductions from a subset of point sources (electric generating units), continue in effect. Ten years of maintenance of the NAAQS is demonstrated in Table 5 (and its associated explanatory material) of the NPR, (73 FR at 40821). As the NPR indicates, emissions from area and non-road sources in Greene County are projected to have an overall decline from 2004 through the end of the 2018 ozone season. Thus, even if point source projected emissions were to remain steady or even minimally increase during this same time frame, the 1997 ozone NAAQS will be maintained in Greene County. However, point source measures currently in place, such as the NO_X SIP call, allow EPA to conclude that NO_X emissions from point source in Greene County are more likely to decline than increase or hold steady through the end of the 2018 ozone season. Thus, even if EPA could comply with the D.C. Circuit's CAIR opinions through a new or revised program that did not achieve the same (or any) level of the NO_X reductions of the current CAIR program in Greene County, the projected emissions in the maintenance plan indicate that Greene County will continue to maintain the 1997 8-hour ozone NAAQS throughout the duration of the 120 month (from the effective date of this redesignation) and ten ozone season (beginning of ozone season 2009 through end of ozone season 2018) maintenance period. EPA may therefore approve the redesignation request.

II. Final Action

EPA is approving the Commonwealth of Pennsylvania's redesignation request, maintenance plan, 2002 base-year inventory, and MVEBs SIP revisions submitted on January 25, 2007, because they satisfy the requirements of the CAA. EPA is also approving the significant change of a new methodology that projects future emissions of NO_X from EGUs, submitted on May 23, 2008 as a revision to the Pennsylvania SIP. The final approval of this redesignation request will change the designation of the Greene County Area from nonattainment to attainment for the 1997 8-hour ozone standard.

In this final rulemaking, EPA is notifying the public that we have found that the MVEBs for NO_X and volatile organic compounds (VOC) in the Greene County Area for the 1997 8-hour ozone maintenance plan are adequate and approved for conformity purposes. As a result of our finding, the Greene County Area must use the MVEBs from the submitted 8-hour ozone maintenance plan for future conformity determinations. The adequate and approved MVEBs for the Greene County Area are provided in the following table:

TABLE 1—GREENE COUNTY MOTOR VEHICLE EMISSIONS BUDGETS IN TONS PER SUMMER DAY (TPSD)

Year	VOC	NO_X
2009	1.6	2.6

TABLE 1—GREENE COUNTY MOTOR VEHICLE EMISSIONS BUDGETS IN TONS PER SUMMER DAY (TPSD)—Continued

Year	VOC	NO_X
2018	1.0	1.3

The Greene County Area is subject to the CAA's requirement for the basic nonattainment areas until and unless it is redesignated to attainment.

III. Statutory and Executive Order Reviews

A. General Requirements

Under Executive Order 12866 (58 FR 51735, October 4, 1993), this action is not a "significant regulatory action" and therefore is not subject to review by the Office of Management and Budget. For this reason, this action is also not subject to Executive Order 13211, "Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use" (66 FR 28355, May 22, 2001). This action merely approves state law as meeting Federal requirements and imposes no additional requirements beyond those imposed by state law. Redesignation is an action that affects the status of a geographical area and does not impose any new regulatory requirements on sources. Accordingly, the Administrator certifies that this rule will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). Because this rule approves pre-existing requirements under state law and does not impose any additional enforceable duty beyond that required by state law, it 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). This final rule also does not have tribal implications because it will 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, as specified by Executive Order 13175 (65 FR 67249, November 9, 2000). Because this action affects the status of a geographical area, does not impose any new requirements on sources, or allows the state to avoid adopting or implementing other requirements, this action also does not have Federalism implications because it does not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132 (64 FR 43255, August 10, 1999). This action merely approves a state rule implementing a Federal requirement, and does not alter the relationship or the distribution of power and responsibilities established in the CAA. This rule also is not subject to Executive Order 13045 "Protection of Children from Environmental Health Risks and Safety Risks" (62 FR 19885, April 23, 1997), because it approves a state rule implementing a Federal standard.

In reviewing SIP submissions, EPA's role is to approve state choices, provided that they meet the criteria of the CAA. In this context, in the absence of a prior existing requirement for the State to use voluntary consensus standards (VCS), EPA has no authority to disapprove a SIP submission for failure to use VCS. It would thus be inconsistent with applicable law for EPA, when it reviews a SIP submission, to use VCS in place of a SIP submission that otherwise satisfies the provisions of the CAA. Redesignation is an action that affects the status of a geographical area and does not impose any new requirements on sources. Thus, the requirements of section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) do not apply. This rule does not impose an information collection burden under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

B. Submission to Congress and the Comptroller General

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. This rule is not a "major rule" as defined by 5 U.S.C. 804(2).

C. Petitions for Judicial Review

Under section 307(b)(1) of the CAA, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by *May 18, 2009*. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action.

This action, approving the redesignation of the Greene County Area to attainment for the 8-hour ozone NAAQS, the associated maintenance plan, the 2002 base year emission inventory, and the MVEBs identified in the maintenance plan, may not be challenged later in proceedings to enforce its requirements. (*See* section 307(b)(2).)

List of Subjects

40 CFR Part 52

Environmental protection, Air pollution control, Incorporation by reference, Nitrogen dioxide, Ozone, Reporting and recordkeeping requirements, Volatile organic compounds.

40 CFR Part 81

Air pollution control, National parks, Wilderness areas.

Dated: February 11, 2009.

James W. Newsom,

Acting Regional Administrator, Region III.

■ 40 CFR parts 52 and 81 are amended as follows:

PART 52—[AMENDED]

■ 1. The authority citation for part 52 continues to read as follows:

Authority: 42 U.S.C. 7401 *et seq.*

Subpart NN—Pennsylvania

■ 2. In § 52.2020, the table in paragraph (e)(1) is amended by adding an entry at the end of the table to read as follows:

§ 52.2020 Identification of plan.

* * * * *

(e) * * *

(1) * * *

Name of non-regulatory SIP revision	Applicable geographic area	State submittal date	EPA approval date	Additional explanation
*	*	*	*	*
8-Hour Ozone Maintenance Plan and 2002 Base Year Emissions Inventory.	Greene County	01/25/07, 05/23/08	March 19, 2009 [Insert page number where the document begins].	

* * * * *

PART 81—[AMENDED]

■ 3. The authority citation for Part 81 continues to read as follows:

Authority: 42 U.S.C. 7401 *et seq.*

■ 4. In § 81.339, the table entitled "Pennsylvania-Ozone (8-Hour Standard)" is amended by revising the entry for the Greene County, PA: Greene County, to read as follows:

§ 81.339 Pennsylvania

* * * * *

PENNSYLVANIA—OZONE
[8-Hour Standard]

Designated area	Designation[a]		Category/classification	
	Date[1]	Type	Date[1]	Type
*	*	*	*	*
Greene County, PA: Greene County.	*April 20, 2009*	Attainment.		
*	*	*	*	*

[a] Includes Indian County located in each county or area, except otherwise noted.
[1] This date is June 15, 2004, unless otherwise noted.

* * * * *

[FR Doc. E9–5851 Filed 3–18–09; 8:45 am]
BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52 and 81

[EPA–R03–OAR–2007–0624; FRL–8777–4]

Approval and Promulgation of Air Quality Implementation Plans; Pennsylvania; Redesignation of the Clearfield/Indiana 8-Hour Ozone Nonattainment Area to Attainment and Approval of the Maintenance Plan and 2002 Base-Year Inventory

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: EPA is approving a State Implementation Plan (SIP) revision submitted by the Commonwealth of Pennsylvania. The Pennsylvania Department of Environmental Protection (PADEP) is requesting that the Clearfield and Indiana Counties ozone nonattainment area (Clearfield/Indiana Area) be redesignated as attainment for the 1997 8-hour ozone national ambient air quality standard (NAAQS). EPA is approving the ozone redesignation request for the Clearfield/Indiana Area. In conjunction with its redesignation request, PADEP submitted a SIP revision consisting of a maintenance plan for the Clearfield/Indiana Area that provides for continued attainment of the 1997 8-hour ozone NAAQS for at least 10 years after redesignation. EPA is approving the 8-hour maintenance plan. PADEP also submitted a 2002 base year inventory for the Clearfield/Indiana Area, which EPA is approving. In addition, EPA is approving the adequacy determination for the motor vehicle emission budgets (MVEBs) that are identified in the Clearfield/Indiana Area maintenance plan for purposes of transportation conformity, and is approving those MVEBs. EPA is approving the redesignation request, the maintenance plan, and the 2002 base year emissions inventory as revisions to the Pennsylvania SIP in accordance with the requirements of the Clean Air Act (CAA or the Act).

EFFECTIVE DATE: This final rule is effective on April 20, 2009.

ADDRESSES: EPA has established a docket for this action under Docket ID Number EPA–R03–OAR–2007–0624. All documents in the docket are listed in the *www.regulations.gov* Web site. Although listed in the electronic docket, some information is not publicly available, i.e., confidential business information (CBI) or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available either electronically through *www.regulations.gov* or in hard copy for public inspection during normal business hours at the Air Protection Division, U.S. Environmental Protection Agency, Region III, 1650 Arch Street, Philadelphia, Pennsylvania 19103. Copies of the State submittal are available at the Pennsylvania Department of Environment Protection, Bureau of Air Quality Control, P.O. Box 8468, 400 Market Street, Harrisburg, Pennsylvania 17105.

FOR FURTHER INFORMATION CONTACT: Gregory Becoat, (215) 814–2036, or by e-mail at *becoat.gregory@epa.gov*.

SUPPLEMENTARY INFORMATION:

I. Background

On July 23, 2008 (73 FR 43731), EPA published a notice of proposed rulemaking (NPR) for the Commonwealth of Pennsylvania. The NPR proposed approval of Pennsylvania's redesignation request and maintenance plan SIP revisions for the Clearfield/Indiana Area that provide for continued attainment of the 1997 8-hour ozone NAAQS for at least 10 years

after redesignation. The NPR also proposed approval of a 2002 base year emissions inventory for the Clearfield/Indiana Area. The formal SIP revisions were submitted by PADEP on June 14, 2007, with two significant changes submitted on May 23, 2008 that separated the MVEBs for the Clearfield/Indiana Area into separate MVEBs for Clearfield County and Indiana County and used a new methodology that projects future emissions of nitrogen oxides (NO_X) from electric generating units (EGUs). Other specific requirements of Pennsylvania's redesignation request and maintenance plan SIP revisions, and the rationale for EPA's proposed actions, are explained in the NPR and will not be restated here. No public comments were received on the NPR.

The holdings in two lawsuits potentially impact this redesignation action. As we explain below, we believe neither lawsuit precludes the redesignation of the Clearfield/Indiana Area.

However, on December 22, 2006, the U.S. Court of Appeals for the District of Columbia Circuit (D.C. Circuit) vacated EPA's Phase 1 Implementation Rule for the 8-Hour Ozone Standard. (69 FR 23591, April 30, 2004). *South Coast Air Quality Management Dist.* v. *EPA*, 472 F.3d 882 (D.C. Cir. 2006). On June 8, 2007, in *South Coast Air Quality Management Dist.* v. *EPA*, Docket No. 04–1201, in response to several petitions for rehearing, the D.C. Circuit clarified that the Phase 1 Rule was vacated only with regard to those parts of the rule that had been successfully challenged. Therefore, the Phase 1 Rule provisions related to classifications for areas currently classified under subpart 2 of Title I, part D of the Act as 8-hour nonattainment areas, the 8-hour attainment dates, and the timing for emissions reductions needed for attainment of the 8-hour ozone NAAQS remain effective. The June 8, 2007 decision left intact the Court's rejection of EPA's reasons for implementing the 8-hour standard in certain nonattainment areas under subpart 1 in lieu of subpart 2. By limiting the vacatur, the Court let stand EPA's revocation of the 1-hour standard and those anti-backsliding provisions of the Phase 1 Rule that had not been successfully challenged. The June 8, 2007 decision reaffirmed the December 22, 2006 decision that EPA had improperly failed to retain measures required for 1-hour nonattainment areas under the anti-backsliding provisions of the regulations: (1) Nonattainment area New Source Review (NSR) requirements based on an area's 1-hour nonattainment classification; (2) Section 185 penalty fees for the 1-hour severe or extreme nonattainment areas; and (3) measures to be implemented pursuant to section 172(c)(9) or 182(c)(9) of the CAA, on the contingency of an area not making reasonable further progress toward attainment of the 1-hour NAAQS, or for failure to attain NAAQS. In addition, the June 8, 2007 decision clarified that the Court's reference to conformity requirements for anti-backsliding purposes was limited to requiring the continued use of the 1-hour motor vehicle emissions budgets until 8-hour budgets were available for 8-hour conformity determinations, which is already required under EPA's conformity regulations. The Court thus clarified the 1-hour conformity determinations are not required for anti-backsliding purposes.

For the reasons set forth in the proposal, EPA does not believe that the Court's rulings alter any requirements relevant to this redesignation action so as to preclude redesignation, and do not prevent EPA from finalizing this redesignation. EPA believes that the Court's December 22, 2006 and June 8, 2007 decisions impose no impediment to moving forward with redesignation of this area to attainment, because even in the light of the Court's decisions, redesignation is appropriate under the relevant redesignation provisions of the CAA and longstanding policies regarding redesignation requests.

The second lawsuit relates to EPA's Clean Air Interstate Rule (CAIR). On July 11, 2008, the D.C. Circuit ruled on various challenges to EPA's CAIR, and issued an order vacating CAIR in its entirety. 531 F.3d 896 (D.C. Cir. 2008). This order did not become final before December 23, 2008, when the Court granted partial rehearing as to the remedy set forth in its July 11, 2008 decision and issued an opinion remanding CAIR to EPA without vacating. During the pendency of the remand, CAIR will remain in place. *North Carolina* v. *EPA*, 550 F.3d 1176 (D.C. Cir. 2008). The Court stated, however, in its December 23, 2008 opinion that EPA was still under an obligation to remedy what the Court characterized as "flaws" with CAIR, though the Court declined to impose a deadline for EPA to finalize that remedy.

EPA believes that the maintenance plan for Clearfield and Indiana Counties demonstrates that the NAAQS will be maintained for at least 120 months (ten years), and through 10 ozone seasons, as required by section 175A(a) of the Act, 42 U.S.C. 7505a(a), whether or not CAIR and its specific, associated emissions reductions from a subset of point sources (electric generating units), continue in effect. Ten years of maintenance of the NAAQS is demonstrated in Table 5 (and its associated explanatory material) of the NPR (73 FR at 42739, July 23, 2008). As the NPR indicates, emissions from area and non-road sources in the Clearfield/Indiana Area are projected to have an overall decline from 2004 through the end of the 2018 ozone season. Thus, even if point source projected emissions were to remain steady or even minimally increase during this same time frame, the 1997 ozone NAAQS will be maintained in the Clearfield/Indiana Area. However, point source measures currently in place, such as the NO_X SIP call, allow EPA to conclude that NO_X emissions from point source in the Clearfield/Indiana Area are more likely to decline than increase or hold steady through the end of the 2018 ozone season. Thus, even if EPA could comply with the D.C. Circuit's CAIR opinions through a new or revised program that did not achieve the same (or any) level of the NO_X reductions of the current CAIR program in the Clearfield/Indiana Area, the projected emissions in the maintenance plan indicate that the Clearfield/Indiana Area will continue to maintain the 1997 8-hour ozone NAAQS throughout the duration of the 120 month (from the effective date of this redesignation) and ten ozone season (beginning of ozone season 2009 through end of ozone season 2018) maintenance period. EPA may therefore approve the redesignation request.

II. Final Action

EPA is approving the Commonwealth of Pennsylvania's redesignation request, maintenance plan, 2002 base-year inventory, and MVEBs SIP revisions submitted on June 14, 2007, because they satisfy the requirements of the CAA. EPA is also approving the two significant changes that separated the MVEBs for the Clearfield/Indiana Area into separate MVEBs for Clearfield County and Indiana County and used a new methodology that projects future emissions of NO_X from EGUs, submitted on May 23, 2008 as a revision to the Pennsylvania SIP. The final approval of this redesignation request will change the designation of the Clearfield/Indiana Area from nonattainment to attainment for the 1997 8-hour ozone standard.

In this final rulemaking, EPA is notifying the public that we have found that the MVEBs for NO_X and volatile organic compounds (VOC) in the Clearfield/Indiana Area for the 1997 8-hour ozone maintenance plan are adequate and approved for conformity

purposes. As a result of our finding, the Clearfield/Indiana Area must use the MVEBs from the submitted 8-hour ozone maintenance plan for future conformity determinations. The Clearfield/Indiana Area contains one Metropolitan Planning Organizations (MPO) and one Rural Planning Organizations (RPO) responsible for transportation planning within the Clearfield/Indiana Area. The MPO is the Southwestern Pennsylvania Commission for Indiana County, and the RPO is the North Central PA Regional Planning and Development Commission for Clearfield County. The adequate and approved MVEBs for the MPO and the RPO within the Clearfield/Indiana Area are provided in the following tables:

TABLE 1A—CLEARFIELD/INDIANA MOTOR VEHICLE EMISSIONS BUDGETS, NORTH CENTRAL PENNSYLVANIA REGIONAL PLANNING AND DEVELOPMENT COMMISSION RPO (CLEARFIELD COUNTY PORTION OF THE AREA), IN TONS PER SUMMER DAY (TPD)

Year	VOC	NO_x
2009	4.11	11.44
2018	2.71	5.14

TABLE 1B—CLEARFIELD/INDIANA MOTOR VEHICLE EMISSIONS BUDGETS SOUTHWESTERN PENNSYLVANIA COMMISSION MPO (INDIANA COUNTY PORTION OF THE AREA), IN TONS PER SUMMER DAY (TPD)

Year	VOC	NO_x
2009	3.06	4.85
2018	1.92	2.40

The Clearfield/Indiana Area is subject to the CAA's requirement for the basic nonattainment areas until and unless it is redesignated to attainment.

III. Statutory and Executive Order Reviews

A. General Requirements

Under Executive Order 12866 (58 FR 51735, October 4, 1993), this action is not a "significant regulatory action" and therefore is not subject to review by the Office of Management and Budget. For this reason, this action is also not subject to Executive Order 13211, "Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use" (66 FR 28355, May 22, 2001). This action merely approves state law as meeting Federal requirements and imposes no additional requirements beyond those imposed by state law. Redesignation is an action that affects the status of a geographical area and does not impose any new regulatory requirements on sources. Accordingly, the Administrator certifies that this rule will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). Because this rule approves pre-existing requirements under state law and does not impose any additional enforceable duty beyond that required by state law, it does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Public Law 104–4). This final rule also does not have tribal implications because it will 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, as specified by Executive Order 13175 (65 FR 67249, November 9, 2000). Because this action affects the status of a geographical area, does not impose any new requirements on sources, or allows the state to avoid adopting or implementing other requirements, this action also does not have Federalism implications because it does not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132 (64 FR 43255, August 10, 1999). This action merely approves a state rule implementing a Federal requirement, and does not alter the relationship or the distribution of power and responsibilities established in the CAA. This rule also is not subject to Executive Order 13045 "Protection of Children from Environmental Health Risks and Safety Risks" (62 FR 19885, April 23, 1997), because it approves a state rule implementing a Federal standard.

In reviewing SIP submissions, EPA's role is to approve state choices, provided that they meet the criteria of the CAA. In this context, in the absence of a prior existing requirement for the State to use voluntary consensus standards (VCS), EPA has no authority to disapprove a SIP submission for failure to use VCS. It would thus be inconsistent with applicable law for EPA, when it reviews a SIP submission, to use VCS in place of a SIP submission that otherwise satisfies the provisions of the CAA. Redesignation is an action that affects the status of a geographical area and does not impose any new requirements on sources. Thus, the requirements of section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) do not apply. This rule does not impose an information collection burden under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

B. Submission to Congress and the Comptroller General

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. This rule is not a "major rule" as defined by 5 U.S.C. 804(2).

C. Petitions for Judicial Review

Under section 307(b)(1) of the CAA, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by May 18, 2009. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action.

This action, approving the redesignation of the Clearfield/Indiana Area to attainment for the 8-hour ozone NAAQS, the associated maintenance plan, the 2002 base year emission inventory, and the MVEBs identified in the maintenance plan, may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2).)

List of Subjects

40 CFR Part 52

Environmental protection, Air pollution control, Incorporation by reference, Nitrogen dioxide, Ozone, Reporting and recordkeeping requirements, Volatile organic compounds.

40 CFR Part 81

Air pollution control, national parks, Wilderness areas.

Dated: February 11, 2009.

James W. Newsom,

Acting Regional Administrator, Region III.

■ 40 CFR parts 52 and 81 are amended as follows:

PART 52—[AMENDED]

■ 1. The authority citation for part 52 continues to read as follows:

Authority: 42 U.S.C. 7401 *et seq.*

Subpart NN—Pennsylvania

■ 2. In § 52.2020, the table in paragraph (e)(1) is amended by adding an entry at the end of the table to read as follows:

§ 52.2020 Identification of plan.

* * * * *

(e) * * *

(1) * * *

Name of non-regulatory SIP revision	Applicable geographic area	State submittal date	EPA approval date	Additional explanation
*	*	*	*	*
8-Hour Ozone Maintenance Plan and 2002 Base Year Emissions Inventory.	Clearfield/Indiana Area: Clearfield and Indiana Counties.	06/14/07, 05/23/08	*3/19/09* [Insert page number where the document begins].	

* * * * *

PART 81—[AMENDED]

■ 3. The authority citation for Part 81 continues to read as follows:

Authority: 42 U.S.C. 7401 *et seq.*

■ 4. In § 81.339, the table entitled "Pennsylvania—Ozone (8–Hour Standard)" is amended by revising the entry for the Clearfield and Indiana, PA, Clearfield County, Indiana County, to read as follows:

§ 81.339 Pennsylvania

* * * * *

PENNSYLVANIA—OZONE (8-HOUR STANDARD)

Designated area	Designation[a]		Category/classification	
	Date[1]	Type	Date[1]	Type
*	*	*	*	*
Clearfield and Indiana, PA: Clearfield County, Indiana County, Northampton County.	*April 20, 2009*	Attainment.		
*	*	*	*	*

[a] Includes Indian County located in each county or area, except otherwise noted.
[1] This date is June 15, 2004, unless otherwise noted.

* * * * *

[FR Doc. E9–5885 Filed 3–18–09; 8:45 am]

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ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 258

[EPA–R09–RCRA–2008–0354; FRL–8777–9]

Final Determination to Approve Research, Development, and Demonstration Request for the Salt River Landfill

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final Rule.

SUMMARY: The Environmental Protection Agency Region IX is making a final determination to approve a research, development, and demonstration (RD&D) project at the Salt River Landfill, a commercial municipal solid waste landfill (MSWLF) owned and operated by the Salt River Pima-Maricopa County Indian Community (SRPMIC) on the SRPMIC reservation in Arizona. EPA is promulgating a site-specific rule proposed on August 4, 2008, that approves the RD&D project at the Salt River Landfill.

DATES: This final rule is effective on March 19, 2009. The incorporation by reference of certain publications listed in this rule have been approved by the Director of the Federal Register on March 19, 2009.

ADDRESSES: EPA has established a docket for this action under Docket ID No. EPA–R09–RCRA–2008–0354. All documents in the docket are listed on the *http://www.regulations.gov* Web site. 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 electronically through *http://www.regulations.gov* or in hard copy at the Docket Facility located at the Environmental Protection Agency Region IX, 75 Hawthorne Street, San Francisco, California. The Docket Facility is open from 9 a.m. to 4 p.m., Monday through Thursday, excluding legal holidays, and is located in a secured building. To review docket materials at the Docket facility, it is recommended that the public make an appointment by calling the Docket Facility at (415) 947–4406 during normal business hours.

FOR FURTHER INFORMATION CONTACT: Karen Ueno, Waste Management Division, WST–7, Environmental Protection Agency, 75 Hawthorne Street, San Francisco, CA 94105–3901; *telephone number:* (415) 972–3317; *fax number:* (415) 947–3530; *e-mail address: ueno.karen@epa.gov.*

SUPPLEMENTARY INFORMATION:

I. General Information

A. What Did EPA Propose?

After completing a review of SRPMIC's final site-specific flexibility application request, dated September 27, 2007, and the amendments to that application, dated April 8, 2008, EPA proposed to approve in the **Federal Register** on August 4, 2008, (73 FR 45187) SRPMIC's site-specific flexibility request to: (1) Install an alternative bottom liner system in an area of the landfill known as Phase VI and to operate Phase VI as an anaerobic bioreactor by recirculating leachate and landfill gas condensate, and adding storm water and groundwater to the below grade portions of Phase VI; and (2) recirculate leachate and landfill gas condensate and add storm water and groundwater to the below grade portions of areas of the landfill known as Phases IIIB and IVA to increase the moisture content of the waste mass in these phases, both of which have alternative bottom liner systems, which were previously approved by EPA.

B. What Is a Site-Specific Flexibility Request?

Under Sections 1008, 2002, 4004, and 4010 of the Resource Conservation and Recovery Act of 1976 (RCRA) as amended by the Hazardous and Solid Waste Amendments of 1984 (HSWA), EPA established revised minimum federal criteria for MSWLFs, including landfill location restrictions, operating standards, design standards and requirements for ground water monitoring, corrective action, closure and post-closure care, and financial assurance. Under RCRA Section 4005, states are to develop permit programs for facilities that may receive household hazardous waste or waste from conditionally exempt small quantity generators, and EPA determines whether the program is adequate to ensure that facilities will comply with the revised criteria.

The MSWLF criteria are in the Code of Federal Regulations at 40 CFR part 258. These regulations are self-implementing and apply directly to owners and operators of MSWLFs. For many of these criteria, 40 CFR part 258 includes a flexible performance standard as an alternative to the self-implementing regulation. The flexible standard is not self-implementing, and use of the alternative standard requires approval by the Director of an EPA-approved state.

Since EPA's approval of the State of Arizona's program generally does not extend to Indian country, owners and operators of MSWLF units located in Indian country cannot take advantage of the flexibilities available to those facilities subject to the approved State program. However, the EPA has the authority under Sections 2002, 4004, and 4010 of RCRA to promulgate site-specific rules that may provide for use of alternative standards. See *Yankton Sioux Tribe* v. *EPA*, 950 F. Supp. 1471 (D.S.D. 1996); *Backcountry Against Dumps* v. *EPA*, 100 F.3d 147 (D.C. Cir. 1996). EPA has developed draft guidance on preparing a site-specific request to provide flexibility to owners or operators of MSWLFs in Indian country (Site-Specific Flexibility Requests for Municipal Solid Waste Landfills in Indian Country Draft Guidance, EPA530–R–97–016, August 1997).

On March 22, 2004, EPA issued a final rule at 40 CFR 258.4 amending the municipal solid waste landfill criteria to allow for RD&D permits. (69 FR 13242). This rule allows for variances from specified criteria for a limited period of time. Specifically, the rule allows for the Director of an approved state to issue a time-limited RD&D permit for a new MSWLF unit, existing MSWLF unit, or lateral expansion, for which the owner or operator proposes to use innovative and new methods which vary from either or both of the following: (1) The run-on control systems at 40 CFR 258.26(a)(1); and/or (2) the liquids restrictions at 40 CFR 258.28(a), provided that the MSWLF unit has a leachate collection system designed and constructed to maintain less than a 30-cm depth of leachate on the liner. The rule also allows for the issuance of a time-limited RD&D permit for which the owner or operator proposes to use innovative and new methods that vary from the final cover criteria at 40 CFR 258.60(a)(1) and (2), and (b)(1), provided that the owner or operator demonstrates that the infiltration of liquid through the alternative cover system will not cause contamination to groundwater or surface water, or cause leachate depth on the liner to exceed 30 cm. RD&D permits must include such terms and conditions at least as protective as the criteria for MSWLFs to assure protection of human health and the environment. An RD&D permit cannot exceed three years and a renewal of an RD&D permit cannot exceed three years. Although multiple renewals of an RD&D permit can be issued, the current total term for an RD&D permit including renewals cannot exceed twelve years. In adopting the RD&D rule, EPA stated that RD&D facilities in Indian country could be approved in a site-specific rule. (69 FR 13253).

C. Overview of SRPMIC's Site-Specific Flexibility Request and EPA's Action

Today, EPA is making a final determination to approve SRPMIC's site-specific flexibility request to: (1) Install an alternative bottom liner system in Phase VI and to operate Phase VI as an anaerobic bioreactor by recirculating leachate and landfill gas condensate, and adding storm water and groundwater to the below grade portions of Phase VI; and (2) recirculate leachate and landfill gas condensate and add storm water and groundwater to the below grade portions of Phases IIIB and IVA to increase the moisture content of the waste mass in these phases, both of which have alternative bottom liner systems, which were previously approved by EPA. The Tribe's request is discussed in further detail in the August 4, 2008 proposal.

EPA is basing its final determination on a number of factors, including SRPMIC's overarching goal to demonstrate protection of human health and the environment, and the requirement of today's final rule to maintain less than 30-cm depth of leachate on the liner. SRPMIC will also maintain a 25-foot or greater separation zone between the bottom of the landfill and the top of the groundwater aquifer, and will routinely monitor leachate quantity and quality, liquids balance, volume and settlement of the waste, and groundwater quality and levels.

SRPMIC will ensure that each horizontal pipe gallery in Phase VI will be used to collect landfill gas before being converted for liquids addition to reduce the risk of negatively affecting the gas collection efficiency of the pipe gallery. No pipe gallery will be converted to liquids addition until the pipe gallery above it is installed and collecting landfill gas. SRPMIC also will install at least two layers of horizontal pipe galleries in the above-grade portion of Phase VI for the sole purpose of collecting gas. To further reduce the risk of increased landfill gas generation and fugitive emissions, SRPMIC will only add liquids to the below-grade portions of Phases VI, IIIB, and IVA. SRPMIC will monitor fugitive gas emissions annually or more frequently, as appropriate, using ground-based optical remote sensing (EPA OTM–10), and will routinely monitor landfill gas quantity and quality. Using information gained from the monitoring program, SRPMIC will propose site-specific input parameters to EPA that improve modeling calculations for the amount of landfill gas generated and the

performance of landfill gas collection systems.

In the event that EPA determines that the project goals are not being attained, including protecting human health and the environment, EPA may terminate SRPMIC's authority to operate the RD&D project.

As part of this final determination and in accordance with 40 CFR 258.4, EPA is requiring SRPMIC to maintain less than 30 cm depth of leachate on the liner in Phases VI, IIIB, and IVA, and to ensure that the approved operation of these Phases is protective of human health and the environment. For purposes of the alternative liner system in Phase VI, the relevant point(s) of compliance pursuant to 40 CFR 258.40 will be determined by EPA and shall be no more than 150 meters from the waste management cell boundaries and located on land owned by the owner of the cells.

In accordance with its application, which today's final rule incorporates by reference, SRPMIC will submit annual reports to EPA that summarize and show whether and to what extent RD&D project goals are being achieved. The annual report will include a summary of all monitoring and testing results. Any deviations from the September 27, 2007 application, and the April 8, 2008 amendments to that application, must continue to conform to the standards set forth in 40 CFR 258.4 and require the prior approval of EPA.

Also in accordance with its application, SRPMIC will arrange for independent, third party inspections of the RD&D operations on a quarterly basis throughout the term of the RD&D approval. Copies of the report will be submitted to EPA.

EPA's final determination will allow operation of the subject Phases of the landfill consistent with the RD&D rule for a total of 12 years. However, the owner or operator of the landfill must seek a renewal of this authority every three years. Each renewal request is subject to public notice and comment. No renewal may be for greater than three years and the overall period of operation may not exceed twelve years.

D. Summary of Public Comments Received and Response to Comments

EPA received one comment on EPA's Tentative Determination. The commenter, the National Solid Wastes Management Association, expressed concern with the use of ground-based optical remote sensing (EPA OTM–10). The commenter felt that the use of OTM–10 should not be required at this time, and indicated concern with the test method's applicability to municipal solid waste landfills and relatively high cost, and cited EPA's ongoing research on the test method. The commenter suggested that EPA use existing gas monitoring methods rather than OTM–10 until EPA's current research on OTM–10 is completed, and the method's applicability to landfills and cost-effectiveness are demonstrated.

As indicated in EPA's "Development of EPA OTM–10 for Landfill Applications Interim Report 2," (September 2008), due to the spatial extent and non-homogenous nature of many source areas, assessment of fugitive emissions using traditional point sampling techniques can be problematic. EPA posted OTM–10 in 2006 to help address this issue, and believes it is a valuable tool to supplement traditional monitoring approaches. OTM–10 is an "other test method" that has not been subject to Federal rulemaking, but which may be useful to the emission control community. EPA continues to study the application of OTM–10 from both performance and implementation standpoints.

For purposes of today's action, the use of OTM–10 is specific solely to the Salt River Landfill and the SRPMIC Research, Development, and Demonstration project. SPRMIC agreed to use OTM–10 to help address concerns with increases to fugitive gas emissions from bioreactor operations. OTM–10 data will supplement other landfill gas monitoring and operating information collected to better project the amount of landfill gas generated and the performance of the landfill gas collection system.

The SRPMIC project is a research, development, and demonstration project, and EPA believes that the data collected by SRPMIC will help to characterize emissions from the bioreactor operations at the landfill and further the research and evaluation of the OTM–10 test method by providing additional information on actual use scenarios. EPA anticipates working closely with SRPMIC to help guide the implementation of OTM–10 and facilitate the quality and use of data collected. Any long-term use of OTM–10 at the Salt River Landfill will be assessed after EPA reviews the method's applicability at this landfill, and overall cost-effectiveness.

II. Statutory and Executive Order Reviews

Section 106 of the National Historic Preservation Act of 1966 (NHPA) requires Federal agencies to take into account the effects of their undertakings on historic properties, and afford the Advisory Council on Historic Preservation a reasonable opportunity to comment. In accordance with this provision, EPA first determined whether it has an undertaking that is a type of activity that could affect historic properties. Historic properties are properties that are included in the National Register of Historic Places or that meet the criteria for the National Register. EPA then identified the appropriate State Historic Preservation Officer (SHPO) to consult with during the process, the Arizona SHPO.

The NHPA regulations, found at 36 CFR Part 800, place major emphasis on consultation with Indian tribes. Consultation with an Indian tribe must respect tribal sovereignty and the government-to-government relationship between the Federal Government and Indian tribes. Even if an Indian tribe has not been certified by the National Park Service to have a Tribal Historic Preservation Officer (THPO) who can act for the SHPO on its lands, it must be consulted about undertakings on or affecting its lands on the same basis and in addition to the SHPO.

While there was no Tribal Historic Preservation Officer for the Tribes which historically used the area around the Salt River Landfill, EPA consulted with the SRPMIC, as well as the Ak-Chin Indian Community, the Fort McDowell Yavapai Nation, the Gila River Indian Community, the Hopi Tribe, the Pascua Yaqui Tribe, the Tohono O'odham Nation, the Yavapai-Apache Nation, and the Yavapai-Prescott Indian Tribe. No cultural or historic properties were identified by these Tribes, nor was any interest expressed in having further consultation on the NHPA process with EPA.

Pursuant to Section 106 of the NHPA, EPA reviewed SRPMIC's site-specific flexibility request to take into account the effect of the proposed RD&D project on historic properties. EPA tentatively determined that there is a one-half mile area of potential effects, a finding that the Arizona Canal is the sole historic property within the APE, and that the action has no adverse effect.

EPA received no public comments on the proposed Area of Potential Effects (APE), proposed finding that the Arizona Canal is the sole historic property within the APE, or proposed finding of no adverse effect under the NHPA. As a result, EPA is today also making a finding of no adverse effect under the NHPA, having determined that the RD&D project will not adversely affect the Arizona Canal, which is the sole historic property within the Area of Potential Effects (APE). The Arizona SHPO concurs with EPA's finding.

Under Executive Order 12866, "Regulatory Planning and Review" (*58 FR 51735*, October 4, 1993), this rule is not of general applicability and therefore is not a regulatory action subject to review by the Office of Management and Budget (OMB).

This rule does not impose an information collection burden under the provisions of the Paperwork Reduction Act of 1995 (*44 U.S.C. 3501 et seq.*) because it applies to a particular facility only.

Because this rule is of particular applicability relating to a particular facility, it is not subject to the regulatory flexibility provisions of the Regulatory Flexibility Act (*5 U.S.C. 601 et seq.*), or to sections 202, 204, and 205 of the Unfunded Mandates Reform Act of 1995 (UMRA) (Pub. L. 104–4). Because this rule will affect only a particular facility, it will not significantly or uniquely affect small governments, as specified in section 203 of UMRA.

Because this rule will affect only a particular facility, this proposed rule does not have federalism implications. It will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132, "Federalism," (*64 FR 43255*, August 10, 1999). Thus, Executive Order 13132 does not apply to this rule.

This rule also is not subject to Executive Order 13045, "Protection of Children From Environmental Health Risks and Safety Risks" (*62 FR 19885*, April 23, 1997), because it is not economically significant as defined in Executive Order 12866, and because the Agency does not have reason to believe the environmental health or safety risks addressed by this action present a disproportionate risk to children. The basis for this belief is EPA's conservative analysis of the potential risks posed by SRPMIC's proposal and the controls and standards set forth in the application.

This rule is not subject to Executive Order 13211, "Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use" (*66 FR 28355* May 22, 2001), because it is not a significant regulatory action under Executive Order 12866.

As required by section 3 of Executive Order 12988, "Civil Justice Reform," (*61 FR 4729*, February 7, 1996), in issuing this rule, EPA has taken the necessary steps to eliminate drafting errors and ambiguity, minimize potential litigation, and provide a clear legal standard for affected conduct.

Executive Order 13175, entitled "Consultation and Coordination With Indian Tribal Governments," (*65 FR 67249*, November 9, 2000), calls for EPA to develop an accountable process to ensure "meaningful and timely input by tribal officials in the development of regulatory policies that have tribal implications." EPA has concluded that this action may have tribal implications because it is directly applicable to the owner and/or operator of the landfill, which is currently the Tribe. However, this tentative determination, if made final, will neither impose substantial direct compliance costs on tribal governments, nor preempt Tribal law. This tentative determination to approve the SRPMIC's application will affect only the SRPMIC's operation of their landfill on their own land.

EPA consulted with the SRPMIC early in the process of making this tentative determination to approve the Tribe's RD&D project so as to give them meaningful and timely input into the determination. In 2005, SRPMIC submitted its site-specific RD&D flexibility request. Between 2005 and 2008, many technical issues were raised and addressed concerning SRPMIC's proposal. EPA's consultation with the Tribe culminated in the SRPMIC submitting an RD&D application amendment in April of 2008.

With respect to the type of flexibility being afforded to SRPMIC under this proposed rule, EO 13175 does provide for agencies to review applications for flexibility "with a general view toward increasing opportunities for utilizing flexible policy approaches at the Indian tribal level in cases in which the proposed waiver is consistent with the applicable Federal policy objectives and is otherwise appropriate." In formulating this tentative determination and proposed rule, the Region has been guided by the fundamental principles set forth in EO 13175 and has granted the SRPMIC the "maximum administrative discretion possible" within the standards set forth under the RD&D rule in accordance with EO 13175.

Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (*15 U.S.C. 272* note) directs EPA to use voluntary consensus standards in its regulatory activities unless to do so would be inconsistent with applicable law or otherwise impractical. Voluntary consensus standards are technical standards, (e.g., materials specifications, test methods, sampling procedures, and business practices) that are developed or adopted by voluntary consensus standards bodies. The NTTAA directs EPA to provide Congress, through OMB, explanations when the Agency decides not to use available and applicable voluntary consensus standards.

The technical standards included in the application were proposed by SRPMIC. Given EPA's obligations under EO 13175 (see above), the Agency has, to the extent appropriate, applied the standards established by the Tribe. In addition, the Agency considered the Interstate Technology and Regulatory Council's February 2006 technical and regulatory guideline "Characterization, Design, Construction, and Monitoring of Bioreactor Landfills."

Authority: Sections 1008, 2002, 4004, and 4010 of the Solid Waste Disposal Act, as amended, 42 U.S.C. Sections 6907, 6912, 6944, and 6949a. Temporary Delegation of Authority to Promulgate Site-Specific Rules to Respond to Requests for Flexibility from Owners/Operators of Municipal Solid Waste Landfill Facilities in Indian Country, February 26, 2008, Incorporation by Reference.

List of Subjects in 40 CFR Part 258

Environmental protection, Incorporation by reference, Municipal landfills, Reporting and recordkeeping requirements, Waste treatment and disposal.

Dated: February 19, 2009.

Laura Yoshii,

Acting Regional Administrator, Region IX.

■ For the reasons stated in the preamble, 40 CFR part 258 is amended as follows:

PART 258—CRITERIA FOR MUNICIPAL SOLID WASTE LANDFILLS

Subpart D—[Amended]

■ 1. The authority citation for part 258 continues to read as follows:

Authority: 33 U.S.C. 1345(d) and (e); 42 U.S.C. 6902(a), 6907, 6912(a), 6944, 6945(c) and 6949a(c), 6981(a).

■ 2. Amend Subpart D to add § 258.42 to read as follows:

§ 258.42 Approval of Site-specific Flexibility Requests in Indian Country.

(a) Salt River Pima-Maricopa Indian Community (SRPMIC), Salt River Landfill Research, Development, and Demonstration Project Requirements. Paragraph (a) of this section applies to the Salt River Landfill, a municipal solid waste landfill owned and operated by the SPRMIC on the SRPMIC's reservation in Arizona, which includes waste disposal areas identified as "Phases I–VI." The application submitted by SRPMIC, "Research, Development, and Demonstration Permit Application Salt River Landfill," dated September 24, 2007 and amended

on April 8, 2008 is hereby incorporated by reference. The Director of the Federal Register approves this incorporation by reference in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. You may inspect or obtain a copy at the Environmental Protection Agency Region IX, 75 Hawthorne Street, San Francisco, CA, or by calling the Docket Facility at (415) 947–4406, or go to *http://www.regulations.gov*, Docket ID No. EPA–R09–RCRA–2008–0354. You may also inspect a copy at the National Archives and Records Administration (NARA). For information on the availability at NARA, call (202) 741–6030 or go to: *http://www.archives.gov/federal_register/code_of_federal_regulations/ibr_locations.html*. The facility owner and/or operator may operate the facility in accordance with this application, including the following activities more generally described as follows:

(1) The owner and/or operator may install a geosynthetic clay liner as an alternative bottom liner system in Phase VI.

(2) The owner and/or operator may operate Phase VI as a bioreactor by recirculating leachate and landfill gas condensate, and by adding storm water and groundwater, to the below grade portions of Phase VI.

(3) The owner and/or operator may increase the moisture content of the waste mass in Phases IIIB and IVA by recirculating leachate and landfill gas condensate, and by adding storm water and groundwater, to the below grade portions of Phases IIIB and IVA.

(4) The owner and/or operator shall maintain less than a 30-cm depth of leachate on the liner.

(5) The owner and/or operator shall submit reports to the Director of the Waste Management Division at EPA Region 9 as specified in "Research, Development, and Demonstration Permit Application Salt River Landfill," dated September 24, 2007 and amended on April 8, 2008 including an annual report showing whether and to what extent the site is progressing in attaining project goals. The annual report will also include a summary of all monitoring and testing results, as specified in the application.

(6) The owner and/or operator may not operate the facility pursuant to the authority granted by this section if there is any deviation from the terms, conditions, and requirements of this section unless the operation of the facility will continue to conform to the standards set forth in § 258.4 of this chapter and the owner and/or operator has obtained the prior written approval of the Director of the Waste Management Division at EPA Region 9 or his or her designee to implement corrective measures or otherwise operate the facility subject to such deviation. The Director of the Waste Management Division or designee shall provide an opportunity for the public to comment on any significant deviation prior to providing his or her written approval of the deviation.

(7) Paragraphs (a)(2), (3), (5), (6) and (9) of this section will terminate 36 months after date of publication in the **Federal Register** unless the Director of the Waste Management Division at EPA Region 9 or his or her designee renews this authority in writing. Any such renewal may extend the authority granted under paragraphs (a)(2), (3), (5), (6) and (9) of this section for up to an additional three years, and multiple renewals (up to a total of 12 years) may be provided. The Director of the Waste Management Division or designee shall provide an opportunity for the public to comment on any renewal request prior to providing his or her written approval or disapproval of such request.

(8) In no event will the provisions of paragraphs (a)(2), (3), (5), (6) or (9) of this section remain in effect after 12 years after date of publication in the **Federal Register**. Upon termination of paragraphs (a)(2), (3), (5), (6) and (9) of this section, and except with respect to paragraphs (a)(1) and (4) of this section, the owner and/or operator shall return to compliance with the regulatory requirements which would have been in effect absent the flexibility provided through this site-specific rule.

(9) In seeking any renewal of the authority granted under or other requirements of paragraphs (a)(2), (3), (5) and (6) of this section, the owner and/or operator shall provide a detailed assessment of the project showing the status with respect to achieving project goals, a list of problems and status with respect to problem resolutions, and any other requirements that the Director of the Waste Management Division at EPA Region 9 or his or her designee has determined are necessary for the approval of any renewal and has communicated in writing to the owner and operator.

(10) The owner and/or operator's authority to operate the landfill in accordance with paragraphs (a)(2), (3), (5), (6) and (9) of this section shall terminate if the Director of the Waste Management Division at EPA Region 9 or his or her designee determines that the overall goals of the project are not being attained, including protection of human health or the environment. Any such determination shall be communicated in writing to the owner and operator.

(b) [Reserved]

[FR Doc. E9–5848 Filed 3–18–09; 8:45 am]

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DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 300

[Docket No. 0812311655–9277–02]

RIN 0648–AX44

Pacific Halibut Fisheries; Catch Sharing Plan

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

ACTION: Final rule.

SUMMARY: The Assistant Administrator for Fisheries, NOAA (AA), on behalf of the International Pacific Halibut Commission (IPHC), publishes annual management measures promulgated as regulations by the IPHC and approved by the Secretary of State governing the Pacific halibut fishery. The AA also announces modifications to the Catch Sharing Plan (CSP) for Area 2A (waters off the U.S. West Coast) and implementing regulations for 2009, and announces approval of the Area 2A CSP. These actions are intended to enhance the conservation of Pacific halibut and further the goals and objectives of the Pacific Fishery Management Council (PFMC) and the North Pacific Fishery Management Council (NPFMC) (Councils).

DATES: The IPHC's 2009 annual management measure are effective March 4, 2009 except for the measures in section 26 which are effective April 20, 2009. The 2009 management measures are effective until superseded by the 2010 management measures that will be published in the **Federal Register**.

The amendments to §§ 300.61 and 300.64 are effective April 20, 2009.

ADDRESSES: Additional requests for information regarding this action may be obtained by contacting: the International Pacific Halibut Commission, P.O. Box 95009, Seattle, WA 98145–2009; or Sustainable Fisheries Division, NMFS Alaska Region, P.O. Box 21668, Juneau, AK 99802–1668, Attn: Ellen Sebastian, Records Officer; or Sustainable Fisheries Division, NMFS Northwest Region, 7600

Sand Point Way, NE, Seattle, WA 98115. This final rule also is accessible via the Internet at the Government Printing Office's website at *http://www.regulations.gov*.

FOR FURTHER INFORMATION CONTACT: For waters off Alaska, Peggy Murphy, 907–586–8743 , e-mail at peggy.murphy@noaa.gov; or, for waters off the U.S. West Coast, Sarah Williams, 206–526–4646, email at sarah.williams@noaa.gov.

SUPPLEMENTARY INFORMATION:

Background

The IPHC has promulgated regulations governing the Pacific halibut fishery in 2009 under the Convention between the United States and Canada for the Preservation of the Halibut Fishery of the North Pacific Ocean and Bering Sea (Convention), signed at Ottawa, Ontario, on March 2, 1953, as amended by a Protocol Amending the Convention (signed at Washington, D.C., on March 29, 1979). The IPHC regulations have been accepted by the Secretary of State of the United States as provided by the Northern Pacific Halibut Act of 1982 (Halibut Act) at 16 U.S.C. 773–773k.

The Halibut Act provides the Secretary with the authority and general responsibility to carry out the requirements of the Convention and the Halibut Act. The Regional Fishery Management Councils may develop and the Secretary may implement regulations governing harvesting privileges among U.S. fishermen in U.S. waters that are in addition to, and not in conflict with approved IPHC regulations. The NPFMC has exercised this authority most notably in developing a suite of halibut management programs that correspond to the three fisheries that harvest halibut in Alaska - the subsistence, commercial, and sport fisheries. Subsistence and sport halibut fishery management measures are codified at 50 CFR 300.65. Commercial halibut fisheries operate within the Individual Fishing Quota (IFQ) Program and Community Development Quota (CDQ) Program (50 CFR part 679) and through area-specific catch sharing plans. Regulations for sport fisheries for halibut including a CSP also are being developed pursuant to the NPFMC authority under the Halibut Act. The PFMC also exercises this authority in its annual development of a CSP among sectors of the halibut fisheries in IPHC Area 2A. This CSP encompasses fisheries in Washington, Oregon, and California and applies to groups within treaty Indian, non-Indian commercial and non-Indian sport fisheries. A group may include tribal commercial and tribal ceremonial and subsistence fisheries.

The structure of each Council's CSP affects how each plan is promulgated. The Secretary implemented the Area 2A CSP recommended by the PFMC in 1995. Each year between 1995 and the present, the PFMC has adopted minor revisions to the plan to account for needs of the fisheries. These revisions are implemented in regulations for the Area 2A CSP through annual rule making and annual IPHC review and recommendation of management measures for Secretarial review. The Area 2A CSP regulations are part of the IPHC annual management measures and are superseded each year by new implementing regulations.

The NPFMC implemented a CSP among commercial IFQ and CDQ halibut fisheries in IPHC Areas 4C, 4D and 4E (Area 4) through rule making and the Secretary approved the plan on March 20, 1996 (61 FR 11337). The Area 4 CSP regulations were codified in the Code of Federal Regulations (50 CFR 300.65) and amended through rule making on March 17, 1998 (63 FR 13000). New annual regulations pertaining to the Area 4 CSP also may be implemented through IPHC review and recommendation for Secretarial review.

Publication of this final rule announces that the U.S. government has accepted the annual management measures recommended by the IPHC, implements regulations supporting annual management measures recommended by IPHC, and implements the Area 2A CSP. The proposed rule for the Area 2A CSP was published on January 14, 2009 (74 FR 2032).

The NPFMC is developing a regulatory program to manage the guided sport fishery for halibut in Areas 2C (Southeast Alaska) and 3A (Central Gulf of Alaska). Work on this program has focused on a proposed rule for a limited access system for vessels in the guided sport fishery for halibut. The NPFMC also recommended regulations for a CSP to apportion halibut between the commercial and guided sport fisheries and to provide for lease of commercial halibut IFQ to charter vessel operators. A final rule is being prepared for the Area 2C guided sport fishery for halibut to impose a daily bag limit of one halibut for each charter vessel angler, prevent charter vessel guides, operators and crew from harvesting halibut, and restrict the number of lines used to fish for halibut on a charter vessel and add certain recordkeeping and reporting requirements. This action is being taken because a similar rule NMFS published May 28, 2008 (73 FR 30504) was withdrawn on September 11, 2008 (73 FR 52795). NMFS proposed a separate rule making on December 22, 2008 to implement this action (73 FR 78276) in Area 2C. The proposed rule would reduce sport fishing mortality of halibut in the Area 2C charter vessel fishery giving effect to the NPFMC's intent to keep the harvest of charter vessel anglers close to the Council's Guideline Harvest Level (GHL). NMFS provides annual notice of the GHL for Areas 2C and 3A to meet regulatory requirements and inform the public. Notice was published this year on February 24, 2009 (74 FR 8232).

Pursuant to regulations at 50 CFR 300.62, the approved IPHC regulations setting forth the 2009 IPHC annual management measures are published in the **Federal Register** to provide notice of their immediate regulatory effect, and to inform persons subject to the regulations of the restrictions and requirements. The 2009 management measures became effective on March 4, 2009 and will stay in effect until superseded by the 2010 management measures, which NMFS will publish in the **Federal Register**. As noted, NMFS anticipates implementing more restrictive regulations for the Area 2C guided sport fishery for halibut and participants in that fishery are advised to check the current federal regulations and check with IPHC prior to fishing.

The IPHC held its annual meeting in Vancouver, British Columbia, January 12–16, 2009, and adopted regulations for 2009. The substantive changes to the previous IPHC regulations (73 FR 12280, March 7, 2008) include:

1. New halibut catch limits in all regulatory areas;
2. New commercial halibut fishery opening dates;
3. Revisions of regulations regarding possession of Area 4 halibut on a vessel with a Vessel Monitoring System (VMS);
4. Exemption of possession limits for transport of sport caught halibut and clarification of possession limit language.
5. Revision of regulations in paragraph 19, governing fishing 72-hours prior to any commercial opening in Area 2A to clarify the regulations intent; and
6. Adopt the revised CSP and 2009 recreational management measures for Area 2A.

Other changes to the IPHC regulations include: clarifying the interpretation of commercial fishing in paragraph 3 as fishing with the intent to sell or barter the catch and adding sport fishing to the list of activities that do not constitute "commercial fishing"; adding the word

commercial to references for the directed fishery to clarify the regulations in paragraphs 8 and 19; and adding the word "pieces" to reference side specific parts of a cut up halibut in paragraph 28.

Catch Limits

The IPHC recommended to the governments of Canada and the United States catch limits for 2009 totaling 54,080,000 pounds (24,530 mt), a 10.4 percent reduction from the 2008 catch limit. The decline in the catch limit is attributed to the exceptionally strong 1987 and 1988 year classes passing out of the fishery. Recruitment of the 1994 and 1995 year classes is above average and the 1999 and 2000 year classes are estimated to be above average but several years away from making major contributions to the exploitable biomass of the stock.

The IPHC staff reported on the 2008 assessment of the Pacific halibut stock that estimated coastwide biomass, with apportionment to regulatory biomass, based on the data from the annual Commission assessment survey. The total of the IPHC staff catch limit recommendations was accepted, but there were differences from staff recommendations and the limits adopted by IPHC for most areas.

The IPHC recommended a 20 percent harvest rate for Areas 2A through Area 3B and a harvest rate of 15 percent for Areas 4B and 4CDE. Because of concerns over continued decline in catch rates in Area 4A, an analysis of productivity was conducted for this area during 2008. The analysis recommended a reduction of the harvest rate to 15 percent for Area 4A, similar to that for the other areas of the Bering Seas (Areas 4B and 4CDE). Catch limits adopted by the IPHC for 2009 were lower for most regulatory areas except: Area 3B where IPHC with advice from its advisory bodies, recommended a catch limit the same as that in 2008; and Area 4B where the recommended catch limit increased slightly in 2009.

Commercial Halibut Fishery Opening Dates

The opening date for the tribal commercial fishery in Area 2A and for the commercial halibut fisheries in Areas 2B through 4E is March 21, 2009. The date takes into account a number of factors including, tides, timing of halibut migration and spawning, marketing for seasonal holidays, and interest in getting product in to the processing plants before the herring season opens. The close of the commercial halibut fishery is November 15, 2009.

In the Area 2A directed fishery, each fishing period shall begin at 0800 hours and terminate at 1800 hours local time on June 24, July 8, July 22, August 5, August 19, September 2, September 16 and September 30, unless the Commission specifies otherwise. These 10-hour openings will occur until the quota is taken and the fishery is closed.

Harvest in Multiple Areas of Area 4

New provisions for Fishing Multiple Regulatory Areas, paragraph 18, subparagraph (3)(a) and (b) allow possession of halibut on board a vessel that have been caught in more than one of the IPHC regulatory Areas 4A, 4B, 4C, or 4D when a NMFS certified observer is on board; or when the operator of the vessel has an operational VMS on board actively transmitting in all regulatory areas fished and the operator abides by specific halibut retention provisions.

The regulation also clarifies the specific provisions for retaining halibut from multiple Areas in Area 4. The word "cumulatively" was added to describe the amount of IFQ available for fishing in a single Area in Area 4 from the IFQ permit holders on board the vessel. The method for separating each halibut caught in one regulatory area from each halibut caught in a different regulatory area also was updated to indicate halibut could be separated in more than one hold.

Halibut Transport

The regulation of sport halibut possession limits in Alaska in paragraph 28(2) is revised to better accommodate flexibility needed by anglers to keep lawfully harvested fish while not undermining NMFS's ability to monitor compliance with IPHC daily bag limits. To enforce the daily bag limit, the number of halibut in a person's possession must not exceed two daily bag limits. This possession limit created a problem for anglers who fish from remote lodges or camps for three or more days and who use vessels to transport their total halibut harvest to a central port. To accommodate vessels used for such transportation, the revision of paragraph 28 (2) exempts persons from the possession limit if the vessel they are using does not contain sport fishing gear, fishing rods, hand lines, or gaffs. The restriction on gear is necessary to distinguish a vessel fishing for halibut from a vessel transporting halibut because both vessels would be considered a "fishing vessel" as that term is defined in the Halibut Act at section 773(f). Further, revising the term "fishing vessel" in paragraph 28(2) to read more simply "vessel" will allow more precise enforcement of the possession limit.

Area 2A Pre-fishing Period Requirements

The change would add a requirement that vessels and skippers fishing before the 72-hours immediately prior to the opening would have to offload their catch or be subject to a hold inspection before taking part in the halibut fishery. Without this change, persons or vessels using setline gear to fish for any species of fish during the 72-hour period immediately before the halibut fishing period could not participate in the halibut fishery at all. The change would allow enforcement officers to determine whether the person or vessel in question commenced halibut fishing prior to the opening of the fishery, and allows for more flexibility with respect to participation in both non-halibut and halibut fisheries.

Change to Federal Regulations

Addition of the Nooksack Tribe and their fishing areas to the definition of "Treaty Indian tribes" at § 300.61.

To recognize the treaty rights of the Nooksack tribe, the definition of treaty Indian tribes will now include this tribe, in addition their fishing area will be added to the tribal fishing areas listed at § 300.64.

Catch Sharing Plan (CSP) and 2009 Recreational Management Measures for Area 2A

For 2009 and beyond, PFMC recommended changes to the Federal Regulations and the CSP to modify the Pacific halibut fisheries in Area 2A to: 1. Remove the provision that divides the Washington North Coast subarea quota between May and June; 2. Change the Washington North Coast subarea to a 2-day per week fishery, Thursday and Saturday, from a 3-day per week fishery; 3. Change the June re-opening date in the Washington North Coast subarea to the first Thursday in June, from the status-quo of the first Tuesday and Thursday after June 16; 4. Clarify that the nearshore set-aside in the Washington South Coast subarea is 10 percent of the subquota, or 2,000 pounds, whichever is less, rather than a straight 10 percent of the subquota; 5. Set the Washington South Coast subarea to open the first Sunday in May and continue to be open on Sundays and Tuesdays in May, except that beginning on the third week in May the fishery would be open on Sunday only until the quota for the primary season is reached. Under status-quo the fishery was open 2 days a week until the quota was achieved; 6. Set the nearshore fishery in

the Washington South Coast subarea as a 4-day per week fishery, open Thursday, Friday, Saturday and Sunday, during and after the primary season. Under status-quo the nearshore fishery was open only after the primary fishery was closed, leaving a large amount of unfished quota, in 2008 only 158 pounds out of the 4,460 pound quota was caught; 7. Specify that in addition to the South Coast YRCA, recreational fishing for groundfish and halibut will be prohibited in the newly created Westport Offshore YRCA; 8. Change the Columbia River subarea spring fishery to a 3-day per week fishery, open Thursday, Friday and Saturday, until 70 percent of the subarea allocation is taken or until the third Sunday in July, whichever is earlier. Under status-quo this was a 7-day per week fishery; 9. Specify that in the Oregon Central Coast subarea Pacific cod may be retained with a halibut on the vessel during the all-depth openings. Under status-quo Pacific cod retention was not allowed. The change is intended to make retention consistent in the areas north and south of Cape Falcon and Pacific cod are rarely encountered south of Cape Falcon; 10. Add the Nooksack tribe to the definition of "Treaty Indian tribes" in the federal regulations; 11. Add the Nooksack tribal fishing area boundaries to the federal regulations. NMFS published a proposed rule to implement the PFMC's recommended changes to the Federal Regulations and the CSP, and to implement the 2009 Area 2A sport fishing season regulations on January 14, 2009 (74 FR 2032).

This final rule Implements the Annual Management Measures for the 2009 Pacific Halibut Fisheries and changes to the Area 2A Catch Sharing Plan and Federal Regulations, and Approves the Catch Sharing Plan for Area 2A. The halibut management measures for 2009 became effective March 4, 2009 and stay in effect until superseded by the 2010 halibut management measures, which will be published in the **Federal Register**.

Comments and Responses

NMFS accepted comments through February 1, 2009, on the proposed rule to implement the 2009 Area 2A CSP and received one letter of comment apiece from Washington Department of Fish and Wildlife (WDFW) and Oregon Department of Fish and Wildlife (ODFW).

Comment 1: The WDFW held a public meeting on February 2, 2009, to review the results of the 2008 Puget Sound halibut fishery, and to develop season dates for the 2009 sport halibut fishery. Based on the 2009 Area 2A total allowable catch of 950,000 pounds (430.9 mt,) the halibut quota for the Puget Sound sport fishery is 57,393 lb (26.03 mt.) Applying WDFW's Fishing Equivalent Day (FED) method for estimating the Puget Sound fishery's season length, and applying the highest catch per FED in the past five years, there are 52 FEDs available in 2009. WDFW recommends that the regions within the Puget Sound sport halibut fishery will be open 5 days a week (Thursday through Monday) as follows: Eastern Region to be open April 23 through June 5, 2009; and Western Region to be open May 21 through July 3, 2009.

Response: NMFS agrees with WDFW's recommended Puget Sound season dates and has implemented them via this final rule.

Comment 2: ODFW held a public meeting on January 22, 2009, to gather comments on the open dates for the recreational all-depth fishery in Oregon's Central Coast sub-area. Since 2004, the number of open fishing days that could be accommodated in the Spring fishery has been roughly constant. The catch limit for this sub-area's Spring season will be 124,261lb (56.3mt) in 2009, based on the IPHC's 2009 TAC for Area 2A. Given the relatively constant effort pattern in recent years, and the reduced quota level in 2009 from more similar levels in 2008 and 2007, ODFW recommends setting a Central Coast all-depth fishery of 12 days, with 11 additional back-up dates, in case the sub-area's Spring quota is not taken in the initial 12 days. ODFW recommends the following days for the Spring fishery, within this sub-area's parameters for a Thursday-Saturday season and with weeks of adverse tidal conditions skipped (except for the opening weekend): regular open days of May 14–16, May 21–23, May28–30, June 4–6; back-up open days of June 18–20, July 2–4, July 16–18, and July 30–31. For the Summer fishery in this sub-area, ODFW recommended following the CSP's parameters of opening the first Friday in August, with open days to occur every other Friday-Sunday, unless modified in-season within the parameters of the CSP. Under the CSP, the 2009 summer all-depth fishery in Oregon's Central Coast sub-area would occur: August 7–9, August 21–23, September 4–6, September 18–20, October 2–4, October 16–18, and October 30–31.

Response: NMFS agrees with ODFW's recommended Central Coast season dates and has implemented them via this final rule.

Changes from the Proposed Rule

On January 14, 2009, NMFS published a proposed rule on changes to the CSP and recreational management measures for Area 2A (74 FR 2032). The final catch limits and total allowable catch numbers were not available until January 16, 2009, which was after the publication of the proposed rule. The proposed rule, therefore, was issued based on the preliminary estimate of the 2A TAC of 860,000 pounds. The final 2A TAC is 950,000 pounds which is higher than the preliminary estimate for 2009, but lower than the 2008 2A TAC of 1,220,000 pounds. Most of the changes in this final rule are updates to subarea catch limits based on the final TAC. There are no other substantive changes from the proposed rule.

Annual Halibut Management Measures

The annual management measures that follow for the 2009 Pacific halibut fishery are those recommended by the IPHC and accepted by the Secretary of State, with concurrence of the Secretary of Commerce. The sport fishing regulations for Area 2A, included in paragraph 26, are consistent with the measures adopted by the Commission and approved by the Secretary of State, but were developed by the Pacific Fishery Management Council and promulgated by the United States under the Halibut Act.

1. Short Title

These regulations may be cited as the Pacific Halibut Fishery Regulations.

2. Application

(1) These Regulations apply to persons and vessels fishing for halibut in, or possessing halibut taken from, the maritime area as defined in Section 3.

(2) Sections 3 to 6 apply generally to all halibut fishing.

(3) Sections 7 to 20 apply to commercial fishing for halibut.

(4) Section 21 applies to tagged halibut caught by any vessel.

(5) Section 22 applies to the United States treaty Indian fishery in Subarea 2A–1.

(6) Section 23 applies to customary and traditional fishing in Alaska.

(7) Section 24 applies to Aboriginal groups fishing for food, social and ceremonial purposes in British Columbia.

(8) Sections 25 to 28 apply to sport fishing for halibut.

(9) These Regulations do not apply to fishing operations authorized or conducted by the Commission for research purposes.

3. Interpretation

(1) In these Regulations,

(a) "authorized officer" means any State, Federal, or Provincial officer authorized to enforce these regulations including, but not limited to, the National Marine Fisheries Service (NMFS), Canada's Department of Fisheries and Oceans (DFO), Alaska Wildlife Troopers (AWT), United States Coast Guard (USCG), Washington Department of Fish and Wildlife (WDFW), and the Oregon State Police (OSP);

(b) "authorized clearance personnel" means an authorized officer of the United States, a representative of the Commission, or a designated fish processor;

(c) "charter vessel" means a vessel used for hire in sport fishing for halibut, but not including a vessel without a hired operator;

(d) "commercial fishing" means fishing, the resulting catch of which is sold or bartered; or is intended to be sold or bartered, other than

(i) sport fishing,

(ii) treaty Indian ceremonial and subsistence fishing as referred to in section 22,

(iii) customary and traditional fishing as referred to in section 23 and defined by and regulated pursuant to NMFS regulations published at 50 CFR Part 300, and

(iv) Aboriginal groups fishing in British Columbia as referred to in section 24;

(e) "Commission" means the International Pacific Halibut Commission;

(f) "daily bag limit" means the maximum number of halibut a person may take in any calendar day from Convention waters;

(g) "fishing" means the taking, harvesting, or catching of fish, or any activity that can reasonably be expected to result in the taking, harvesting, or catching of fish, including specifically the deployment of any amount or component part of setline gear anywhere in the maritime area;

(h) "fishing period limit" means the maximum amount of halibut that may be retained and landed by a vessel during one fishing period;

(i) "land" or "offload" with respect to halibut, means the removal of halibut from the catching vessel;

(j) "license" means a halibut fishing license issued by the Commission pursuant to section 4;

(k) "maritime area," in respect of the fisheries jurisdiction of a Contracting Party, includes without distinction areas within and seaward of the territorial sea and internal waters of that Party;

(l) "net weight" of a halibut means the weight of halibut that is without gills and entrails, head-off, washed, and without ice and slime. If a halibut is weighed with the head on or with ice and slime, the required conversion factors for calculating net weight are a 2% deduction for ice and slime and a 10% deduction for the head.

(m) "operator," with respect to any vessel, means the owner and/or the master or other individual on board and in charge of that vessel;

(n) "overall length" of a vessel means the horizontal distance, rounded to the nearest foot, between the foremost part of the stem and the aftermost part of the stern (excluding bowsprits, rudders, outboard motor brackets, and similar fittings or attachments);

(o) "person" includes an individual, corporation, firm, or association;

(p) "regulatory area" means an area referred to in section 6;

(q) "setline gear" means one or more stationary, buoyed, and anchored lines with hooks attached;

(r) "sport fishing" means all fishing other than i) commercial fishing, ii) treaty Indian ceremonial and subsistence fishing as referred to in section 22, iii) customary and traditional fishing as referred to in section 23 and defined in and regulated pursuant to NMFS regulations published in 50 CFR Part 300, and iv) Aboriginal groups fishing in British Columbia as referred to in section 24;

(s) "tender" means any vessel that buys or obtains fish directly from a catching vessel and transports it to a port of landing or fish processor;

(t) "VMS transmitter" means a NMFS-approved vessel monitoring system transmitter that automatically determines a vessel's position and transmits it to a NMFS-approved communications service provider.[1]

(2) In these Regulations, all bearings are true and all positions are determined by the most recent charts issued by the United States National Ocean Service or the Canadian Hydrographic Service.

4. Licensing Vessels for Area 2A

(1) No person shall fish for halibut from a vessel, nor possess halibut on board a vessel, used either for commercial fishing or as a charter vessel in Area 2A, unless the Commission has issued a license valid for fishing in Area 2A in respect of that vessel.

(2) A license issued for a vessel operating in Area 2A shall be valid only for operating either as a charter vessel or a commercial vessel, but not both.

(3) A vessel with a valid Area 2A commercial license cannot be used to sport fish for Pacific halibut in Area 2A.

(4) A license issued for a vessel operating in the commercial fishery in Area 2A shall be valid for one of the following, but not both

(a) the directed commercial fishery during the fishing periods specified in paragraph (2) of section 8 and the incidental commercial fishery during the sablefish fishery specified in paragraph (3) of section 8; or

(b) the incidental catch fishery during the salmon troll fishery specified in paragraph (4) of section 8.

(5) A license issued in respect of a vessel referred to in paragraph (1) of this section must be carried on board that vessel at all times and the vessel operator shall permit its inspection by any authorized officer.

(6) The Commission shall issue a license in respect of a vessel, without fee, from its office in Seattle, Washington, upon receipt of a completed, written, and signed "Application for Vessel License for the Halibut Fishery" form.

(7) A vessel operating in the directed commercial fishery or the incidental commercial fishery during the sablefish fishery in Area 2A must have its "Application for Vessel License for the Halibut Fishery" form postmarked no later than 11:59 PM on April 30, or on the first weekday in May if April 30 is a Saturday or Sunday.

(8) A vessel operating in the incidental commercial fishery during the salmon troll season in Area 2A must have its "Application for Vessel License for the Halibut Fishery" form postmarked no later than 11:59 PM on March 31, or the first weekday in April if March 31 is a Saturday or Sunday.

(9) Application forms may be obtained from any authorized officer or from the Commission.

(10) Information on "Application for Vessel License for the Halibut Fishery" form must be accurate.

(11) The "Application for Vessel License for the Halibut Fishery" form shall be completed and signed by the vessel owner.

(12) Licenses issued under this section shall be valid only during the year in which they are issued.

(13) A new license is required for a vessel that is sold, transferred, renamed, or the documentation is changed.

(14) The license required under this section is in addition to any license, however designated, that is required under the laws of the United States or any of its States.

[1] Call NOAA Enforcement Division, Alaska Region, at 907–586–7225 between the hours of 0800 and 1600 local time for a list of NMFS-approved VMS transmitters and communications service providers.

(15) The United States may suspend, revoke, or modify any license issued under this section under policies and procedures in Title 15, CFR Part 904.

5. In-Season Actions

(1) The Commission is authorized to establish or modify regulations during the season after determining that such action:

(a) will not result in exceeding the catch limit established preseason for each regulatory area;

(b) is consistent with the Convention between the United States of America and Canada for the Preservation of the Halibut Fishery of the Northern Pacific Ocean and Bering Sea, and applicable domestic law of either Canada or the United States; and

(c) is consistent, to the maximum extent practicable, with any domestic catch sharing plans or other domestic allocation programs developed by the United States or Canadian governments.

(2) In-season actions may include, but are not limited to, establishment or modification of the following:

(a) closed areas;
(b) fishing periods;
(c) fishing period limits;
(d) gear restrictions;
(e) recreational bag limits;
(f) size limits; or
(g) vessel clearances.

(3) In-season changes will be effective at the time and date specified by the Commission.

(4) The Commission will announce in-season actions under this section by providing notice to major halibut processors; Federal, State, United States treaty Indian, and Provincial fishery officials; and the media.

6. Regulatory Areas

The following areas shall be regulatory areas (see Figure 1) for the purposes of the Convention:

(1) Area 2A includes all waters off the states of California, Oregon, and Washington;

(2) Area 2B includes all waters off British Columbia;

(3) Area 2C includes all waters off Alaska that are east of a line running 340° true from Cape Spencer Light (58°11′54″ N. latitude, 136°38′24″ W. longitude) and south and east of a line running 205° true from said light;

(4) Area 3A includes all waters between Area 2C and a line extending from the most northerly point on Cape Aklek (57°41′15″ N. latitude, 155°35′00″ W. longitude) to Cape Ikolik (57°17′17″ N. latitude, 154°47′18″ W. longitude), then along the Kodiak Island coastline to Cape Trinity (56°44′50″ N. latitude, 154°08′44″ W. longitude), then 140° true;

(5) Area 3B includes all waters between Area 3A and a line extending 150° true from Cape Lutke (54°29′00″ N. latitude, 164°20′00″ W. longitude) and south of 54°49′00″ N. latitude in Isanotski Strait;

(6) Area 4A includes all waters in the Gulf of Alaska west of Area 3B and in the Bering Sea west of the closed area defined in section 10 that are east of 172°00′00″ W. longitude and south of 56°20′00″ N. latitude;

(7) Area 4B includes all waters in the Bering Sea and the Gulf of Alaska west of Area 4A and south of 56°20′00″ N. latitude;

(8) Area 4C includes all waters in the Bering Sea north of Area 4A and north of the closed area defined in section 10 which are east of 171°00′00″ W. longitude, south of 58°00′00″ N. latitude, and west of 168°00′00″ W. longitude;

(9) Area 4D includes all waters in the Bering Sea north of Areas 4A and 4B, north and west of Area 4C, and west of 168°00′00″ W. longitude;

(10) Area 4E includes all waters in the Bering Sea north and east of the closed area defined in section 10, east of 168°00′00″ W. longitude, and south of 65°34′00″ N. latitude.

7. Fishing in Regulatory Area 4E and 4D

(1) Section 7 applies only to any person fishing, or vessel that is used to fish for, Area 4E Community Development Quota (CDQ) or Area 4D CDQ halibut provided that the total annual halibut catch of that person or vessel is landed at a port within Area 4E or 4D.

(2) A person may retain halibut taken with setline gear in Area 4E CDQ and 4D CDQ fishery that are smaller than the size limit specified in section 13, provided that no person may sell or barter such halibut.

(3) The manager of a CDQ organization that authorizes persons to harvest halibut in the Area 4E or 4D CDQ fisheries must report to the Commission the total number and weight of undersized halibut taken and retained by such persons pursuant to section 7, paragraph (2). This report, which shall include data and methodology used to collect the data, must be received by the Commission prior to November 1 of the year in which such halibut were harvested.

8. Fishing Periods

(1) The fishing periods for each regulatory area apply where the catch limits specified in section 11 have not been taken.

(2) Each fishing period in the Area 2A directed commercial fishery[2] shall begin at 0800 hours and terminate at 1800 hours local time on June 24, July 8, July 22, August 5, August 19, September 2, September 16, and September 30 unless the Commission specifies otherwise.

(3) Notwithstanding paragraph (7) of section 11, an incidental catch fishery[3] is authorized during the sablefish seasons in Area 2A in accordance with regulations promulgated by NMFS.

(4) Notwithstanding paragraph (2), and paragraph (7) of section 11, an incidental catch fishery is authorized during salmon troll seasons in Area 2A in accordance with regulations promulgated by NMFS.

(5) The fishing period in Areas 2B, 2C, 3A, 3B, 4A, 4B, 4C, 4D, and 4E shall begin at 1200 hours local time on March 21 and terminate at 1200 hours local time on November 15, unless the Commission specifies otherwise.

(6) All commercial fishing for halibut in Areas 2A, 2B, 2C, 3A, 3B, 4A, 4B, 4C, 4D, and 4E shall cease at 1200 hours local time on November 15.

9. Closed Periods

(1) No person shall engage in fishing for halibut in any regulatory area other than during the fishing periods set out in section 8 in respect of that area.

(2) No person shall land or otherwise retain halibut caught outside a fishing period applicable to the regulatory area where the halibut was taken.

(3) Subject to paragraphs (7), (8), (9), and (10) of section 19, these Regulations do not prohibit fishing for any species of fish other than halibut during the closed periods.

(4) Notwithstanding paragraph (3), no person shall have halibut in his/her possession while fishing for any other species of fish during the closed periods.

(5) No vessel shall retrieve any halibut fishing gear during a closed period if the vessel has any halibut on board.

(6) A vessel that has no halibut on board may retrieve any halibut fishing gear during the closed period after the operator notifies an authorized officer or representative of the Commission prior to that retrieval.

(7) After retrieval of halibut gear in accordance with paragraph (6), the vessel shall submit to a hold inspection

[2] The directed fishery is restricted to waters that are south of Point Chehalis, Washington (46°53′18″ N. latitude) under regulations promulgated by NMFS and published in the **Federal Register**.

[3] The incidental fishery during the directed, fixed gear sablefish season is restricted to waters that are north of Point Chehalis, Washington (46°53′18″ N. latitude) under regulations promulgated by NMFS at 50 CFR 300.63.

at the discretion of the authorized officer or representative of the Commission.

(8) No person shall retain any halibut caught on gear retrieved referred to in paragraph (6).

(9) No person shall possess halibut aboard a vessel in a regulatory area during a closed period unless that vessel is in continuous transit to or within a port in which that halibut may be lawfully sold.

10. Closed Area

All waters in the Bering Sea north of 55°00′00″ N. latitude in Isanotski Strait that are enclosed by a line from Cape Sarichef Light (54°36′00″ N. latitude, 164°55′42″ W. longitude) to a point at 56°20′00″ N. latitude, 168°30′00″ W. longitude; thence to a point at 58°21′25″ N. latitude, 163°00′00″ W. longitude; thence to Strogonof Point 56°53′18″ N. latitude, 158°50′37″ W. longitude); and then along the northern coasts of the Alaska Peninsula and Unimak Island to the point of origin at Cape Sarichef Light are closed to halibut fishing and no person shall fish for halibut therein or have halibut in his/her possession while in those waters except in the course of a continuous transit across those waters. All waters in Isanotski Strait between 55°00′00″ N. latitude and 54°49′00″ N. latitude are closed to halibut fishing.

11. Catch Limits

(1) The total allowable catch of halibut to be taken during the halibut fishing periods specified in section 8 shall be limited to the net weights expressed in pounds or metric tons shown in the following table:

Regulatory	Catch Limit	
Area	Pounds	Metric tons
2A: directed commercial, and incidental commercial during salmon troll fishery	195,747	88.8
2A: incidental commercial during sablefish fishery	11,895	5.4
2B[4]	7,630,000	3,460.3
2C	5,020,000	2,276.6
3A	21,700,000	9,841.3
3B	10,900,000	4,943.3
4A	2,550,000	1,156.5
4B	1,870,000	848.1
4C	1,569,000	711.6
4D	1,569,000	711.6
4E	322,000	146.0

[4] Area 2B includes combined commercial and sport catch limits which will be allocated by DFO.

(2) Notwithstanding paragraph (1), regulations pertaining to the division of the Area 2A catch limit between the directed commercial fishery and the incidental catch fishery as described in paragraph (4) of section 8 will be promulgated by NMFS and published in the **Federal Register**.

(3) The Commission shall determine and announce to the public the date on which the catch limit for Area 2A will be taken.

(4) Notwithstanding paragraph (1), Area 2B will close only when all Individual Vessel Quotas (IVQs) assigned by DFO are taken, or November 15, whichever is earlier.

(5) Notwithstanding paragraph (1), Areas 2C, 3A, 3B, 4A, 4B, 4C, 4D, and 4E will each close only when all IFQs and all CDQs issued by NMFS have been taken, or November 15, whichever is earlier.

(6) If the Commission determines that the catch limit specified for Area 2A in paragraph (1) would be exceeded in an unrestricted 10-hour fishing period as specified in paragraph (2) of section 8, the catch limit for that area shall be considered to have been taken unless fishing period limits are implemented.

(7) When under paragraphs (2), (3), and (6) the Commission has announced a date on which the catch limit for Area 2A will be taken, no person shall fish for halibut in that area after that date for the rest of the year, unless the Commission has announced the reopening of that area for halibut fishing.

(8) Notwithstanding paragraph (1), the total allowable catch of halibut that may be taken in the Area 4E directed commercial fishery is equal to the combined annual catch limits specified for the Area 4D and Area 4E CDQ fisheries. The annual Area 4D CDQ catch limit will decrease by the equivalent amount of halibut CDQ taken in Area 4E in excess of the annual Area 4E CDQ catch limit.

(9) Notwithstanding paragraph (1), the total allowable catch of halibut that may be taken in the Area 4D directed commercial fishery is equal to the combined annual catch limits specified for the Area 4C and Area 4D. The annual Area 4C catch limit will decrease by the equivalent amount of halibut taken in Area 4D in excess of the annual Area 4D catch limit.

12. Fishing Period Limits

(1) It shall be unlawful for any vessel to retain more halibut than authorized by that vessel's license in any fishing period for which the Commission has announced a fishing period limit.

(2) The operator of any vessel that fishes for halibut during a fishing period when fishing period limits are in effect must, upon commencing an offload of halibut to a commercial fish processor, completely offload all halibut on board said vessel to that processor and ensure that all halibut is weighed and reported on State fish tickets.

(3) The operator of any vessel that fishes for halibut during a fishing period when fishing period limits are in effect must, upon commencing an offload of halibut other than to a commercial fish processor, completely offload all halibut on board said vessel and ensure that all halibut are weighed and reported on State fish tickets.

(4) The provisions of paragraph (3) are not intended to prevent retail over-the-side sales to individual purchasers so long as all the halibut on board is ultimately offloaded and reported.

(5) When fishing period limits are in effect, a vessel's maximum retainable catch will be determined by the Commission based on

(a) the vessel's overall length in feet and associated length class;

(b) the average performance of all vessels within that class; and

(c) the remaining catch limit.

(6) Length classes are shown in the following table:

Overall Length (in feet)	Vessel Class
1–25	A
26–30	B
31–35	C
36–40	D
41–45	E
46–50	F
51–55	G
56+	H

(7) Fishing period limits in Area 2A apply only to the directed halibut fishery referred to in paragraph (2) of section 8.

13. Size Limits

(1) No person shall take or possess any halibut that

(a) with the head on, is less than 32 inches (81.3 cm) as measured in a straight line, passing over the pectoral fin from the tip of the lower jaw with the mouth closed, to the extreme end of the middle of the tail, as illustrated in Figure 2; or

(b) with the head removed, is less than 24 inches (61.0 cm) as measured from the base of the pectoral fin at its most anterior point to the extreme end of the middle of the tail, as illustrated in Figure 2.

(2) No person on board a vessel fishing for, or tendering, halibut caught

in Area 2A shall possess any halibut that has had its head removed.

14. Careful Release of Halibut

(1) All halibut that are caught and are not retained shall be immediately released outboard of the roller and returned to the sea with a minimum of injury by

(a) hook straightening;

(b) cutting the gangion near the hook; or

(c) carefully removing the hook by twisting it from the halibut with a gaff.

(2) Except that paragraph (1) shall not prohibit the possession of halibut on board a vessel that has been brought aboard to be measured to determine if the minimum size limit of the halibut is met and, if sublegal-sized, is promptly returned to the sea with a minimum of injury.

15. Vessel Clearance in Area 4

(1) The operator of any vessel that fishes for halibut in Areas 4A, 4B, 4C, or 4D must obtain a vessel clearance before fishing in any of these areas, and before the landing of any halibut caught in any of these areas, unless specifically exempted in paragraphs (10), (13), (14), (15), or (16).

(2) An operator obtaining a vessel clearance required by paragraph (1) must obtain the clearance in person from the authorized clearance personnel and sign the IPHC form documenting that a clearance was obtained, except that when the clearance is obtained via VHF radio referred to in paragraphs (5), (8), and (9), the authorized clearance personnel must sign the IPHC form documenting that the clearance was obtained.

(3) The vessel clearance required under paragraph (1) prior to fishing in Area 4A may be obtained only at Nazan Bay on Atka Island, Dutch Harbor or Akutan, Alaska, from an authorized officer of the United States, a representative of the Commission, or a designated fish processor.

(4) The vessel clearance required under paragraph (1) prior to fishing in Area 4B may only be obtained at Nazan Bay on Atka Island or Adak, Alaska, from an authorized officer of the United States, a representative of the Commission, or a designated fish processor.

(5) The vessel clearance required under paragraph (1) prior to fishing in Area 4C and 4D may be obtained only at St. Paul or St. George, Alaska, from an authorized officer of the United States, a representative of the Commission, or a designated fish processor by VHF radio and allowing the person contacted to confirm visually the identity of the vessel.

(6) The vessel operator shall specify the specific regulatory area in which fishing will take place.

(7) Before unloading any halibut caught in Area 4A, a vessel operator may obtain the clearance required under paragraph (1) only in Dutch Harbor or Akutan, Alaska, by contacting an authorized officer of the United States, a representative of the Commission, or a designated fish processor.

(8) Before unloading any halibut caught in Area 4B, a vessel operator may obtain the clearance required under paragraph (1) only in Nazan Bay on Atka Island or Adak, by contacting an authorized officer of the United States, a representative of the Commission, or a designated fish processor by VHF radio or in person.

(9) Before unloading any halibut caught in Area 4C and 4D, a vessel operator may obtain the clearance required under paragraph (1) only in St. Paul, St. George, Dutch Harbor, or Akutan, Alaska, either in person or by contacting an authorized officer of the United States, a representative of the Commission, or a designated fish processor. The clearances obtained in St. Paul or St. George, Alaska, can be obtained by VHF radio and allowing the person contacted to confirm visually the identity of the vessel.

(10) Any vessel operator who complies with the requirements in section 18 for possessing halibut on board a vessel that was caught in more than one regulatory area in Area 4 is exempt from the clearance requirements of paragraph (1) of this section, provided that:

(a) the operator of the vessel obtains a vessel clearance prior to fishing in Area 4 in either Dutch Harbor, Akutan, St. Paul, St. George, Adak, or Nazan Bay on Atka Island by contacting an authorized officer of the United States, a representative of the Commission, or a designated fish processor. The clearance obtained in St. Paul, St. George, Adak, or Nazan Bay on Atka Island can be obtained by VHF radio and allowing the person contacted to confirm visually the identity of the vessel. This clearance will list the Areas in which the vessel will fish; and

(b) before unloading any halibut from Area 4, the vessel operator obtains a vessel clearance from Dutch Harbor, Akutan, St. Paul, St. George, Adak, or Nazan Bay on Atka Island by contacting an authorized officer of the United States, a representative of the Commission, or a designated fish processor. The clearance obtained in St. Paul or St. George can be obtained by VHF radio and allowing the person contacted to confirm visually the identity of the vessel. The clearance obtained in Adak or Nazan Bay on Atka Island can be obtained by VHF radio.

(11)Vessel clearances shall be obtained between 0600 and 1800 hours, local time.

(12) No halibut shall be on board the vessel at the time of the clearances required prior to fishing in Area 4.

(13) Any vessel that is used to fish for halibut only in Area 4A and lands its total annual halibut catch at a port within Area 4A is exempt from the clearance requirements of paragraph (1).

(14) Any vessel that is used to fish for halibut only in Area 4B and lands its total annual halibut catch at a port within Area 4B is exempt from the clearance requirements of paragraph (1).

(15) Any vessel that is used to fish for halibut only in Areas 4C or 4D or 4E and lands its total annual halibut catch at a port within Areas 4C, 4D, 4E, or the closed area defined in section 10, is exempt from the clearance requirements of paragraph (1).

(16) Any vessel that carries a transmitting VMS transmitter while fishing for halibut in Area 4A, 4B, 4C, or 4D and until all halibut caught in any of these areas is landed is exempt from the clearance requirements of paragraph (1) of this section, provided that:

(a) the operator of the vessel complies with NMFS' vessel monitoring system regulations published at 50 CFR sections 679.28(f)(3), (4) and (5); and

(b) the operator of the vessel notifies NOAA Fisheries Office for Law Enforcement at 800–304–4846 (select option 1 to speak to an Enforcement Data Clerk) between the hours of 0600 and 0000 (midnight) local time within 72 hours before fishing for halibut in Area 4A, 4B, 4C, or 4D and receives a VMS confirmation number.

16. Logs

(1) The operator of any U.S. vessel fishing for halibut that has an overall length of 26 feet (7.9 meters) or greater shall maintain an accurate log of halibut fishing operations. The operator of a vessel fishing in waters in and off Alaska must use one of the following logbooks: the Groundfish/IFQ Daily Fishing Longline and Pot Gear Logbook provided by NMFS; the Alaska hook-and-line logbook provided by Petersburg Vessel Owners Association or Alaska Longline Fisherman's Association; the Alaska Department of Fish and Game (ADF&G) longline-pot logbook; or the logbook provided by IPHC. The operator of a vessel fishing in Area 2A must use either the Washington Department of Fish and Wildlife (WDFW) Voluntary

Sablefish Logbook, or the logbook provided by IPHC.

(2) The logbook referred to in paragraph (1) must include the following information:

(a) the name of the vessel and the state (ADF&G, WDFW, Oregon Department of Fish and Wildlife, or California Department of Fish and Game) vessel number;

(b) the date(s) upon which the fishing gear is set or retrieved;

(c) the latitude and longitude or loran coordinates or a direction and distance from a point of land for each set or day.

(d) the number of skates deployed or retrieved, and number of skates lost; and

(e) the total weight or number of halibut retained for each set or day.

(3) The logbook referred to in paragraph (1) shall be

(a) maintained on board the vessel;

(b) updated not later than 24 hours after midnight local time for each day fished and prior to the offloading or sale of halibut taken during that fishing trip;

(c) retained for a period of two years by the owner or operator of the vessel;

(d) open to inspection by an authorized officer or any authorized representative of the Commission upon demand; and

(e) kept on board the vessel when engaged in halibut fishing, during transits to port of landing, and until the offloading of all halibut is completed.

(4) The log referred to in paragraph (1) does not apply to the incidental halibut fishery during the salmon troll season in Area 2A defined in paragraph (4) of section 8.

(5) The operator of any Canadian vessel fishing for halibut shall maintain an accurate log recorded in the British Columbia Integrated Groundfish Fishing Log provided by DFO.

(6) The logbook referred to in paragraph (5) must include the following information:

(a) the name of the vessel and the DFO vessel number;

(b) the date(s) upon which the fishing gear is set or retrieved;

(c) the latitude and longitude or loran coordinates or a direction and distance from a point of land for each set or day;

(d) the number of skates deployed or retrieved, and number of skates lost; and

(e) the total weight or number of halibut retained for each set or day.

(7) The logbook referred to in paragraph (5) shall be

(a) maintained on board the vessel;

(b) retained for a period of two years by the owner or operator of the vessel;

(c) open to inspection by an authorized officer or any authorized representative of the Commission upon demand;

(d) kept on board the vessel when engaged in halibut fishing, during transits to port of landing, and until the offloading of all halibut is completed;

(e) mailed to the DFO (white copy) within seven days of offloading; and

(f) mailed to the Commission (yellow copy) within seven days of the final offload if not collected by a Commission employee.

(8) No person shall make a false entry in a log referred to in this section.

17. Receipt and Possession of Halibut

(1) No person shall receive halibut caught in Area 2A from a United States vessel that does not have on board the license required by section 4.

(2) No person shall possess on board a vessel a halibut other than whole or with gills and entrails removed. Except that this paragraph shall not prohibit the possession on board a vessel of:

(a) halibut cheeks cut from halibut caught by persons authorized to process the halibut on board in accordance with NMFS regulations published at 50 CFR Part 679;

(b) fillets from halibut offloaded in accordance with section 17 that are possessed on board the harvesting vessel in the port of landing up to 1800 hours local time on the calendar day following the offload5; and

(c) halibut with their heads removed in accordance with section 13.

(3) No person shall offload halibut from a vessel unless the gills and entrails have been removed prior to offloading6.

(4) It shall be the responsibility of a vessel operator who lands halibut to continuously and completely offload at a single offload site all halibut on board the vessel.

(5) A registered buyer (as that term is defined in regulations promulgated by NMFS and codified at 50 CFR Part 679) who receives halibut harvested in IFQ and CDQ fisheries in Areas 2C, 3A, 3B, 4A, 4B, 4C, 4D, and 4E, directly from the vessel operator that harvested such halibut must weigh all the halibut received and record the following information on federal catch reports: date of offload; name of vessel; vessel number; scale weight obtained at the time of offloading, including the scale weight (in pounds) of halibut purchased by the registered buyer, the scale weight (in pounds) of halibut offloaded in excess of the IFQ or CDQ, the scale weight of halibut (in pounds) retained for personal use or for future sale, and the scale weight (in pounds) of halibut discarded as unfit for human consumption.

(6) The first recipient, commercial fish processor, or buyer in the United States who purchases or receives halibut directly from the vessel operator that harvested such halibut must weigh and record all halibut received and record the following information on state fish tickets: the date of offload; vessel number; total weight obtained at the time of offload including the weight (in pounds) of halibut purchased; the weight (in pounds) of halibut offloaded in excess of the IFQ, CDQ, or fishing period limits; the weight of halibut (in pounds) retained for personal use or for future sale; and the weight (in pounds) of halibut discarded as unfit for human consumption.

(7) The individual completing the state fish tickets for the Area 2A fisheries as referred to in paragraph (6) must additionally record whether the halibut weight is of head-on or head-off fish.

(8) For halibut landings made in Alaska, the requirements as listed in paragraph (5) and (6) can be met by recording the information in the Interagency Electronic Reporting Systems, eLandings

(9) The master or operator of a Canadian vessel that was engaged in halibut fishing must weigh and record all halibut on board said vessel at the time offloading commences and record on Provincial fish tickets or Federal catch reports the date; locality; name of vessel; the name(s) of the person(s) from whom the halibut was purchased; and the scale weight obtained at the time of offloading of all halibut on board the vessel including the pounds purchased, pounds in excess of IVQs, pounds retained for personal use, and pounds discarded as unfit for human consumption.

(10) No person shall make a false entry on a State or Provincial fish ticket or a Federal catch or landing report referred to in paragraphs (5), (6), and (9) of section 17.

(11) A copy of the fish tickets or catch reports referred to in paragraphs (5), (6), and (9) shall be

(a) retained by the person making them for a period of three years from the date the fish tickets or catch reports are made; and

(b) open to inspection by an authorized officer or any authorized representative of the Commission.

(12) No person shall possess any halibut taken or retained in contravention of these Regulations.

(13) When halibut are landed to other than a commercial fish processor, the records required by paragraph (6) shall be maintained by the operator of the vessel from which that halibut was caught, in compliance with paragraph (9).

(14) It shall be unlawful to enter an IPHC license number on a State fish ticket for any vessel other than the vessel actually used in catching the halibut reported thereon.

(15) No person shall tag halibut unless the tagging is authorized by IPHC permit or by a Federal or State agency.

5DFO has more restrictive regulations; therefore, section 17(2)b does not apply to fish caught in Area 2B or landed in British Columbia.

6DFO did not adopt this regulation; therefore, section 17 paragraph (3) does not apply to fish caught in Area 2B.

18. Fishing Multiple Regulatory Areas

(1) Except as provided in this section, no person shall possess at the same time on board a vessel halibut caught in more than one regulatory area.

(2) Halibut caught in more than one of the Regulatory Areas 2C, 3A, or 3B may be possessed on board a vessel at the same time provided the operator of the vessel:

(a) has a NMFS-certified observer on board when required by NMFS regulations7 published at 50 CFR Section 679.7(f)(4); and

(b) can identify the regulatory area in which each halibut on board was caught by separating halibut from different areas in the hold, tagging halibut, or by other means.

(3) Halibut caught in more than one of the Regulatory Areas 4A, 4B, 4C, or 4D may be possessed on board a vessel at the same time provided the operator of the vessel:

(a) has a NMFS-certified observer on board the vessel as required by NMFS regulations published at 50, CFR Section 679.7(f)(4); or has an operational Vessel Monitoring System (VMS) on board actively transmitting in all regulatory areas fished and does not possess at any time more halibut on board the vessel than the IFQ permit holders on board the vessel have cumulatively available for any single Area 4 regulatory area fished; and

(b) can identify the regulatory area in which each halibut on board was caught by separating halibut from different areas in the holds, tagging halibut, or by other means.

(4) If halibut from Area 4 are on board the vessel, the vessel can have halibut caught in Regulatory Areas 2C, 3A, and 3B on board if in compliance with paragraph (2).

7Without an observer, a vessel cannot have on board more halibut than the IFQ for the area that is being fished, even if some of the catch occurred earlier in a different area.

19. Fishing Gear

(1) No person shall fish for halibut using any gear other than hook and line gear, except that vessels licensed to catch sablefish in Area 2B using sablefish trap gear as defined in the Condition of Sablefish Licence can retain halibut caught as bycatch under regulations promulgated by the Canadian Department of Fisheries and Oceans.

(2) No person shall possess halibut taken with any gear other than hook and line gear, except that vessels licensed to catch sablefish in Area 2B using sablefish trap gear as defined by the Condition of Sablefish Licence can retain halibut caught as bycatch under regulations promulgated by the Canadian Department of Fisheries and Oceans.

(3) No person shall possess halibut while on board a vessel carrying any trawl nets or fishing pots capable of catching halibut, except that in Areas 2C, 3A, 3B, 4A, 4B, 4C, 4D, or 4E, halibut heads, skin, entrails, bones or fins for use as bait may be possessed on board a vessel carrying pots capable of catching halibut, provided that a receipt documenting purchase or transfer of these halibut parts is on board the vessel.

(4) All setline or skate marker buoys carried on board or used by any United States vessel used for halibut fishing shall be marked with one of the following

(a) the vessel's state license number; or

(b) the vessel's registration number.

(5) The markings specified in paragraph (4) shall be in characters at least four inches in height and one-half inch in width in a contrasting color visible above the water and shall be maintained in legible condition.

(6) All setline or skate marker buoys carried on board or used by a Canadian vessel used for halibut fishing shall be

(a) floating and visible on the surface of the water; and

(b) legibly marked with the identification plate number of the vessel engaged in commercial fishing from which that setline is being operated.

(7) No person on board a vessel used to fish for any species of fish anywhere in Area 2A during the 72-hour period immediately before the fishing period for the directed commercial fishery shall catch or possess halibut anywhere in those waters during that halibut fishing period unless, prior to the start of the halibut fishing period, the vessel has removed its gear from the water and has either

(a) made a landing and completely offloaded its catch of other fish; or

(b) submitted to a hold inspection by an authorized officer.

(8) No vessel used to fish for any species of fish anywhere in Area 2A during the 72-hour period immediately before the fishing period for the directed commercial fishery may be used to catch or possess halibut anywhere in those waters during that halibut fishing period unless, prior to the start of the halibut fishing period, the vessel has removed its gear from the water and has either

(a) made a landing and completely offloaded its catch of other fish; or

(b) submitted to a hold inspection by an authorized officer.

(9) No person on board a vessel from which setline gear was used to fish for any species of fish anywhere in Areas 2B, 2C, 3A, 3B, 4A, 4B, 4C, 4D, or 4E during the 72-hour period immediately before the opening of the halibut fishing season shall catch or possess halibut anywhere in those areas until the vessel has removed all of its setline gear from the water and has either

(a) made a landing and completely offloaded its entire catch of other fish; or

(b) submitted to a hold inspection by an authorized officer.

(10) No vessel from which setline gear was used to fish for any species of fish anywhere in Areas 2B, 2C, 3A, 3B, 4A, 4B, 4C, 4D, or 4E during the 72-hour period immediately before the opening of the halibut fishing season may be used to catch or possess halibut anywhere in those areas until the vessel has removed all of its setline gear from the water and has either

(a) made a landing and completely offloaded its entire catch of other fish; or

(b) submitted to a hold inspection by an authorized officer.

(11) Notwithstanding any other provision in these regulations, a person may retain, possess and dispose of halibut taken with trawl gear only as authorized by Prohibited Species Donation regulations of NMFS.

20. Supervision of Unloading and Weighing

The unloading and weighing of halibut may be subject to the supervision of authorized officers to assure the fulfillment of the provisions of these Regulations.

21. Retention of Tagged Halibut

(1) Nothing contained in these Regulations prohibits any vessel at any time from retaining and landing a halibut that bears a Commission external tag at the time of capture, if the halibut with the tag still attached is

reported at the time of landing and made available for examination by a representative of the Commission or by an authorized officer.

(2) After examination and removal of the tag by a representative of the Commission or an authorized officer, the halibut:

(a) may be retained for personal use; or

(b) may be sold only if the halibut is caught during commercial halibut fishing and complies with the other commercial fishing provisions of these regulations.

(3) Externally tagged fish must count against commercial IVQs, CDQs, IFQs, or daily bag or possession limits unless otherwise exempted by state, provincial, or federal regulations.

22. Fishing by United States Treaty Indian Tribes

(1) Halibut fishing in Subarea 2A–1 by members of United States treaty Indian tribes located in the State of Washington shall be regulated under regulations promulgated by NMFS and published in the **Federal Register**.

(2) Subarea 2A–1 includes all waters off the coast of Washington that are north of 46°53′18″ N. latitude and east of 125°44′00″ W. longitude, and all inland marine waters of Washington.

(3) Section 13 (size limits), section 14 (careful release of halibut), section 16 (logs), section 17 (receipt and possession of halibut) and section 19 (fishing gear), except paragraphs (7) and (8) of section 19, apply to commercial fishing for halibut in Subarea 2A–1 by the treaty Indian tribes

(4) Commercial fishing for halibut in Subarea 2A–1 is permitted with hook and line gear from March 21 through November 15, or until 303,500 pounds (137.6 metric tons) net weight is taken, whichever occurs first.

(5) Ceremonial and subsistence fishing for halibut in Subarea 2A–1 is permitted with hook and line gear from January 1 through December 31, and is estimated to take 29,000 pounds (13.2 metric tons) net weight.

23. Customary and Traditional Fishing in Alaska

(1) Customary and traditional fishing for halibut in Regulatory Areas 2C, 3A, 3B, 4A, 4B, 4C, 4D, and 4E shall be governed pursuant to regulations promulgated by NMFS and published in 50 CFR Part 300.

(2) Customary and traditional fishing is authorized from January 1 through December 31.

24. Aboriginal Groups Fishing for Food, Social and Ceremonial Purposes in British Columbia

(1) Fishing for halibut for food, social and ceremonial purposes by Aboriginal groups in Regulatory Area 2B shall be governed by the Fisheries Act of Canada and regulations as amended from time to time.

25. Sport Fishing for Halibut—General

(1) No person shall engage in sport fishing for halibut using gear other than a single line with no more than two hooks attached; or a spear.

(2) Any minimum overall size limit promulgated under IPHC or NMFS regulations shall be measured in a straight line passing over the pectoral fin from the tip of the lower jaw with the mouth closed, to the extreme end of the middle of the tail.

(3) Any halibut brought aboard a vessel and not immediately returned to the sea with a minimum of injury will be included in the daily bag limit of the person catching the halibut.

(4) No person may possess halibut on a vessel while fishing in a closed area.

(5) No halibut caught by sport fishing shall be offered for sale, sold, traded, or bartered.

(6) No halibut caught in sport fishing shall be possessed onboard a vessel when other fish or shellfish aboard said vessel are destined for commercial use, sale, trade, or barter.

(7) The operator of a charter vessel shall be liable for any violations of these regulations committed by a passenger aboard said vessel.

26. Sport Fishing for Halibut—Area 2A

(1) The total allowable catch of halibut shall be limited to

(a) 214,110 pounds (97.1 metric tons) net weight in waters off Washington and

(b) 195,748 pounds (88.8 metric tons) net weight in waters off California and Oregon;

(2) The Commission shall determine and announce closing dates to the public for any area in which the catch limits promulgated by NMFS are estimated to have been taken.

(3) When the Commission has determined that a subquota under paragraph (8) of this section is estimated to have been taken, and has announced a date on which the season will close, no person shall sport fish for halibut in that area after that date for the rest of the year, unless a reopening of that area for sport halibut fishing is scheduled in accordance with the Catch Sharing Plan for Area 2A, or announced by the Commission.

(4) In California, Oregon, or Washington, no person shall fillet, mutilate, or otherwise disfigure a halibut in any manner that prevents the determination of minimum size or the number of fish caught, possessed, or landed.

(5) The possession limit on a vessel for halibut in the waters off the coast of Washington is the same as the daily bag limit. The possession limit on land in Washington for halibut caught in U.S. waters off the coast of Washington is two halibut.

(6) The possession limit on a vessel for halibut caught in the waters off the coast of Oregon is the same as the daily bag limit. The possession limit for halibut on land in Oregon is three daily bag limits.

(7) The possession limit on a vessel for halibut caught in the waters off the coast of California is one halibut. The possession limit for halibut on land in California is one halibut.

(8) The sport fishing subareas, subquotas, fishing dates, and daily bag limits are as follows, except as modified under the in-season actions in 50 CFR 300.63(c). All sport fishing in Area 2A is managed on a "port of landing" basis, whereby any halibut landed into a port counts toward the quota for the area in which that port is located, and the regulations governing the area of landing apply, regardless of the specific area of catch.

(a) The area in Puget Sound and the U.S. waters in the Strait of Juan de Fuca, east of a line extending from 48°17.30' N. lat., 124°23.70' W. long. north to 48°24.10' N. lat., 124°23.70' W. long., is not managed in-season relative to its quota. This area is managed by setting a season that is projected to result in a catch of 57,393 lb (26.03 mt).

(i) The fishing season in eastern Puget Sound (east of 123°49.50' W. long., Low Point) is open April 23 — June 5, and the fishing season in western Puget Sound (west of 123°49.50' W. long., Low Point) is open May 21 — July 3, 5 days a week (Thursday through Monday).

(ii) The daily bag limit is one halibut of any size per day per person.

(b) The quota for landings into ports in the area off the north Washington coast, west of the line described in paragraph (2)(a) of section 26 and north of the Queets River (47°31.70' N. lat.), is 108,030 lb (49.0 mt).

(i) The fishing seasons are:

(A) Commencing on May 14 and continuing 2 days a week (Thursday and Saturday) until 108,030 lb (49.0 mt) are estimated to have been taken and the season is closed by the Commission.

(B) If sufficient quota remains the fishery will reopen on June 4 in the entire north coast subarea, continuing 2 days per week (Thursday and Saturday)

until there is not sufficient quota for another full day of fishing and the area is closed by the Commission. When there is insufficient quota remaining to reopen the entire north coast subarea for another day, then the nearshore areas described below will reopen for 2 days per week (Thursday and Saturday), until the overall quota of 108,030 lb (49.0 mt) is estimated to have been taken and the area is closed by the Commission, or until September 30, whichever is earlier. After May 24, any fishery opening will be announced on the NMFS hotline at 800–662–9825. No halibut fishing will be allowed after May 24 unless the date is announced on the NMFS hotline. The nearshore areas for Washington's North Coast fishery are defined as follows:

(*1*) WDFW Marine Catch Area 4B, which is all waters west of the Sekiu River mouth, as defined by a line extending from 48°17.30' N. lat., 124°23.70' W. long. north to 48°24.10' N. lat., 124°23.70' W. long., to the Bonilla-Tatoosh line, as defined by a line connecting the light on Tatoosh Island, WA, with the light on Bonilla Point on Vancouver Island, British Columbia (at 48°35.73' N. lat., 124°43.00' W. long.) south of the International Boundary between the U.S. and Canada (at 48°29.62' N. lat., 124°43.55' W. long.), and north of the point where that line intersects with the boundary of the U.S. territorial sea.

(*2*) Shoreward of the recreational halibut 30–fm boundary line, a modified line approximating the 30–fm depth contour from the Bonilla-Tatoosh line south to the Queets River. The recreational halibut 30–fm boundary line is defined by the following coordinates in the order listed:

(1) 48°24.79' N. lat., 124°44.07' W. long.;

(2) 48°24.80' N. lat., 124°44.74' W. long.;

(3) 48°23.94' N. lat., 124°44.70' W. long.;

(4) 48°23.51' N. lat., 124°45.01' W. long.;

(5) 48°22.59' N. lat., 124°44.97' W. long.;

(6) 48°21.75' N. lat., 124°45.26' W. long.;

(7) 48°21.23' N. lat., 124°47.78' W. long.;

(8) 48°20.32' N. lat., 124°49.53' W. long.;

(9) 48°16.72' N. lat., 124°51.58' W. long.;

(10) 48°10.00' N. lat., 124°52.58' W. long.;

(11) 48°05.63' N. lat., 124°52.91' W. long.;

(12) 47°56.25' N. lat., 124°52.57' W. long.;

(13) 47°40.28' N. lat., 124°40.07' W. long.; and

(14) 47°1.70' N. lat., 124°37.03' W. long.

(ii) The daily bag limit is one halibut of any size per day per person.

(iii) Recreational fishing for groundfish and halibut is prohibited within the North Coast Recreational Yelloweye Rockfish Conservation Area (YRCA). It is unlawful for recreational fishing vessels to take and retain, possess, or land halibut taken with recreational gear within the North Coast Recreational YRCA. A vessel fishing in the North Coast Recreational YRCA may not be in possession of any halibut. Recreational vessels may transit through the North Coast Recreational YRCA with or without halibut on board. The North Coast Recreational YRCA is a C-shaped area off the northern Washington coast intended to protect yelloweye rockfish. The North Coast Recreational YRCA is defined by straight lines connecting the following specific latitude and longitude coordinates in the order listed:

(1) 48°18.00' N. lat.; 125°18.00' W. long.;

(2) 48°18.00' N. lat.; 124°59.00' W. long.;

(3) 48°11.00' N. lat.; 124°59.00' W. long.;

(4) 48°11.00' N. lat.; 125°11.00' W. long.;

(5) 48°04.00' N. lat.; 125°11.00' W. long.;

(6) 48°04.00' N. lat.; 124°59.00' W. long.;

(7) 48°00.00' N. lat.; 124°59.00' W. long.;

(8) 48°00.00' N. lat.; 125°18.00' W. long.;

and connecting back to 48°18.00' N. lat.; 125°18.00' W. long.

(c) The quota for landings into ports in the area between the Queets River, WA (47°31.70' N. lat.) and Leadbetter Point, WA (46°38.17' N. lat.), is 42,739 pounds (19.38 mt).

(i) This subarea is divided between the all-waters fishery (the Washington South coast primary fishery), and the incidental nearshore fishery in the area from 47°25.00' N. lat. south to 46°58.00' N. lat. and east of 124°30.00' W. long. (the Washington South coast, northern nearshore area). The south coast subarea quota will be allocated as follows: 40,739 lb (18.47 mt), for the primary fishery, and 2,000 lb (0.9 mt), for the nearshore fishery. The primary fishery commences on May 3 and continues 2 days a week (Sunday and Tuesday) until May 24. Beginning on May 24 the primary fishery will be open 1 day per week (Sunday) until the quota for the south coast subarea primary fishery is taken and the season is closed by the Commission, or until September 30, whichever is earlier. The fishing season in the nearshore area commences on May 3 and, and during the primary season, continues 3 days a week (Thursday, Friday and Saturday) in addition to the days open in the primary fishery. Subsequent to closure of the primary fishery the nearshore fishery is open on Thursdays, Fridays, Saturdays and Sundays, until 42,739 lb (19.38 mt)is projected to be taken by the two fisheries combined and the fishery is closed by the Commission or September 30, whichever is earlier. If the fishery is closed prior to September 30, and there is insufficient quota remaining to reopen the northern nearshore area for another fishing day, then any remaining quota may be transferred in-season to another Washington coastal subarea by NMFS via an update to the recreational halibut hotline.

(ii) The daily bag limit is one halibut of any size per day per person.

(iii) Recreational fishing for groundfish and halibut is prohibited within the South Coast Recreational YRCA and Westport Offshore YRCA. It is unlawful for recreational fishing vessels to take and retain, possess, or land halibut taken with recreational gear within the South Coast Recreational YRCA and Westport Offshore YRCA. A vessel fishing in the South Coast Recreational YRCA and/or Westport Offshore YRCA may not be in possession of any halibut. Recreational vessels may transit through the South Coast Recreational YRCA and Westport Offshore YRCA with or without halibut on board. The South Coast Recreational YRCA and Westport Offshore YRCA are areas off the southern Washington coast intended to protect yelloweye rockfish. The South Coast Recreational YRCA is defined by straight lines connecting the following specific latitude and longitude coordinates in the order listed:

(1) 46°58.00' N. lat., 124°48.00' W. long.;

(2) 46°55.00' N. lat., 124°48.00' W. long.;

(3) 46°55.00' N. lat., 124°49.00' W. long.;

(4) 46°58.00' N. lat., 124°49.00' W. long.;

and connecting back to 46°58.00' N. lat., 124°48.00' W. long.

The Westport Offshore YRCA is defined by straight lines connecting the following specific latitude and longitude coordinates in the order listed:

(1) 46°54.30' N. lat., 124°53.40' W. long.;

(2) 46°54.30' N. lat., 124°51.00' W. long.;

(3) 46°53.30' N. lat., 124°51.00' W. long.;

(4) 46°53.30' N. lat., 124°53.40' W. long.;

and connecting back to 46°54.30' N. lat., 124°53.40' W. long.

(d) The quota for landings into ports in the area between Leadbetter Point, WA (46°38.17' N. lat.) and Cape Falcon, OR (45°46.00'N. lat.), is 15,735 lb (7.1 mt).

(i) The fishing season commences on May 1, and continues 3 days a week (Thursday through Saturday) until 11,014 lb (4.9 mt) are estimated to have been taken and the season is closed by the Commission or until July 19, whichever is earlier. The fishery will reopen on August 1 and continue 3 days a week (Friday through Sunday) until 4,720 lb (2.1 mt) have been taken and the season is closed by the Commission, or until September 30, whichever is earlier. Subsequent to this closure, if there is insufficient quota remaining in the Columbia River subarea for another fishing day, then any remaining quota may be transferred in-season to another Washington and/or Oregon subarea by NMFS via an update to the recreational halibut hotline. Any remaining quota would be transferred to each state in proportion to its contribution.

(ii) The daily bag limit is one halibut of any size per day per person.

(iii) Pacific Coast groundfish may not be taken and retained, possessed or landed, except sablefish and Pacific cod when allowed by Pacific Coast groundfish regulations, if halibut are on board the vessel.

(e) The quota for landings into ports in the area off Oregon between Cape Falcon (45°46.00' N. lat.) and Humbug Mountain (42°40.50' N. lat.), is 180,088 lb (81.68 mt).

(i) The fishing seasons are:

(A) The first season (the "inside 40–fm" fishery) commences May 1 and continues 7 days a week through October 31, in the area shoreward of a boundary line approximating the 40–fm (73–m) depth contour, or until the sub-quota for the central Oregon "inside 40–fm" fishery (14,407 lb (6.5 mt)) or any in-season revised subquota is estimated to have been taken and the season is closed by the Commission, whichever is earlier. The boundary line approximating the 40–fm (73–m) depth contour between 45°46.00' N. lat. and 42°40.50' N. lat. is defined by straight lines connecting all of the following points in the order stated:

(1) 45°46.00' N. lat., 124°04.49' W. long.;

(2) 45°44.34' N. lat., 124°05.09' W. long.;

(3) 45°40.64' N. lat., 124°04.90' W. long.;

(4) 45°33.00' N. lat., 124°04.46' W. long.;

(5) 45°32.27' N. lat., 124°04.74' W. long.;

(6) 45°29.26' N. lat., 124°04.22' W. long.;

(7) 45°20.25' N. lat., 124°04.67' W. long.;

(8) 45°19.99' N. lat., 124°04.62' W. long.;

(9) 45°17.50' N. lat., 124°04.91' W. long.;

(10) 45°11.29' N. lat., 124°05.19' W. long.;

(11) 45°05.79' N. lat., 124°05.40' W. long.;

(12) 45°05.07' N. lat., 124°05.93' W. long.;

(13) 45°03.83' N. lat., 124°06.47' W. long.;

(14) 45°01.70' N. lat., 124°06.53' W. long.;

(15) 44°58.75' N. lat., 124°07.14' W. long.;

(16) 44°51.28' N. lat., 124°10.21' W. long.;

(17) 44°49.49' N. lat., 124°10.89' W. long.;

(18) 44°44.96' N. lat., 124°14.39' W. long.;

(19) 44°43.44' N. lat., 124°14.78' W. long.;

(20) 44°42.27' N. lat., 124°13.81' W. long.;

(21) 44°41.68' N. lat., 124°15.38' W. long.;

(22) 44°34.87' N. lat., 124°15.80' W. long.;

(23) 44°33.74' N. lat., 124°14.43' W. long.;

(24) 44°27.66' N. lat., 124°16.99' W. long.;

(25) 44°19.13' N. lat., 124°19.22' W. long.;

(26) 44°15.35' N. lat., 124°17.37' W. long.;

(27) 44°14.38' N. lat., 124°17.78' W. long.;

(28) 44°12.80' N. lat., 124°17.18' W. long.;

(29) 44°09.23' N. lat., 124°15.96' W. long.;

(30) 44°08.38' N. lat., 124°16.80' W. long.;

(31) 44°08.30' N. lat., 124°16.75' W. long.;

(32) 44°01.18' N. lat., 124°15.42' W. long.;

(33) 43°51.60' N. lat., 124°14.68' W. long.;

(34) 43°42.66' N. lat., 124°15.46' W. long.;

(35) 43°40.49' N. lat., 124°15.74' W. long.;

(36) 43°38.77' N. lat., 124°15.64' W. long.;

(37) 43°34.52' N. lat., 124°16.73' W. long.;

(38) 43°28.82' N. lat., 124°19.52' W. long.;

(39) 43°23.91' N. lat., 124°24.28' W. long.;

(40) 43°20.83' N. lat., 124°26.63' W. long.;

(41) 43°17.96' N. lat., 124°28.81' W. long.;

(42) 43°16.75' N. lat., 124°28.42' W. long.;

(43) 43°13.98' N. lat., 124°31.99' W. long.;

(44) 43°13.71' N. lat., 124°33.25' W. long.;

(45) 43°12.26' N. lat., 124°34.16' W. long.;

(46) 43°10.96' N. lat., 124°32.34' W. long.;

(47) 43°05.65' N. lat., 124°31.52' W. long.;

(48) 42°59.66' N. lat., 124°32.58' W. long.;

(49) 42°54.97' N. lat., 124°36.99' W. long.;

(50) 42°53.81' N. lat., 124°38.58' W. long.;

(51) 42°50.00' N. lat., 124°39.68' W. long.;

(52) 42°49.14' N. lat., 124°39.92' W. long.;

(53) 42°46.47' N. lat., 124°38.65' W. long.;

(54) 42°45.60' N. lat., 124°39.04' W. long.;

(55) 42°44.79' N. lat., 124°37.96' W. long.;

(56) 42°45.00' N. lat., 124°36.39' W. long.;

(57) 42°44.14' N. lat., 124°35.16' W. long.;

(58) 42°42.15' N. lat., 124°32.82' W. long.; and

(59) 42°40.50' N. lat., 124°31.98' W. long.;

(B) The second season (spring season), which is for the "all-depth" fishery, is open on May 14, 15, 16, 21, 22, 23, 28, 29, 30, and June 4, 5, 6. The projected catch for this season is 124,261 lb (56.3 mt). If sufficient unharvested catch remains for additional fishing days, the season will re-open. Dependent on the amount of unharvested catch available, the potential season re-opening dates will be June 18, 19, 20 and July 2, 3, 4, 16, 17, 18, 30, 31. If NMFS decides in-season to allow fishing on any of these re-opening dates, notice of the re-opening will be announced on the NMFS hotline (206) 526–6667 or (800) 662–9825. No halibut fishing will be allowed on the re-opening dates unless the date is announced on the NMFS hotline.

(C) If sufficient unharvested catch remains, the third season (summer season), which is for the "all-depth"

fishery, will be open on August 7, 8, 9, 21, 22, 23 and September 4, 5 6, 18, 19, 20 and October 2, 3, 4, 16, 17, 18, 30, 31 , or until the combined spring season and summer season quotas in the area between Cape Falcon and Humbug Mountain, OR, totaling165,681 lb (75.1 mt), are estimated to have been taken and the area is closed by the Commission, or October 31, whichever is earlier. NMFS will announce on the NMFS hotline in July whether the fishery will re-open for the summer season in August. No halibut fishing will be allowed in the summer season fishery unless the dates are announced on the NMFS hotline. Additional fishing days may be opened if a certain amount of quota remains after August 9 and August 23. If after August 9, greater than or equal to 60,000 lb (27.2 mt) remains in the combined all-depth and inside 40–fm (73–m) quota, the fishery may re-open every Friday through Sunday, beginning August 16–18, and ending October 31. If after September 6, greater than or equal to 30,000 lb (13.6 mt) remains in the combined all-depth and inside 40–fm (73–m) quota, and the fishery is not already open every Friday through Sunday, the fishery may re-open every Friday through Sunday, beginning September 18–20, and ending October 31. After September 6, the bag limit may be increased to two fish of any size per person, per day. NMFS will announce on the NMFS hotline whether the summer all-depth fishery will be open on such additional fishing days, what days the fishery will be open and what the bag limit is.

(ii) The daily bag limit is one halibut of any size per day per person, unless otherwise specified. NMFS will announce on the NMFS hotline any bag limit changes.

(iii) During days open to all-depth halibut fishing, no Pacific Coast groundfish may be taken and retained, possessed or landed, except sablefish and Pacific cod, when allowed by Pacific Coast groundfish regulations, if halibut are on board the vessel.

(iv) When the all-depth halibut fishery is closed and halibut fishing is permitted only shoreward of a boundary line approximating the 40–fm (73–m) depth contour, halibut possession and retention by vessels operating seaward of a boundary line approximating the 40–fm (73–m) depth contour is prohibited.

(v) Recreational fishing for groundfish and halibut is prohibited within the Stonewall Bank YRCA. It is unlawful for recreational fishing vessels to take and retain, possess, or land halibut taken with recreational gear within the Stonewall Bank YRCA. A vessel fishing in the Stonewall Bank YRCA may not be in possession of any halibut. Recreational vessels may transit through the Stonewall Bank YRCA with or without halibut on board. The Stonewall Bank YRCA is an area off central Oregon, near Stonewall Bank, intended to protect yelloweye rockfish. The Stonewall Bank YRCA is defined by straight lines connecting the following specific latitude and longitude coordinates in the order listed:

(1) 44°37.46' N. lat.; 124°24.92' W. long.;

(2) 44°37.46' N. lat.; 124°23.63' W. long.;

(3) 44°28.71' N. lat.; 124°21.80' W. long.;

(4) 44°28.71' N. lat.; 124°24.10' W. long.;

(5) 44°31.42' N. lat.; 124°25.47' W. long.;

and connecting back to 44°37.46' N. lat.; 124°24.92' W. long.

(f) The area south of Humbug Mountain, Oregon (42°40.50' N. lat.) and off the California coast is not managed in-season relative to its quota. This area is managed on a season that is projected to result in a catch of 5,872 lb (2.6 mt).

(i) The fishing season will commence on May 1 and continue 7 days a week until October 31.

(ii) The daily bag limit is one halibut of any size per day per person.

27. Sport Fishing for Halibut—Area 2B

(1) In all waters off British Columbia[8]

(a) The sport fishing season is from February 1 to December 31;

(b) The daily bag limit is two halibut of any size per day per person.

(2) In British Columbia, no person shall fillet, mutilate, or otherwise disfigure a halibut in any manner that prevents the determination of minimum size or the number of fish caught, possessed, or landed.

(3) The possession limit for halibut in the waters off the coast of British Columbia is three halibut.

28. Sport Fishing for Halibut—Areas 2C, 3A, 3B, 4A, 4B, 4C, 4D, 4E

(1) In waters in and off Alaska[9]

(a) The sport fishing season is from February 1 to December 31;

(b) The daily bag limit is two halibut of any size per day per person unless a more restrictive bag limit applies in federal regulations at 50CFR 300.65; and

(c) No person may possess more than two daily bag limits.

(2) In Convention waters in and off Alaska, no person shall possess on board a vessel, including charter vessels and pleasure craft used for fishing, halibut that has been filleted, mutilated, or otherwise disfigured in any manner, except that

(a) Each halibut may be cut into no more than 2 ventral pieces, 2 dorsal pieces, and 2 cheek pieces, with skin on all pieces; and

(b) Halibut in excess of the possession limit in paragraph (1)(c) of this section may be possessed on a vessel that does not contain sport fishing gear, fishing rods, hand lines, or gaffs.

29. Previous Regulations Superseded

These regulations shall supersede all previous regulations of the Commission, and these regulations shall be effective each succeeding year until superseded.

[8] DFO could implement more restrictive regulations for the sport fishery, therefore anglers are advised to check the current federal or provincial regulations prior to fishing.

[9] NMFS could implement more restrictive regulations for the sport fishery or components of it, therefore, anglers are advised to check the current federal or state regulations prior to fishing.

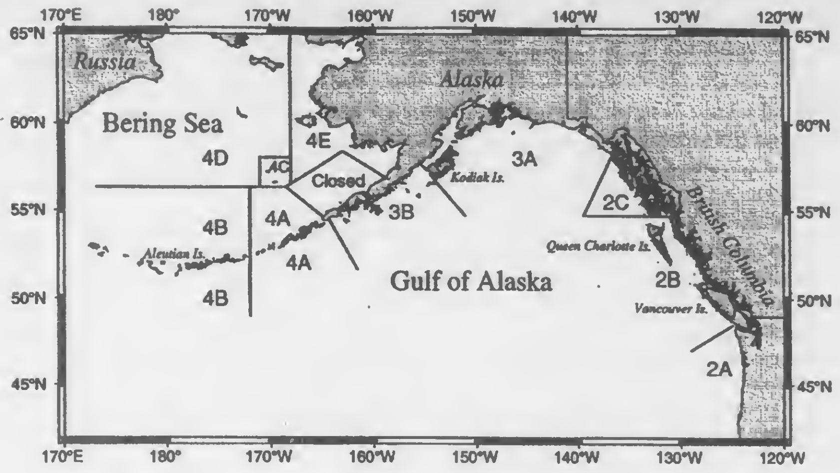

Figure 1. Regulatory areas for the Pacific halibut fishery.

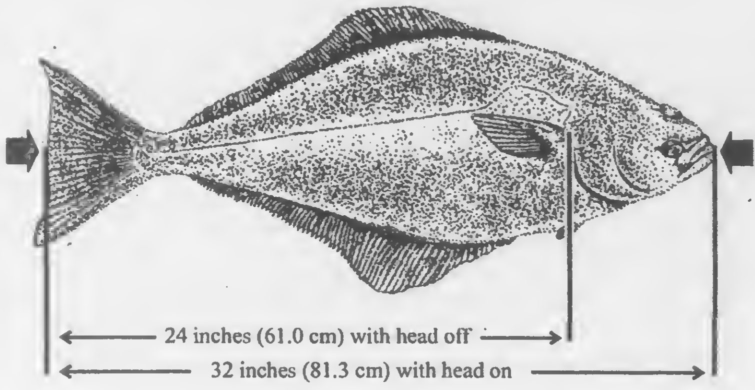

Figure 2. Minimum commercial size.

Classification

IPHC Regulations

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

Pursuant to 5 U.S.C. 553(a)(1), the notice-and-comment and delay-in-effectiveness date requirements of the Administrative Procedure Act (APA), 5 U.S.C. 553, are inapplicable to this notice of the effectiveness and content of the IPHC regulations because this regulation involves a foreign affairs function of the United States. Furthermore, no other law requires prior notice and public comment for this rule. Because prior notice and an opportunity for public comment are not required to be provided for these portions of this rule by 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 not applicable.

2009 Area 2A Catch Sharing Plan, Annual Management Measures and Federal Regulations

As explained above in the preamble, the recreational management measures for Area 2A are promulgated through a different process than the process for the IPHC regulations themselves. NMFS proposed these management measures on January 14, 2009 (74 FR 2032). The different regulatory process requires a different classification section for these recreational management measures.

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

NMFS prepared an Initial Regulatory Flexibility Analysis (IRFA) in association with the proposed rule for this action. A final regulatory flexibility analysis (FRFA) incorporates the IRFA, a summary of the significant issues raised by the public comments in response to the IRFA, if any, and NMFS responses to those comments, and a summary of the analyses completed to support the action. NMFS received no comments on the IRFA or on the economic impacts of the rule. A copy of the FRFA is available from the NMFS Northwest Region (see ADDRESSES) and a summary of the FRFA follows:

This rule is needed to implement the CSP and annual domestic management measures in Area 2A. The main objective for the Pacific halibut fishery in Area 2A is to manage the fisheries to

remain within the TAC for Area 2A, while also allowing each commercial, recreational, and tribal fishery to target halibut in the manner most appropriate for the users' needs within that fishery. This rule is intended to enhance the conservation of Pacific halibut, to protect yellow eye rockfish and other overfished species from incidental catch in the halibut fisheries, and to provide greater angler opportunity where available.

A fish-harvesting business is considered a "small" business by the Small Business Administration (SBA) if it has annual receipts not in excess of $4.0 million. For related fish-processing businesses, a small business is one that employs 500 or fewer persons. For wholesale businesses, a small business is one that employs not more than 100 people. For marinas and charter/party boats, a small business is one with annual receipts not in excess of $6.5 million. All of the businesses that would be affected by this action are considered small businesses under Small Business Administration guidance. This action finalizes the following changes to the CSP, which allocates the catch of Pacific halibut among users in Washington, Oregon and California: (1) Remove the provision that divides the Washington North Coast subarea quota between May and June; (2) Change the Washington North Coast subarea to a 2-day per week fishery, Thursday and Saturday, from a 3-day per week fishery; (3) Change the June re-opening date in the Washington North Coast subarea to the first Thursday in June, from the status-quo of the first Tuesday and Thursday after June 16; (4) Clarify that the nearshore set-aside in the Washington South Coast subarea is 10 percent of the subquota, or 2,000 pounds, whichever is less, rather than a straight 10 percent of the subquota; (5) Set the Washington South Coast subarea to open the first Sunday in May and continue to be open on Sundays and Tuesdays in May, except that beginning the third week in May the fishery would be open on Sunday only until the quota for the primary season is reached. Under status-quo the fishery was open 2 days a week until the quota was achieved; (6) Set the nearshore fishery in the Washington South Coast subarea as a 3-day per week fishery, open Thursday, Friday, and Saturday, in addition to days on which the primary fishery is open, during the primary season. After the primary season, the nearshore fishery is open Thursday through Sunday. Under status-quo the nearshore fishery was open only after the primary fishery was closed, leaving a large amount of unfished quota, in 2008 only 158 pounds out of the 4460 pound quota was caught; (7) Specify that in addition to the South Coast Yelloweye Rockfish Conservation Area (YRCA), recreational fishing for groundfish and halibut will be prohibited in the newly created Westport Offshore YRCA; (8) Change the Columbia River subarea spring fishery to a 3-day per week fishery, open Thursday, Friday and Saturday, until 70 percent of the subarea allocation is taken or until the third Sunday in July, whichever is earlier. Under status-quo this was a 7-day per week fishery; (9) Specify that in the Oregon Central Coast subarea Pacific cod may be retained with a halibut on the vessel during the all-depth openings. Under status-quo Pacific cod retention was not allowed. The change is intended to make retention consistent in the areas north and south of Cape Falcon and Pacific cod are rarely encountered south of Cape Falcon; (10) Add the Nooksack tribe to the definition of "Treaty Indian tribes" in the federal regulations; (11) Add the Nooksack tribal fishing area boundaries to the federal regulations.

In 1995, NMFS implemented the Plan, when the TAC was 520,000 pounds (236 mt). In each of the intervening years between 1995 and the present, minor revisions to the Plan have been made to adjust for the changing needs of the fisheries, even though the TAC reached levels of over 1,000,000 pounds (454 mt), with a peak of 1,480,000 pounds (671 mt) in 2004. Since 2004, there has been very little change in the total allowable catch and sector allocations. In 2007, the Area 2A Halibut TAC set by the IPHC was 1,340,000 pounds (608 mt) and in 2008 it was 1,220,000 pounds (553 mt). However, the 2009 TAC is lower than the TAC levels since 2001. The 2009 Area 2A TAC of 950,000 pounds (430.9 mt) is lower than previous years due to the IPHC's new stock assessment information, revised selectivity assumptions, and revised harvest policy. This is a 22–percent decline from the 2008 TAC.

WDFW held state meetings and crafted alternatives to adjust management of the sport halibut fisheries in their state. These alternatives were then narrowed by the state and brought to the Council at the Council's September and November 2008 meetings. Generally, by the time the alternatives reach the Council, and because they have been through the state public review process, they are narrowed down into the proposed action and status quo. The Council and the States considered the full range of alternatives that could have similarly improved angler enjoyment of and participation in the fisheries while simultaneously protecting halibut and co-occurring groundfish species from overharvest.

In 2008, 570 vessels were issued IPHC licenses to retain halibut. IPHC issues licenses for: the directed commercial fishery in Area 2A, including licenses issued to retain halibut caught incidentally in the primary sablefish fishery (296 licenses in 2008); incidental halibut caught in the salmon troll fishery (135 licenses in 2008); and the charterboat fleet (139 licenses in 2008). No vessel may participate in more than one of these three fisheries per year. Individual recreational anglers and private boats are the only sectors that are not required to have an IPHC license to retain halibut.

Specific data on the economics of halibut charter operations is unavailable. However, in January 2004, the Pacific States Marine Fisheries Commission (PSMFC) completed a report on the overall West Coast charterboat fleet. In surveying charterboat vessels concerning their operations in 2000, the PSMFC estimated that there were about 315 charterboat vessels in operation off Washington and Oregon. In 2000, IPHC licensed 130 vessels to fish in the halibut sport charter fishery. Comparing the total charterboat fleet to the 130 and 139 IPHC licenses in 2000 and 2008, respectively, approximately 41 to 44 percent of the charterboat fleet could participate in the halibut fishery. The PSMFC has developed preliminary estimates of the annual revenues earned by this fleet and they vary by size class of the vessels and home state. Small charterboat vessels range from 15 to 30 ft (4.572 to 9.144 m), and typically carry 5 to 6 passengers. Medium charterboat vessels range from 31 to 49 ft (9.44 to 14.93 m) in length and typically carry 19 to 20 passengers. (Neither state has large vessels of greater than 49 ft (14.93 m) in their fleet.) Average annual revenues from all types of recreational fishing, whale watching, and other activities ranged from $7,000 for small Oregon vessels to $131,000 for medium Washington vessels. Estimates from the RIR show the recreational halibut fishery generated approximately $2.5 million in personal income to West Coast communities, while the non-tribal commercial halibut fishery generated approximately $2.2 million in income impacts. Because these estimated impacts for the entire halibut fishery overall are less than the SBA criteria for individual businesses, these data confirm that charterboat and commercial halibut vessels qualify as

small entities under the Regulatory Flexibility Act (RFA).

These changes are authorized under the Pacific Halibut Act, implementing regulations at 50 CFR 300.60 through 300.65, and the Pacific Council process of annually evaluating the utility and effectiveness of Area 2A Pacific halibut management under the Plan. Given the TAC, the sport management measures implement the Plan by managing the recreational fishery to meet the differing fishery needs of the various areas along the coast according to the Plan's objectives. The measures are very similar to last year's management measures. The changes to the Plan and domestic management measures are minor changes and are intended to help prolong the halibut season, provide increased recreational harvest opportunities, or clarify sport fishery management for fishermen and managers. There are no large entities involved in the halibut fisheries; therefore, none of these changes to the Plan and domestic management measures will have a disproportionate negative effect on small entities versus large entities.

These changes do not include any reporting or recordkeeping requirements. These changes will also not duplicate, overlap or conflict with other laws or regulations. These changes to the Plan and annual domestic Area 2A halibut management measures are not expected to have a "significant" economic impact on a "substantial number" of small entities, as those terms are defined in the RFA.

Section 212 of the Small Business Regulatory Enforcement Fairness Act of 1996 states that, for each rule or group of related rules for which an agency is required to prepare a FRFA, the agency shall publish one or more guides to assist small entities in complying with the rule, and shall designate such publications as "small entity compliance guides." The agency shall explain the actions a small entity is required to take to comply with a rule or group of rules. As part of halibut management in Area 2A, NMFS maintains a toll-free telephone hotline where members of the public may call in to receive current information on seasons and requirements to participate in the halibut fisheries in Area 2A. This hotline also serves as small entity compliance guide. Copies of this final rule are available from the NMFS Northwest Regional Office upon request (See **ADDRESSES**). To hear the small entity compliance guide associated with this final rule, call the NMFS hotline at 800—662—9825.

Pursuant to Executive Order 13175, the Secretary recognizes the sovereign status and co-manager role of Indian tribes over shared Federal and tribal fishery resources. At section 302(b)(5), the Magnuson-Stevens Fishery Conservation and Management Act establishes a seat on the Pacific Council for a representative of an Indian tribe with federally recognized fishing rights from California, Oregon, Washington, or Idaho. The U.S. government formally recognizes that 13 Washington Tribes have treaty rights to fish for Pacific halibut. In general terms, the quantification of those rights is 50 percent of the harvestable surplus of Pacific halibut available in the tribes' usual and accustomed fishing areas (described at 50 CFR 300.64). Each of the treaty tribes has the discretion to administer their fisheries and to establish their own policies to achieve program objectives. Accordingly, tribal allocations and regulations, including the changes to the CSP, have been developed in consultation with the affected tribe(s) and, insofar as possible, with tribal consensus.

List of Subjects in 50 CFR Part 300

Fishing, Fisheries, Indian fisheries, Reporting and recordkeeping requirements, Treaties.

Dated: March 16, 2009

Samuel D. Rauch III,

Deputy Assistant Administrator For Regulatory Programs, National Marine Fisheries Service.

■ For the reasons set out in the preamble, 50 CFR part 300 is amended as follows:

PART 300—INTERNATIONAL FISHERIES REGULATIONS

■ 1. The authority citation for part 300 continues to read as follows:

Authority: 16 U.S.C. 773 *et seq.*

■ 2. In § 300.61, the definition of "Treaty Indian tribes" is revised to read as follows:

§ 300.61 Definitions.

* * * * *

Treaty Indian tribes means the Hoh, Jamestown S'Klallam, Lower Elwha S'Klallam, Lummi, Makah, Port Gamble S'Klallam, Quileute, Quinault, Skokomish, Suquamish, Swinomish, Tulalip, and Nooksack tribes.

■ 3. In § 300.64, in the table within paragraph (i), an entry for "Nooksack" is added in alphabetical order to read as follows:

§ 300.64 Fishing by U.S. treaty Indian tribes.

* * * * *

Tribe	Boundaries
* * * * *	
Nooksack	Those locations in the Strait of Juan de Fuca and Puget Sound as determined in or in accordance with Final Decision No. 1 and subsequent orders in United States v. Washington, 384 F. Supp. 312 (W.D. Wash. 1974), and particularly at 459 F. Supp. 1049, to be places at which the Nooksack Tribe may fish under rights secured by treaties with the United States.
* * * * *	

[FR Doc. E9–6025 Filed 3–18–09; 8:45 am]

BILLING CODE 3510–22–S

Proposed Rules

Federal Register
Vol. 74, No. 52
Thursday, March 19, 2009

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

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 193

[Docket No. FAA–2009–0245]

Voluntary Disclosure Reporting Program

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of Proposed Order Designating Information as Protected from Disclosure.

SUMMARY: The FAA is proposing that information provided to the Agency to populate its Wildlife Hazard Database be designated by an FAA order as protected from public disclosure in accordance with the provisions of 14 CFR part 193. Under 49 U.S.C. 40123, the FAA is required to protect the information from disclosure to the public, including disclosure under the Freedom of Information Act (5 U.S.C. 552) or other laws, following the issuance of such order. The designation is intended to encourage continued voluntary reporting of wildlife hazard data.

DATES: Comments must be received on or before April 20, 2009.

ADDRESSES: You may send comments identified by docket number FAA–2009–0245 using any of the following methods:

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

For more information on the rulemaking process, see the **SUPPLEMENTARY INFORMATION** section of this document.

Privacy: We will post all comments we receive, without change, to *http://dms.dot.gov,* including any personal information you provide. For more information, see the Privacy Act discussion in the **SUPPLEMENTARY INFORMATION** section of this document.

Docket: To read background documents or comments received, go to *http://dms.dot.gov* at any time or to 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: John Weller, Airport Safety and Operations Division, AAS–300, Federal Aviation Administration, 800 Independence Ave., SW., Washington, DC 20591, telephone (202) 267–3778.

SUPPLEMENTARY INFORMATION:

Comments Invited

The FAA invites interested persons to participate in this rulemaking by submitting written comments, data, or views. We also invite comments about the economic, environmental, energy, or federalism impacts that might result from adopting the proposals in this document. The most helpful comments reference a specific portion of the proposal, explain the reason for any recommended change, and include supporting data. We ask that you send us two copies of written comments. We will file in the docket all comments we receive, as well as a report summarizing each substantive public contact with FAA personnel about this proposed rulemaking. The docket is available for public inspection before and after the comment closing date. If you wish to review the docket in person, go to the address in the **ADDRESSES** section of this preamble between 9 a.m. and 5 p.m., Monday though Friday, except Federal holidays. You may also review the docket using the Internet at the Web address in the **ADDRESSES** section.

Privacy Act: Using the search function of our docket Web site, anyone can find and read the comments received into any of our dockets, including the name of the individual sending the comment (or signing the comment on behalf of an association, business, labor union, etc.). You may review DOT's complete Privacy Act Statement in the **Federal Register** published on April 11, 2000 (65 FR 19477–78) or you may visit *http://dms.dot.gov.*

Before acting on this proposal, we will consider all comments we receive on or before the closing date for comments. We will consider comments filed late if it is possible to do so without incurring expense or delay. We may change this proposal in light of the comments we receive.

If you want the FAA to acknowledge receipt of your comments on this proposal, include with your comments a preaddressed stamped postcard on which the docket number appears. We will stamp the date on the postcard and mail it to you.

Availability of This Proposed Designation

You can get an electronic copy using the Internet by:

1. Searching the Department of Transportation's electronic Docket Management System (DMS) Web page (*http://dms.dot.gov/search*);
2. Visiting the FAA's Regulations and Polices Web page at *http://www.faa.gov/regulations—policies/;* or
3. Accessing the Government Printing Office's Web page at *http://www.gpoaccess.gov/fr/index.html.*

Background

Under 49 U.S.C. 40123, certain voluntarily provided safety and security information is protected from disclosure to encourage persons to provide the information to the FAA. The FAA must issue an order to make certain findings before the information is protected from disclosure. The FAA's rules implementing that section are in 14 CFR part 193. If the Administrator issues an order designating information as protected under 49 U.S.C. 40123, that information will not be disclosed under the Freedom of Information Act (5 U.S.C. 552) or other laws except as provided in 49 U.S.C. 40123 and 14 CFR part 193. This proposed order is issued under 14 CFR 193.111, which sets out the notice procedure for designating information as protected.

The FAA designates information as protected under this part when the FAA finds that:

1. The information is provided voluntarily;
2. The information is safety or security related;

3. The disclosure of the information would inhibit the voluntary provision of that type of information;

4. The receipt of that type of information aids in fulfilling the FAA's safety and security responsibilities; and

5. Withholding such information from disclosure, under the circumstances provided in this part, will be consistent with the FAA's safety and security responsibilities.

Description of the Proposed Information Sharing Program

In an effort to monitor and analyze the hazards presented by wildlife to aircraft operations, the FAA actively solicits voluntary wildlife strike reports from a variety of sources such as pilots, air traffic controllers, air carrier personnel, and airport operations personnel. With this data, the FAA is able to analyze trends in order to develop better wildlife management strategies for individual airports and all civil/military aviation communities. These trends include seasonal strike fluctuations, diurnal/nocturnal strike comparisons, species identification, frequency, geographical distribution, effect on flight and damage incurred. Monitoring strikes also provides useful data regarding their frequency of occurrence during a specific phase of flight, altitude, and distance from airport. The information may also be used by the FAA to develop aircraft certification standards that take into account the unique hazard posed by wildlife threats.

The FAA has been collecting voluntarily submitted data from the public since 1990. During this time, the number of strikes annually reported more than quadrupled from 1,759 in 1990 to a record 7,666 in 2007. The increase in reports from 1990 to 2007 was likely the result of several factors:

1. An increased awareness of the wildlife strike issue, an increase in aircraft operations;

2. An increase in populations of hazardous wildlife species; and

3. An increase in the number of strikes.

Overall, there are over 100,000 wildlife strikes that have been submitted from civil and military aircraft strikes. As a result of these collection efforts, the FAA has a wildlife strike database that is unparalleled.

When the FAA began collecting this data, it assured the entities submitting the data that the submissions would not be made available to the public. At that time, the FAA did not have the authority to provide part 193 protection. However, the FAA has relied upon other voluntary disclosure programs to obtain needed safety data prior to the enactment of 49 U.S.C. 40123 and these other programs are presently covered by part 193. The FAA believes that it is appropriate to extend this formal protection to the bird strike database as well. The Agency is concerned that there is a serious potential that information related to bird strikes will not be submitted because of fear that the disclosure of raw data could unfairly cast unfounded aspersions on the submitter.

The collection of this safety information has been successful not only in part due to an increase in awareness and improved strike-reporting technology but due to the fact that the reporting of strikes is nonpunitive to airports and airlines. There are almost 100 separate data fields in the strike database that allows the FAA to understand wildlife strike hazards to aviation better. Cooperative analyses between the FAA, the United States Department of Agriculture (USDA) and USDA's Animal and Plant Health Inspection Service Branch summarized this data into an annual report made available to the public. Such analyses are critical to determining:

1. The economic cost of wildlife strikes;

2. The magnitude of safety issues; and most important; and

3. The nature of the problems (e.g., wildlife species involved, types of damage, height and phase of flight during which strikes occur, and seasonal patterns).

The information obtained from these analyses provides the foundation for refinements in the development, implementation, and justification of integrated research and management efforts to reduce wildlife strikes. The FAA redacts certain information from the data that is available to the public based on relevance or its sensitivity.

For example, while the FAA collects wildlife strike data for specific airports, which it uses in its regulatory and oversight activities for that individual airport, the FAA does not release data regarding the submitter of the report. Here again, the FAA seeks to encourage the open provision of data for use in its regulatory activities. Drawing comparisons between airports is difficult because of the unevenness of reporting. Other factors that must be considered between airports and strike reporting are their different geographies, operations, structures, onsite/offsite habitats, and personnel to name a few. The complexity of the information warrants care with its interpretation; releasing this information without benefit of proper analysis would not only produce an inaccurate perception of the individual airports and airlines but also inaccurate and inappropriate comparisons between airports/airlines. Requests for data within the FAA National Wildlife Strike Database have typically been for specific data fields, individual airports or detailed portions of the database. Responses from the FAA have addressed each request individually and adequately. Airports voluntarily report bird strike data to understand their wildlife hazards better and to streamline allocating wildlife mitigation funding. Inaccurate portrayals of airports and airlines could have a negative impact on their participation in reporting bird strikes. It is the willingness of airports to participate, to better understand, and to better address their unique set of wildlife hazards that highlights why voluntary reporting works.

In short, the FAA sees a direct correlation between the protection and provision of voluntary safety data. There is no question that the data collected over the last 19 years has improved safety throughout the world. It is imperative we do nothing to stifle this flow of information. Protecting this data under 49 U.S.C. 40123 and 14 CFR part 193 will ensure this continued input.

Proposed Designation

Accordingly, the FAA proposes to designate the data in its Wildlife Strike Database to be protected under 49 U.S.C. 40123 and 14 CFR part 193.

Issued in Washington, DC, on March 12, 2009.

Catherine M. Lang,

Acting Associate Administrator for Airports.

[FR Doc. E9–5868 Filed 3–18–09; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 31

[REG–158747–06]

RIN 1545–BG45

Withholding Under Internal Revenue Code Section 3402(t); Hearing

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice of public hearing on proposed rulemaking.

SUMMARY: This document provides notice of public hearing on a notice of proposed rulemaking relating to withholding under section 3402(t) of the Internal Revenue Code. The proposed

regulations reflect changes in the law made by the Tax Increase Prevention and Reconciliation Act of 2005 that require Federal, State, and local government entities to withhold income tax when making payments to persons providing property or services. These proposed regulations provide guidance to assist the government entities in complying with section 3402(t). The regulations also provide certain guidance to persons receiving payments for property or services from government entities.

DATES: The public hearing is being held on April 16, 2009, at 10 a.m. The IRS must receive outlines of the topics to be discussed at the hearing by March 25, 2009.

ADDRESSES: The public hearing is being held in the auditorium, Internal Revenue Building, 1111 Constitution Avenue, NW., Washington, DC. Send submissions to: CC: PA: LPD: PR (REG–158747–06), room 5203, Internal Revenue Service, P.O. Box 7604, Ben Franklin Station, Washington, DC 20044. Submissions may be hand-delivered Monday through Friday between the hours of 8 a.m. and 4 p.m. to CC: PA: LPD: PR (REG–158747–06), Courier's Desk, Internal Revenue Service, 1111 Constitution Avenue, NW., Washington, DC. Alternatively, taxpayers may submit electronic outlines of oral comments via the Federal eRulemaking Portal at *http://www.regulations.gov*.

FOR FURTHER INFORMATION CONTACT: Concerning these proposed regulations, Jean Casey, (202) 622–6040; concerning submissions of comments, the hearing, and/or to be placed on the building access list to attend the hearing, Richard A. Hurst at *Richard.A.Hurst@irscounsel.treas.gov* or (202) 622–7180 (not toll-free numbers).

SUPPLEMENTARY INFORMATION: The subject of the public hearing is the notice of proposed rulemaking (REG–158747–06) that was published in the **Federal Register** on Friday, December 5, 2008 (73 FR 74082).

Persons, who wish to present oral comments at the hearing that submitted written comments, must submit an outline of the topics to be discussed and the amount of time to be devoted to each topic (signed original and eight (8) copies) by March 25, 2009.

A period of 10 minutes is allotted to each person for presenting oral comments. After the deadline for receiving outlines has passed, the IRS will prepare an agenda containing the schedule of speakers. Copies of the agenda will be made available, free of charge, at the hearing or in the Freedom of Information Reading Room (FOIA RR) (Room 1621) which is located at the 11th and Pennsylvania Avenue, NW entrance, 1111 Constitution Avenue, NW., Washington, DC.

Because of access restrictions, the IRS will not admit visitors beyond the immediate entrance area more than 30 minutes before the hearing starts. For information about having your name placed on the building access list to attend the hearing, see the **FOR FURTHER INFORMATION CONTACT** section of this document.

LaNita Van Dyke,

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

[FR Doc. E9–5951 Filed 3–18–09; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF LABOR

Office of Labor-Management Standards

29 CFR Parts 403 and 408

RIN 1215–AB62

Labor Organization Annual Financial Reports

AGENCY: Office of Labor-Management Standards, Employment Standards Administration, Labor.

ACTION: Notice of proposed extension of effective date and applicability date.

SUMMARY: This notice seeks public comment on a proposal to delay for 180 days the April 21, 2009 effective date of the rule Labor Organization Annual Financial Reports, published in the **Federal Register** on January 21, 2009, and extended by a document published February 20, 2009; and delay the applicability date of the rule, now set for July 1, 2009, until January 1, 2010. The rule revised the Labor Organization Annual Report Form LM–2 and established a procedure whereby the Department of Labor may revoke, when warranted, the authorization to file the simplified Labor Organization Annual Report Form LM–3.

DATES: Following notice and comment, the Department delayed the subject rule, Labor Organization Annual Financial Reports, published in the **Federal Register** on January 21, 2009, and scheduled to take effect on February 20, 2009, from taking effect until April 21, 2009 (74 FR 7814). This notice proposes to further delay the effective date until October 19, 2009. Additionally, the rule published on January 21, 2009, applied to labor organizations with fiscal years beginning on or after July 1, 2009. This notice also proposes to delay the applicability date of the rule to labor organizations reporting on fiscal years beginning on or after January 1, 2010. The comment period for the proposed delay of the effective date and applicability date will close on April 7, 2009.

ADDRESSES: You may submit comments, identified by RIN 1215–AB62, only by the following methods:

Internet—Federal eRulemaking Portal. Electronic comments may be submitted through *http://www.regulations.gov*. To locate the proposed rule, use key words such as "Labor-Management Standards" or "Labor Organization Annual Financial Reports" to search documents accepting comments. Follow the instructions for submitting comments. Please be advised that comments received will be posted without change to *http://www.regulations.gov*, including any personal information provided.

Delivery: Comments may also be hand-delivered or mailed to: Denise M. Boucher, Director of the Office of Policy, Reports and Disclosure, Office of Labor-Management Standards, U.S. Department of Labor, 200 Constitution Avenue, NW., Room N–5609, Washington, DC 20210. Because of security precautions the Department continues to experience delays in U.S. mail delivery. You should take this into consideration when preparing to meet the deadline for submitting comments.

The Office of Labor-Management Standards (OLMS) recommends that you confirm receipt of your delivered comments by contacting (202) 693–0123 (this is not a toll-free number). Individuals with hearing impairments may call (800) 877–8339 (TTY/TDD). Only those comments submitted through *http://www.regulations.gov*, hand-delivered, or mailed will be accepted. Comments will be available for public inspection at *http://www.regulations.gov* and during normal business hours at the above address.

FOR FURTHER INFORMATION CONTACT: Denise M. Boucher, Director, Office of Policy, Reports and Disclosure, Office of Labor-Management Standards, Employment Standards Administration, U.S. Department of Labor, 200 Constitution Avenue, NW., Room N–5609, Washington, DC 20210, (202) 693–1185 (this is not a toll-free number), (800) 877–8339 (TTY/TDD).

SUPPLEMENTARY INFORMATION: The Department published a notice (74 FR 5899) on February 3, 2009, seeking public comment on whether or not it should delay for 60 days the effective

date of the January 21 rule in order to provide the opportunity for further review and consideration of the questions of law and policy raised by the rule, including the merits of the rule and whether or not the Department should rescind or retain it. The period for public comment on the proposed extension closed on February 13, 2009, and the comment period on the merits of the rule closed on March 5, 2009. The Department received about 100 comments.

On February 20, 2009, the Department published a final rule extending the effective date of the January 21 rule until April 21, 2009, to provide an opportunity for that review (74 FR 7814). The Department is currently reviewing questions of law and policy raised by the rule, including consideration of the comments received from the public on these questions. This process will inform the Department in its determination whether or not to propose rescission of the January 21 rule.

This proposal to extend the effective date of the rule until October 19, 2009, and to extend the applicability date until January 1, 2010, is based upon both the need to review the comments received as well as the considerations underlying the Department's initial proposal to extend the effective date of the rule. As there stated:

> Without this proposal to delay the effective date, affected labor organizations likely will undertake much effort and expense in changing their recordkeeping systems to meet the changes required by the rule. If a decision is made to propose changes and such changes are ultimately effectuated, these expenses will have been incurred unnecessarily. The tasks undertaken will have to be repeated, and costs duplicated, to comply with any further revisions to the rule. Additionally, the Department itself will incur significant start up costs in revising its electronic software to make the changes required by the rule; costs that will have to be duplicated if changes are later proposed and effectuated in a final rule. Furthermore, unless the Department now proposes to delay the effective date of the rule, the Department will have to begin answering questions and providing compliance assistance about how the final rule is to be implemented, guidance that will only confuse labor organizations if new guidance about a revised rule has to be provided in the near future. For the foregoing reasons, the Department has determined to propose delay of the effective date of the final rule and, by doing so, alert affected labor organizations that it may be advisable for them to delay preparations and financial commitments associated with the changes required by the final rule until a decision is made regarding the effective date of the final rule. The Department proposes the delay of the effective date to provide an opportunity for further review and consideration of the questions of law and policy raised by it.

74 FR at 5900.

In addition, the Department is reviewing the comments it received on the merits of the rule and the question of whether to retain or rescind it. The Department received comments from individuals, labor unions, and public policy groups. Individuals and public policy groups opposed the rescission of the rule, explaining their views that the rule enhanced the transparency and accountability of labor unions. Two public policy groups and several individuals urged the Department to allow an extended comment period of not less than 120 days for the public to submit its view on the merits of the rule. Labor unions urged the Department to rescind the rule, many claiming that the Department underestimated the costs associated with the rule. Several labor organizations identified what they viewed as two fundamental flaws with the January 21, 2009 rule: (1) The rule had been promulgated without any meaningful review of the utility of the existing Form LM–2; and (2) the Department's burden estimates for the 2009 rule were based on unverified estimates rather than actual costs incurred. A federation of labor organizations stated that the Department has failed to demonstrate that the revised form will aid in the detection or prevention of corruption, noting its view that internal controls established by unions are the more effective approach. It also asserted that the Department's annual reports fail to demonstrate that enhanced reporting has assisted the Department's compliance efforts. Some labor unions expressed the view that the 2009 rule is based on a misapprehension about how unions receive dues payments and how organizing is conducted. Commenters expressed divergent views on the procedure for revoking the simplified reporting obligation for LM–3 filers whose reports were delinquent or deficient. While some saw the procedure as a necessary tool to fix an obvious problem, other commenters viewed the approach as fundamentally misguided and punitive. In the view of the latter commenters, improved compliance is better achieved through cooperative efforts by the Department and national or international unions working with locals that find it difficult to file timely reports.

The Department will not be able to complete its review of the January 21 rule, including consideration of the public comments on the merits of the rule, before April 21, 2009, the current effective date of the rule. The Department estimates that a further extension of 180 days will enable the Department to complete such review, and if a determination is reached to propose rescission, to complete the notice and comment process required for rescinding a rule. Without a further extension, those unions with fiscal years beginning on or after July 1, 2009, would have to begin immediate preparations to comply with the rule, preparations that entail significant burden and expense, but which may prove unnecessary. Furthermore, the Department itself would have to expend substantial financial and compliance resources to prepare for the rule, resources that could be directed to other purposes if the rule is subsequently rescinded. These front-end burdens most directly and substantially fall on labor unions that already file the Form LM–2. If a decision is made to propose rescinding the regulations, and such proposal ultimately is effectuated, these expenses will have been incurred unnecessarily. Moreover, the urgency of dealing with these front-end burdens is greater now than at the time of the February 3, 2009, proposal, as the applicability date of July 1, 2009, is nearer.

For the foregoing reasons, the Department has determined to propose delay of the effective date and applicability date of the January 21, 2009, rule and, by doing so, to alert affected labor organizations that it may be advisable for them to delay any preparations and financial commitments associated with the changes required by the rule until a decision is made regarding the proposed extension of the effective and applicability dates of the final rule.

Signed in Washington, DC, this 11th day of March, 2009.

Andrew D. Auerbach,

Deputy Director, Office of Labor-Management Standards.

Shelby Hallmark,

Acting Assistant Secretary for Employment Standards.

[FR Doc. E9–5690 Filed 3–18–09; 8:45 am]

BILLING CODE 4510–CP–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R03–OAR–2007–0287; FRL–8777–5]

Approval and Promulgation of Air Quality Implementation Plans; Virginia; Northern Virginia Reasonably Available Control Technology Under the 8-Hour Ozone National Ambient Air Quality Standard

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: EPA is proposing to approve a State Implementation Plan (SIP) revision submitted by the Commonwealth of Virginia. This SIP revision consists of a demonstration that the Virginia portion (Cities of Alexandria, Fairfax, Falls Church, Manassas, and Manassas Park; Counties of Arlington, Fairfax, Loudoun, and Prince William) of the Washington, DC-MD-VA area meets the requirements of reasonably available control technology (RACT) for oxides of nitrogen (NO_X) and volatile organic compounds (VOCs) set forth by the Clean Air Act (CAA). This SIP revision demonstrates that all requirements for RACT are met either through: Certification that previously adopted RACT controls in Virginia's SIP that were approved by EPA under the 1-hour ozone NAAQS are based on the currently available technically and economically feasible controls, and that they continue to represent RACT for the 8-hour implementation purposes; a negative declaration demonstrating that no facilities exist in the Virginia portion of the Washington, DC-MD-VA area for certain control technology guideline (CTG) categories; and a new RACT determination for a specific source. This action is being taken under the CAA.

DATES: Written comments must be received on or before April 20, 2009.

ADDRESSES: Submit your comments, identified by Docket ID Number EPA–R03–OAR–2007–0287 by one of the following methods:

A. *www.regulations.gov.* Follow the on-line instructions for submitting comments.

B. *E-mail: fernandez.cristina@epa.gov.*

C. *Mail:* EPA–R03–OAR–2007–0287, Cristina Fernandez, Chief, Air Quality Planning Branch, Mailcode 3AP21, U.S. Environmental Protection Agency, Region III, 1650 Arch Street, Philadelphia, Pennsylvania 19103.

D. *Hand Delivery:* At the previously listed EPA Region III address. Such deliveries are only accepted during the Docket's normal hours of operation, and special arrangements should be made for deliveries of boxed information.

Instructions: Direct your comments to Docket ID No. EPA–R03–OAR–2007–0287. EPA's policy is that all comments received will be included in the public docket without change, and may be made available online at *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 *www.regulations.gov* or e-mail. The *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 *www.regulations.gov,* your e-mail address will be automatically captured and included as part of the comment that is placed in the public docket and made available on the Internet. If you submit an electronic comment, EPA recommends that you include your name and other contact information in the body of your comment and with any disk or CD–ROM you submit. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses.

Docket: All documents in the electronic docket are listed in the *www.regulations.gov* index. Although listed in the index, some information is not publicly available, i.e., CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available either electronically in *www.regulations.gov* or in hard copy during normal business hours at the Air Protection Division, U.S. Environmental Protection Agency, Region III, 1650 Arch Street, Philadelphia, Pennsylvania 19103. Copies of the State submittal are available at the Virginia Department of Environmental Quality, 629 East Main Street, Richmond, Virginia 23219.

FOR FURTHER INFORMATION CONTACT: Gregory Becoat, (215) 814–2036, or by e-mail at *becoat.gregory@epa.gov.*

SUPPLEMENTARY INFORMATION:

I. Background

Ozone is formed in the atmosphere by photochemical reactions between VOC, NO_X, and carbon monoxide (CO) in the presence of sunlight. In order to reduce ozone concentrations in the ambient air, the CAA requires all nonattainment areas to apply controls on VOC/NO_X emission sources to achieve emission reductions.

Since the 1970s, EPA has consistently interpreted RACT to mean the lowest emission limit that a particular source is capable of meeting by the application of the control technology that is reasonably available considering technological and economic feasibility. *See, e.g.,* 72 FR 20586 at 20610 (April 25, 2007). Section 182 of the CAA sets forth two separate RACT requirements for ozone nonattainment areas. The first requirement, contained in section 182(a)(2)(A) of the CAA, and referred to as RACT fix-up, requires the correction of RACT rules for which EPA identified deficiencies before the CAA was amended in 1990. On March 31, 1994 (59 FR 15117), EPA published a final rulemaking notice approving the Commonwealth of Virginia's SIP revision in order to correct the Commonwealth's VOC RACT regulations and establish and require the implementation of revised SIP regulations to control VOCs.

The second requirement, set forth in section 182(b)(2) of the CAA, applies to moderate (or worse) ozone nonattainment areas and attainment areas in the ozone transport region (OTR) established pursuant to section 184 of the CAA. These areas are required to implement RACT controls on all major VOC and NO_X emission sources and on all sources and source categories covered by a control technology guideline (CTG) issued by EPA. On March 12, 1997 (62 FR 11332), EPA published a final rulemaking notice approving the Commonwealth of Virginia's SIP revision as meeting the CTG RACT provisions of the CAA. Further details of Virginia's RACT requirements can be found in a Technical Support Document (TSD) prepared for this rulemaking.

The counties of Fairfax, Loudoun, Prince William, and Arlington, as well as the cities of Fairfax, Alexandria, Manassas, Manassas Park, and Falls Church, Virginia (collectively referred to in this notice as Northern Virginia), along with Stafford County, Virginia, Washington, DC, and portions of

southern Maryland, are part of the OTR. The OTR is established by section 184 of the CAA. Under the 1-hour ozone NAAQS, these jurisdictions, including Stafford County, Virginia, Washington, DC, and portions of southern Maryland were originally classified as part of the Metropolitan Washington serious 1-hour ozone nonattainment area (Washington 1-hour Area) (56 FR 56694 at 56844, November 6, 1991).

The Washington 1-hour Area had certain RACT requirements under section 182 for VOC and NO_X. Section 182(b)(2) of the CAA required the Commonwealth of Virginia to implement RACT on all sources and source categories covered by a CTG issued by EPA. Point sources with the potential to emit 50 tons per year or more of VOCs or 100 tons per year or more of NO_X that were not covered by a CTG were also required to implement RACT. As a result of failure to meet the attainment date of November 15, 1999, the Metropolitan Washington area was reclassified from serious to severe nonattainment area for the 1-hour standard (68 FR 3410, January 24, 2003). As a result of the reclassification, the Commonwealth of Virginia was required to perform RACT evaluations on point sources with the potential to emit 25 tons per year for either VOC (62 FR 11334, March 12, 1997) or NO_X (69 FR 48150, August 9, 2004). *See also* 66 FR 8, January 2, 2001; 69 FR 54578, September 9, 2004; 69 FR 59812, October 6, 2004; 69 FR 54600, September 9, 2004.

The Washington 1-hour Area is also part of the OTR. The OTR is established by section 184 of the CAA. Areas in the OTR are subject to OTR-specific RACT requirements. Section 184(b)(1)(B) of the CAA requires the implementation of RACT with respect to all sources of VOC covered by a CTG. Additionally, section 184(b)(2) of the CAA requires the implementation of major stationary source requirements as if the area were a moderate nonattainment area on any stationary source with a potential to emit at least 50 tons per year of VOC or 100 tons per year of NO_X. However, the Washington 1-hour Area satisfies the section 184 RACT requirements because section 182 requirements are more stringent as a result of reclassification to a severe nonattainment area for the 1-hour standard; therefore, no additional measures for the implementation of RACT are applicable (68 FR at 3425, January 24, 2003).

Under the 8-hour ozone NAAQS, the Washington 1-hr Area, with the exception of Stafford County, was designated and classified as a moderate nonattainment area, and is therefore subject to the CAA RACT requirements in section 182(b) (69 FR 23858, April 30, 2004). Virginia is required to submit to EPA a SIP revision that demonstrates how the Commonwealth meets the RACT requirements under the 8-hour ozone standard in Northern Virginia.

EPA requires under the 8-hour ozone NAAQS that states meet the CAA RACT requirements, either through a certification that previously adopted RACT controls in their SIP approved by EPA under the 1-hour ozone NAAQS represent adequate RACT control levels for 8-hour attainment purposes, or through the establishment of new or more stringent requirements that represent RACT control levels. *See Final Rule To Implement the 8-Hour Ozone National Ambient Air Quality Standard—Phase 2; Final Rule To Implement Certain Aspects of the 1990 Amendments Relating to New Source Review and Prevention of Significant Deterioration as They Apply in Carbon Monoxide, Particulate Matter and Ozone NAAQS; Final Rule for Reformulated Gasoline* (Phase 2 Rule) 70 FR 71612, 71655, November 29, 2005. Sections 172(c)(1) and 182(b)(2) of the CAA require that all SIPs satisfy the NO_X and VOCs RACT requirements that apply in areas that have not attained the NAAQS for ozone. *See* 42 U.S.C. 7502(c)(1), 42 U.S.C. 7511a(b)(2), and 42 U.S.C. 7511a(f). EPA has determined that States that have RACT provisions approved in their SIPs for 1-hour ozone nonattainment areas have several options for fulfilling the RACT requirements for the 8-hour ozone NAAQS. If a State meets certain conditions, it may certify that previously adopted 1-hour ozone RACT controls in the SIP continue to represent RACT control levels for purposes of fulfilling 8-hour ozone RACT requirements. Alternatively, a State may establish new or more stringent requirements that represent RACT control levels, either in lieu of or in conjunction with a certification.

As set forth in the preamble to the Phase 2 Rule, a certification must be accompanied by appropriate supporting information such as consideration of information received during the public comment period and consideration of new data (70 FR at 71655). This information may supplement existing RACT guidance documents that were developed for the 1-hour standard, such that the State's SIP accurately reflects RACT for the 8-hour ozone standard based on the current availability of technically and economically feasible controls. Establishment of new RACT requirements will occur when states have new stationary sources not covered by existing RACT regulations, or when new data or technical information indicates that a previously adopted RACT measure does not represent a newly available RACT control level. Another 8-hour ozone NAAQS requirement for RACT is to submit a negative declaration if there are no CTG sources or major sources of VOC and NO_X emissions in lieu of or in addition to a certification.

II. Summary of SIP Revision

On October 23, 2006, the Virginia Department of Environmental Quality (VADEQ) submitted a revision to its SIP that addresses the requirements of RACT under the 8-hour ozone NAAQS set forth by the CAA. Virginia's SIP revision is consistent with the process in the Phase 2 Rule preamble, and satisfies the requirements of RACT set forth by the CAA under the 8-hour ozone NAAQS. Virginia's SIP revision satisfies the 8-hour RACT requirements through (1) certification that previously adopted RACT controls in Virginia's SIP that were approved by EPA under the 1-hour ozone NAAQS are based on the currently available technically and economically feasible controls, and continues to represent RACT for the 8-hour implementation purposes; (2) a negative declaration demonstrating that no facilities exist in the Virginia portion of the Washington, DC-MD-VA area for the applicable CTG categories; and (3) a new RACT determination for a single source.

A. VOC CTG RACT Controls

Virginia's Regulations codified at 9 VAC 5 Chapter 40, contain the Commonwealth's CTG VOC RACT controls that were implemented and approved in the Virginia SIP under the 1-hour ozone NAAQS. Table 1 lists Virginia's VOC RACT controls, which Virginia is certifying as meeting the 8-hour RACT requirements.

TABLE 1—VIRGINIA'S CTG VOC RACT CONTROLS

Regulation (9 VAC 5)	Existing Stationary Sources—40 CFR 52.2420 (c)			
	Title of regulation	State effective date	Federal Register date for SIP approval	Citation
5–40–460	Emission Standards for Synthesized Pharmaceutical Products Manufacturing Operations.	02/1/02	03/3/06	71 FR 10838.
5–40–610	Emission Standards for Rubber Tire Manufacturing Operations	04/17/95	04/21/00	65 FR 21315.
5–40–1400	Emission Standards for Petroleum Refinery Operations	04/17/95	04/21/00	65 FR 21315.
5–40–3290	Emission Standards for Solvent Metal Cleaning Operations Using Non-Halogenated Solvents.	04/1/97	11/3/99	64 FR 59635.
5–40–3590	Emission Standards for Large Appliance Coating Application Systems	04/17/95	04/21/00	65 FR 21315.
5–40–3740	Emission Standards for Magnet Wire Coating Application Systems	04/17/95	04/21/00	65 FR 21315.
5–40–3890	Emission Standards for Automobile and Light Duty Truck Coating Application Systems.	04/17/95	04/21/00	65 FR 21315.
5–40–4040	Emission Standards for Can Coating Application Systems	04/17/95	04/21/00	65 FR 21315.
5–40–4190	Emission Standards for Metal Coil Coating Application Systems	04/17/95	04/21/00	65 FR 21315.
5–40–4340	Emission Standards for Paper and Fabric Coating Application Systems.	04/17/95	04/21/00	65 FR 21315.
5–40–4490	Emission Standards for Vinyl Coating Application Systems	04/17/95	04/21/00	65 FR 21315.
5–40–4640	Emission Standards for Metal Furniture Coating Application Systems	04/17/95	04/21/00	65 FR 21315.
5–40–4790	Emission Standards for Miscellaneous Metal Parts and Products Coating Application Systems.	04/17/95	04/21/00	65 FR 21315.
5–40–4940	Emission Standards for Flatwood Paneling Coating Application Systems.	04/17/95	04/21/00	65 FR 21315.
5–40–5080	Flexographic, Packaging Rotogravure, and Publication Rotogravure Printing Lines.	04/1/96	03/12/97	62 FR 11334.
5–40–5230	Emission Standards for Petroleum Liquid Storage and Transfer Operations—Stage I Vapor Control Systems—Gasoline Service Stations.	02/1/02	03/3/06	71 FR 10838.
5–40–5230	Emission Standards for Petroleum Liquid Storage and Transfer Operations—Tank Truck Gasoline Loading Terminals.	02/1/02	03/3/06	71 FR 10838.
5–40–5230	Emission Standards for Petroleum Liquid Storage and Transfer Operations—Bulk Gasoline Plants.	02/1/02	03/3/06	71 FR 10838.
5–40–5230	Emission Standards for Petroleum Liquid Storage and Transfer Operations—Petroleum Liquids in Fixed Roof Tanks.	02/1/02	03/3/06	71 FR 10838.
5–40–5230	Emission Standards for Petroleum Liquid Storage and Transfer Operations—Petroleum Liquid Storage in External Floating Roof Tanks.	02/1/02	03/3/06	71 FR 10838.
5–40–5230	Emission Standards for Petroleum Liquid Storage and Transfer Operations—Gasoline Tank Trucks and Vapor Collection Systems.	02/1/02	03/3/06	71 FR 10838.
5–40–5510	Emission Standards for Asphalt Paving Operations	04/17/95	04/21/00	65 FR 21315.
5–40–6840	Emission Standards for Solvent Metal Cleaning Operations in the Northern Virginia Volatile Organic Compound Emissions Control Area.	03/24/04	06/09/04	69 FR 32277.

Virginia also submitted a negative declaration certifying that the following VOC CTG sources do not exist in Northern Virginia and therefore there is no need for Virginia to adopt CTGs for these sources. Table 2 lists VOC CTG sources in Virginia's negative declaration.

TABLE 2—VOC CTG SOURCES FOR WHICH NO APPLICABLE FACILITIES EXIST IN NORTHERN VIRGINIA

Control of Volatile Organic Compound Leaks from Petroleum Refinery Equipment.
Control of Volatile Organic Compound Emissions form Large Petroleum Dry Cleaners.
Control of Volatile Organic Compound Emissions from Manufacture of High Density Polyethylene, Polypropylene, and Polystyrene Resins.
Control of Volatile Organic Compound Equipment Leaks form Natural Gas/Gasoline Processing Plants.
Control of Volatile Organic Compound fugitive Emission from Synthetic Organic Chemical Polymer and Resin Manufacturing Equipment.
Control of Volatile Organic Compound Emissions from Air Oxidation Processes in Synthetic Organic Chemical Manufacturing Industry.
SOCMI Distillation and Reactor Processes.
Wood Furniture.
Shipbuilding/repair.
Aerospace.

B. Source-specific RACT Controls

Table 3 lists Virginia's source-specific RACT controls, that were implemented and approved into the Virginia SIP under the 1-hour ozone NAAQS, which Virginia is certifying as meeting the 8-hr RACT requirements for VOC and/or NO_X.

TABLE 3—SOURCE-SPECIFIC RACT CONTROLS

Facility name	State effective date	Pollutant	Federal Register date	Citation
Pentagon Utilities Plant	05/17/00	NO_X	01/02/01	66 FR 8.
Washington Gas Light Company	04/03/98	NO_X	01/02/01	66 FR 8.
Dominion Virginia Power-Possum Point Power Station[1]	n/a	NO_X	n/a	n/a.
	06/12/95	VOC	01/02/01	66 FR 8.
Mirant-Potomac River Power Plant[1]	n/a	NO_X	n/a	n/a.
	05/08/00	VOC	01/02/01	66 FR 8.
United States Marine Base—Quantico	05/24/00	NO_X	01/02/01	66 FR 8.
U.S. Army—Fort Belvoir	05/16/00	NO_X	01/02/01	66 FR 8.
Noman M. Cole, Jr. Pollution Control Plant	12/23/99	NO_X	01/02/01	66 FR 8.
Covanta—Alexandria	07/31/98	NO_X	01/02/01	66 FR 8.
Covanta—Fairfax	04/03/98	NO_X	01/02/01	66 FR 8.
Transco—Station 185	09/05/96	NO_X	01/02/01	66 FR 8.
Michigan Cogeneration Systems, Inc	05/10/00	NO_X	01/02/01	66 FR 8.
	05/10/00	VOC	01/02/01	66 FR 8.
CNG Service Company	05/22/00	NO_X	01/02/01	66 FR 8.
	05/22/00	VOC	01/02/01	66 FR 8.
Columbia Gas Transmission Corporation	05/23/00	NO_X	01/02/01	66 FR 8.
Prince William County Department of Public Works	04/16/04	NO_X	09/09/04	69 FR 54581.

[1] NO_X SIP Call—These facilities in the Virginia portion of the Washington, DC-MD-VA 8-hour nonattainment area are subject to 9 VAC 5 Chapter 140 Regulation for Emissions Trading Part I NO_X Budget Trading Program, often called the NO_X SIP Call. These facilities may be recertified as meeting NO_X RACT requirement based on the Phase 2 Rule and source-specific RACT controls, as well as their compliance with the NO_X Budget Trading Program (9 VAC 5 Chapter 140). *See* Phase 2 Rule, 70 FR 71617, 71652, November 29, 2005.

A new RACT determination was performed for the Noman M. Cole Pollution Control Plant. Based on the results, the Noman M. Cole Pollution Control Plant's existing RACT determination of proper operation and good combustion practices can be recertified. Further details of the Commonwealth of Virginia's RACT determination can be found in a TSD prepared for this rulemaking.

III. General Information Pertaining to SIP Submittals From the Commonwealth of Virginia

In 1995, Virginia adopted legislation that provides, subject to certain conditions, for an environmental assessment (audit) "privilege" for voluntary compliance evaluations performed by a regulated entity. The legislation further addresses the relative burden of proof for parties either asserting the privilege or seeking disclosure of documents for which the privilege is claimed. Virginia's legislation also provides, subject to certain conditions, for a penalty waiver for violations of environmental laws when a regulated entity discovers such violations pursuant to a voluntary compliance evaluation and voluntarily discloses such violations to the Commonwealth and takes prompt and appropriate measures to remedy the violations. Virginia's Voluntary Environmental Assessment Privilege Law, Va. Code Sec. 10.1–1198, provides a privilege that protects from disclosure documents and information about the content of those documents that are the product of a voluntary environmental assessment. The Privilege Law does not extend to documents or information (1) that are generated or developed before the commencement of a voluntary environmental assessment; (2) that are prepared independently of the assessment process; (3) that demonstrate a clear, imminent and substantial danger to the public health or environment; or (4) that are required by law.

On January 12, 1998, the Commonwealth of Virginia Office of the Attorney General provided a legal opinion that states that the Privilege law, Va. Code Sec. 10.1–1198, precludes granting a privilege to documents and information "required by law," including documents and information "required by Federal law to maintain program delegation, authorization or approval," since Virginia must "enforce Federally authorized environmental programs in a manner that is no less stringent than their Federal counterparts. * * *" The opinion concludes that "[r]egarding § 10.1–1198, therefore, documents or other information needed for civil or criminal enforcement under one of these programs could not be privileged because such documents and information are essential to pursuing enforcement in a manner required by Federal law to maintain program delegation, authorization or approval."

Virginia's Immunity law, Va. Code Sec. 10.1–1199, provides that "[t]o the extent consistent with requirements imposed by Federal law," any person making a voluntary disclosure of information to a state agency regarding a violation of an environmental statute, regulation, permit, or administrative order is granted immunity from administrative or civil penalty. The Attorney General's January 12, 1998 opinion states that the quoted language renders this statute inapplicable to enforcement of any Federally authorized programs, since "no immunity could be afforded from administrative, civil, or criminal penalties because granting such immunity would not be consistent with Federal law, which is one of the criteria for immunity."

Therefore, EPA has determined that Virginia's Privilege and Immunity statutes will not preclude the Commonwealth from enforcing its program consistent with the Federal requirements. In any event, because EPA has also determined that a state audit privilege and immunity law can affect only state enforcement and cannot have any impact on Federal enforcement authorities, EPA may at any time invoke its authority under the CAA, including, for example, sections 113, 167, 205, 211 or 213, to enforce the requirements or prohibitions of the state plan, independently of any state enforcement effort. In addition, citizen enforcement under section 304 of the CAA is likewise unaffected by this, or any, state audit privilege or immunity law.

IV. Proposed Action

EPA is proposing to approve the Virginia SIP revision that addresses the requirements of RACT under the 8-hour ozone NAAQS, which was submitted on October 23, 2006. This SIP revision is

based on a combination of (1) certifications that previously adopted RACT controls in Virginia's SIP that were approved by EPA under the 1-hour ozone NAAQS are based on the currently available technically and economically feasible controls, and continues to represent RACT for the 8-hour implementation purposes; (2) a negative declaration demonstrating that no facilities exist in the four county, five city area for the applicable CTG categories; and (3) a new RACT determination for a single source. EPA is soliciting public comments on the issues discussed in this document. These comments will be considered before taking final action.

V. Statutory and Executive Order Reviews

Under the CAA, the Administrator is required to approve a SIP submission that complies with the provisions of the CAA and applicable Federal regulations. 42 U.S.C. 7410(k); 40 CFR 52.02(a). Thus, in reviewing SIP submissions, EPA's role is to approve state choices, provided that they meet the criteria of the Clean Air Act. Accordingly, this action merely proposes to approve state law as meeting Federal requirements and does not impose additional requirements beyond those imposed by state law. For that reason, this proposed action:

- Is not a "significant regulatory action" subject to review by the Office of Management and Budget under Executive Order 12866 (58 FR 51735, October 4, 1993);
- Does not impose an information collection burden under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*);
- Is certified as not having a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*);
- Does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4);
- Does not have Federalism implications as specified in Executive Order 13132 (64 FR 43255, August 10, 1999);
- Is not an economically significant regulatory action based on health or safety risks subject to Executive Order 13045 (62 FR 19885, April 23, 1997);
- Is not a significant regulatory action subject to Executive Order 13211 (66 FR 28355, May 22, 2001);
- Is not subject to requirements of Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) because application of those requirements would be inconsistent with the CAA; and
- Does not provide EPA with the discretionary authority to address, as appropriate, disproportionate human health or environmental effects, using practicable and legally permissible methods, under Executive Order 12898 (59 FR 7629, February 16, 1994).

In addition, this proposed rule, pertaining to the Virginia RACT under the 8-hour ozone NAAQS, 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, Nitrogen dioxide, Ozone, Reporting and recordkeeping requirements, Volatile organic compounds.

Authority: 42 U.S.C. 7401 *et seq.*

Dated: February 5, 2009.

William T. Wisniewski,

Acting Regional Administrator, Region III.

[FR Doc. E9–5839 Filed 3–18–09; 8:45 am]

BILLING CODE 6560–50–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 648

[Docket No. 090206149–9302–01]

RIN 0648–AX57

Fisheries of the Northeastern United States; Proposed 2009 Specifications for the Spiny Dogfish Fishery

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

ACTION: Proposed rule; request for comments.

SUMMARY: NMFS proposes specifications for the spiny dogfish fishery for the 2009 fishing year (FY) (May 1, 2009, through April 30, 2010). The implementing regulations for the Spiny Dogfish Fishery Management Plan (FMP) require NMFS to publish specifications for up to a period of 5 years and to provide an opportunity for public comment. The intent of this rulemaking is to specify the commercial quota and other management measures, such as possession limits, to rebuild the spiny dogfish resource. NMFS proposes that the annual quota be set at 12 million lb (5,443.11 mt), and that the possession limits for dogfish be set at 3,000 lb (1.36 mt).

DATES: Public comments must be received no later than 5 p.m. eastern standard time on April 3, 2009.

ADDRESSES: You may submit comments, identified by RIN 0648–AX57, by any one of the following methods:

- *Electronic Submissions:* Submit all electronic public comments via the Federal eRulemaking Portal *http://www.regulations.gov*
- *Fax:* 978–281–9135, Attn: Jamie Goen
- *Mail:* Patricia A. Kurkul, Regional Administrator, NMFS, Northeast Regional Office, 55 Great Republic Drive, Gloucester, MA 01930. Mark the outside of the envelope: "Comments on 2009 Dogfish Spex."

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

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

Copies of supporting documents used by the Mid-Atlantic Fishery Management Council (Council), including the Environmental Assessment (EA) and Regulatory Impact Review (RIR)/Initial Regulatory Flexibility Analysis (IRFA), are available from: Daniel T. Furlong, Executive Director, Mid-Atlantic Fishery Management Council, Room 2115, Federal Building, 300 South New Street, Dover, DE 19904–6790. The EA/RIR/IRFA is also accessible via the Internet at *http://www.nero.noaa.gov.*

FOR FURTHER INFORMATION CONTACT: Jamie Goen, Fishery Policy Analyst, phone: 978–281–9220, fax: 978–281–9135.

SUPPLEMENTARY INFORMATION: Spiny dogfish were declared overfished by NMFS on April 3, 1998, and added to that year's list of overfished stocks in the *Report on the Status of the Fisheries of the United States*, prepared pursuant to section 304 of the Magnuson-Stevens

Fishery Conservation and Management Act (Magnuson-Stevens Act). Consequently, the Magnuson-Stevens Act required the preparation of measures to end overfishing and to rebuild the spiny dogfish stock. A joint FMP was developed by the Mid-Atlantic and New England Fishery Management Councils (Councils) during 1998 and 1999. The Mid-Atlantic Fishery Management Council (MAFMC) was designated as the administrative lead on the FMP.

The regulations implementing the FMP at 50 CFR part 648, subpart L, outline the process for specifying the commercial quota and other management measures (e.g., minimum or maximum fish sizes, seasons, mesh size restrictions, possession limits, and other gear restrictions) necessary to assure that the target fishing mortality rate (target F) specified in the FMP will not be exceeded in any fishing year (May 1 April 30), for a period of 1 5 fishing years. The annual quota is allocated between two semi-annual quota periods as follows: Period 1, May 1 through October 31 (57.9 percent); and Period 2, November 1 through April 30 (42.1 percent).

The Spiny Dogfish Monitoring Committee (Monitoring Committee), comprised of representatives from states; MAFMC staff; New England Fishery Management Council (NEFMC) staff; NMFS staff; academia; and two non-voting, ex-officio industry representatives (one each from the MAFMC and NEFMC regions) is required to review the best available information and to recommend a commercial quota and other management measures necessary to achieve the target F for the 1–5 fishing years. The Council's Joint Spiny Dogfish Committee (Joint Committee) then considers the Monitoring Committee's recommendations and any public comment in making its recommendation to the two Councils. Afterwards, the MAFMC and the NEFMC make their recommendations to NMFS. NMFS reviews those recommendations to assure they are consistent with the FMP, and may modify them if necessary. NMFS then publishes proposed measures for public comment.

Spiny Dogfish Stock Status Update

In the fall of 2008, the NMFS Northeast Fisheries Science Center (NEFSC) updated the spiny dogfish stock status using the model from the 43rd Stock Assessment Review Committee (SARC), 2007 catch data, and results from the 2008 trawl survey. The stock status update estimated that the spiny dogfish female spawning stock biomass (SSB) is likely to be above the most recently calculated maximum sustainable yield biomass (Bmsy), which would indicate the stock is not overfished and could be considered rebuilt. However, there is no Bmsy target in the FMP because NMFS disapproved the Councils' recommended biomass target (90% SSBmax) during the review of the FMP. Framework Adjustment 2 to the FMP has been submitted for review and, if approved, would incorporate updated biological reference points after the next benchmark stock assessment results from the Transboundary Resource Assessment Committee (TRAC) are available in late 2009.

The NEFSC stock status update also estimated that overfishing is not occurring. Total removals in 2007 were approximately 12,136 mt (26.755 M lb), corresponding to an F estimate of 0.1104, well below the overfishing threshold of F = 0.39 and essentially equivalent to Frebuild = 0.11.

While the stock status update estimates that the stock could be considered rebuilt and that overfishing is not occurring, there are a number of concerns with the stock. These include: size frequency of the female population that is concentrated between 75 and 95 cm (29.3 and 37.1 inches), with very few fish above 100 cm (39.1 inches) or below 70 cm (27.3 inches); several years of low pup production, implying that the population will oscillate over time decreasing to a low around 2017; a skewed sex ratio of males to females (4:1, rather than the expected 2:1); and concern that projections of future biomass include assumptions about pup survivorship and selectivity of gear that may be optimistic.

Monitoring Committee Recommendations

The Monitoring Committee and a representative of the MAFMC's Scientific and Statistical Committee (SSC) met on October 31, 2008, to develop recommendations based on stock conditions estimated from the NEFSC stock status update. Based on the information from the stock status update, including the concerns over the status of the stock, the Monitoring Committee recommended a precautionary management response. The Monitoring Committee recommended maintaining the rebuilding F value of 0.11 as the target in FY 2009, as opposed to the F = 0.28 target that is associated with a rebuilt stock. The fishing mortality associated with $F_{rebuild}$ results in a quota recommendation of 12 million lb (5,443.11 mt) for FY 2009, a 200 percent increase from the 4-million-lb (1,814.37–mt) quota in FY 2008. The Monitoring Committee also agreed that the commercial quota should be set for 1 fishing year pending the TRAC stock assessment in 2009. The Monitoring Committee recommended that the possession limit be set at 3,000 lb (1.36 mt), up from 600 lb (272 kg) in 2008. A 3,000–lb (1.36–mt) possession limit would allow for increased retention of dogfish incidentally captured in Federal waters.

Joint Committee Recommendations

The Joint Committee met on November 17, 2008, to review the Monitoring Committee's recommendations and make its recommendation to the Councils. Council staff noted the SSC had been polled and generally supported the recommendation. The Joint Committee agreed with the Monitoring Committee's recommendation; to establish a 12–million-lb (5,443.11–mt) quota with a possession limit of 3,000 lb (1.36 mt).

Council Recommendations

The MAFMC and NEFMC met in December and November 2008, respectively, to review the Joint Committee's recommendation. The Councils agreed with the recommendation, a commercial quota of 12 million lb (5,443.11 mt) and a possession limit of 3,000 lb (1.36 mt), and recommended that NMFS implement these recommendations for FY 2009.

Alternatives Adopted by the Atlantic States Marine Fisheries Commission (ASFMC)

The Councils' quota and possession limit recommendations are consistent with those adopted for state waters in FY 2009 by the ASMFC at its October 2008 meeting. However, the newly approved Addendum II to the ASMFC's Interstate FMP for Spiny Dogfish removes the seasonal quota split (Period 1 and Period 2) for state fisheries and re-allocates the ASMFC quota with 58 percent to states from Maine through Connecticut, 26 percent to New York through Virginia, and 16 percent to North Carolina. Thus, while the overall 12–million-lb (5,443.11–mt) quota is the same for both state and Federal waters, the way that quota is allocated differs by region and season. One of the implications of this difference is that state and Federal waters may close at different times, depending on regional and seasonal quota attainment.

Proposed Measures

NMFS reviewed the Councils' recommendations and proposes to implement their recommendations of a commercial spiny dogfish quota of 12 million lb (5,443.11 mt) and a possession limit of 3,000 lb (1.36 mt) for FY 2009. As specified in the FMP, quota Period 1 (May 1 through October 31) would be allocated 57.9 percent of the quota, 6,948,000 lb (3,151.56 mt), and quota Period 2 (November 1 through April 30) would be allocated 42.1 percent of the quota, 5,052,000 lb (2,291.55 mt).

Classification

Pursuant to section 304 (b)(1)(A) of the Magnuson-Stevens Act, the NMFS Assistant Administrator has determined that this proposed rule is consistent with the Spiny Dogfish FMP, other provisions of the Magnuson-Stevens Act, and other applicable law, subject to further consideration after public comment.

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

An initial regulatory flexibility analysis (IRFA) was prepared, as required by section 603 of the Regulatory Flexibility Act (RFA). The IRFA describes the economic impact this proposed rule, if adopted, would have on small entities. A description of the action, why it is being considered, and the legal basis for this action are contained at the beginning of this section in the preamble and in the **SUMMARY** section of the preamble. A copy of this analysis is available from the Council (see **ADDRESSES**). A summary of the analysis follows:

Statement of Objective and Need

A description of the reasons why this action is being considered, and the objectives of and legal basis for this action, is contained in the preamble to this proposed rule and is not repeated here.

Description and Estimate of Number of Small Entities to Which the Rule Will Apply

All of the potentially affected businesses are considered small entities under the standards described in NMFS guidelines because they have gross receipts that do not exceed $3.5 million annually. Information from FY 2007 was used to evaluate impacts of this action, as that is the most recent year for which data are complete. According to NMFS permit file data, 3,142 vessels were issued Federal spiny dogfish permits in FY 2007, while 257 of these vessels contributed to overall landings.

Description of Projected Reporting, Recordkeeping, and Other Compliance Requirements

This action does not contain any new collection-of-information, reporting, recordkeeping, or other compliance requirements. It does not duplicate, overlap, or conflict with any other Federal rules.

Minimizing Significant Economic Impacts on Small Entities

The IRFA considered three alternatives. The action recommended in this proposed rule, Alternative 1, includes a commercial quota of 12 million lb (5,443.11 mt), and the possession limit at 3,000 lb (1.36 mt), for both quota periods during FY 2009. Alternative 2 is the same as Alternative 1, but with a more liberal quota of 36.5 million lb (16,556.14 mt). Alternative 3, the status quo/no action alternative, would result in commercial quota of 4 million lb (1,814.37 mt) and a possession limit of 600 lb (272 kg) for both quota periods.

Alternatives 1 and 2 have higher quotas than prior years. Assuming that the quota implemented would be attained, Alternatives 1 and 2 would be expected to increase overall revenue from dogfish landings, a beneficial economic impact on small entities. FY 2008 revenue is estimated using the average FY 2007 price/lb ($0.20) and the FY 2008 state quota of 8 million lb (3,628.74 mt) to equal $1.6 million. The increase in revenue in FY 2009 compared to FY 2008 could amount to $800,000 under Alternative 1 (preferred) and Alternative 3, and $5.7 million under Alternative 2. Alternative 3 is expected to result in a revenue increase because landings for spiny dogfish would presumably continue in state waters even after Federal waters closed until the 12–million-lb (5,443.11–mt) state quota implemented by the ASMFC for FY 2009 was reached. The net economic benefits by alternative would be greatest under Alternative 2, then Alternative 1 (preferred), and lastly by Alternative 3. Although total dogfish revenues may be the same under Alternative 1 and 3, the lower trip limit under Alternative 3 would distribute revenues at a lower rate over a longer period. Alternatives 1 and 2 would have a beneficial economic impact on small entities, including fishermen, processors, and the businesses that support them.

List of Subjects in 50 CFR Part 648

Fisheries, Fishing, Reporting and recordkeeping requirements.

Dated: March 16, 2009.

Samuel D. Rauch III,

Deputy Assistant Administrator For Regulatory Programs, National Marine Fisheries Service.

For the reasons set out above, 50 CFR part 648 is proposed to be amended as follows:

PART 648—FISHERIES OF THE NORTHEASTERN UNITED STATES

1. The authority citation for part 648 continues to read as follows:

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

2. In § 648.235, paragraphs (a) and (b) are revised to read as follows:

§ 648.235 Possession and landing restrictions.

(a) *Quota Period 1.* From May 1 through October 31, vessels issued a valid Federal spiny dogfish permit specified under § 648.4(a)(11) may:

(1) Possess up to 3,000 lb (1.36 mt) of spiny dogfish per trip; and

(2) Land only one trip of spiny dogfish per calendar day.

(b) *Quota Period 2.* From November 1 through April 30, vessels issued a valid Federal spiny dogfish permit specified under § 648.4(a)(11) may:

(1) Possess up to 3,000 lb (1.36 mt) of spiny dogfish per trip; and

(2) Land only one trip of spiny dogfish per calendar day.

* * * * *

[FR Doc. E9–6023 Filed 3–18–09; 8:45 am]

BILLING CODE 3510–22–S

Notices

Federal Register
Vol. 74, No. 52
Thursday, March 19, 2009

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

Forest Service

Fremont Winema National Forests; Oregon; Proposed Forest Plan Amendments for the Ruby Pipeline L.L.C. Project

AGENCY: Forest Service, USDA.

ACTION: Notice of intent to prepare an environmental impact statement (FERC Ruby Pipeline Project) and request for comments on the proposed forest plan amendments for the Fremont Land and Resource Management Plan to be included in the Ruby Project.

SUMMARY: The USDA Forest Service (Forest Service), Fremont Winema National Forests, is proposing to prepare an amendment to the Fremont National Forest Land and Resource Management Plan (Forest Plan) for the proposed Ruby Pipeline Project (Project). The Federal Energy Regulatory Commission (FERC) is the lead agency for this proposed natural gas pipeline (Docket No. CP09–54–000). The staff of FERC is preparing an Environmental Impact Statement (EIS) that will discuss the environmental impacts that could result from the construction and operation of a new underground natural gas pipeline proposed by Ruby Pipeline, LLC (Ruby). The Project's proposed facilities consist of 675.2 miles of 42-inch-diameter natural gas pipeline, four new compressor stations, and related facilities. The USDA Forest Service, Fremont Winema National Forests is participating as a cooperating agency because the Project traverses the Fremont Winema National Forests in Oregon. As a cooperating agency, the U.S. Forest Service, Fremont Winema National Forests intends to adopt the FERC EIS per Title 40 CFR 1506.3, to meet its National Environmental Policy Act (NEPA) responsibilities.

FERC, as lead federal agency in the preparation of the EIS, is preparing the EIS to satisfy the requirements of NEPA. NEPA requires FERC to take into account the environmental impacts that could result from an action when it considers whether or not an interstate natural gas pipeline should be issued a Certificate of Public Convenience and Necessity for construction of the pipeline. FERC will use the EIS to consider the environmental impacts that could result if it issues project authorizations. FERC will use the EIS in its decision-making processes to determine whether or not to authorize the Project. FERC initiated its pre-filing process on January 31, 2008 and issued a Notice of Intent (NOI) to prepare an EIS for this Project on September 26, 2008.

The USDA Forest Service will use the EIS to evaluate the proposed amendments to the Fremont Forest Plan and for any forest plan amendment decisions made subsequently should FERC authorize this Project. The Forest Service has determined that an amendment to the Fremont Forest Plan would be needed because the Project would not meet the plan Standards and Guidelines for soil disturbance, visual quality, mechanical disturbance in seeps and springs, and old growth management. Analysis of the effects of the amendment will be included in the FERC EIS. This notice announces the intention to prepare an amendment to the Fremont Forest Plan.

DATES: Comments concerning the scope of the analysis must be received by April 20, 2009. The draft environmental impact statement is expected in June, 2009 and the final environmental impact statement is expected in October 2009.

ADDRESSES: Send written comments to Glen Westlund, Forest Environmental Coordinator, 2819 Dahlia Street, Klamath Falls, OR 97601. Comments may also be sent via e-mail to *comments-pacificnorthwest-fremont-winema@fs.fed.us,* or via facsimile to 541–883–6709.

It is important that reviewers provide their comments at such times and in such a way that they are useful to the Agency's preparation of the EIS. Therefore, comments should be provided prior to the close of the comment period and should clearly articulate the reviewer's concerns and contentions. The submission of timely and specific comments can affect a reviewer's ability to participate in subsequent administrative review or judicial review.

Comments received in response to this solicitation, including names and addresses of those who comment, will be part of the public record for this proposed action. Comments submitted anonymously will be accepted and considered; however, anonymous comments will not provide the respondent with standing to participate in subsequent administrative review or judicial review.

FOR FURTHER INFORMATION CONTACT: Glen Westlund; Phone 541–883–6743; e-mail at *gwestlund@fs.fed.us;* or by mail at the above address.

Individuals who use telecommunication devices for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339 between 8 a.m. and 8 p.m., Eastern Time, Monday through Friday.

SUPPLEMENTARY INFORMATION:

Purpose and Need for Action

If the Ruby Pipeline is approved and constructed there will be a need to exempt the construction activity from several standards and guidelines found in the Fremont National Forest Land and Resource Management Plan (Forest Plan) or to relocate a management area. The route of the pipeline crosses east-west through the forest and could not avoid passing through portions of Management Areas: 6—Scenic; 14—Old Growth; and 15—Fish and Wildlife Habitat and Water Quality as well as portions of soil capability areas 1, 2, 3 and scabland portions of capability area 13 covered by general forest standards and guidelines. Resource protection was considered in the route location and the current route reflects resource concerns like avoiding special interest areas in MA 7 or inventoried roadless areas. The general forest standard and guideline for detrimental soil conditions would not be met because equipment activity would be confined to the clearing limits, causing more than 20 percent of soil in the activity area to be detrimentally impacted. For the construction to occur, the Forest Plan will need amending.

Proposed Action

Approximately 14 miles of right-of-way (ROW) will be located on the Fremont National Forest disturbing about 328 acres, including temporary

storage and staging areas. Ruby is proposing to use a 115 foot wide construction right-of-way with a 50 foot wide permanent ROW over the top of the pipeline. All work sites would be restored. The following Forest Plan amendments are proposed:

1. General Forest Plan Standard and Guideline for Soils Management, Forest Plan pages 80 to 81. Add item (5) under the Operational Considerations for Surface Soil Condition which says: During and immediately after construction of the Ruby Pipeline the soil conditions within the activity area (construction right-of-way) will be permitted to exceed the 20 percent standard and guideline for detrimental soil condition. The implementation of Ruby's Upland Erosion, Revegetation and Mitigation Plan would reduce erosion impacts and minimize impacts to soil productivity.

2. General Forest Standard and Guideline for Soils Management, Forest Plan pages 83 and 84. Add a statement under item 4, operational considerations "During installation of the Ruby pipeline exposed mineral soil standards displayed in Table 21 will be exceeded; however with the extra mitigation proposed in Ruby's Upland Erosion, Revegetation and Mitigation Plan, these standards would be achieved."

3. Management Area 6—Scenic Viewsheds: The pipeline crosses through a portion of Management Area 6 when it crosses FR 3915; the area has a VQO of foreground retention and middleground partial retention. Item B will be added to Land Uses on Forest Plan page 154: B. The cleared corridor needed to install the Ruby pipeline will not immediately meet VQO objectives of retention and partial retention. Mitigation measures, including vegetation management and restoration actions, will occur to move the construction corridor toward current visual quality objectives over an extended timeframe.

4. Management Area 14—Old Growth habitat: The pipeline crosses through a stand of dedicated old growth. The best stands either meeting or soon to meet old growth standards will be designated as replacement.

5. Management Area 15—Fish and Wildlife Habitat and Water Quality: The crossing of seeps and springs is expected to be uncommon. The pipeline is known to cross one seasonal seep. The following statement will be added under Seeps and Springs, management treatments on Forest plan page 204. (d) Construction equipment necessary to install the Ruby pipeline will be permitted in the area of seeps and springs. Implementation of Ruby's Upland Erosion, Revegetation and Mitigation Plan and special construction measures would minimize impacts.

Responsible Official

The responsible official of the Forest Plan amendments will be the Forest Supervisor of the Frement Winema National Forests.

Nature of Decision To Be Made

Determine what forest plan standards and guideline would need to be amended to allow the construction of the Ruby pipeline if FERC approves the project. These amendments would apply only to Ruby pipeline and are expected to be limited in scope.

Scoping Process

This notice of intent initiates the scoping process for the forest plan amendment. The decision will be tiered to the analysis contained in the FERC EIS for the Ruby Pipeline Project. FERC has already performed the scoping process for the EIS. This NOI is to inform about the Fremont Winema National Forest's need to amend the Fremont Forest Plan, which did not get included in the original FERC NOI scoping period for the Ruby Project. A scoping letter will be mailed to those currently on the Forests' mailing list. No other methods of scoping will be used. The Fremont Forest Plan can be found on the Forests' Web page at *http://www.fs.fed.us/r6/frewin/projects/forestplan/index.shtml*. Comments should be focused on the forest plan amendments and not about the decision whether to construct the pipeline or not. There will be another opportunity to comment on the construction aspect when the DEIS is available in June 2008.

It is important that reviewers provide their comments at such times and in such manner that they are useful to the agency's preparation of the environmental impact statement. Therefore, comments should be provided prior to the close of the comment period and should clearly articulate the reviewer's concerns and contentions. The submission of timely and specific comments can affect a reviewer's ability to participate in subsequent administrative appeal or judicial review.

March 11, 2009.

Karen Shimamoto,

Forest Supervisor.

[FR Doc. E9–5989 Filed 3–18–09; 8:45 am]

BILLING CODE 3410–11–P

DEPARTMENT OF AGRICULTURE

Forest Service

Notice of Central Idaho Resource Advisory Committee Meeting

AGENCY: Forest Service, USDA.

ACTION: Notice of Meeting.

SUMMARY: Pursuant to the authorities in the Federal Advisory Committee Act (Pub. L. 92–463) and under the Secure Rural Schools and Community Self Determination Act of 2000 (Pub. L. 106–393), the Salmon-Challis National Forest's Central Idaho Resource Advisory Committee will conduct a business meeting which is open to the public.

DATES: Friday, March 20, 2009, beginning at 10 a.m.

ADDRESSES: Salmon-Challis N.F. South Zone Office, Highway 93, Challis, Idaho.

SUPPLEMENTARY INFORMATION: Agenda topics will include review and approval of project proposals, and is an open public forum.

FOR FURTHER INFORMATION CONTACT: William A. Wood, Forest Supervisor and Designated Federal Officer, at 208–756–5111.

Dated: March 11, 2009.

Larry Svalberg,

Acting Forest Supervisor, Salmon-Challis National Forest.

[FR Doc. E9–5813 Filed 3–18–09; 8:45 am]

BILLING CODE 3410–01–M

DEPARTMENT OF AGRICULTURE

Forest Service

Hood/Willamette Resource Advisory Committee (RAC)

AGENCY: Forest Service, USDA.

ACTION: Notice of meeting.

SUMMARY: The Hood/Willamette Resource Advisory Committee (RAC) will meet on Friday, April 24, 2009. The meeting is scheduled to begin at 9:30 a.m. and will conclude at approximately 12 p.m. The meeting will be held at Salem Office of the Bureau of Land Management Office; 1717 Fabry Road SE; Salem, Oregon; (503) 375–5646. The tentative agenda includes: (1) Orientation; (2) Election of chairperson; (3) Decision on overhead rate for 2009 and 2010 projects; (4) Presentation of 2009 and 2010 Projects; and (5) Public Forum.

The Public Forum is tentatively scheduled to begin at 10:30 a.m. Time allotted for individual presentations will be limited to 4–5 minutes. Written

comments are encouraged, particularly if the material cannot be presented within the time limits for the Public Forum. Written comments may be submitted prior to the April 24th meeting by sending them to Donna Short at the address given below.

FOR FURTHER INFORMATION CONTACT: For more information regarding this meeting, contact Donna Short; Sweet Home Ranger District; 4431 Highway 20; Sweet Home, Oregon 97386; (541) 367–3540.

Dated: March 11, 2009.

Dallas J. Emch,

Forest Supervisor.

[FR Doc. E9–5799 Filed 3–18–09; 8:45 am]

BILLING CODE 3410–11–M

DEPARTMENT OF AGRICULTURE

Grain Inspection, Packers and Stockyards Administration

Designation for the Jamestown, ND; Lincoln, NE; Memphis, TN; and Sioux City, IA Areas

AGENCY: Grain Inspection, Packers and Stockyards Administration, USDA.

ACTION: Notice.

SUMMARY: GIPSA is announcing designation of the following organizations to provide official services under the United States Grain Standards Act, as amended (USGSA): Grain Inspection, Inc. (Jamestown); Lincoln Inspection Service, Inc. (Lincoln); Midsouth Grain Inspection Service (Midsouth); and Sioux City Inspection and Weighing Service Company (Sioux City).

DATES: Effective April 1, 2009.

ADDRESSES: USDA, GIPSA, Karen Guagliardo, Chief, Review Branch, Compliance Division, STOP 3604, Room 1647–S, 1400 Independence Avenue, SW., Washington, DC 20250–3604.

FOR FURTHER INFORMATION CONTACT: Karen Guagliardo at 202–720–7312, e-mail *Karen.W.Guagliardo@usda.gov.*

Read Applications: All applications and comments will be available for public inspection at the office above during regular business hours (7 CFR 1.27(b)).

SUPPLEMENTARY INFORMATION: In the September 2, 2008, **Federal Register** (73 FR 51269), GIPSA requested applications for designations to provide official services in the geographic areas assigned to the official agencies named above. Applications were due by October 1, 2008.

Jamestown, Lincoln, Midsouth, and Sioux City were the sole applicants for designation to provide official services in the areas currently assigned to them, so GIPSA did not ask for additional comments on them.

GIPSA evaluated all available information regarding the designation criteria in section 7(f)(l) of the USGSA (7 U.S.C. 79(f)) and determined that Jamestown, Lincoln, Midsouth, and Sioux City are able to provide official services in the geographic areas specified in the September 2, 2008, **Federal Register**, for which they applied. These designation actions to provide official services are effective April 1, 2009, and terminate March 31, 2012.

Interested persons may obtain official services by calling the telephone numbers listed below.

Official agency	Headquarters location and telephone	Designation start	Designation end
Jamestown	Jamestown, ND (701–252–1290); *Additional Location:* Appleton, MN	4/1/2009	3/31/2012
Lincoln	Lincoln, NE (402–435–4386); *Additional Location:* Farwell, TX	4/1/2009	3/31/2012
Midsouth	Memphis, TN (901–942–3216); *Additional Locations:* North Little Rock, AR and Stoneville, MS.	4/1/2009	3/31/2012
Sioux City	Sioux City, IA (712–255–8073); *Additional Locations:* Fort Dodge, IA; Windom, MN.	4/1/2009	3/31/2012

Section 7(f)(1) of the USGSA authorizes GIPSA's Administrator to designate a qualified applicant to provide official services in a specified area after determining that the applicant is better able than any other applicant to provide such official services (7 U.S.C. 79(f)(1)).

Under section 7(g)(1) of the USGSA, designations of official agencies are effective for 3 years unless terminated by the Secretary but may be renewed according to the criteria and procedures prescribed in section 7(f) of the USGSA.

Authority: 7 U.S.C. 71–87k.

Alan R. Christian,

Acting Administrator, Grain Inspection, Packers and Stockyards Administration.

[FR Doc. E9–5983 Filed 3–18–09; 8:45 am]

BILLING CODE 3410–KD–P

DEPARTMENT OF AGRICULTURE

Grain Inspection, Packers and Stockyards Administration

Opportunity for Designation in the Pocatello, ID; Lewiston, ID; Evansville, IN; and Utah Areas and Request for Comments on the Official Agencies Serving These Areas

AGENCY: Grain Inspection, Packers and Stockyards Administration, USDA.

ACTION: Notice.

SUMMARY: The designations of the official agencies listed below will end on September 30, 2009. We are asking persons or governmental agencies interested in providing official services in the areas served by these agencies to submit an application for designation. We are also asking for comments on the quality of services provided by these currently designated agencies:

Idaho Grain Inspection Service, Inc. (Idaho);

Lewiston Grain Inspection Service, Inc. (Lewiston);

Ohio Valley Grain Inspection, Inc. (Ohio Valley); and

Utah Department of Agriculture and Food (Utah).

DATES: Applications and comments must be received on or before April 1, 2009.

ADDRESSES: We invite you to submit applications and comments on this notice by any of the following methods:

- To apply for designation, go to "FGISonline" at *https://fgis.gipsa.usda.gov/default_home_FGIS.aspx* then select *Delegations/Designations and Export Registrations (DDR).* You will need a USDA e-authentication, username, password, and a customer number prior to applying.
- *Hand Delivery or Courier:* Karen Guagliardo, Review Branch Chief, Compliance Division, GIPSA, USDA, Room 1647–S, 1400 Independence Avenue, SW., Washington, DC 20250.

- *Fax:* (202) 690–2755, to the attention of: Karen Guagliardo.
- *E-mail:* *Karen.W.Guagliardo@usda.gov.*
- *Mail:* Karen Guagliardo, Review Branch Chief, Compliance Division, GIPSA, USDA, STOP 3604, 1400 Independence Avenue, SW., Washington, DC 20250–3604.
- *Internet:* Go to *http://www.regulations.gov.* Follow the online instructions for submitting and reading comments online.

Read Applications and Comments: All applications and comments will be available for public inspection at the office above during regular business hours (7 CFR 1.27(b)).

FOR FURTHER INFORMATION CONTACT: Karen Guagliardo at 202–720–7312, e-mail *Karen.W.Guagliardo@usda.gov.*

SUPPLEMENTARY INFORMATION: Section 7(f)(1) of the United States Grain Standards Act (USGSA) (7 U.S.C. 71–87k) authorizes GIPSA's Administrator to designate a qualified applicant to provide official services in a specified area after determining that the applicant is better able than any other applicant to provide such official services.

Under section 7(g)(1) of the USGSA, designations of official agencies are effective for 3 years unless terminated by the Secretary, but may be renewed according to the criteria and procedures prescribed in section 7(f) of the Act.

Areas Open for Designation

Idaho

Pursuant to Section 7(f)(2) of the Act, the following geographic area, in the State of Idaho, is assigned to this official agency:

The southern half of the State up to the northern boundaries of Adams, Valley, and Lemhi Counties.

Lewiston

Pursuant to Section 7(f)(2) of the Act, the following geographic area, in the States of Idaho and Oregon, is assigned to this official agency:

In Idaho:

The northern half of the state down to the northern boundaries of Adams, Valley, and Lemhi Counties.

In Oregon:

The entire state of Oregon, except those export port locations within the State which are serviced by GIPSA.

Ohio Valley

Pursuant to Section 7(f)(2) of the Act, the following geographic area, in the States of Indiana, Kentucky, and Tennessee, is assigned to this official agency:

In Indiana:

Daviess, Dubois, Gibson, Knox (except the area west of U.S. Route 41 (150) from Sullivan County south to U.S. Route 50), Pike, Posey, Vanderburgh, and Warrick Counties.

In Kentucky:

Caldwell, Christian, Crittenden, Henderson, Hopkins (west of State Route 109 south of the Western Kentucky Parkway), Logan, Todd, Union, and Webster (west of Alternate U.S. Route 41 and State Route 814) Counties.

In Tennessee:

Cheatham, Davidson, and Robertson Counties, Tennessee.

Utah

Pursuant to Section 7(f)(2) of the Act, the entire State of Utah is assigned to this official agency.

Opportunity for Designation

Interested persons or governmental agencies, including Idaho, Lewiston, Ohio Valley, and Utah, may apply for designation to provide official services in the geographic areas specified above under the provisions of section 7(f) of the USGSA and 7 CFR 800.196(d). Designation in the specified geographic areas is for the period beginning October 1, 2009, and ending September 30, 2012. To apply for designation or for more information contact the Compliance Division at the address listed above or visit the GIPSA Web site at *http://www.gipsa.usda.gov.*

Request for Comments

We are publishing this notice to provide interested persons the opportunity to comment on the quality of services provided by the Idaho, Lewiston, Ohio Valley, and Utah official agencies. In the designation process, we are particularly interested in receiving comments citing reasons and pertinent data supporting or objecting to the designation of the applicants. Submit all comments to the Compliance Division at the above address or at *http://www.regulations.gov.*

In determining which applicant will be designated, we will consider applications, comments, and other available information.

Authority: 7 U.S.C. 71–87k.

Alan R. Christian,
Acting Administrator, Grain Inspection, Packers and Stockyards Administration.

[FR Doc. E9–5985 Filed 3–18–09; 8:45 am]

BILLING CODE 3410–KD–P

COMMISSION ON CIVIL RIGHTS

Agenda and Notice of Public Meeting of the Rhode Island Advisory Committee

Notice is hereby given, pursuant to the provisions of the rules and regulations of the U.S. Commission on Civil Rights and the Federal Advisory Committee Act, that a planning meeting of the Rhode Island Advisory Committee will convene at 9 a.m. on Tuesday, April 7, 2009, at the Rhode Island Urban League, 246 Prairie Avenue, Providence, Rhode Island. The purpose of the planning meeting is for the Committee to work on its racial profiling report.

Members of the public are entitled to submit written comments. The address is U.S. Commission on Civil Rights, Eastern Regional Office, 624 Ninth Street NW., Suite 740, Washington, DC 20425. Persons wishing to e-mail their comments, present their comments at the meeting, or who desire additional information should contact Alfreda Greene, Secretary, at 202–376–7533 or by e-mail to: *ero@usccr.gov.*

Hearing-impaired persons who will attend the meeting and require the services of a sign language interpreter should contact the Regional Office at least ten (10) working days before the scheduled date of the meeting.

Records generated from this meeting may be inspected and reproduced at the Eastern Regional Office, as they become available, both before and after the meeting. Persons interested in the work of this advisory committee are advised to go to the Commission's Web site, *http://www.usccr.gov,* or to contact the Eastern Regional Office at the above e-mail or street address.

The meeting will be conducted pursuant to the rules and regulations of the Commission and FACA.

Dated in Washington, DC, March 13, 2009.

Christopher Byrnes,
Chief, Regional Programs Coordination Unit.

[FR Doc. E9–5859 Filed 3–18–09; 8:45 am]

BILLING CODE 6335–01–P

DEPARTMENT OF COMMERCE

International Trade Administration

[C–570–931]

Circular Welded Austenitic Stainless Pressure Pipe From the People's Republic of China: Countervailing Duty Order

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

SUMMARY: Based on affirmative final determinations by the Department of Commerce (the Department) and the International Trade Commission (ITC), the Department is issuing a countervailing duty order on circular welded austenitic stainless pressure pipe (CWASPP) from the People's Republic of China (PRC).

Effective Date: March 19, 2009.

Contact Information: Robert Copyak, AD/CVD Operations, Office 3, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230; telephone: (202) 482–2209.

SUPPLEMENTARY INFORMATION:

Background

On January 28, 2009, the Department published its final determination in the countervailing duty investigation on CWASPP from the PRC. *See Circular Welded Austenitic Stainless Pressure Pipe from the People's Republic of China: Final Affirmative Countervailing Duty Determination,* 74 FR 4936 (January 28, 2009) (*Final Determination*). On March 11, 2009, the ITC notified the Department of its final determination pursuant to section 705(b)(1)(A)(i) of the Tariff Act of 1930, as amended (the Act), that an industry in the United States is materially injured by reason of subsidized imports of subject merchandise from the PRC. *See* Letter from the ITC to the Secretary of Commerce, "Notification of Final Affirmative Determination of Welded Stainless Pressure Pipe from China (Investigation Nos. 701–TA–454 and 731–TA–1144 (Final), USITC Publication 4064, March 2009)," March 11, 2009. Pursuant to section 736(a) of the Act, the Department is publishing a countervailing duty order on the subject merchandise.

Scope of the Order

The merchandise covered by this investigation is circular welded austenitic stainless pressure pipe not greater than 14 inches in outside diameter. This merchandise includes, but is not limited to, the American Society for Testing and Materials (ASTM) A–312 or ASTM A–778 specifications, or comparable domestic or foreign specifications. ASTM A–358 products are only included when they are produced to meet ASTM A–312 or ASTM A–778 specifications, or comparable domestic or foreign specifications.

Excluded from the scope are: (1) Welded stainless mechanical tubing, meeting ASTM A–554 or comparable domestic or foreign specifications; (2) boiler, heat exchanger, superheater, refining furnace, feedwater heater, and condenser tubing, meeting ASTM A–249, ASTM A–688 or comparable domestic or foreign specifications; and (3) specialized tubing, meeting ASTM A–269, ASTM A–270 or comparable domestic or foreign specifications.

The subject imports are normally classified in subheadings 7306.40.5005, 7306.40.5040, 7306.40.5062, 7306.40.5064, and 7306.40.5085 of the Harmonized Tariff Schedule of the United States. They may also enter under HTSUS subheadings 7306.40.1010, 7306.40.1015, 7306.40.5042, 7306.40.5044, 7306.40.5080, and 7306.40.5090. The HTSUS subheadings are provided for convenience and customs purposes only; the written description of the scope is dispositive.

Countervailing Duty Order

In accordance with section 705(d) of the Act on January 28, 2009, the Department published its final determination in the countervailing duty investigation of CWASPP from the PRC. *See Final Determination*, 74 FR 4936. On February 5, 2009, the Department terminated suspension of liquidation in accordance with 703(d) of the Act, effective November 7, 2008. Section 703(d) of the Act states that the suspension of liquidation pursuant to a preliminary determination may not remain in effect for more than four months.

On March 11, 2009, in accordance with section 705(d) of the Act, the ITC notified the Department of its final determination that the industry in the United States producing welded stainless steel pressure pipe is materially injured within the meaning of section 705(b)(1)(A)(i) of the Act by reason of subsidized imports of welded stainless steel pressure pipe from the PRC. Therefore, countervailing duties will be assessed on all unliquidated entries of CWASPP from the PRC entered or withdrawn from warehouse, for consumption, on or after July 10, 2008, the date on which the Department published its preliminary affirmative countervailing duty determination in the **Federal Register**, and before November 7, 2008, the date on which the Department instructed CBP to discontinue the suspension of liquidation in accordance with section 703(d) of the Act. *See Circular Welded Austenitic Stainless Pressure Pipe From the People's Republic of China: Preliminary Affirmative Countervailing Duty Determination and Alignment of Final Countervailing Duty Determination with Final Antidumping Duty Determination,* 73 FR 39657 (July 10, 2008). Entries of CWASPP made on or after November 7, 2008, 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 due to the Department's discontinuation, effective November 7, 2008, of the suspension of liquidation.

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 amounts of the net countervailable subsidy for all relevant entries of CWASPP from the PRC.

In accordance with section 706 of the Act, the Department will direct CBP to suspend liquidation, effective the date of publication of the ITC's final determination in the **Federal Register**, and to require a cash deposit for each entry of the subject merchandise in an amount based on the net countervailable subsidy rates for the subject merchandise as noted in the *Final Determination.*

This notice constitutes the countervailing duty order with respect to CWASPP from the PRC pursuant to section 706(a) of the Act. Interested parties may contact the Department's Central Records Unit, Room 1117 of the main Department Building, for copies of an updated list of countervailing duty orders currently in effect.

This countervailing duty order is issued and published in accordance with section 706(a) of the Act and 19 CFR 351.211.

Dated: March 16, 2009.

John M. Andersen,

Acting Deputy Assistant Secretary for Antidumping and Countervailing Duty Operations.

[FR Doc. E9–6103 Filed 3–17–09; 4:15 pm]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

A–570–918

Steel Wire Garment Hangers from the People's Republic of China: Initiation and Preliminary Results of Changed Circumstances Review, and Intent to Revoke Order in Part

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

EFFECTIVE DATE: March 19, 2009.

SUMMARY: On February 3, 2009, the Department of Commerce

("Department") received a request for a changed circumstances review and a request to revoke, in part, the antidumping duty order on steel wire garment hangers from the People's Republic of China with respect to chrome–plated steel wire garment hangers with a diameter of 3.4 mm or greater. Petitioner submitted a letter to the Department expressing lack of interest in antidumping duty relief from imports of chrome–plated steel wire garment hangers with a diameter of 3.4 mm or greater. Therefore, we are notifying the public of our intent to revoke, in part, the antidumping duty order as it relates to imports of chrome–plated steel wire garment hangers with a diameter of 3.4 mm or greater as described below. The Department invites interested parties to comment on these preliminary results.

FOR FURTHER INFORMATION CONTACT: Catherine Bertrand, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, N.W., Washington DC 20230; telephone (202) 482–3207.

Background

On October 6, 2008, the Department published the antidumping duty order on steel wire garment hangers from the People's Republic of China. *See Notice of Antidumping Duty Order: Steel Wire Garment Hangers from the People's Republic of China*, 73 FR 58111 (October 6, 2008). On February 3, 2009, the Department received a request on behalf of M&B Metal Products Company, Inc. ("Petitioner") for a changed circumstances review to revoke, in part, the antidumping duty order on steel wire garment hangers from the People's Republic of China with respect to chrome–plated steel wire garment hangers with a diameter of 3.4 mm or greater. We did not receive comments from any other party.

Scope of the Order

The merchandise that is subject to the order is steel wire garment hangers, fabricated from carbon steel wire, whether or not galvanized or painted, whether or not coated with latex or epoxy or similar gripping materials, and/or whether or not fashioned with paper covers or capes (with or without printing) and/or nonslip features such as saddles or tubes. These products may also be referred to by a commercial designation, such as shirt, suit, strut, caped, or latex (industrial) hangers. Specifically excluded from the scope of the order are wooden, plastic, and other garment hangers that are not made of steel wire. The products subject to the order are currently classified under HTSUS subheadings 7326.20.0020 and 7323.99.9060.

Although the HTSUS subheadings are provided for convenience and customs purposes, the written description of the merchandise is dispositive.

Initiation and Preliminary Results of Changed Circumstances Review, and Intent to Revoke Order in Part

At the request of Petitioner, and in accordance with sections 751(b)(1) and (d)(1) of the Tariff Act of 1930, as amended ("Act"), and 19 CFR 351.216, the Department is initiating a changed circumstances review of steel wire garment hangers from the People's Republic of China to determine whether partial revocation of the antidumping duty order is warranted with respect to chrome–plated steel wire garment hangers with a diameter of 3.4 mm or greater. Section 782(h)(2) of the Act and 19 CFR 351.222(g)(1)(i) provide that the Department may revoke an order (in whole or in part) if it determines that producers accounting for substantially all of the production of the domestic like product have no further interest in the order, in whole or in part. In addition, in the event the Department determines that expedited action is warranted, 19 CFR 351.221(c)(3)(ii) permits the Department to combine the notices of initiation and preliminary results.

In accordance with section 751(b) of the Act, and 19 CFR 351.222(g)(l)(i) and 351.221(c)(3), we are initiating this changed circumstances review and have determined that expedited action is warranted. Petitioner stated in its February 3, 2009, request that itself, Shanti Industries Inc., and Metro Supply Company account for all or substantially all of the steel wire garment hangers production in the United States. Petitioner further stated that Shanti Industries Inc., and Metro Supply Company support the request for changed circumstances review as filed by Petitioner on February 3, 2009. In accordance with section 751(b) of the Act and 19 CFR 351.222(g)(1)(i), we find Petitioner, along with the other domestic producers supporting the request, comprise substantially all of the production of the domestic like product. *See* Petitioner's Request for Changed Circumstances Review dated February 3, 2009. Petitioner has expressed a lack of interest in the order, in part, with respect to chrome–plated steel wire garment hangers with a diameter of 3.4 mm or greater. Because this changed circumstances request was filed less than 24 months after the date of publication of notice of the final determination in an investigation, pursuant to 19 CFR 351.216(c), the Department must determine whether good cause exists. We find that Petitioners' affirmative statement of no interest in the order with respect to chrome–plated steel wire garment hangers with a diameter of 3.4 mm or greater constitutes good cause for the conduct of this review. Based on the expression of no interest by Petitioner and the supporting domestic producers, and absent any objection by any other interested parties, we have preliminarily determined that the domestic producers of the like product have no interest in the continued application of the antidumping duty order on steel wire garment hangers to the merchandise that is subject to this request. Accordingly, we are notifying the public of our intent to revoke, in part, the antidumping duty order as it relates to imports of chrome–plated steel wire garment hangers with a diameter of 3.4 mm or greater. Therefore, we intend to change the scope of the order on steel wire garment hangers from the People's Republic of China to include the following exclusion: Excluded from the scope are chrome–plated steel wire garment hangers with a diameter of 3.4 mm or greater.

Public Comment

Interested parties are invited to comment on these preliminary results. Written comments may be submitted no later than 14 days after the date of publication of these preliminary results. Rebuttals to written comments, limited to issues raised in such comments, may be filed no later than 21 days after the date of publication of these preliminary results. The Department will issue the final results of this changed circumstances review, which will include its analysis of any written comments, no later than 270 days after the date on which this review was initiated, or within 45 days if all parties agree to our preliminary results. *See* 19 CFR 351.216(e).

If final revocation occurs, we will instruct U.S. Customs and Border Protection to end the suspension of liquidation for the merchandise covered by the revocation on the effective date of the notice of revocation and to release any cash deposit or bond. *See* 19 CFR 351.222(g)(4). The current requirement for a cash deposit of estimated antidumping duties on all subject merchandise will continue unless and until it is modified pursuant to the final results of this changed circumstances review.

This initiation and preliminary results of review and notice are in accordance

with sections 751(b) and 777(i) of the Act and 19 CFR 351.216, 351.221, and 351.222.

Dated: March 13, 2009.

Ronald K. Lorentzen,

Acting Assistant Secretary for Import Administration.

[FR Doc. E9–6022 Filed 3–18–09; 8:45 am]

BILLING CODE 3510–DS–S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

RIN 0648–XO17

New England Fishery Management Council; Public Meeting

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

ACTION: Notice; public meeting.

SUMMARY: The New England Fishery Management Council (Council) is scheduling a public meeting of its Scallop Survey Advisory Panel in April, 2009 to consider actions affecting New England fisheries in the exclusive economic zone (EEZ). Recommendations from this group will be brought to the full Council for formal consideration and action, if appropriate.

DATES: This meeting will be held on Monday, April 6, 2009 at 9 a.m.

ADDRESSES: *Meeting address*: This meeting will be held at the Holiday Inn, 31 Hampshire Street, Mansfield, MA 02048; telephone: (508) 339–2200; fax: (508) 339–1040.

Council address: New England Fishery Management Council, 50 Water Street, Mill 2, Newburyport, MA 01950.

FOR FURTHER INFORMATION CONTACT: Paul J. Howard, Executive Director, New England Fishery Management Council; telephone: (978) 465–0492.

SUPPLEMENTARY INFORMATION: The Sea Scallop Survey Advisory Panel (SSAP) will meet to review 2008 survey research and plans for 2009 research projects. The SSAP will recommend changes in research priorities to develop improved scallop survey data collection and analysis methods. The SSAP will also develop and recommend a peer review process to analyze the new survey dredge calibrations and also to evaluate the strengths, weaknesses, and utility of existing survey technologies. The SSAP will also develop recommendations for implementation of integrated, multi-technology annual scallop resource surveys. Other issues may also be discussed and recommendations will be presented to the New England Fishery Management Council for approval.

This meeting is physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to Paul J. Howard, Executive Director, at 978–465–0492, at least 5 days prior to the meeting date.

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

Dated: March 16, 2009

Tracey L. Thompson,

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

[FR Doc. E9–5937 Filed 3–18–09; 8:45 am]

BILLING CODE 3510–22–S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

RIN 0648–XO23

National Marine Fisheries Service, Pacific Fishery Management Council (Pacific Council); April 2–9, 2009 Council Meeting

AGENCY: National Marine Fisheries Service, National Oceanic and Atmospheric Administration, Commerce.

ACTION: Notice of public meetings.

SUMMARY: The Pacific Council and its advisory entities will hold public meetings.

DATES: The Council and its advisory entities will meet April 2–9, 2009. The Council meeting will begin on Saturday, April 4, at 8:00 a.m., reconvening each day through Thursday, April 9. All meetings are open to the public, except a closed session will be held from 8:00 a.m. until 9:00 a.m. on Saturday, April 4 to address litigation and personnel matters. The Council will meet as late as necessary each day to complete its scheduled business.

ADDRESSES: The meetings will be held at The Westin San Francisco Airport, 1 Old Bayshore Highway, Millbrae, California 94030; telephone: 650–692–3500. The Pacific Council address is Pacific Fishery Management Council, 7700 NE Ambassador Place, Suite 101, Portland, OR 97220.

FOR FURTHER INFORMATION CONTACT: Dr. Donald O. McIsaac, Executive Director, telephone 866–806–7204 or 503–820–2280; or access the Pacific Council website, *www.pcouncil.org* for the current meeting location, proposed agenda, and meeting briefing materials.

SUPPLEMENTARY INFORMATION: The following items are on the Pacific Council agenda, but not necessarily in this order:

A. Call to Order
1. Opening Remarks and Introductions
2. Roll Call
3. Executive Director(s Report
4. Approve Agenda

B. Open Comment Period
1. Comments on Non-Agenda Items

C. Habitat
1. Current Habitat Issues

D. Highly Migratory Species Management
1. National Marine Fisheries Service Report
2. Fishery Management Plan Amendment 2 - High Seas Shallow-Set Longline
3. Fishery Management Plan Amendments to Implement Annual Catch Limit Requirements
4. International Regional Fishery Management Organization Matters

E. Marine Protected Areas
1. Update on Olympic Coast National Marine Sanctuary Management Plan Review Process

F. Groundfish Management
1. National Marine Fisheries Service Report
2. Consideration of Inseason Adjustments
3. Fishery Management Plan Amendment 21 - Intersector Allocation
4. Fishery Management Plan Amendment 20 - Trawl Rationalization — Community Fishery Association and Miscellaneous Clarification Issues
5. Fishery Management Plan Amendment 20 - Trawl Rationalization — Analysis of Parameters for Adaptive Management Program
6. Final Consideration of Inseason Adjustments
7. Fishery Plan Amendments to Implement Annual Catch Limit Requirements
8. Review of Implementing Regulations for the Vessel Monitoring System

G. Administrative Matters
1. Legislative Matters
2. Approval of Council Meeting Minutes
3. Membership Appointments and Council Operating Procedures
4. Review of Proposed Rule on Council Standard Operating Policies and Procedures
5. Future Council Meeting Agenda and Workload Planning

H. Salmon Management
1. Update on National Marine Fisheries Service Draft Biological Opinion for California Water Projects
2. Work Group Report on Causes of 2008 Salmon Failure

3. Tentative Adoption of 2009 Ocean Salmon Management Measures for Analysis
4. Clarify Council Direction on 2009 Management Measures
5. Methodology Review Process and Preliminary Topic Selection for 2009
6. Update on Mitchell Act Hatchery Environmental Impact Statement
7. Final Action on 2009 Management Measures

I. Pacific Halibut Management
1. Incidental 2009 Catch Regulations for the Salmon Troll and Fixed Gear Sablefish Fisheries

Advisory entities are scheduled to meet April 2–9, 2009 in conjunction with the Pacific Council as follows:

Thursday, April 2, 2009
Highly Migratory Advisory Subpanel–1:00 p.m.
Highly Migratory Management Team–8:00 a.m.

Friday, April 3, 2009
Highly Migratory Advisory Subpanel–8:00 a.m.
Highly Migratory Management Team–8:00 a.m.
Scientific and Statistical Committee–8:00 a.m.
Habitat Committee–8:30 a.m.
Legislative Committee–3:30 p.m.

Saturday, April 4, 2009
Pacific Council Secretariat–7:00 a.m.
Washington State Delegation–7:00 a.m.
Oregon State Delegation–7:00 a.m.
California State Delegation–7:00 a.m.
Highly Migratory Advisory Subpanel–8:00 a.m.
Highly Migratory Management Team–8:00 a.m.
Scientific and Statistical Committee–8:00 a.m.
Tribal Policy Group–8:00 a.m.
Tribal and Washington Technical Group–8:00 a.m.
Groundfish Advisory Subpanel–1:00 p.m.
Groundfish Management Team–1:00 p.m.
Enforcement Consultants–4:30 p.m.

Sunday, April 5, 2009
Pacific Council Secretariat–To be determined
Washington State Delegation–To be determined
Oregon State Delegation–To be determined
California State Delegation–To be determined
Enforcement Consultants–10:00 a.m.
Groundfish Advisory Subpanel–10:00 a.m.
Groundfish Management Team–10:00 a.m.
Salmon Advisory Subpanel–10:00 a.m.
Salmon Technical Team–10:00 a.m.
Tribal Policy Group–10:00 a.m.
Tribal and Washington Technical Group–10:00 a.m.

Monday, April 6, 2009:
Pacific Council Secretariat–7:00 a.m.
Washington State Delegation–7:00 a.m.
Oregon State Delegation–7:00 a.m.
California State Delegation–7:00 a.m.
Enforcement Consultants–8:00 a.m.
Groundfish Advisory Subpanel–8:00 a.m.
Groundfish Management Team–8:00 a.m.
Salmon Advisory Subpanel–8:00 a.m.
Salmon Technical Team–8:00 a.m.
Tribal Policy Group–8:00 a.m.
Tribal and Washington Technical Group–8:00 a.m.

Tuesday, April 7, 2009:
Pacific Council Secretariat–7:00 a.m.
Washington State Delegation–7:00 a.m.
Oregon State Delegation–7:00 a.m.
California State Delegation–7:00 a.m.
Enforcement Consultants–8:00 a.m.
Groundfish Advisory Subpanel–8:00 a.m.
Groundfish Management Team–8:00 a.m.
Salmon Advisory Subpanel–8:00 a.m.
Salmon Technical Team–8:00 a.m.
Tribal Policy Group–8:00 a.m.
Tribal and Washington Technical Group–8:00 a.m.

Wednesday, April 8, 2009:
Pacific Council Secretariat–7:00 a.m.
Washington State Delegation–7:00 a.m.
Oregon State Delegation–7:00 a.m.
California State Delegation–7:00 a.m.
Enforcement Consultants–8:00 a.m.
Groundfish Advisory Subpanel–8:00 a.m.
Groundfish Management Team–8:00 a.m.
Salmon Advisory Subpanel–8:00 a.m.
Salmon Technical Team–8:00 a.m.
Tribal Policy Group–8:00 a.m.
Tribal and Washington Technical Group–8:00 a.m.

Thursday, April 9, 2009:
Pacific Council Secretariat–7:00 a.m.
Washington State Delegation–7:00 a.m.
Oregon State Delegation–7:00 a.m.
California State Delegation–7:00 a.m.
Salmon Advisory Subpanel–8:00 a.m.
Salmon Technical Team–8:00 a.m.
Tribal Policy Group–8:00 a.m.
Tribal and Washington Technical Group–8:00 a.m.

Although non-emergency issues not contained in this agenda may come before the Pacific Council for discussion, those issues may not be the subject of formal Council action during this meeting. Council 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 Ms. Carolyn Porter at503–820–2280 at least five days prior to the meeting date.

Dated: March 17, 2009.

Tracey L. Thompson,

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

[FR Doc. E9–6090 Filed 3–18–09; 8:45 am]

BILLING CODE 3510–22–S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

RIN 0648–XO18

Western Pacific Fishery Management Council; Public Meetings

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

ACTION: Notice of public meeting.

SUMMARY: The Western Pacific Fishery Management Council (Council) will hold a meeting of its Marine Mammal Advisory Committee (MMAC).

DATES: The MMAC meeting will be held on April 6–7, 2009, from 8:30 a.m. to 5 p.m.

ADDRESSES: The meeting will be held at the Council Office Conference Room, 1164 Bishop Street, Suite 1400, Honolulu, HI; telephone: (808) 522–8220.

FOR FURTHER INFORMATION CONTACT: Kitty M. Simonds, Executive Director; telephone: (808) 522–8220.

SUPPLEMENTARY INFORMATION: The MMAC will review recent research and activities related to cetacean interactions and depredation in longline fisheries, and produce recommendations for future research and activities.

Special Accommodations

These meetings are physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids

should be directed to Kitty M. Simonds, (808) 522–8220 (voice) or (808) 522–8226 (fax), at least five days prior to the meeting date.

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

Dated: March 16, 2009

Tracey L. Thompson,

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

[FR Doc. E9–5938 Filed 3–18–09; 8:45 am]

BILLING CODE 3510–22–S

DEPARTMENT OF COMMERCE

Patent and Trademark Office

National Medal of Technology and Innovation Nomination Application

ACTION: Proposed collection; comment request.

SUMMARY: The United States Patent and Trademark Office (USPTO), as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on this new information collection, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)).

DATES: Written comments must be submitted on or before May 18, 2009.

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

- *E-mail: Susan.Fawcett@uspto.gov.* Include "0651–0060 collection comment" in the subject line of the message.
- *Fax:* 571–273–0112, marked to the attention of Susan K. Fawcett.
- *Mail:* Susan K. Fawcett, Records Officer, Office of the Chief Information Officer, Customer Information Services Group, Public Information Services Division, U.S. Patent and Trademark Office, P.O. Box 1450, Alexandria, VA 22313–1450.
- *Federal Rulemaking Portal: http://www.regulations.gov.*

FOR FURTHER INFORMATION CONTACT: Requests for additional information should be directed to the attention of Jennifer Lo, Program Manager, United States Patent and Trademark Office, P.O. Box 1450, Alexandria, VA 22313–1450; by telephone at 571–272–7640; or by e-mail at *nmti@uspto.gov* with "Paperwork" in the subject line.

SUPPLEMENTARY INFORMATION:

I. Abstract

The National Medal of Technology is the highest honor awarded by the President of the United States to America's leading innovators. Established by an Act of Congress in 1980, the Medal of Technology was first awarded in 1985. The Medal is given annually to individuals, teams, and/or companies/divisions for their outstanding contributions to the Nation's economic, environmental and social well-being through the development and commercialization of technology products, processes and concepts, technological innovation, and development of the Nation's technological manpower.

The purpose of the National Medal of Technology is to recognize those who have made lasting contributions to America's competitiveness, standard of living, and quality of life through technological innovation, and to recognize those who have made substantial contributions to strengthening the Nation's technological workforce. By highlighting the national importance of technological innovation, the Medal also seeks to inspire future generations of Americans to prepare for and pursue technical careers to keep America at the forefront of global technology and economic leadership.

The National Medal of Technology and Innovation Nomination Evaluation Committee, a distinguished, independent committee appointed by the Secretary of Commerce, reviews and evaluates the merit of all candidates nominated through an open, competitive solicitation process. The committee makes its recommendations for Medal candidates to the Secretary of Commerce, who in turn makes recommendations to the President for final selection. The National Medal of Technology and Innovation Laureates are announced by the White House and the Department of Commerce once the Medalists are notified of their selection.

The public uses the National Medal of Technology and Innovation Nomination Application to recognize through nomination an individual's or company's extraordinary leadership and innovation in technological achievement. The application must be accompanied by six letters of recommendation or support from individuals who have firsthand knowledge of the cited achievement(s).

II. Method of Collection

The nomination application and instructions can be downloaded from the USPTO Web site. Nomination files should be submitted by electronic mail. Alternatively, letters of recommendation may be sent by electronic mail, fax or overnight delivery.

III. Data

OMB Number: 0651–0060.

Form Number(s): None.

Type of Review: Extension of a currently approved collection.

Affected Public: Primarily business or other for-profit organizations; not-for-profit institutions; individuals or households.

Estimated Number of Respondents: 26 responses per year.

Estimated Time per Response: The USPTO estimates that it will take approximately 40 hours to gather the necessary information, prepare the nomination form, write the recommendations, and submit the request for the nomination to the USPTO. This collection contains one form.

Estimated Total Annual Respondent Burden Hours: 1,040 hours per year.

Estimated Total Annual Respondent Cost Burden: $36,067. The USPTO is calculating an estimated respondent hourly rate through an estimate of earnings obtained from the Bureau of Labor Statistics, Occupational Outlook Handbook, 2008–09 edition. The USPTO estimates that half of the submissions will be filed by public relations specialists and half by research engineers. The USPTO estimates that it will cost public relations specialists $23.68 per hour and research engineers $45.68 per hour, for an average hourly rate of $34.68. Considering these factors, the USPTO estimates $36,067 per year for labor costs associated with respondents.

Item	Estimated time for response	Estimated annual responses	Estimated annual burden hours
National Medal of Technology and Innovation Nomination Form	40 hours	26	1,040
Total	....	26	1,040

Estimated Total Annual (Non-hour) Respondent Cost Burden: $0. There are no capital start-up, operation, maintenance or recordkeeping costs associated with this information collection, and there are no filing fees.

Although it is possible for the public to submit the nominations through regular or express mail, to date no submissions have been received in this manner. The majority of recent submissions have been through electronic mail. The USPTO, therefore, is not calculating an estimate of postage costs associated with this information collection.

IV. Request for Comments

Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden (including hours and cost) of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology.

Comments submitted in response to this notice will be summarized or included in the request for OMB approval of this information collection; they will also become a matter of public record.

Dated: March 12, 2009.

Susan K. Fawcett,

Records Officer, USPTO, Office of the Chief Information Officer, Customer Information Services Group, Public Information Services Division.

[FR Doc. E9–5984 Filed 3–18–09; 8:45 am]

BILLING CODE 3510–16–P

DEPARTMENT OF COMMERCE

United States Patent and Trademark Office

[PTO–C–2009–0009]

Public Advisory Committees

AGENCY: United States Patent and Trademark Office.

ACTION: Notice and request for nominations for Public Advisory Committees.

SUMMARY: On November 29, 1999, the President signed into law the Patent and Trademark Office Efficiency Act (the "Act"), Public Law 106–113, which, among other things, established two Public Advisory Committees to review the policies, goals, performance, budget and user fees of the United States Patent and Trademark Office (USPTO) with respect to patents, in the case of the Patent Public Advisory Committee, and with respect to trademarks, in the case of the Trademark Public Advisory Committee, and to advise the Director on these matters (now codified at 35 U.S.C. 5). Due to the expiration of current members' terms, the USPTO is requesting nominations for three (3) members to the Patent Public Advisory Committee (PPAC) and two (2) members to the Trademark Public Advisory Committee (TPAC) for terms of three years that begin from date of appointment.

DATES: Nominations must be postmarked or electronically transmitted on or before May 15, 2009.

ADDRESSES: Persons wishing to submit nominations should send the nominee's resumé to Chief of Staff, Office of the Under Secretary of Commerce for Intellectual Property and Director of the USPTO, Post Office Box 1450, Alexandria, Virginia 22313–1450; by electronic mail to: *PPACnominations@uspto.gov* for the Patent Public Advisory Committee or *TPACnominations@uspto.gov* for the Trademark Patent Public Advisory Committee; by facsimile transmission marked to the Chief of Staff's attention at (571) 273–0464, or by mail marked to the Chief of Staff's attention and addressed to the Office of the Under Secretary of Commerce for Intellectual Property and Director of the USPTO, Post Office, Box 1450, Alexandria, Virginia 22313–1450. Self-nominations are perfectly acceptable.

FOR FURTHER INFORMATION CONTACT: Eleanor K. Meltzer, Chief of Staff, by facsimile transmission marked to her attention at (571) 273–0464, by mail marked to her attention and addressed to the Office of the Under Secretary of Commerce for Intellectual Property and Director of the USPTO, Post Office Box 1450, Alexandria, Virginia 22313–1450, or by telephone at: (571) 272–7660.

SUPPLEMENTARY INFORMATION: The Advisory Committees' duties include:

- Advising the Under Secretary of Commerce for Intellectual Property and Director of the USPTO on matters relating to policies, goals, performance, budget, and user fees of the USPTO relating to patents and trademarks, respectively; and
- Within 60 days after the end of each fiscal year: (1) Preparing an annual report on matters listed above; (2) transmitting a report to the Secretary of Commerce, the President, and the Committees on the Judiciary of the Senate and the House of Representatives; and (3) publishing the report in the Official Gazette of the USPTO.

Members of the Patent and Trademark Public Advisory Committees are appointed by and serve at the pleasure of the Secretary of Commerce for three (3)-year terms.

Advisory Committees

The Public Advisory Committees are each composed of nine (9) voting members who are appointed by the Secretary of Commerce (the "Secretary"). The Public Advisory Committee members must be United States citizens and represent the interests of diverse users of the USPTO, both large and small entity applicants in proportion to the number of such applications filed. The Committees must include members who have "substantial backgrounds and achievement in finance, management, labor relations, science, technology, and office automation." 35 U.S.C. 5(b)(3). In the case of the Patent Public Advisory Committee, at least twenty-five (25) percent of the members must represent "small business concerns, independent inventors, and nonprofit organizations," and at least one member must represent the independent inventor community. 35 U.S.C. 5(b)(2). Each of the Public Advisory Committees includes three (3) non-voting members representing each of the labor organizations recognized by the USPTO.

Procedures and Guidelines of the Patent and Trademark Public Advisory Committees

Each newly appointed member of the Patent and Trademark Public Advisory Committees will serve for a term of three years from date of appointment. As required by the Act, members of the Patent and Trademark Public Advisory Committees receive compensation for each day they attend meetings or are engaged in the business of that Advisory Committee.

The rate of compensation is the daily equivalent of the annual rate of basic pay in effect for level III of the Executive Schedule under section 5314 of title 5, United States Code. While away from their home or regular place of business, members are allowed travel expenses, including per diem in lieu of subsistence, as authorized by Section 5703 of title 5, United States Code. The USPTO provides the necessary administrative support, including technical assistance, for the Committees.

Applicability of Certain Ethics Laws

Members of each Public Advisory Committee are considered Special Government Employees within the meaning of Section 202 of title 18, United States Code. The following additional information includes several, but not all, of the ethics rules that apply to members, and assumes that members are not engaged in Public Advisory Committee business more than sixty days during each calendar year:

- Each member will be required to file a confidential financial disclosure form within thirty (30) days of appointment. 5 CFR 2634.202(c), 2634.204, 2634.903, and 2634.904(b).
- Each member will be subject to many of the public integrity laws, including criminal bars against representing a party, 18 U.S.C. 205(c), in a particular matter that came before the member's committee and that involved at least one specific party. *See also* 18 U.S.C. 207 for post-membership bars. A member also must not act on a matter in which the member (or any of certain closely related entities) has a financial interest. 18 U.S.C. 208.
- Representation of foreign interests may also raise issues. 35 U.S.C. 5(a)(1) and 18 U.S.C. 219.

Meetings of the Patent and Trademark Public Advisory Committees

Meetings of each Advisory Committee take place at the call of the Chair to consider an agenda set by the Chair. Meetings may be conducted in person, electronically through the Internet, or by other appropriate means. The meetings of each Advisory Committee are open to the public except that each Advisory Committee may, by majority vote, meet in executive session when considering personnel, privileged, or other confidential matters. Nominees must have the ability to participate in Committee business via the Internet.

Procedures for Submitting Nominations

Please submit resumés for nominations for the Patent Public Advisory Committee and the Trademark Public Advisory Committee to: Chief of Staff to the Under Secretary of Commerce for Intellectual Property and Director of the United States Patent and Trademark Office, using the addresses provided above.

Dated: March 12, 2009.

John J. Doll,

Acting Under Secretary of Commerce for Intellectual Property and Acting Director of the United States Patent and Trademark Office.

[FR Doc. E9–5844 Filed 3–18–09; 8:45 am]

BILLING CODE 3510–16–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–8784–1]

Total Coliform Rule Revisions—Notice of Stakeholder Meeting

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: The Environmental Protection Agency's Total Coliform Rule/Distribution System Advisory Committee established an Agreement in Principle (AIP), which provides the Agency with recommendations for revising the 1989 Total Coliform Rule (TCR). One of the recommendations of the Committee is that EPA conduct stakeholder outreach as the Agency develops the proposed revisions to the TCR. Today, EPA is giving notice of a public meeting to provide regulation development updates and opportunities for stakeholders to provide feedback on the development of the proposed revised Total Coliform Rule (RTCR).

Topics to be discussed in the meeting include a review of EPA's commitments to stakeholder outreach and involvement pertaining to the proposed RTCR and linkages to other rules; plan and schedule for guidance documents development; progress in converting the AIP recommendations to the rule language; discussion on proposed changes to the Public Notification and Consumer Confidence Report language; and discussion on AIP recommendations regarding review of the TCR analytical methods for Total Coliform/E. coli. EPA will also provide status on the Distribution System Research and Information Collection Partnership. Teleconferencing will be available for individuals unable to attend the meeting in person.

DATES: The public meeting will be held on Friday, April 3, 2009 (9 a.m. to 4 p.m., Eastern Time (ET)). Attendees and those planning to participate via teleconference should register for the meeting by calling Kate Zimmer of RESOLVE at (202) 965–6387 or by e-mail to *kzimmer@resolv.org* no later than March 31, 2009.

ADDRESSES: The meeting will be held at the EPA East Building, Room 1117–A, 1201 Constitution Avenue, NW., Washington, DC 20460.

FOR FURTHER INFORMATION CONTACT: For general inquiries about this meeting and teleconference information, contact Kate Zimmer of RESOLVE at (202) 965–6387 or by e-mail *kzimmer@resolv.org*. For technical information, contact Sean Conley: *conley.sean@epa.gov*, (202) 564–1781), Standards and Risk Management Division, Office of Ground Water and Drinking Water (MC 4607M), Environmental Protection Agency, 1200 Pennsylvania Avenue, NW., Washington, DC 20460; fax number: (202) 564–3767. For more information on the Committee's recommendations please visit, *http://www.epa.gov/safewater/disinfection/tcr/regulation_revisions_tcrdsac.html.*

SUPPLEMENTARY INFORMATION: *Special Accommodations:* For information on access or accommodations for individuals with disabilities, please contact Crystal Rodgers-Jenkins at (202) 564–5275 or by e-mail at *rodgers-jenkins.crystal@epa.gov*. Please allow at least 10 days prior to the meeting to give EPA time to process your request.

Dated: March 13, 2009.

Cynthia C. Dougherty,

Director, Office of Ground Water and Drinking Water.

[FR Doc. E9–6005 Filed 3–18–09; 8:45 am]

BILLING CODE 6560–50–P

FARM CREDIT SYSTEM INSURANCE CORPORATION

Farm Credit System Insurance Corporation Board; Regular Meeting

AGENCY: Farm Credit System Insurance Corporation.

SUMMARY: Notice is hereby given of the regular meeting of the Farm Credit System Insurance Corporation Board (Board).

DATES: The meeting of the Board will be held at the offices of the Farm Credit Administration in McLean, Virginia, on March 24, 2009, 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 System Insurance Corporation Board, (703) 883–4009, TTY (703) 883–4056.

ADDRESSES: Farm Credit System Insurance Corporation, 1501 Farm Credit Drive, McLean, Virginia 22102.

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

- January 15, 2009 (Regular).

B. Business Reports

- FCSIC Financial Report.
- Report on Insured Obligations.
- Quarterly Report on Annual Performance Plan.

C. New Business

- Policy Statement on Receivership and Conservatorship Counsel.
- Presentation of 2008 Audit Results.

Closed Session

- FCSIC Report on System Performance.

Executive Session

- Executive Session of the FCSIC Board Audit Committee with the External Auditor.

Dated: March 13, 2009.

Roland E. Smith,

Secretary, Farm Credit System Insurance Corporation Board.

[FR Doc. E9–5886 Filed 3–18–09; 8:45 am]

BILLING CODE 6710–01–P

FEDERAL COMMUNICATIONS COMMISSION

Public Information Collection Requirement Submitted to OMB for Review and Approval, Comments Requested

March 13, 2009.

SUMMARY: The Federal Communications Commission, as part of its continuing effort to reduce paperwork burden, invites the general public and other Federal agencies to take this opportunity to comment on the following information collection, as required by the Paperwork Reduction Act of 1995, Public Law 104–13. An agency may not conduct or sponsor a collection of information unless it displays a currently valid control number. No person shall be subject to any penalty for failing to comply with a collection of information subject to the Paperwork Reduction Act (PRA) that does not display a valid control number. Comments are requested concerning (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; (b) the accuracy of the Commission's burden estimate; (c) ways to enhance the quality, utility, and clarity of the information collected; and (d) ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology.

DATES: Written Paperwork Reduction Act (PRA) comments should be submitted on or before April 20, 2009. If you anticipate that you will be submitting comments, but find it difficult to do so within the period of time allowed by this notice, you should advise the contacts listed below as soon as possible.

ADDRESSES: Direct all PRA comments to Nicholas A. Fraser, Office of Management and Budget, via Internet at *Nicholas_A._Fraser@omb.eop.gov* or via fax at (202) 395–5167 and to Cathy Williams, Federal Communications Commission, Room 1–C823, 445 12th Street, SW., Washington, DC or via Internet at *Cathy.Williams@fcc.gov* or *PRA@fcc.gov.*

To view a copy of this information collection request (ICR) submitted to OMB: (1) Go to the Web page *http://www.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, (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(s), contact Cathy Williams at (202) 418–2918.

SUPPLEMENTARY INFORMATION:

OMB Control Number: 3060–0208.

Title: Section 73.1870, Chief Operators.

Form Number: Not applicable.

Type of Review: Extension of a currently approved collection.

Respondents: Business and other for-profit entities; Not-for-profit institutions.

Number of Respondents and Responses: 18,498 respondents; 36,996 responses.

Estimated Time per Response: 0.166–26 hours.

Frequency of Response: Recordkeeping requirement; Third party disclosure requirement; Weekly reporting requirement.

Total Annual Burden: 484,019 hours.

Total Annual Costs: None.

Obligation to Respond: Required to obtain or retain benefits. The statutory authority for this collection of information is contained in Section 154(i) of the Communications Act of 1934, as amended.

Nature and Extent of Confidentiality: There is no need for confidentiality with this collection of information.

Privacy Impact Assessment(s): No impact(s).

Needs and Uses: 47 CFR Section 73.1870 requires that the licensee of an AM, FM, or TV broadcast station designate a chief operator of the station. Section 73.1870(b)(3) requires that this designation must be in writing and posted with the station license. Section 73.1230 requires that all licensees post station licenses "at the place the licensee considers the principal control point of the transmitter" generally at the transmitter site. Agreements with chief operators serving on a contract basis must be in writing with a copy kept in the station files. Section 73.1870(c)(3) requires that the chief operator, or personnel delegated and supervised by the chief operator, review the station records at least once each week to determine if required entries are being made correctly, and verify that the station has been operated in accordance with FCC rules and the station authorization. Upon completion of the review, the chief operator must date and sign the log, initiate corrective action which may be necessary and advise the station licensee of any condition which is repetitive. The posting of the designation of the chief operator is used by interested parties to readily identify the chief operator. The review of the station records is used by the chief operator, and FCC staff in investigations, to ensure that the station is operating in accordance with its station authorization and the FCC rules and regulations.

OMB Control Number: 3060–0573.

Title: Application for Franchise Authority Consent to Assignment or Transfer of Control of Cable Television Franchise.

Form Number: FCC Form 394.

Type of Review: Extension of a currently approved collection.

Respondents: Business of other for-profit entities; State, Local or Tribal Government.

Number of Respondents and Responses: 2,000 respondents; 1,000 responses.

Estimated Time per Response: 1–5 hours.

Frequency of Response: Third party disclosure requirement.

Obligation to Respond: Required to obtain or retain benefits. The statutory authority for this information collection is contained in Section 4(i) and 617 of the Communications Act of 1934, as amended.

Total Annual Burden: 7,000 hours.
Total Annual Costs: $375,000.
Privacy Impact Assessment(s): No impact(s).
Nature and Extent of Confidentiality: There is no need for confidentiality with this collection of information.
Needs and Uses: Cable operators use FCC Form 394 to apply to the local franchise authority (LFA) for approval to assign or transfer control of a cable television system. With the information provided by Form 394, LFAs can restrict profiteering transactions and other transfers that are likely to have an adverse effect on cable rates or service in the franchise area.
OMB Control Number: 3060–0754.
Title: Children's Television Programming Report.
Form Number: FCC Form 398.
Type of Review: Extension of a currently approved collection.
Respondents: Businesses or other for-profit entities.
Number of Respondents and Responses: 1,962 respondents; 7,848 responses.
Estimated Time per Response: 12 hours.
Frequency of Response: Recordkeeping requirement; Quarterly reporting requirement.
Obligation to Respond: Required to obtain or retain benefits. Statutory authority for this information collection is contained in 154(i) and 303 of the Communications Act of 1934, as amended.
Total Annual Burden: 94,176 hours.
Total Annual Cost: $3,139,200.
Privacy Act Impact Assessment: No impact(s).
Nature and Extent of Confidentiality: There is no need for confidentiality with this collection of information.
Needs and Uses: Commercial television broadcast stations and Class A television broadcast stations are both required to file FCC Form 398. FCC Form 398 is a standardized form that provides a consistent format for reporting by all licensees, and facilitates efforts by the public and the FCC to monitor compliance with the Children's Television Act.

These commercial television broadcast station licensees and the Class A television broadcast station licensees both use FCC Form 398 to identify the individual station, and to identify the children's educational and informational programs, which the station broadcasts on both the regularly scheduled and preempted core programming, to meet the station's obligation under the Children's Television Act of 1990 (CTA).

Each quarter, the licensee is required to place in its public inspection file a "Children's Television Programming Report" and to file the FCC Form 398 each quarter with the Commission. The licensee must also complete a "Preemption Report" for each preempted core program during the quarter. This "Preemption Report" requests information on the date of each preemption, if the program was rescheduled, the date and time the program was aired, and the reason for the preemption.

Federal Communications Commission.
Marlene H. Dortch,
Secretary.
[FR Doc. E9–6015 Filed 3–18–09; 8:45 am]
BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

Federal Advisory Committee Act; Communications Security, Reliability and Interoperability Council

AGENCY: Federal Communications Commission.

ACTION: Notice of intent to renew charter.

SUMMARY: In accordance with the Federal Advisory Committee Act, the purpose of this notice is to announce that the Federal Communications Commission (FCC) has renewed the charter of the "Communications Security, Reliability and Interoperability Council" (hereinafter the "CSRIC").

ADDRESSES: A copy of the charter is available at the Federal Communications Commission, Reference Information Center, 445 12th Street, SW., Room CY-A257, Washington, DC 20554.

FOR FURTHER INFORMATION CONTACT: Lisa M. Fowlkes, Deputy Bureau Chief, Public Safety & Homeland Security Bureau, Federal Communications Commission, 445 12th Street, SW., Room 7-C753, Washington, DC 20554. *Telephone:* (202) 418–7452, e-mail: *lisa.fowlkes@fcc.gov.*

SUPPLEMENTARY INFORMATON: The purpose of the CSRIC is to provide recommendations to the FCC to ensure optimal security, reliability, and interoperability of communications systems, including public safety, telecommunications, and media communications. The recommendations to be provided by the CSRIC shall include those related to facilitating: (1) The security, reliability, operability and interoperability of public safety communications systems; (2) the security, reliability, operability, and interoperability of wireline, wireless, satellite, cable, and public voice and data networks; and (3) the security and reliability of broadcast and Multichannel Video Programming Distribution facilities. The CSRIC's recommendations will also address: (1) Ensuring the availability of communications capacity during natural disasters, terrorist attacks, or other events that result in exceptional strain on the communications infrastructure; and (2) ensuring and facilitating the rapid restoration of communications services in the event of widespread or major disruptions.

The Council's duties may include: (1) Recommending best practices and actions the FCC can take to ensure the security, reliability, operability, and interoperability of today's public safety communications systems, including dispatch systems, radio communications networks and facilities, and devices used by first responders. (This task should take into account the availability of new and advanced technologies such as broadband and Internet Protocol (IP) based technologies); (2) recommending best practices and actions the FCC can take to improve the reliability and resiliency of communications infrastructure. (This task should include a review and update, if appropriate, of best practices previously produced by the Network Reliability and Interoperability Council and the Media Security and Reliability Council, should take into account new and advanced technologies including broadband and IP-based technologies, as well as, to the extent appropriate, additional functionalities provided by wireless handsets such as Short Message Service (SMS) to create alternative means of communication to emergency response channels); (3) evaluating ways to strengthen the collaboration between communications service providers and public safety entities during emergencies and make recommendations for how they can be improved; (4) developing and recommending best practices and actions the FCC can take that promote reliable 9–1–1 and enhanced 9–1–1 service, including procedures for: (a) Defining geographic coverage areas for public safety answering points; (b) defining network diversity requirements for delivery of IP-enabled 9–1–1 and enhanced 9–1–1 calls; (c) call-handling in the event of call overflow or network outages; (d) public safety answering point (PSAP) certification and testing requirements; (e) validation procedures for inputting and updating location information in relevant databases; and (f) the format for delivering address

information to PSAPs; (5) analyzing and recommending technical options to enable accurate and reliable dynamic E9–1–1 location identification for interconnected VoIP services; (6) recommending ways, including best practices, to improve Emergency Alert System (EAS) operations and testing and to ensure that all Americans, including those living in rural areas, the elderly, people with disabilities, and people who do not speak English, have access to timely EAS alerts and other emergency information; (7) recommending methods to measure reliably and accurately the extent to which key best practices are implemented both now and in the future. (In carrying out this task, the Council shall identify those "key best practices" for each communications industry segment, e.g., media, wireline, and wireless, that are most critical for network and media security, reliability, operability, and interoperability); (8) making recommendations with respect to such additional topics as the FCC may specify. Such topics may include issues arising from the convergence of technologies and how the FCC can best fulfill its responsibilities, particularly with respect to safety of life and property (including law enforcement) and national defense under the Communications Act.

Federal Communications Commission.

Marlene H. Dortch,

Secretary.

[FR Doc. E9–6014 Filed 3–18–09; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

[DA 09–471]

Notice of Suspension and Initiation of Debarment Proceedings; Schools and Libraries Universal Service Support Mechanism

AGENCY: Federal Communications Commission.

ACTION: Notice.

SUMMARY: The Enforcement Bureau (the "Bureau") gives notice of Mr. Ruben B. Bohuchot's suspension from the schools and libraries universal service support mechanism (or "E–Rate Program"). Additionally, the Bureau gives notice that debarment proceedings are commencing against him. Mr. Bohuchot, or any person who has an existing contract with or intends to contract with him to provide or receive services in matters arising out of activities associated with or related to the schools and libraries support, may respond by filing an opposition request, supported by documentation to Rebekah Bina, Federal Communications Commission, Enforcement Bureau, Investigations and Hearings Division, Room 4–C330, 445 12th Street, SW., Washington, DC 20554.

DATES: Opposition requests must be received by April 20, 2009. However, an opposition request by the party to be suspended must be received 30 days from the receipt of the suspension letter or April 20, 2009, whichever comes first. The Bureau will decide any opposition request for reversal or modification of suspension or debarment within 90 days of its receipt of such requests.

FOR FURTHER INFORMATION CONTACT: Rebekah Bina, Federal Communications Commission, Enforcement Bureau, Investigations and Hearings Division, Room 4–C330, 445 12th Street, SW., Washington, DC 20554. Rebekah Bina may be contacted by phone at (202) 418–7931 or e-mail at *Rebekah.Bina@fcc.gov.* If Ms. Bina is unavailable, you may contact Ms. Vickie Robinson, Assistant Chief, Investigations and Hearings Division, by telephone at (202) 418–1420 and by e-mail at *Vickie.Robinson@fcc.gov.*

SUPPLEMENTARY INFORMATION: The Bureau has suspension and debarment authority pursuant to 47 CFR 54.8 and 47 CFR 0.111(a)(14). Suspension will help to ensure that the party to be suspended cannot continue to benefit from the schools and libraries mechanism pending resolution of the debarment process. Attached is the suspension letter, DA 09–471, which was mailed to Mr. Bohuchot and released on February 26, 2009. The complete text of the notice of suspension and initiation of debarment proceedings is available for public inspection and copying during regular business hours at the FCC Reference Information Center, Portal II, 445 12th Street, SW., Room CY–A257, Washington, DC 20554. In addition, the complete text is available on the FCC's Web site at *http://www.fcc.gov.* The text may also be purchased from the Commission's duplicating inspection and copying during regular business hours at the contractor, Best Copy and Printing, Inc., Portal II, 445 12th Street, SW., Room CY–B420, Washington, DC 20554, telephone (202) 488–5300 or (800) 378–3160, facsimile (202) 488–5563, or via e-mail *http://www.bcpiweb.com.*

Hillary S. DeNigro,

Chief, Investigations and Hearings Division, Enforcement Bureau, Federal Communications Commission.

The suspension letter follows:

February 26, 2009.

[DA 09–471]

Via Certified Mail, Return Receipt Requested and Facsimile (510–452–8405)

Mr. Ruben B. Bohuchot, c/o Richard Alan Anderson, Federal Public Defender—Dallas, 525 Griffin Street, Suite 629, Dallas, TX 75202.

Re: Notice of Suspension and Initiation of Debarment Proceedings, File No. EB–08–IH–5312

Dear Mr. Bohuchot:

The Federal Communications Commission ("FCC" or "Commission") has received notice of your conviction of Federal crimes, including conspiracy to commit bribery, conspiracy to launder monetary instruments, multiple counts of bribery concerning programs receiving Federal funds, obstruction of justice and making false statements on tax returns, in connection with your participation in the schools and libraries universal service support mechanism ("E–Rate program").[1] Consequently, pursuant to 47 CFR 54.8, this letter constitutes official notice of your suspension from the E–Rate program. In addition, the Enforcement Bureau ("Bureau") hereby notifies you that we are commencing debarment proceedings against you.[2]

[1] *See* 18 U.S.C. 371 (conspiracy to bribery involving Federal programs), 666(a)(1)(B) and 2 (bribery concerning programs receiving Federal funds and aiding and abetting), 1512(c) (obstructing and impeding an official proceeding), and 1956(h) (conspiracy to lauder monetary instruments) and 26 U.S.C. 7206(1) (false statements on a tax return). Any further reference in this letter to "your conviction" refers to your thirteen count conviction. *United States* v. *Ruben B. Bohuchot,* Criminal Docket No. 3:07–CR–00167–L –1, Judgment (N.D. Tex. filed Nov. 14, 2008 and entered Nov. 17, 2008; amended Nov. 25, 2008) ("*Ruben Bohuchot Judgment*").

[2] 47 CFR 54.8; 47 CFR 0.111 (delegating to the Enforcement Bureau authority to resolve universal service suspension and debarment proceedings). The Commission adopted debarment rules for the schools and libraries universal service support mechanism in 2003. *See Schools and Libraries Universal Service Support Mechanism,* Second Report and Order and Further Notice of Proposed Rulemaking, 18 FCC Rcd 9202 (2003) ("*Second Report and Order*") (adopting section 54.521 to suspend and debar parties from the E-rate program). In 2007, the Commission extended the debarment rules to apply to all of the Federal universal service support mechanisms. *Comprehensive Review of the Universal Service Fund Management, Administration, and Oversight; Federal-State Joint Board on Universal Service; Schools and Libraries*

I. Notice of Suspension

The Commission has established procedures to prevent persons who have "defrauded the government or engaged in similar acts through activities associated with or related to the schools and libraries support mechanism" from receiving the benefits associated with that program.[3] On November 12, 2008, the United States District Court in Texas sentenced you to serve eleven years in prison following your conviction of Federal crimes, including conspiracy to commit bribery involving Federal funds, conspiracy to launder monetary instruments, multiple counts of bribery involving Federal funds, and other related offenses in connection with your participation the E–Rate program.[4] In addition, you and a co-conspirator will have to forfeit approximately $1 million as a result of your conviction.[5]

As the former Chief Technology Officer of the Dallas Independent School District ("DISD"), you were in charge of procuring technology contracts for DISD. In this position, you participated in a bribery and money laundering scheme involving DISD technology projects, including a contract that involved E–Rate funds for Funding Year 2002 ("E–Rate FY 2002 Contract").[6] Specifically, you provided assistance to the efforts of your co-defendant, Frankie Logyang Wong ("Mr. Wong"), former co-owner and president of Micro Systems Engineering, Inc. ("MSE"),[7] which enabled MSE to obtain a contract to provide E–Rate services to DISD.[8] In exchange for your role in helping MSE obtain the E–Rate FY 2002 Contract, you received bribes that included extensive access to and control of large sports-fishing vessels, payment for numerous vacations and various entertainment services, and cash that you attempted to disguise as repayments from another individual for living expenses.[9] MSE received at least $35 million in aggregate revenue from DISD and the Universal Service Administrative Company as a result of its participation in the DISD E–Rate FY 2002 Contract.[10]

Pursuant to section 54.8(a)(4) of the Commission's rules,[11] your conviction requires the Bureau to suspend you from participating in any activities associated with or related to the schools and libraries fund mechanism, including the receipt of funds or discounted services through the schools and libraries fund mechanism, or consulting with, assisting, or advising applicants or service providers regarding the schools and libraries support mechanism.[12] Your suspension becomes effective upon the earlier of your receipt of this letter or publication of notice in the **Federal Register.**[13]

Suspension is immediate pending the Bureau's final debarment determination. In accordance with the Commission's debarment rules, you may contest this suspension or the scope of this suspension by filing arguments in opposition to the suspension, with any relevant documentation. Your request must be received within 30 days after you receive this letter or after notice is published in the **Federal Register**, whichever comes first.[14] Such requests, however, will not ordinarily be granted.[15] The Bureau may reverse or limit the scope of suspension only upon a finding of extraordinary circumstances.[16] Absent extraordinary circumstances, the Bureau will decide any request for reversal or modification of suspension within 90 days of its receipt of such request.[17]

II. Initiation of Debarment Proceedings

Your conviction of criminal conduct in connection with the E–Rate program, in addition to serving as a basis for immediate suspension from the program, also serves as a basis for the initiation of debarment proceedings against you. Your conviction falls within the categories of causes for debarment defined in section 54.8(c) of the Commission's rules.[18] Therefore, pursuant to section 54.8(a)(4) of the Commission's rules, your conviction requires the Bureau to commence debarment proceedings against you.

As with your suspension, you may contest debarment or the scope of the proposed debarment by filing arguments and any relevant documentation within 30 calendar days of the earlier of the receipt of this letter or of publication in the **Federal Register.**[19] Absent extraordinary circumstances, the Bureau will debar you.[20] Within 90 days of receipt of any opposition to your suspension and proposed debarment, the Bureau, in the absence of extraordinary circumstances, will provide you with notice of its decision to debar.[21] If the Bureau decides to debar you, its decision will become effective upon the earlier of your receipt

Universal Service Support Mechanism; Lifeline and Link Up; Changes to the Board of Directors for the National Exchange Carrier Association, Inc., Report and Order, 22 FCC Rcd 16372, 16410–12 (2007) (*Program Management Order*) (renumbering section 54.521 of the universal service debarment rules as section 54.8 and amending subsections (a)(1), (5), (c), (d), (e)(2)(i), (3), (e)(4), and (g)).

[3] *See Second Report and Order*, 18 FCC Rcd at 9225, ¶ 66; *Program Management Order*, 22 FCC Rcd at 16387, ¶ 32. The Commission's debarment rules define a "person" as "[a]ny individual, group of individuals, corporation, partnership, association, unit of government or legal entity, however, organized." 47 CFR 54.8(a)(6).

[4] *See supra* note 1. *See also http://dallas.fbi.gov/dojpressrel/pressrel08/dl111208.htm* (accessed Dec. 8, 2008) ("*DOJ November 12, 2008 Ruben Bohuchot Press Release*"); *Ruben Bohuchot Judgment* at 1–2.

[5] *See DOJ November 12, 2008 Ruben Bohuchot Press Release; Ruben Bohuchot Judgment* at 2 and 8.

[6] *See United States* v. *Ruben B. Bohuchot, et al.*, Criminal Docket No. 3:07–CR–167–L–2, Indictment at 1,5–6,15 (N.D.Tex. filed May 22, 2007, and entered May. 24, 2007, under seal; unsealed May 29, 2007). ("*DISD Indictment*"); *see also DOJ November 12, 2008 Ruben Bohuchot Press Release.*

[7] In a separate letter, we also serve notice of suspension and initiation of debarment proceedings to Frankie Logyang Wong for his role in the DISD bribery and money laundering scheme, pursuant to his conviction. *See* Letter from Hillary S. DeNigro, Chief Investigations and Hearings Division, Enforcement Bureau, to Frankie Logyang Wong, Notice of Suspension and Initiation of Debarment Proceedings, DA 09–473 (Inv. & Hearings Div., Enf. Bur. Feb. 26, 2009). MSE operated as a computer reseller firm providing computer products and services to large corporations and school districts. *See DISD Indictment at 2.*

[8] *See DISD Indictment* at 5–6; *DOJ November 12, 2008 Ruben Bohuchot Press Release.* MSE was able to obtain two contracts with DISD worth approximately $120 million as a result of information that Mr. Wong received from Mr. Bohuchot. *DISD Indictment* at 2–4. In this proceeding, we only address the contract involving E–Rate services.

[9] *DISD Indictment* at 4–5, 7–21; *DOJ November 12, 2008 Ruben Bohuchot Press Release.*

[10] *DISD Indictment* at 6. Based on a winning bid proposal prepared utilizing information that Mr. Wong received from Mr. Bohuchot, MSE received at least $4 million as a subcontractor under another contract with DISD. *See DISD Indictment* at 4; *DOJ November 12, 2008 Ruben Bohuchot Press Release* at 2.

[11] 47 CFR 54.8(a)(4). *See Second Report and Order*, 18 FCC Rcd at 9225–9227, ¶¶ 67–74.

[12] 47 CFR 54.8(a)(1), (d).

[13] *Second Report and Order*, 18 FCC Rcd at 9226, ¶ 69; 47 CFR 54.8(e)(1).

[14] 47 CFR 54.8(e)(4).

[15] *Id.*

[16] 47 CFR 54.8(e)(5).

[17] *See Second Report and Order*, 18 FCC Rcd at 9226, ¶ 70; 47 CFR 54.8(e)(5), 54.8(f).

[18] "Causes for suspension and debarment are the conviction of or civil judgment for attempt or commission of criminal fraud, theft, embezzlement, forgery, bribery, falsification or destruction of records, making false statements, receiving stolen property, making false claims, obstruction of justice and other fraud or criminal offense arising out of activities associated with or related to the schools and libraries support mechanism, the high-cost support mechanism, the rural healthcare support mechanism, and the low-income support mechanism." 47 CFR 54.8(c). Such activities "include the receipt of funds or discounted services through [the Federal universal service] support mechanisms, or consulting with, assisting, or advising applicants or service providers regarding [the Federal universal service] support mechanisms." 47 CFR 54.8(a)(1).

[19] *See Second Report and Order*, 18 FCC Rcd at 9226, ¶ 70; 47 CFR 54.8(e)(3).

[20] *Second Report and Order*, 18 FCC Rcd at 9227, ¶ 74.

[21] *See id.*, 18 FCC Rcd at 9226, ¶ 70; 47 CFR 54.8(e)(5).

of a debarment notice or publication of the decision in the **Federal Register**.[22]

If and when your debarment becomes effective, you will be prohibited from participating in activities associated with or related to the schools and libraries support mechanism for at least three years from the date of debarment.[23] The Bureau may, if necessary to protect the public interest, extend the debarment period.[24]

Please direct any response, if by messenger or hand delivery, to Marlene H. Dortch, Secretary, Federal Communications Commission, 236 Massachusetts Avenue, NE., Suite 110, Washington, DC 20002, to the attention of Rebekah Bina, Attorney Advisor, Investigations and Hearings Division, Enforcement Bureau, Room 4–C330, with a copy to Vickie Robinson, Assistant Chief, Investigations and Hearings Division, Enforcement Bureau, Room 4–C330, Federal Communications Commission. If sent by commercial overnight mail (other than U.S. Postal Service Express Mail and Priority Mail), the response should be sent to the Federal Communications Commission, 9300 East Hampton Drive, Capitol Heights, Maryland 20743. If sent by first-class, Express, or Priority mail, the response should be sent to Rebekah Bina, Attorney Advisor, Investigations and Hearings Division, Enforcement Bureau, Federal Communications Commission, 445 12th Street, SW., Room 4–C330, Washington, DC, 20554, with a copy to Vickie Robinson, Assistant Chief, Investigations and Hearings Division, Enforcement Bureau, Federal Communications Commission, 445 12th Street, SW., Room 4–C330, Washington, DC, 20554. You shall also transmit a copy of the response via e-mail to *Rebekah.Bina@fcc.gov* and to *Vickie.Robinson@fcc.gov*.

If you have any questions, please contact Ms. Bina via mail, by telephone at (202) 418–7931 or by e-mail at *Rebekah.Bina@fcc.gov*. If Ms. Bina is unavailable, you may contact Ms. Vickie Robinson, Assistant Chief, Investigations and Hearings Division, by telephone at (202) 418–1420 and by e-mail at *Vickie.Robinson@fcc.gov*.

Sincerely yours,

Hillary S. DeNigro,
Chief, Investigations and Hearings Division, Enforcement Bureau.

[22] 47 CFR 54.8(e)(5). The Commission may reverse a debarment, or may limit the scope or period of debarment upon a finding of extraordinary circumstances, following the filing of a petition by you or an interested party or upon motion by the Commission. 47 CFR 54.8(f).

[23] *Second Report and Order*, 18 FCC Rcd at 9225, ¶ 67; 47 CFR 54.8(d), 54.8(g).

[24] 47 CFR 54.8(g).

cc: Kristy Carroll, Esq., Universal Service Administrative Company (via e-mail),
Dayle A. Elieson, U.S. Attorney's Office, United States Department of Justice (via mail).

[FR Doc. E9–6016 Filed 3–18–09; 8:45 am]
BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

[DA 09–477]

Notice of Suspension and Initiation of Debarment Proceedings; Schools and Libraries Universal Service Support Mechanism

AGENCY: Federal Communications Commission.

ACTION: Notice.

SUMMARY: The Enforcement Bureau (the "Bureau") gives notice of Mr. R. Clay Harris's suspension from the schools and libraries universal service support mechanism (or "E-Rate Program"). Additionally, the Bureau gives notice that debarment proceedings are commencing against him. Mr. Harris, or any person who has an existing contract with or intends to contract with him to provide or receive services in matters arising out of activities associated with or related to the schools and libraries support, may respond by filing an opposition request, supported by documentation to Rebekah Bina, Federal Communications Commission, Enforcement Bureau, Investigations and Hearings Division, Room 4–C330, 445 12th Street, SW., Washington, DC 20554.

DATES: Opposition requests must be received by April 20, 2009. However, an opposition request by the party to be suspended must be received 30 days from the receipt of the suspension letter or April 20, 2009, whichever comes first. The Bureau will decide any opposition request for reversal or modification of suspension or debarment within 90 days of its receipt of such requests.

FOR FURTHER INFORMATION CONTACT: Rebekah Bina, Federal Communications Commission, Enforcement Bureau, Investigations and Hearings Division, Room 4–C330, 445 12th Street, SW., Washington, DC 20554. Rebekah Bina may be contacted by phone at (202) 418–7931 or e-mail at *Rebekah.Bina@fcc.gov*. If Ms. Bina is unavailable, you may contact Ms. Vickie Robinson, Assistant Chief, Investigations and Hearings Division, by telephone at (202) 418–1420 and by e-mail at *Vickie.Robinson@fcc.gov*.

SUPPLEMENTARY INFORMATION: The Bureau has suspension and debarment authority pursuant to 47 CFR 54.8 and 47 CFR 0.111(a)(14). Suspension will help to ensure that the party to be suspended cannot continue to benefit from the schools and libraries mechanism pending resolution of the debarment process. Attached is the suspension letter, DA 09–477, which was mailed to Mr. Harris and released on February 26, 2009. The complete text of the notice of suspension and debarment proceedings is available for public inspection and copying during regular business hours at the FCC Reference Information Center, Portal II, 445 12th Street, SW., Room CY–A257, Washington, DC 20554. In addition, the complete text is available on the FCC's Web site at *http://www.fcc.gov*. The text may also be purchased from the Commission's duplicating inspection and copying during regular business hours at the contractor, Best Copy and Printing, Inc., Portal II, 445 12th Street, SW., Room CY–B420, Washington, DC 20554, telephone (202) 488–5300 or (800) 378–3160, facsimile (202) 488–5563, or via e-mail *http://www.bcpiweb.com*.

Hillary S. DeNigro,
Chief, Investigations and Hearings Division, Enforcement Bureau, Federal Communications Commission.

The suspension letter follows:

February 26, 2009.

DA 09–477

VIA CERTIFIED MAIL

RETURN RECEIPT REQUESTED AND FACSIMILE (404–872–1622)

Mr. R. Clay Harris
c/o Allison Cobham Dawson
Federal Defender Program, Inc.
Suite 1700, The Equitable Building
100 Peachtree Street, NW
Atlanta, GA 30303.
E-Mail: *allison_dawson@fd.org*

Re: Notice of Suspension and Initiation of Debarment Proceedings, File No. EB–09–IH–0003

Dear Mr. Harris:

The Federal Communications Commission ("FCC" or "Commission") has received notice of your conviction of conspiracy to defraud the United States and bribery, in violation of 18 U.S.C. 371 and 666(a)(2), in connection with your participation in the schools and libraries universal service support mechanism ("E-Rate program").[1]

[1] Any further reference in this letter to "your conviction" refers to your conviction by a federal

Consequently, pursuant to 47 CFR 54.8, this letter constitutes official notice of your suspension from the E-Rate program. In addition, the Enforcement Bureau ("Bureau") hereby notifies you that we are commencing debarment proceedings against you.[2]

I. Notice of Suspension

The Commission has established procedures to prevent persons who have "defrauded the government or engaged in similar acts through activities associated with or related to the schools and libraries support mechanism" from receiving the benefits associated with that program.[3] On July 31, 2008, a federal jury found you guilty of bribery and conspiracy to defraud the United States in connection with your participation in the E-Rate program.[4] Evidence provided at trial demonstrated that, as President and majority owner of Multimedia Communications Services Corporation ("MCSC"), you provided bribes to co-conspirators Arthur Scott and Evelyn Myers Scott ("co-conspirators"), former employees of Atlanta Public Schools ("APS") and co-owners of M&S Consulting,[5] in order for the co-conspirators to support your efforts in securing MCSC's performance of E-Rate and other technology-related work for APS.[6] As part of this conspiracy, you provided the co-conspirators and M&S Consulting over $230,000 between November 2000 and November 2002.[7] During the same period of time, Arthur Scott and other APS employees allocated E-Rate work to MCSC without requiring MCSC to submit competitive bids. Arthur Scott and MCSC also submitted defective applications and bills to USAC resulting in overpayments from the E-Rate program to MCSC.[8] As a result of your conviction, you were sentenced to five years in federal prison to be followed by three years of supervised released. You were also ordered to pay, along with the co-conspirators, restitution totaling over $234,000.[9]

Pursuant to section 54.8(a)(4) of the Commission's rules,[10] your conviction requires the Bureau to suspend you from participating in any activities associated with or related to the schools and libraries fund mechanism, including the receipt of funds or discounted services through the schools and libraries fund mechanism, or consulting with, assisting, or advising applicants or service providers regarding the schools and libraries support mechanism.[11] Your suspension becomes effective upon the earlier of your receipt of this letter or publication of notice in the **Federal Register**.[12]

Suspension is immediate pending the Bureau's final debarment determination. In accordance with the Commission's debarment rules, you may contest this suspension or the scope of this suspension by filing arguments in opposition to the suspension, with any relevant documentation. Your request must be received within 30 days after you receive this letter or after notice is published in the **Federal Register**, whichever comes first.[13] Such requests, however, will not ordinarily be granted.[14] The Bureau may reverse or limit the scope of suspension only upon a finding of extraordinary circumstances.[15] Absent extraordinary circumstances, the Bureau will decide any request for reversal or modification of suspension within 90 days of its receipt of such request.[16]

II. Initiation of Debarment Proceedings

Your conviction of bribery and conspiracy to defraud the United States in connection with the E-Rate program, in addition to serving as a basis for immediate suspension from the program, also serves as a basis for the initiation of debarment proceedings against you. Your conviction falls within the categories of causes for debarment defined in section 54.8(c) of the Commission's rules.[17] Therefore, pursuant to section 54.8(a)(4) of the Commission's rules, your conviction requires the Bureau to commence debarment proceedings against you.

As with your suspension, you may contest debarment or the scope of the proposed debarment by filing arguments and any relevant documentation within 30 calendar days of the earlier of the receipt of this letter or of publication in the **Federal Register**.[18] Absent extraordinary circumstances, the Bureau will debar you.[19] Within 90 days of receipt of any opposition to your suspension and proposed debarment, the Bureau, in the absence of

jury of conspiracy to defraud the United States and bribery. *United States* v. *R. Clay Harris*, Criminal Docket No. 1:07–CR–00287–CC, Verdict (N.D.Ga. filed July 31, 2008 and entered Aug. 1, 2008) ("*Harris Jury Verdict*"); Department of Justice Press Release (July 31, 2008), available at *http://atlanta.fbi.gov/dojpressrel/pressrel08/bribery073108.htm* (DOJ July 31, 2008 Press Release). See also United States v. R. Clay Harris, 1:07–CR–00287–CC, Judgment (N.D.Ga. filed and entered Dec. 24, 2008) (finalizing conviction and imposing sentence) ("*Harris Judgment*"); *United States* v. *R. Clay Harris*, 1:07–CR–00287–CC, Criminal Indictment (N.D.Ga. filed on Aug. 28, 2007 and entered Aug. 30, 2007) ("*Harris Indictment*").

[2] 47 CFR 54.8; 47 CFR 0.111 (delegating to the Enforcement Bureau authority to resolve universal service suspension and debarment proceedings). The Commission adopted debarment rules for the schools and libraries universal service support mechanism in 2003. *See Schools and Libraries Universal Service Support Mechanism*, Second Report and Order and Further Notice of Proposed Rulemaking, 18 FCC Rcd 9202 (2003) ("*Second Report and Order*") (adopting section 54.521 to suspend and debar parties from the E-rate program). In 2007, the Commission extended the debarment rules to apply to all of the Federal universal service support mechanisms. *Comprehensive Review of the Universal Service Fund Management, Administration, and Oversight; Federal-State Joint Board on Universal Service; Schools and Libraries Universal Service Support Mechanism; Lifeline and Link Up; Changes to the Board of Directors for the National Exchange Carrier Association, Inc.*, Report and Order, 22 FCC Rcd 16372, 16410–12 (2007) (*Program Management Order*) (renumbering section 54.521 of the universal service debarment rules as section 54.8 and amending subsections (a)(1), (5), (c), (d), (e)(2)(i), (3), (e)(4), and (g)).

[3] *Second Report and Order*, 18 FCC Rcd at 9225, ¶ 66. The Commission's debarment rules define a "person" as "[a]ny individual, group of individuals, corporation, partnership, association, unit of government or legal entity, however, organized." 47 CFR 54.8(a)(6).

[4] *See* Harris Jury Verdict; DOJ July 31, 2008 Press Release.

[5] Arthur Scott and Evelyn Myers Scott were convicted in connection with their roles in this scheme, and each was subsequently debarred from the E-Rate program. See Letter from Hillary S. DeNigro, Chief, Investigations and Hearings Division, Enforcement Bureau, Federal Communications Commission, to Mrs. Evelyn Myers Scott, Notice of Debarment, 23 FCC Rcd 137 (Inv. & Hearings Div., Enf. Bur. 2008); Letter from Hillary S. DeNigro, Chief, Investigations and Hearings Division, Enforcement Bureau, Federal Communications Commission, to Mr. Arthur Scott, Notice of Debarment, 23 FCC Rcd 143 (Inv. & Hearings Div., Enf. Bur. 2008). Evelyn Myers Scott and Arthur Scott both testified at trial against Mr. Harris. See Department of Justice Press Release (Dec. 22, 2008) available at *http://www.usdoj.gov/usao/gan/press/2008/12-22-08b.pdf (DOJ Dec. 22, 2008 Press Release)*.

[6] *DOJ Dec. 22, 2008 Press Release; Harris Indictment* at 8–18.

[7] *DOJ Dec. 22, 2008 Press Release; Harris Indictment* at 8–10.

[8] *DOJ Dec. 22, 2008 Press Release; Harris Indictment* at 5–8.

[9] *DOJ Dec. 22, 2008 Press Release; Harris Judgment* at 2–5.

[10] 47 CFR 54.8(a)(4). *See Second Report and Order*, 18 FCC Rcd at 9225–27, ¶¶ 67–74.

[11] 47 CFR 54.8(a)(1),(d).

[12] *Second Report and Order*, 18 FCC Rcd at 9226, ¶ 69; 47 CFR 54.8(e)(1).

[13] 47 CFR 54.8(e)(4).

[14] *Id.*

[15] 47 CFR 54.8(e)(5).

[16] *See Second Report and Order*, 18 FCC Rcd at 9226, ¶ 70; 47 CFR 54.8(e)(5), 54.8(f).

[17] "Causes for suspension and debarment are the conviction of or civil judgment for attempt or commission of criminal fraud, theft, embezzlement, forgery, bribery, falsification or destruction of records, making false statements, receiving stolen property, making false claims, obstruction of justice and other fraud or criminal offense arising out of activities associated with or related to the schools and libraries support mechanism." 47 CFR 54.8(c). Such activities "include the receipt of funds or discounted services through [the Federal universal service] support mechanisms, or consulting with, assisting, or advising applicants or service providers regarding [the Federal universal service] support mechanism." 47 CFR 54.8(a)(1).

[18] *See Second Report and Order*, 18 FCC Rcd at 9226, ¶ 70; 47 CFR 54.8(e)(3).

[19] *Second Report and Order*, 18 FCC Rcd at 9227, ¶ 74.

extraordinary circumstances, will provide you with notice of its decision to debar.[20] If the Bureau decides to debar you, its decision will become effective upon the earlier of your receipt of a debarment notice or publication of the decision in the **Federal Register**.[21]

If and when your debarment becomes effective, you will be prohibited from participating in activities associated with or related to the schools and libraries support mechanism for three years from the date of debarment.[22] The Bureau may, if necessary to protect the public interest, extend the debarment period.[23]

Please direct any response, if by messenger or hand delivery, to Marlene H. Dortch, Secretary, Federal Communications Commission, 236 Massachusetts Avenue, NE., Suite 110, Washington, DC 20002, to the attention of Rebekah Bina, Attorney Advisor, Investigations and Hearings Division, Enforcement Bureau, Room 4–C330, with a copy to Vickie Robinson, Assistant Chief, Investigations and Hearings Division, Enforcement Bureau, Room 4–C330, Federal Communications Commission. If sent by commercial overnight mail (other than U.S. Postal Service Express Mail and Priority Mail), the response should be sent to the Federal Communications Commission, 9300 East Hampton Drive, Capitol Heights, Maryland 20743. If sent by first-class, Express, or Priority mail, the response should be sent to Rebekah Bina, Attorney Advisor, Investigations and Hearings Division, Enforcement Bureau, Federal Communications Commission, 445 12th Street, SW., Room 4–C330, Washington, DC 20554, with a copy to Vickie Robinson, Assistant Chief, Investigations and Hearings Division, Enforcement Bureau, Federal Communications Commission, 445 12th Street, SW., Room 4–C330, Washington, DC 20554. You shall also transmit a copy of the response via email to *Rebekah.Bina@fcc.gov* and to *Vickie.Robinson@fcc.gov*.

If you have any questions, please contact Ms. Bina via mail, by telephone at (202) 418–7931 or by e-mail at *Rebekah.Bina@fcc.gov*. If Ms. Bina is unavailable, you may contact Ms. Vickie Robinson, Assistant Chief, Investigations and Hearings Division, by telephone at (202) 418–1420 and by e-mail at *Vickie.Robinson@fcc.gov*.

Sincerely yours,

Hillary S. DeNigro,

Chief, Investigations and Hearings Division Enforcement Bureau.

cc: Glenn D. Baker, Assistant United States Attorney, Department of Justice (via e-mail)

Kristy Carroll, Esq., Universal Service Administrative Company (via e-mail)

[FR Doc. E9–6017 Filed 3–18–09; 8:45 am]

BILLING CODE 6712–01–P

[20] *See id.*, 18 FCC Rcd at 9226, ¶ 70; 47 CFR 54.8(e)(5).

[21] 47 CFR 54.8(e)(5). The Commission may reverse a debarment, or may limit the scope or period of debarment upon a finding of extraordinary circumstances, following the filing of a petition by you or an interested party or upon motion by the Commission. 47 CFR 54.8(f).

[22] *Second Report and Order*, 18 FCC Rcd at 9225, ¶ 67; 47 CFR 54.8(d),(g).

[23] 47 CFR 54.8(g).

FEDERAL COMMUNICATIONS COMMISSION

[DA 09–476]

Notice of Suspension and Initiation of Debarment Proceedings; Schools and Libraries Universal Service Support Mechanism

AGENCY: Federal Communications Commission.

ACTION: Notice.

SUMMARY: The Enforcement Bureau (the "Bureau") gives notice of Ms. Cynthia K. Ayer's suspension from the schools and libraries universal service support mechanism (or "E-Rate Program"). Additionally, the Bureau gives notice that debarment proceedings are commencing against her. Ms. Ayer, or any person who has an existing contract with or intends to contract with her to provide or receive services in matters arising out of activities associated with or related to the schools and libraries support, may respond by filing an opposition request, supported by documentation to Rebekah Bina, Federal Communications Commission, Enforcement Bureau, Investigations and Hearings Division, Room 4–C330, 445 12th Street, SW., Washington, DC 20554.

DATES: Opposition requests must be received by April 20, 2009. However, an opposition request by the party to be suspended must be received 30 days from the receipt of the suspension letter or April 20, 2009, whichever comes first. The Bureau will decide any opposition request for reversal or modification of suspension or debarment within 90 days of its receipt of such requests.

FOR FURTHER INFORMATION CONTACT: Rebekah Bina, Federal Communications Commission, Enforcement Bureau, Investigations and Hearings Division, Room 4–C330, 445 12th Street, SW., Washington, DC 20554. Rebekah Bina may be contacted by phone at (202) 418–7931 or e-mail at *Rebekah.Bina@fcc.gov*. If Ms. Bina is unavailable, you may contact Ms. Vickie Robinson, Assistant Chief, Investigations and Hearings Division, by telephone at (202) 418–1420 and by e-mail at *Vickie.Robinson@fcc.gov*.

SUPPLEMENTARY INFORMATION: The Bureau has suspension and debarment authority pursuant to 47 CFR 54.8 and 47 CFR 0.111(a)(14). Suspension will help to ensure that the party to be suspended cannot continue to benefit from the schools and libraries mechanism pending resolution of the debarment process. Attached is the suspension letter, DA 09–476, which was mailed to Ms. Ayer and released on February 26, 2009. The complete text of the notice of suspension and initiation of debarment proceedings is available for public inspection and copying during regular business hours at the FCC Reference Information Center, Portal II, 445 12th Street, SW., Room CY–A257, Washington, DC 20554. In addition, the complete text is available on the FCC's Web site at *http://www.fcc.gov*. The text may also be purchased from the Commission's duplicating inspection and copying during regular business hours at the contractor, Best Copy and Printing, Inc., Portal II, 445 12th Street, SW., Room CY–B420, Washington, DC 20554, telephone (202) 488–5300 or (800) 378–3160, facsimile (202) 488–5563, or via e-mail *http://www.bcpiweb.com*.

Hillary S. DeNigro,

Chief, Investigations and Hearings Division, Enforcement Bureau, Federal Communications Commission.

The suspension letter follows:

February 26, 2009.

[DA 09–476]

Via Certified Mail, Return Receipt Requested and E-Mail

Ms. Cynthia K. Ayer, c/o James Edward Holler, Holler Dennis Corbett Ormond Plante and Garner, P.O. Box 11006, Columbia, SC 29211.

Re: Notice of Suspension and Initiation of Debarment Proceedings, File No. EB–09–IH–0002

Dear Ms. Ayer:

The Federal Communications Commission ("FCC" or "Commission") has received notice of your conviction of mail fraud, in violation of 18 U.S.C. 2 and 1341, in connection with your participation in the schools and libraries universal service support mechanism ("E-Rate program").[1] Consequently,

[1] Any further reference in this letter to "your conviction" refers to your guilty plea and

pursuant to 47 CFR 54.8, this letter constitutes official notice of your suspension from the E-Rate program. In addition, the Enforcement Bureau ("Bureau") hereby notifies you that we are commencing debarment proceedings against you.[2]

I. Notice of Suspension

The Commission has established procedures to prevent persons who have "defrauded the government or engaged in similar acts through activities associated with or related to the schools and libraries support mechanism" from receiving the benefits associated with that program.[3] On April 30, 2008, you plead guilty to mail fraud in connection with your participation in the E-Rate program.[4] While employed as a technology director for Bamberg County School District One in Bamberg, South Carolina, you admitted to submitting applications containing false information to the E-Rate program.[5] You subsequently requested funds that you were not entitled to and caused the Universal Service Administrative Company ("USAC") to send you a check in the amount of $25,243 made payable to your company, Go Between Communications a/k/a Go Between Telecommunications.[6] As a result of your conviction, you have been sentenced to serve two years in prison and ordered to pay $468,496 in restitution to USAC for using the mail to submit fraudulent applications for E-Rate funding on behalf of Bamberg County School District One.[7]

Pursuant to section 54.8(a)(4) of the Commission's rules,[8] your conviction requires the Bureau to suspend you from participating in any activities associated with or related to the schools and libraries fund mechanism, including the receipt of funds or discounted services through the schools and libraries fund mechanism, or consulting with, assisting, or advising applicants or service providers regarding the schools and libraries support mechanism.[9] Your suspension becomes effective upon the earlier of your receipt of this letter or publication of notice in the **Federal Register**.[10]

Suspension is immediate pending the Bureau's final debarment determination. In accordance with the Commission's debarment rules, you may contest this suspension or the scope of this suspension by filing arguments in opposition to the suspension, with any relevant documentation. Your request must be received within 30 days after you receive this letter or after notice is published in the **Federal Register**, whichever comes first.[11] Such requests, however, will not ordinarily be granted.[12] The Bureau may reverse or limit the scope of suspension only upon a finding of extraordinary circumstances.[13] Absent extraordinary circumstances, the Bureau will decide any request for reversal or modification of suspension within 90 days of its receipt of such request.[14]

II. Initiation of Debarment Proceedings

Your guilty plea to criminal conduct in connection with the E-Rate program, in addition to serving as a basis for immediate suspension from the program, also serves as a basis for the initiation of debarment proceedings against you. Your conviction falls within the categories of causes for debarment defined in section 54.8(c) of the Commission's rules.[15] Therefore, pursuant to section 54.8(a)(4) of the Commission's rules, your conviction requires the Bureau to commence debarment proceedings against you.

As with your suspension, you may contest debarment or the scope of the proposed debarment by filing arguments and any relevant documentation within 30 calendar days of the earlier of the receipt of this letter or of publication in the **Federal Register**.[16] Absent extraordinary circumstances, the Bureau will debar you.[17] Within 90 days of receipt of any opposition to your suspension and proposed debarment, the Bureau, in the absence of extraordinary circumstances, will provide you with notice of its decision to debar.[18] If the Bureau decides to debar you, its decision will become effective upon the earlier of your receipt of a debarment notice or publication of the decision in the **Federal Register**.[19]

If and when your debarment becomes effective, you will be prohibited from participating in activities associated with or related to the schools and libraries support mechanism for three years from the date of debarment.[20] The Bureau may, if necessary to protect the public interest, extend the debarment period.[21]

Please direct any response, if by messenger or hand delivery, to Marlene H. Dortch, Secretary, Federal Communications Commission, 236 Massachusetts Avenue, NE., Suite 110, Washington, DC 20002, to the attention of Rebekah Bina, Attorney Advisor,

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subsequent conviction of one count of mail fraud. *United States* v. *Cynthio K. Ayer*, Criminal Docket No. 5:06–453 (001 MBS), Plea Agreement (D. S.C. filed and entered Apr. 30, 2008) ("*Ayer Pleo Agreement*"); *United States* v. *Cynthio K. Ayer*, 5:06–453 (001 MBS), Judgment (D. S.C. filed and entered Dec. 11, 2008) ("*Ayer Judgment*"). *See olso United States* v. *Cynthio K. Ayer*, Criminal Docket No. 5:06–453 (001 MBS), Indictment (D. S.C. filed Apr. 19, 2006 and entered Apr. 20, 2006) ("*Ayer Indictment*").

[2] 47 CFR 54.8; 47 CFR 0.111 (delegating to the Enforcement Bureau authority to resolve universal service suspension and debarment proceedings). The Commission adopted debarment rules for the schools and libraries universal service support mechanism in 2003. *See Schools ond Libraries Universal Service Support Mechonism*, Second Report and Order and Further Notice of Proposed Rulemaking, 18 FCC Rcd 9202 (2003) ("*Second Report ond Order*") (adopting section 54.521 to suspend and debar parties from the E-Rate program). In 2007, the Commission extended the debarment rules to apply to all of the Federal universal service support mechanisms. *Comprehensive Review of the Universal Service Fund Monogement, Administrotion, ond Oversight; Federol-Stote Joint Boord on Universol Service; Schools ond Libraries Universol Service Support Mechonism; Lifeline ond Link Up; Changes to the Boord of Directors for the Notionol Exchonge Corrier Associotion, Inc.*, Report and Order, 22 FCC Rcd 16372, 16410–12 (2007) (*Program Monagement Order*) (renumbering section 54.521 of the universal service debarment rules as section 54.8 and amending subsections (a)(1), (5), (c), (d), (e)(2)(i), (3), (e)(4), and (g)).

[3] *Second Report and Order*, 18 FCC Rcd at 9225, ¶ 66. The Commission's debarment rules define a "person" as "[a]ny individual, group of individuals, corporation, partnership, association, unit of government or legal entity, however, organized." 47 CFR 54.8(a)(6).

[4] *See Ayer Pleo Agreement. See olso* Department of Justice Press Release (Dec. 11, 2008), available at *http://www.usdoj.gov/otr/public/press_releoses/2008/240283.pdf* (*DOJ Press Releose*).

[5] *DOJ Press Release* at 1.

[6] *See Ayer Indictment* at 13–15; *DOJ Press Releose* at 1.

[7] *Ayer Judgment* at 2–4; *DOJ Press Release* at 1.

[8] 47 CFR 54.8(a)(4). *See Second Report ond Order*, 18 FCC Rcd at 9225–27, ¶¶ 67–74.

[9] 47 CFR 54.8(a)(1)(d).

[10] *Second Report ond Order*, 18 FCC Rcd at 9226, ¶ 69; 47 CFR 54.8(e)(1).

[11] 47 CFR 54.8(e)(4).

[12] *Id.*

[13] 47 CFR 54.8(e)(5).

[14] *See Second Report ond Order*, 18 FCC Rcd at 9226, ¶ 70; 47 CFR 54.8(e)(5),(f).

[15] "Causes for suspension and debarment are the conviction of or civil judgment for attempt or commission of criminal fraud, theft, embezzlement, forgery, bribery, falsification or destruction of records, making false statements, receiving stolen property, making false claims, obstruction of justice and other fraud or criminal offense arising out of activities associated with or related to the schools and libraries support mechanism." 47 CFR 54.8(c). Such activities "include the receipt of funds or discounted services through [the Federal universal service] support mechanisms, or consulting with, assisting, or advising applicants or service providers regarding [the Federal universal service] support mechanism." 47 CFR 54.8(a)(1).

[16] *See Second Report ond Order*, 18 FCC Rcd at 9226, ¶ 70; 47 CFR 54.8(e)(3).

[17] *Second Report ond Order*, 18 FCC Rcd at 9227, ¶ 74.

[18] *See id.*, 18 FCC Rcd at 9226, ¶ 70; 47 CFR 54.8(e)(5).

[19] 47 CFR 54.8(e)(5). The Commission may reverse a debarment, or may limit the scope or period of debarment upon a finding of extraordinary circumstances, following the filing of a petition by you or an interested party or upon motion by the Commission. 47 CFR 54.8(f).

[20] *Second Report ond Order*, 18 FCC Rcd at 9225, ¶ 67; 47 CFR 54.8(d),(g).

[21] 47 CFR 54.8(g).

Investigations and Hearings Division, Enforcement Bureau, Room 4–C330, with a copy to Vickie Robinson, Assistant Chief, Investigations and Hearings Division, Enforcement Bureau, Room 4–C330, Federal Communications Commission. If sent by commercial overnight mail (other than U.S. Postal Service Express Mail and Priority Mail), the response should be sent to the Federal Communications Commission, 9300 East Hampton Drive, Capitol Heights, Maryland 20743. If sent by first-class, Express, or Priority mail, the response should be sent to Rebekah Bina, Attorney Advisor, Investigations and Hearings Division, Enforcement Bureau, Federal Communications Commission, 445 12th Street, SW., Room 4–C330, Washington, DC 20554, with a copy to Vickie Robinson, Assistant Chief, Investigations and Hearings Division, Enforcement Bureau, Federal Communications Commission, 445 12th Street, SW., Room 4–C330, Washington, DC 20554. You shall also transmit a copy of the response via e-mail to *Rebekah.Bina@fcc.gov* and to *Vickie.Robinson@fcc.gov*.

If you have any questions, please contact Ms. Bina via mail, by telephone at (202) 418–7931 or by e-mail at *Rebekah.Bina@fcc.gov*. If Ms. Bina is unavailable, you may contact Ms. Vickie Robinson, Assistant Chief, Investigations and Hearings Division, by telephone at (202) 418–1420 and by e-mail at *Vickie.Robinson@fcc.gov*.

Sincerely yours,
Hillary S. DeNigro,
Chief,
Investigations and Hearings Division, Enforcement Bureau.

cc: Beth Drake, Assistant United States Attorney (via e-mail),
Kristy Carroll, Esq., Universal Service Administrative Company (via e-mail).

[FR Doc. E9–6019 Filed 3–18–09; 8:45 am]
BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

[DA 09–473]

Notice of Suspension and Initiation of Debarment Proceedings; Schools and Libraries Universal Service Support Mechanism

AGENCY: Federal Communications Commission.

ACTION: Notice.

SUMMARY: The Enforcement Bureau (the "Bureau") gives notice of Mr. Frankie Logyang Wong's suspension from the schools and libraries universal service support mechanism (or "E-Rate Program"). Additionally, the Bureau gives notice that debarment proceedings are commencing against him. Mr. Wong, or any person who has an existing contract with or intends to contract with him to provide or receive services in matters arising out of activities associated with or related to the schools and libraries support, may respond by filing an opposition request, supported by documentation to Rebekah Bina, Federal Communications Commission, Enforcement Bureau, Investigations and Hearings Division, Room 4–C330, 445 12th Street, SW., Washington, DC 20554.

DATES: Opposition requests must be received by April 20, 2009. However, an opposition request by the party to be suspended must be received 30 days from the receipt of the suspension letter or April 20, 2009, whichever comes first. The Bureau will decide any opposition request for reversal or modification of suspension or debarment within 90 days of its receipt of such requests.

FOR FURTHER INFORMATION CONTACT: Rebekah Bina, Federal Communications Commission, Enforcement Bureau, Investigations and Hearings Division, Room 4–C330, 445 12th Street, SW., Washington, DC 20554. Rebekah Bina may be contacted by phone at (202) 418–7931 or e-mail at *Rebekah.Bina@fcc.gov*. If Ms. Bina is unavailable, you may contact Ms. Vickie Robinson, Assistant Chief, Investigations and Hearings Division, by telephone at (202) 418–1420 and by e-mail at *Vickie.Robinson@fcc.gov*.

SUPPLEMENTARY INFORMATION: The Bureau has suspension and debarment authority pursuant to 47 CFR 54.8 and 47 CFR 0.111(a)(14). Suspension will help to ensure that the party to be suspended cannot continue to benefit from the schools and libraries mechanism pending resolution of the debarment process. Attached is the suspension letter, DA 09–473, which was mailed to Mr. Wong and released on February 26, 2009. The complete text of the notice of suspension and initiation of debarment proceedings is available for public inspection and copying during regular business hours at the FCC Reference Information Center, Portal II, 445 12th Street, SW., Room CY–A257, Washington, DC 20554. In addition, the complete text is available on the FCC's Web site at *http://www.fcc.gov*. The text may also be purchased from the Commission's duplicating inspection and copying during regular business hours at the contractor, Best Copy and Printing, Inc., Portal II, 445 12th Street, SW., Room CY–B420, Washington, DC 20554, telephone (202) 488–5300 or (800) 378–3160, facsimile (202) 488–5563, or via e-mail *http://www.bcpiweb.com*.

Federal Communications Commission.
Hillary S. DeNigro,
Chief, Investigations and Hearings Division, Enforcement Bureau.

The suspension letter follows:

February 26, 2009.

DA 09–473

VIA CERTIFIED MAIL

RETURN RECEIPT REQUESTED AND FACSIMILE (510–452–8405)

Mr. Frankie Logyang Wong
c/o David Gerger
1001 Fannin, Suite 1950
Houston, TX 77002

Re: Notice of Suspension and Initiation of Debarment Proceedings, File No. EB–08–IH–5313

Dear Mr. Wong:

The Federal Communications Commission ("FCC" or "Commission") has received notice of your conviction of federal crimes, including conspiracy to commit bribery, conspiracy to launder monetary instruments, and multiple counts of bribery concerning programs receiving federal funds, in connection with your participation in the schools and libraries universal service support mechanism ("E-Rate program").[1] Consequently, pursuant to 47 CFR 54.8, this letter constitutes official notice of your suspension from the E-Rate program. In addition, the Enforcement Bureau ("Bureau") hereby notifies you that we are commencing debarment proceedings against you.[2]

[1] *See* 18 U.S.C. 371 (conspiracy to bribery involving federal programs), 666(a) (bribery concerning programs receiving federal funds and aiding and abetting), and 1956(h) (conspiracy to lauder monetary instruments). Any further reference in this letter to "your conviction" refers to your ten count conviction. *United States* v. *Frankie Logyang Wong*, Criminal Docket No. 3:07–CR–00167–L–2, Judgment (N.D. Tex. filed Nov. 14, 2008 and entered Nov. 17, 2008) ("*Frankie Wong Judgment*").

[2] 47 CFR 54.8; 47 CFR 0.111 (delegating to the Enforcement Bureau authority to resolve universal service suspension and debarment proceedings). The Commission adopted debarment rules for the schools and libraries universal service support mechanism in 2003. *See Schools and Libraries Universal Service Support Mechanism*, Second Report and Order and Further Notice of Proposed Rulemaking, 18 FCC Rcd 9202 (2003) ("*Second Report and Order*") (adopting section 54.521 to suspend and debar parties from the E-rate program). In 2007, the Commission extended the debarment rules to apply to all of the Federal universal service support mechanisms. *Comprehensive Review of the Universal Service Fund Management, Administration, and Oversight; Federal-State Joint Board on Universal Service; Schools and Libraries*

I. Notice of Suspension

The Commission has established procedures to prevent persons who have "defrauded the government or engaged in similar acts through activities associated with or related to the schools and libraries support mechanism" from receiving the benefits associated with that program.[3] On November 13, 2008, the United States District Court in Texas sentenced you to serve ten years in prison following your conviction of federal crimes, including conspiracy to commit bribery, conspiracy to launder monetary instruments, and multiple counts of bribery concerning programs receiving federal funds, in connection with your participation the E-Rate program.[4] In addition, you and a co-conspirator were ordered to forfeit approximately $1 million as a result of your conviction.[5]

As the co-owner and president of Micro Systems Engineering, Inc., ("MSE"), you participated in a bribery and money laundering scheme involving technology projects for the Dallas Independent School District ("DISD"), including a contract that involved E-Rate funds for Funding Year 2002 ("E-Rate FY 2002 Contract").[6] Beginning in November 2002, MSE and other companies formed a consortium ("Consortium") for the purpose of submitting a bid proposal relating to E-Rate services for the DISD. While your co-defendant Ruben B. Bohuchot ("Mr. Bohuchot") was Chief Technology Officer of the Dallas Independent School District,[7] the Consortium submitted a bid proposal for E-Rate services after Mr. Bohuchot adjusted the requirements of DISD's request for proposals to benefit you and your companies. Ultimately, the Consortium's bid was approved by DISD.[8] During the same time period, you and MSE provided things of value to Mr. Bohuchot, including extensive access to and control of large sports-fishing vessels, payment for numerous vacations and various entertainment services and cash.[9] A federal jury ultimately determined that you and Mr. Bohuchot engaged in a conspiracy to commit bribery and money laundering. As a result of your criminal activity, MSE received at least $35 million in aggregate revenue from DISD and the Universal Service Administrative Company as a result of its participation in the DISD E-Rate FY 2002 Contract.[10]

Pursuant to section 54.8(a)(4) of the Commission's rules,[11] your conviction requires the Bureau to suspend you from participating in any activities associated with or related to the schools and libraries fund mechanism, including the receipt of funds or discounted services through the schools and libraries fund mechanism, or consulting with, assisting, or advising applicants or service providers regarding the schools and libraries support mechanism.[12] Your suspension becomes effective upon the earlier of your receipt of this letter or publication of notice in the **Federal Register**.[13]

Suspension is immediate pending the Bureau's final debarment determination. In accordance with the Commission's debarment rules, you may contest this suspension or the scope of this suspension by filing arguments in opposition to the suspension, with any relevant documentation. Your request must be received within 30 days after you receive this letter or after notice is published in the **Federal Register**, whichever comes first.[14] Such requests, however, will not ordinarily be granted.[15] The Bureau may reverse or limit the scope of suspension only upon a finding of extraordinary circumstances.[16] Absent extraordinary circumstances, the Bureau will decide any request for reversal or modification of suspension within 90 days of its receipt of such request.[17]

II. Initiation of Debarment Proceedings

Your conviction of criminal conduct in connection with the E-Rate program, in addition to serving as a basis for immediate suspension from the program, also serves as a basis for the initiation of debarment proceedings against you. Your conviction falls within the categories of causes for debarment defined in section 54.8(c) of the Commission's rules.[18] Therefore, pursuant to section 54.8(a)(4) of the Commission's rules, your conviction requires the Bureau to commence debarment proceedings against you.

As with your suspension, you may contest debarment or the scope of the proposed debarment by filing arguments and any relevant documentation within 30 calendar days of the earlier of the receipt of this letter or of publication in the **Federal Register**.[19] Absent extraordinary circumstances, the Bureau will debar you.[20] Within 90 days of receipt of any opposition to your suspension and proposed debarment, the Bureau, in the absence of extraordinary circumstances, will provide you with notice of its decision

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Universal Service Support Mechanism; Lifeline and Link Up; Changes to the Board of Directors for the National Exchange Carrier Association, Inc., Report and Order, 22 FCC Rcd 16372, 16410–12 (2007) (*Program Management Order*) (renumbering section 54.521 of the universal service debarment rules as section 54.8 and amending subsections (a)(1), (5), (c), (d), (e)(2)(i), (3), (e)(4), and (g)).

[3] *See Second Report and Order*, 18 FCC Rcd at 9225, ¶ 66; *Program Management Order*, 22 FCC Rcd at 16387, ¶ 32. The Commission's debarment rules define a "person" as "[a]ny individual, group of individuals, corporation, partnership, association, unit of government or legal entity, however, organized." 47 CFR § 54.8(a)(6).

[4] *See supra* note 1. *See also http://dallas.fbi.gov/dojpressrel/pressrel08/dl111308.htm* (accessed Dec. 8, 2008) ("*DOJ November 13, 2008 Frankie Wong Press Release*"); *Frankie Wong Judgment* at 1–2.

[5] *See DOJ November 13, 2008 Frankie Wong Press Release; Frankie Wong Judgment* at 2 and 8.

[6] *See United States* v. *Ruben B. Bohuchot, et al.*, Criminal Docket No. 3:07–CR–167–L–1, Indictment at 1,5–6,15 (N.D.Tex. filed May 22, 2007, and entered May 24, 2007, under seal; unsealed May 29, 2007). ("*DISD Indictment*"); MSE was a computer reseller firm providing computer products and services to large corporations and school districts, principally in the state of Texas. *See DISD Indictment* at 2; *DOJ November 13, 2008 Frankie Wong Press Release* at 1.

[7] In a separate letter, we also serve notice of suspension and initiation of debarment proceedings to Ruben B. Bohuchot for his role in the DISD bribery and money laundering scheme, pursuant to his conviction. *See* Letter from Hillary S. DeNigro, Chief Investigations and Hearings Division, Enforcement Bureau, to Ruben B. Bohuchot, Notice of Suspension and Initiation of Debarment Proceedings, DA 09–471 (Inv. & Hearings Div., Enf. Bur. Feb. 26, 2009).

[8] *See DISD Indictment* at 5–6; *DOJ November 13, 2008 Frankie Wong Press Release*. MSE was able to obtain two contracts with DISD as a result of information that Mr. Wong received from Mr. Bohuchot. *DISD Indictment* at 2–6. In this proceeding, we only address the contract involving E-Rate services.

[9] *DISD Indictment* at 4–5, 7–21; *DOJ November 13, 2008 Frankie Wong Press Release.*

[10] *DISD Indictment* at 6. Based on a winning bid proposal prepared utilizing information that Mr. Wong received from Mr. Bohuchot, MSE received at least $4 million as a subcontractor under another contract with DISD. *See DISD Indictment* at 4; *DOJ November 13, 2008 Frankie Wong Press Release* at 2.

[11] 47 CFR 54.8(a)(4). *See Second Report and Order*, 18 FCC Rcd at 9225–9227, ¶¶ 67–74.

[12] 47 CFR 54.8(a)(1), (d).

[13] *Second Report and Order*, 18 FCC Rcd at 9226, ¶ 69; 47 CFR 54.8(e)(1).

[14] 47 CFR 54.8(e)(4).

[15] *Id.*

[16] 47 CFR 54.8(e)(5).

[17] *See Second Report and Order*, 18 FCC Rcd at 9226, ¶ 70; 47 CFR 54.8(e)(5), 54.8(f).

[18] "Causes for suspension and debarment are the conviction of or civil judgment for attempt or commission of criminal fraud, theft, embezzlement, forgery, bribery, falsification or destruction of records, making false statements, receiving stolen property, making false claims, obstruction of justice and other fraud or criminal offense arising out of activities associated with or related to the schools and libraries support mechanism, the high-cost support mechanism, the rural healthcare support mechanism, and the low-income support mechanism." 47 CFR 54.8(c). Such activities "include the receipt of funds or discounted services through [the Federal universal service] support mechanisms, or consulting with, assisting, or advising applicants or service providers regarding [the Federal universal service] support mechanisms." 47 CFR 54.8(a)(1).

[19] *See Second Report and Order*, 18 FCC Rcd at 9226, ¶ 70; 47 CFR 54.8(e)(3).

[20] *Second Report and Order*, 18 FCC Rcd at 9227, ¶ 74.

to debar.[21] If the Bureau decides to debar you, its decision will become effective upon the earlier of your receipt of a debarment notice or publication of the decision in the **Federal Register**.[22]

If and when your debarment becomes effective, you will be prohibited from participating in activities associated with or related to the schools and libraries support mechanism for at least three years from the date of debarment.[23] The Bureau may, if necessary to protect the public interest, extend the debarment period.[24]

Please direct any response, if by messenger or hand delivery, to Marlene H. Dortch, Secretary, Federal Communications Commission, 236 Massachusetts Avenue, NE., Suite 110, Washington, DC 20002, to the attention of Rebekah Bina, Attorney Advisor, Investigations and Hearings Division, Enforcement Bureau, Room 4–C330, with a copy to Vickie Robinson, Assistant Chief, Investigations and Hearings Division, Enforcement Bureau, Room 4–C330, Federal Communications Commission. If sent by commercial overnight mail (other than U.S. Postal Service Express Mail and Priority Mail), the response should be sent to the Federal Communications Commission, 9300 East Hampton Drive, Capitol Heights, Maryland 20743. If sent by first-class, Express, or Priority mail, the response should be sent to Rebekah Bina, Attorney Advisor, Investigations and Hearings Division, Enforcement Bureau, Federal Communications Commission, 445 12th Street, SW., Room 4–C330, Washington, DC 20554, with a copy to Vickie Robinson, Assistant Chief, Investigations and Hearings Division, Enforcement Bureau, Federal Communications Commission, 445 12th Street, SW., Room 4–C330, Washington, DC 20554. You shall also transmit a copy of the response via e-mail to *Rebekah.Bina@fcc.gov* and to *Vickie.Robinson@fcc.gov*.

If you have any questions, please contact Ms. Bina via mail, by telephone at (202) 418–7931 or by e-mail at *Rebekah.Bina@fcc.gov*. If Ms. Bina is unavailable, you may contact Ms. Vickie Robinson, Assistant Chief, Investigations and Hearings Division, by telephone at (202) 418–1420 and by e-mail at *Vickie.Robinson@fcc.gov*.

Sincerely yours,
Hillary S. DeNigro,
Chief Investigations and Hearings Division Enforcement Bureau

CC: Kristy Carroll, Esq., Universal Service Administrative Company (via e-mail), Dayle A. Elieson, U.S. Attorney's Office, United States Department of Justice (via mail)

[FR Doc. E9–6020 Filed 3–18–09; 8:45 am]

BILLING CODE 6712–01–P

[21] *See id.*, 18 FCC Rcd at 9226, ¶ 70; 47 CFR 54.8(e)(5).

[22] 47 CFR 54.8(e)(5). The Commission may reverse a debarment, or may limit the scope or period of debarment upon a finding of extraordinary circumstances, following the filing of a petition by you or an interested party or upon motion by the Commission. 47 CFR 54.8(f).

[23] *Second Report and Order*, 18 FCC Rcd at 9225, ¶ 67; 47 CFR 54.8(d), 54.8(g).

[24] 47 CFR 54.8(g).

FEDERAL ELECTION COMMISSION

Sunshine Act Notices

AGENCY: Federal Election Commission.

The Open Meeting Scheduled For Thursday, March 12, 2009, Was Cancelled.

DATE AND TIME: Wednesday, March 18, 2009, 11 a.m.

PLACE: 999 E Street, NW., Washington, DC (ninth floor)

STATUS: This meeting will be closed to the public.

ITEMS TO BE DISCUSSED:

Compliance matters pursuant to 2 U.S.C. 437g.

Audits conducted pursuant to 2 U.S.C. 437g, 438(b), and Title 26, U.S.C.

Matters concerning participation in civil actions or proceedings or arbitration.

Internal personnel rules and procedures or matters affecting a particular employee.

DATE AND TIME: Thursday, March 19, 2009, at 10 a.m.

PLACE: 999 E Street, NW., Washington, DC (ninth floor).

STATUS: This meeting will be open to the public.

ITEMS TO BE DISCUSSED:

Correction and Approval of Minutes.

Draft Advisory Opinion 2009–01: Socialist Workers Party by counsel, Michael Krinsky, Esq., and Lindsey Frank, Esq.

Draft Advisory Opinion 2009–04: Al Franken for U.S. Senate and the Democratic Senatorial Campaign Committee, by Marc E. Elias, Esq.

2009 Legislative Recommendations.

Electronic Distribution of FEC Record.

Management and Administrative Matters.

Individuals who plan to attend and require special assistance, such as sign language interpretation or other reasonable accommodations, should contact Mary Dove, Commission Secretary, at (202) 694–1040, at least 72 hours prior to the hearing date.

PERSON TO CONTACT FOR INFORMATION: Judith Ingram, Press Officer, *Telephone:* (202) 694–1220.

Mary W. Dove,
Secretary of the Commission.

[FR Doc. E9–5879 Filed 3–18–09; 8:45 am]

BILLING CODE: 6715–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Office of the Secretary

Secretary's Advisory Committee on Genetics, Health, and Society; Request for Public Comment

SUMMARY: The Secretary's Advisory Committee on Genetics, Health, and Society (SACGHS) is requesting public comments on a Draft Report to the Secretary of Health and Human Services, "Public Consultation Draft Report on Gene Patents and Licensing Practices and Their Impact on Patient Access to Genetic Tests" (available at *http://oba.od.nih.gov/SACGHS/sacghs_public_comments.html*).

A copy can also be obtained from the National Institutes of Health (NIH) Office of Biotechnology Activities (OBA) by e-mailing *faunteroytd@od.nih.gov* or calling 301–496–9838.

DATES: The public is asked to submit comments by May 15, 2009, in order to be considered by SACGHS in preparing its final report.

ADDRESSES: Comments on the draft report should be addressed to Steven Teutsch, M.D., M.P.H., Chair, SACGHS, and transmitted via an e-mail to *greningerd@od.nih.gov*. Comments may also be submitted by mailing or faxing a copy to NIH OBA at 6705 Rockledge Drive, Suite 750, Bethesda, MD 20892. NIH OBA's fax number is 301–496–9838.

FOR FURTHER INFORMATION CONTACT: Darren Greninger, J.D., NIH OBA, 6705 Rockledge Drive, Suite 750, Bethesda, MD 20892, 301–496–9838, *greningerd@od.nih.gov*.

SUPPLEMENTARY INFORMATION: The Department of Health and Human Services (HHS) established SACGHS to serve as a public forum for deliberations on the broad range of human health and societal issues raised by the development and use of genetic and genomic technologies and, as warranted, to provide advice on these issues. For more information about the Committee, please visit its Web site, *http://oba.od.nih.gov/sacghs/sacghs_home.html*.

The public consultation draft report is the result of work that began in 2004, when SACGHS identified the effect of gene patents and licensing practices on patient and clinical access to genetic tests as a high-priority issue that warranted further study. SACGHS activities in this area were deferred until the completion of a National Academy of Sciences (NAS) study on the granting and licensing of intellectual property rights to genetic and proteomic discoveries and the effects of these practices on research and innovation. In the fall of 2005, NAS released that study's report, *Reaping the Benefits of Genomic and Proteomic Research: Intellectual Property Rights, Innovation, and Public Health*. After reviewing the report, SACGHS decided that more information was needed regarding the effects of gene patents and licenses on patient and clinical access to genetic tests. In 2006, a task force was formed by SACGHS to guide its work in this area. The task force commissioned case studies, compiled relevant information through a review of the literature, and consulted with national and international experts and stakeholders.

At the outset of its work, the task force decided to limit the scope of its inquiry to those genetic tests, whether used for diagnostic, predictive, or other clinical purposes, that rely on analysis of nucleic acid molecules to determine human genotype. As such, the kinds of patent claims that the Committee evaluated were nucleic acid-related patent claims associated with genetic tests for human genotype. This report does not address protein-based genetic tests or protein-related patent claims associated with tests designed to infer genotype.

The public consultation draft report presents the Committee's preliminary findings. The draft report also includes policy options. These options do not necessarily correlate with any particular preliminary finding, but rather provide a framework within which to gather public input. The Committee developed these options to present a broad range of possible actions, but has not yet decided which, if any, of these policy options to support.

Before SACGHS can develop specific recommendations for the Secretary, the Committee needs public input on several issues, including whether changes are needed in patenting and licensing practices that affect genetic testing, and the appropriateness, feasibility, and implications of the report's policy options. Members of the public are also invited to recommend specific policy options not included in the presented options and any needed modifications to existing options. SACGHS also encourages the public to provide any additional information and data regarding the positive or negative effects gene patenting or licensing practices have had, are having, or may have on patient and clinical access to genetic tests.

The Committee will carefully consider public input in finalizing its report and developing any recommendations to the Secretary.

Comments received by May 15, 2009, will be considered by SACGHS in preparing its final report. The public comments and revised report will be discussed during a future SACGHS meeting.

Comments will be available for public inspection at the NIH Office of Biotechnology Activities Monday through Friday between the hours of 8:30 a.m. and 5 p.m.

Dated: March 11, 2009.

Sarah Carr,

Executive Secretary, SACGHS.

[FR Doc. E9–5936 Filed 3–18–09; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention (CDC)

Advisory Board on Radiation and Worker Health (ABRWH or Advisory Board), National Institute for Occupational Safety and Health (NIOSH)

In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), CDC announces the following meeting of the aforementioned committee:

Time and Date: 11 a.m.–5 p.m., Thursday, March 31, 2009.

Place: Audio Conference Call via FTS Conferencing. The USA toll free dial in number is 1–866–659–0537 with a pass code of 9933701.

Status: Open to the public, but without a public oral comment period.

Background: The Advisory Board was established under the Energy Employees Occupational Illness Compensation Program Act of 2000 to advise the President on a variety of policy and technical functions required to implement and effectively manage the new compensation program. Key functions of the Advisory Board include providing advice on the development of probability of causation guidelines which have been promulgated by the Department of Health and Human Services (HHS) as a final rule, advice on methods of dose reconstruction which have also been promulgated by HHS as a final rule, advice on the scientific validity and quality of dose estimation and reconstruction efforts being performed for purposes of the compensation program, and advice on petitions to add classes of workers to the Special Exposure Cohort (SEC).

In December 2000, the President delegated responsibility for funding, staffing, and operating the Advisory Board to HHS, which subsequently delegated this authority to the CDC. NIOSH implements this responsibility for CDC. The charter was issued on August 3, 2001, renewed at appropriate intervals, most recently, August 3, 2007, and will expire on August 3, 2009.

Purpose: This Advisory Board is charged with (a) providing advice to the Secretary, HHS, on the development of guidelines under Executive Order 13179; (b) providing advice to the Secretary, HHS, on the scientific validity and quality of dose reconstruction efforts performed for this program; and (c) upon request by the Secretary, HHS, advising the Secretary on whether there is a class of employees at any Department of Energy facility who were exposed to radiation but for whom it is not feasible to estimate their radiation dose, and on whether there is reasonable likelihood that such radiation doses may have endangered the health of members of this class.

Matters To Be Discussed: The agenda for the conference call includes: Dose Reconstruction Interview Scripts and Procedures; Special Exposure Cohort Petition Status Updates; Board Subcommittee and Work Group Updates; Update on Board Technical Support Contractor Activities; Future Plans.

Due to administrative matters, this **Federal Register** Notice is being published on less than 15 calendar days notice to the public (41 CFR 102–3.150(b)).

The agenda is subject to change as priorities dictate.

Because there is no public comment period, written comments may be submitted. Any written comments received will be included in the official record of the meeting and should be submitted to the contact person below in advance of the meeting.

Contact Person for More Information: Theodore M. Katz, M.P.A., Executive Secretary, NIOSH, CDC, 1600 Clifton Rd. NE., Mailstop: E–20, Atlanta, GA 30333, Telephone (513) 533–6800, Toll Free 1–800–CDC–INFO, E-mail *ocas@cdc.gov*.

The Director, Management Analysis and Services Office, has been delegated the authority to sign **Federal Register** notices pertaining to announcements of meetings and other committee management activities, for both CDC and the Agency for Toxic Substances and Disease Registry.

Dated: March 12, 2009.

Elaine L. Baker,

Director, Management Analysis and Services Office, Centers for Disease Control and Prevention.

[FR Doc. E9–5977 Filed 3–18–09; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

Disease, Disability, and Injury Prevention and Control Special Emphasis Panel (SEP): The Incidence and Etiology of Influenza-Associated Pneumonia In Hospitalized Persons and Virologic Evaluation of the Modes of Influenza Virus Transmission Among Humans, Funding Opportunity Announcement (FOA) IP09–001 and IP09–003

In accordance with Section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), the Centers for Disease Control and Prevention (CDC) announces the aforementioned meeting.

Time and Date: 8 a.m.–5 p.m., April 6, 2009 (Closed).

Place: Sheraton Gateway Hotel Atlanta Airport, 1900 Sullivan Road, Atlanta, Georgia 30337.

Status: The meeting will be closed to the public in accordance with provisions set forth in Section 552b(c)(4) and (6), Title 5 U.S.C., and the Determination of the Director, Management Analysis and Services Office, CDC, pursuant to Public Law 92–463.

Matters to be Discussed: The meeting will include the review, discussion, and evaluation of "The Incidence and Etiology of Influenza-Associated Pneumonia in Hospitalized Persons and Virologic Evaluation of the Modes of Influenza Virus Transmission Among Humans, FOA IP09–001 and IP09–003."

Contact Person for More Information: Gregory Anderson, M.S., M.P.H., Office of the Director, Coordinating Center for Infectious Diseases, CDC, 1600 Clifton Road, Mailstop E–60, Atlanta, GA 30333, *Telephone:* (404) 498–2275.

The Director, Management Analysis and Services Office, has been delegated the authority to sign **Federal Register** notices pertaining to announcements of meetings and other committee management activities, for both CDC and the Agency for Toxic Substances and Disease Registry.

Dated: March 13, 2009.

Elaine L. Baker,

Director, Management Analysis and Services Office, Centers for Disease Control and Prevention.

[FR Doc. E9–6047 Filed 3–18–09; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

Disease, Disability, and Injury Prevention and Control Special Emphasis Panel (SEP): Influenza and Other Emerging Infectious Diseases in Vietnam; and Research and Public Health Practice on Influenza and Other Respiratory Infectious Diseases in the Middle East, Southeast Asia, and South American Regions, Funding Opportunity Announcement (FOA) IP09–002 and IP09–004

In accordance with Section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), the Centers for Disease Control and Prevention (CDC) announces the aforementioned meeting.

Time and Date: 8 a.m.–5 p.m., April 7, 2009 (Closed).

Place: Teleconference.

Status: The meeting will be closed to the public in accordance with provisions set forth in Section 552b(c)(4) and (6), Title 5 U.S.C., and the Determination of the Director, Management Analysis and Services Office, CDC, pursuant to Public Law 92–463.

Matters to be Discussed: The meeting will include the review, discussion, and evaluation of "Influenza and Other Emerging Infectious Diseases in Vietnam; and Research and Public Health Practice on Influenza and Other Respiratory Infectious Diseases in the Middle East, Southeast Asia, and South American Regions, FOA IP09–002 and IP09–004."

Contact Person for More Information: Gregory Anderson, M.S., M.P.H., Office of the Director, Coordinating Center for Infectious Diseases, CDC, 1600 Clifton Road, Mailstop E–60, Atlanta, GA 30333, *Telephone:* (404) 498–2275.

The Director, Management Analysis and Services Office, has been delegated the authority to sign **Federal Register** notices pertaining to announcements of meetings and other committee management activities, for both CDC and the Agency for Toxic Substances and Disease Registry.

Dated: March 13, 2009.

Elaine L. Baker,

Director, Management Analysis and Services Office, Centers for Disease Control and Prevention.

[FR Doc. E9–6049 Filed 3–18–09; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Medicare & Medicaid Services

[Document Identifier: CMS–10164, CMS–10062, CMS–10137, CMS–416, CMS–1557, CMS–2786, CMS–437A&B and CMS–10259]

Agency Information Collection Activities: Submission for OMB Review; Comment Request

Agency: Centers for Medicare & Medicaid Services, HHS.

In compliance with the requirement of section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, the Centers for Medicare & Medicaid Services (CMS), Department of Health and Human Services, is publishing the following summary of proposed collections for public comment. Interested persons are invited to send comments regarding this burden estimate or any other aspect of this collection of information, including any of the following subjects: (1) The necessity and utility of the proposed information collection for the proper performance of the Agency's function; (2) the accuracy of the estimated burden; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) the use of automated collection techniques or other forms of information technology to minimize the information collection burden.

1. *Type of Information Collection Request:* Extension of a currently approved collection;

Title of Information Collection: Electronic Data Interchange (EDI Enrollment Form and Medicare EDI Registration Form; *Form No.:* CMS–10164 (OMB # 0938–983); *Use:* Federal law requires that CMS take precautions to minimize the security risk to Federal information systems. Accordingly, CMS is requiring that trading partners who wish to conduct the Electronic Data Interchange (EDI) transactions provide certain assurances as a condition of receiving access to the Medicare system for the purpose of conducting EDI exchanges. Health care providers, clearinghouses, and health plans that wish to access the Medicare system are required to complete this form. The information will be used to assure that those entities that access the Medicare system are aware of applicable provisions and penalties; *Frequency:* Recordkeeping and Reporting—Other (one-time only); *Affected Public:* Business or other for-profit, Not-for-profit institutions; *Number of Respondents:* 240,000; *Total Annual*

Responses: 240,000; *Total Annual Hours:* 80,000. (For policy questions regarding this collection contact Michael Cabral at 410–786–6168. For all other issues call 410–786–1326.)

2. *Type of Information Collection Request:* Extension of a currently approved collection; *Title of Information Collection:* Collection of Diagnostic Data from Medicare Advantage Organizations for Risk Adjusted Payments: *Use:* CMS requires hospital inpatient, hospital outpatient and physician diagnostic data from Medicare Advantage (MA) organizations to continue making payment under the risk adjustment methodology as required by the Social Security Act, as amended by the Balanced Budget Act; the Medicare, Medicaid and SCHIP Benefits Improvement and Protection Act; and the Medicare Prescription Drug Benefit, Improvement and Modernization Act. CMS will use the data to make risk adjusted payment under Parts C. MA and MA–PD plans will use the data to develop their Parts C bids. As required by law, CMS also annually publishes the risk adjustment factors for plans and other interested entities in the Advance Notice of Methodological Changes for MA Payment Rates (every February) and the Announcement of Medicare Advantage Payment Rates (every April). Lastly, CMS issues monthly reports to each individual plan that contains the CMS-Hierarchical Condition Category (HCC) and RxHCC models' output and the risk scores and reimbursements for each beneficiary that is enrolled in their plan. *Form Number:* CMS–10062 (OMB# 0938–0878); *Frequency:* Quarterly; *Affected Public:* Business or other for-profit and Not-for-profit institutions; *Number of Respondents:* 852; *Total Annual Responses:* 22,097,070; *Total Annual Hours:* 10,826.1. (For policy questions regarding this collection contact Henry Thomas at 410–786–0086. For all other issues call 410–786–1326.)

3. *Type of Information Collection Request:* Extension of a currently approved collection; *Title of Information Collection:* Application for Prescription Drug Plans (PDP); Application for Medicare Advantage Prescription Drug (MA–PD); Application for Cost Plans to Offer Qualified Prescription Drug Coverage; Application for Employer Group Waiver Plans to Offer Prescription Drug Coverage; Service Area Expansion Application for Prescription Drug Coverage; *Use:* Collection of this information is mandated in Part D of the Medicare Prescription Drug, Improvement, and Modernization Act of 2003 and under supporting regulations Subpart K of 42 CFR 423 entitled "Application Procedures and Contracts with PDP Sponsors." Coverage for the prescription drug benefit is provided through contracted prescription drug plans (PDPs) or through Medicare Advantage (MA) plans that offer integrated prescription drug and health care coverage (MA–PD plans). Cost Plans that are regulated under Section 1876 of the Social Security Act, and Employer Group Waiver Plans (EGWP) may also provide a Part D benefit. Organizations wishing to provide services under the Prescription Drug Benefit Program must complete an application, negotiate rates and receive final approval from CMS. Existing Part D Sponsors may also expand their contracted service area by completing the Service Area Expansion (SAE) application. The information will be collected under the solicitation of proposals from PDP, MA–PD, Cost Plan, PACE, and EGWP Plan applicants. The collected information will be used by CMS to: (1) Ensure that applicants meet CMS requirements, (2) support the determination of contract awards. *Form Number:* CMS–10137 (OMB#: 0938–0936); *Frequency:* Reporting—Once; *Affected Public:* Business or other for-profit and Not-for-profit institutions; *Number of Respondents:* 455; *Total Annual Responses:* 455; *Total Annual Hours:* 11,890. (For policy questions regarding this collection contact Marla Rothouse at 410–786–8063. For all other issues call 410–786–1326.)

4. *Type of Information Collection Request:* Revision of a currently approved collection; *Title of Information Collection:* Annual Early and Periodic Screening, Diagnostic and Treatment (EPSDT) Report; *Use:* States are required to submit an annual report on the provision of EPSDT services pursuant to section 1902(a)(43)(D) of the Social Security Act. These reports provide CMS with data necessary to assess the effectiveness of State EPSDT programs, to determine a State's results in achieving its participation goal and to respond to inquiries. This collection is being submitted as a revision based on minor changes made to the form and instructions. CMS has added three additional lines of data to the form (lines 12d, 12e and 12f). This information is currently being collected; however, CMS expanded the lines to obtain a better understanding for the utilization of dental services. CMS believes there will be no additional burden for the changes made to the form. The changes were necessary to accommodate a need for more specific dental data and to preliminary notify States of a change in CPT codes. A clarification was also made to line 14 of the instructions. *Form Number:* CMS–416 (OMB# 0938–0354); *Frequency:* Yearly; *Affected Public:* State, Local or Tribal Governments; *Number of Respondents:* 56; *Total Annual Responses:* 56; *Total Annual Hours:* 1,568. (For policy questions regarding this collection contact Cindy Ruff at 410–786–5916. For all other issues call 410–786–1326.)

5. *Type of Information Collection Request:* Extension of a currently approved collection; *Title of Information Collection:* Survey Report Form for Clinical Laboratory Improvement Amendments (CLIA) and Supporting Regulations in 42 CFR 493.1–493.2001; *Use:* This form is used by the State to determine a laboratory's compliance with CLIA. This information is needed for a laboratory's CLIA certification and recertification. *Form Number:* CMS–1557 (OMB# 0938–0544); *Frequency:* Biennially; *Affected Public:* Business or other for-profit, Not-for-profit institutions, State, Local or Tribal Governments and Federal Government; *Number of Respondents:* 21,000; *Total Annual Responses:* 10,500; *Total Annual Hours:* 5,248. (For policy questions regarding this collection contact Kathleen Todd at 410–786–3385. For all other issues call 410–786–1326.)

6. *Type of Information Collection Request:* Revision of a currently approved collection; *Title of Information Collection:* Fire Safety Survey Reports; *Use:* The Life Safety Code (LSC) is a compilation of fire safety requirements for new and existing buildings and is updated and published every 3 years by the National Fire Protection Association (NFPA), a private, non-profit organization dedicated to reducing loss of life due to fire. The Medicare regulations have historically incorporated by reference these requirements along with Secretarial waiver authority.

The statutory basis for incorporating NFPA's LSC for our providers is under the Secretary's general rulemaking authority at Sections 1102 and 1871 of the Social Security Act. These forms are used by the State Agencies to record data collected to determine compliance with standards specified in 416.44(b) for ambulatory surgical centers (ASCs), and 494.60(e) for End-Stage Renal Disease (ESRD) facilities. The Medicare Health Insurance Program is authorized by Title XVIII of the Social Security Act. The CMS–2786U form is being revised to include ESRD information. *Form Number:* CMS–2786 (OMB# 0938–

0242); *Frequency:* Weekly; *Affected Public:* Individuals or households and State, Local or Tribal Government; *Number of Respondents:* 54; *Total Annual Responses:* 2442; *Total Annual Hours:* 4884. (For policy questions regarding this collection contact JoAnn Perry at 410–786–3336. For all other issues call 410–786–1326.)

7. *Type of Information Collection Request:* Extension of a currently approved collection; *Title of Information Collection:* Rehabilitation Hospital Criteria Worksheet and Rehabilitation Hospital Criteria Worksheet; *Use:* The rehabilitation hospital and rehabilitation unit criteria worksheets are necessary to verify that these facilities/units comply and remain in compliance with the exclusion criteria for the Medicare prospective payment system. *Form Number:* CMS–437A and 437B (OMB# 0938–0986); *Frequency:* Annually; *Affected Public:* Business or other for-profit; *Number of Respondents:* 1227; *Total Annual Responses:* 1227; *Total Annual Hours:* 307. (For policy questions regarding this collection contact Georgia Johnson at 410–786–6859. For all other issues call 410–786–1326.)

8. *Type of Information Collection Request:* New collection; *Title of Information Collection:* State Plan Amendment Template for 1915(i) State Plan Home and Community-Based Services (HCBS) Benefit; *Use:* Section 6086 of the Deficit Reduction Act (DRA), expanded access to HCBS for the elderly and disabled and added a new section 1915(i) to the Social Security Act. Under 1915(i), States can amend their State plans to add these services. The template includes the information needed by CMS to determine whether the State's services will meet the requirements under 1915(i). *Form Number:* CMS–10259 (OMB# 0938-NEW); *Frequency:* Once; *Affected Public:* State, Local or Tribal Governments; *Number of Respondents:* 56; *Total Annual Responses:* 3; *Total Annual Hours:* 240. (For policy questions regarding this collection contact Kathy Poisal at 410–786–5940. For all other issues call 410–786–1326.)

To obtain copies of the supporting statement and any related forms for the proposed paperwork collections referenced above, access CMS Web site address at *http://www.cms.hhs.gov/PaperworkReductionActof1995,* or E-mail your request, including your address, phone number, OMB number, and CMS document identifier, to *Paperwork@cms.hhs.gov,* or call the Reports Clearance Office on (410) 786–1326.

To be assured consideration, comments and recommendations for the proposed information collections must be received by the OMB desk officer at the address below, no later than 5 p.m. on *April 20, 2009.*

OMB, Office of Information and Regulatory Affairs.

Attention: CMS Desk Officer.

Fax Number: (202) 395–6974.

E-mail: OIRA_submission@omb.eop.gov.

Dated: March 12, 2009.

Michelle Shortt,

Director, Regulations Development Group, Office of Strategic Operations and Regulatory Affairs.

[FR Doc. E9–6041 Filed 3–18–09; 8:45 am]

BILLING CODE 4120–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket Nos. FDA–2008–M–0535, FDA–2008–M–0547, FDA–2008–M–0536, FDA–2008–M–0563, FDA–2008–M–0593, FDA–2008–M–0601, FDA–2008–M–0562, FDA–2008–M–0596, FDA–2008–M–0579, FDA–2008–M–0594, FDA–2008–M–0608, FDA–2008–M–0645, FDA–2008–M–0646]

Medical Devices; Availability of Safety and Effectiveness Summaries for Premarket Approval Applications

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is publishing a list of premarket approval applications (PMAs) that have been approved. This list is intended to inform the public of the availability of safety and effectiveness summaries of approved PMAs through the Internet and the agency's Division of Dockets Management.

ADDRESSES: Submit written requests for copies of summaries of safety and effectiveness data to the Division of Dockets Management (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852. Please cite the appropriate docket number as listed in Table 1 of this document when submitting a written request. See the **SUPPLEMENTARY INFORMATION** section for electronic access to the summaries of safety and effectiveness.

FOR FURTHER INFORMATION CONTACT: Nicole Wolanski, Center for Devices and Radiological Health (HFZ–402), Food and Drug Administration, 9200 Corporate Blvd., Rockville, MD 20850, 240–276–4010.

SUPPLEMENTARY INFORMATION:

I. Background

In the **Federal Register** of January 30, 1998 (63 FR 4571), FDA published a final rule that revised 21 CFR 814.44(d) and 814.45(d) to discontinue individual publication of PMA approvals and denials in the **Federal Register**. Instead, the agency now posts this information on the Internet on FDA's home page at *http://www.fda.gov.* FDA believes that this procedure expedites public notification of these actions because announcements can be placed on the Internet more quickly than they can be published in the **Federal Register**, and FDA believes that the Internet is accessible to more people than the **Federal Register**.

In accordance with section 515(d)(4) and (e)(2) of the Federal Food, Drug, and Cosmetic Act (the act) (21 U.S.C. 360e(d)(4) and (e)(2)), notification of an order approving, denying, or withdrawing approval of a PMA will continue to include a notice of opportunity to request review of the order under section 515(g) of the act. The 30 day period for requesting reconsideration of an FDA action under § 10.33(b) (21 CFR 10.33(b)) for notices announcing approval of a PMA begins on the day the notice is placed on the Internet. Section 10.33(b) provides that FDA may, for good cause, extend this 30 day period. Reconsideration of a denial or withdrawal of approval of a PMA may be sought only by the applicant; in these cases, the 30 day period will begin when the applicant is notified by FDA in writing of its decision.

The regulations provide that FDA publish a quarterly list of available safety and effectiveness summaries of PMA approvals and denials that were announced during that quarter. The following is a list of approved PMAs for which summaries of safety and effectiveness were placed on the Internet from October 1, 2008, through December 31, 2008. There were no denial actions during this period. The list provides the manufacturer's name, the product's generic name or the trade name, and the approval date.

TABLE 1—LIST OF SAFETY AND EFFECTIVENESS SUMMARIES FOR APPROVED PMAS MADE AVAILABLE FROM OCTOBER 1, 2008, THROUGH DECEMBER 31, 2008.

PMA No./Docket No.	Applicant	TRADE NAME	Approval Date
P070015 FDA–2008–M–0535	Abbott Vascular Inc.	XIENCE V EVEROLIMUS ELUTING CORONARY STENT SYSTEM & PROMUS ELUTING CORONARY STENT SYSTEM	July 2, 2008
P030025 (S28) FDA–2008–M–0547	Boston Scientific Corp.	TAXUS EXPRESS2 PACLITAXEL ELUTING CORONARY STENT SYSTEM	September 24, 2008
P080004 FDA–2008–M–0536	Hoya Surgical Optics, Inc.	HOYA ISPHERIC MODEL YA–60BB INTRAOCULAR LENS	September 26, 2008
H070004 FDA–2008–M–0563	Levitronix, LLC	LEVITRONIX CENTRIMAG RIGHT VENTRICULAR ASSIST SYSTEM (RVAS)	October 7, 2008
P060008 FDA–2008–M–0593	Boston Scientific Corp.	TAXUS LIBERTE' PACLITAXEL ELUTING CORONARY STENT SYSTEM	October 10, 2008
P050029 FDA–2008–M–0601	Stereotaxis, Inc.	HELIOS II ABLATION CATHETER	October 10, 2008
H040004 FDA–2008–M–0562	Medtronic Sofamor Danek USA, Inc.	INFUSE/MASTERGRAFT POSTEROLATERAL REVISION DEVICE	October 10, 2008
P050019 FDA–2008–M–0596	Boston Scientific Corp.	CAROTID WALLSTENT MONORAIL ENDOPROSTHESIS	October 23, 2008
H060002 FDA–2008–M–0579	Spiration, Inc.	IBV VALVE SYSTEM	October 24, 2008
P060025 FDA–2008–M–0594	ATS Medical, Inc.	ATS 3F AORTIC BIOPROSTHESIS	October 30, 2008
P080011 FDA–2008–M–0608	Coopervision Manufacturing, Ltd.	BIOFINITY COMFILCON A (EXTENDED WEAR SOFT CONTACT LENSES)	November 19, 2008
P080007 FDA–2008–M–0645	Bard Peripheral Vascular Inc.	BARD E-LUMINEXX VASCULAR STENT	December 4, 2008
P060006 FDA–2008–M–0646	Boston Scientific Corp.	BOSTON SCIENTIFIC EXPRESS SD RENAL MONORAIL PREMOUNTED STENT SYSTEM	December 11, 2008

II. Electronic Access

Persons with access to the Internet may obtain the documents at *http://www.fda.gov/cdrh/pmapage.html.*

Dated: March 10, 2009.

Daniel G. Schultz,

Director, Center for Devices and Radiological Health.

[FR Doc. E9–6026 Filed 3–18–09; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Proposed Collection; Comment Request; Simulations for Drug Related Science Education

Summary: Under the provisions of Section 3507(a)(1)(D) of the Paperwork Reduction Act of 1995, the National Institute on Drug Abuse (NIDA), the National Institutes of Health (NIH) has submitted to the Office of Management and Budget (OMB) a request for review and approval of the information collection listed below. This proposed information collection was previously published in the **Federal Register** on June 26, 2008, (Vol. 73 No. 124, page 36337) and allowed 60 days for public comment. No public comments were received. The purpose of this notice is to allow an additional 30 days for public comment. The National Institutes of Health may not conduct or sponsor, and the respondent is not required to respond to, an information collection that has been extended, revised, or implemented on or after November 15, 2008, unless it displays a currently valid OMB control number.

Proposed Collection: Title: Simulations for Drug Related Science Education. *Type of Information Collection Request:* NEW. *Need and Use of Information Collection:* This is a request for a one-time clearance to evaluate an interactive multimedia module developed by *ArchieMD.* This evaluation seeks to determine whether the multimedia module *Archie MD: The Science of Drugs* (1) Increases students' knowledge in brain and heart biology and the effects drugs have on the body (2) Increases positive attitudes towards science education for high school students (3) Reinforce or instill negative attitudes towards substance abuse. In order to test the effectiveness of the interactive multimedia module, data will be collected in the form of pre and post test surveys from 10th and 11th grade high school students utilizing the developed module. The findings will provide valuable information regarding information pertaining to the use of interactive multimedia educational modules in high school science classrooms and their ability to increase knowledge and change attitudes and perceptions.

Frequency of Response: 4. *Affected Public:* High school students engaged with the *ArchieMD: The Science of*

Drugs program. *Type of Respondent:* Participants will include high school students enrolled in the tenth and eleventh grade. *Estimated Total Annual Number of Respondents:* 360. *Estimated Number of Responses per Respondent:* 4. *Average Burden Hours per Response:* One high school period lasting 50 minutes. *Estimated Total Annual Burden Hours Requested:* 1199.95. There are no Capital Costs to report. There are no Operating or Maintenance Costs to report. The estimated annualized burden is summarized below.

Type of respondents	Number of respondents	Frequency of response	Average burden hours per response	Estimated total burden hours requested
Participants—High School Students	360	4	.8333	1199.95
Total	360	4	.8333	1199.95

Request for Comments: Written comments and/or suggestions from the public and affected agencies are invited on one or more of the following points: (1) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (2) the accuracy of the agency's estimate of the burden of the proposed 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, including through the use of automated collection techniques or other forms of information technology.

Direct Comments to OMB: 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: Office of Management and Budget, Office of Regulatory Affairs, *OIRA_submission@omb.eop.gov* or by fax to 202–395–6974, Attention: Desk Officer for NIH. To request more information on the proposed project or to obtain a copy of the data collection plans and instruments, contact: Dr. Cathrine Sasek, Coordinator, Science Education Program, Office of Science Policy and Communications, National Institute on Drug Abuse, 6001 Executive Blvd, Room 5237, Bethesda, MD 20892, or call non-toll-free number (301) 443–6071; fax (301) 443–6277; or by e-mail to *csasek@nida.nih.gov.*

Comments Due Date: Comments regarding this information collection are best assured of having their full effect if received within 30 days of the date of this publication.

Dated: March 12, 2009.

Mary Affeldt,

Associate Director for Management, National Institute on Drug Abuse.

[FR Doc. E9–6037 Filed 3–18–09; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Proposed Collection; Comment Request; Survey of NHLBI Constituents' Health Information Needs and Preferred Formats

SUMMARY: In compliance with the requirement of Section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, for opportunity for public comment on proposed data collection projects, the National Heart, Lung and Blood Institute (NHLBI), the National Institutes of Health (NIH) will publish periodic summaries of proposed projects to be submitted to the Office of Management and Budget (OMB) for review and approval.

Proposed Collection: Title: Survey of NHLBI Constituents' Health Information Needs and Preferred Formats. *Type of Information Collection Request:* NEW. *Need and Use of Information Collection:* The purpose of this survey is to obtain information from NHLBI constituents (health professionals, patients and their families, and the general public) for the purpose of evaluating their health information and education needs and format preferences. The Consumer Services Team (CST) will use the data collected in this survey to create a 3-year Strategic Plan. The findings from the survey, described in the Strategic Plan, will be used to develop new health information materials for NHLBI constituents and to revise materials currently in the Institute's portfolio. *Frequency of Response:* Once every 3 years. *Affected Public:* Individuals. *Type of Respondents:* Individuals who have been consumers of NHLBI information within the past 3 years. The annual reporting burden is as follows: *Estimated Number of Respondents:* 2,450; *Estimated Number of Responses per Respondent:* 1; *Average Burden Hours Per Response:* 0.2; and *Estimated Total Annual Burden Hours Requested:* 162. The annualized cost to respondents is estimated at: $3,518.62. There are no Capital Costs, Operating Costs, and/or Maintenance Costs to report.

Type of respondents	Estimated number of respondents	Estimated number of responses per respondent	Average burden hours per response	Estimated total annual burden hours requested
General Public	1,075	0.33	0.2	71
Private Companies	332	0.33	0.2	22
Public Sector Groups	332	0.33	0.2	22
Health Professionals	711	0.33	0.2	47
Totals	2,450			162

Request for Comments: Written comments and/or suggestions from the public and affected agencies are invited on one or more of the following points: (1) Whether the proposed collection of information is necessary for the proper performance of the function of the agency, including whether the information will have practical utility; (2) The accuracy of the agency's estimate of the burden of the proposed collection of information, including the

validity of the methodology and assumptions used; (3) Ways to enhance the quality, utility, and clarity of the information to be collected; and (4) Ways to minimize the burden of the collection of information on those who are to respond, including the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology.

FOR FURTHER INFORMATION: To request more information on the proposed project or to obtain a copy of the data collection plans and instruments, contact Dr. Ann M. Taubenheim, Principal Investigator, National Heart, Lung, and Blood Institute, Office of Communications and Legislative Activities, NIH, 31 Center Drive, Building 31, Room 4A10, Bethesda, MD 21045, or call non-toll-free number 301–496–4236 or e-mail your request, including your address, to *taubenha@nhlbi.nih.gov.*

Comments Due Date: Comments regarding this information collection are best assured of having their full effect if received within 60 days of the date of this publication.

Dated: March 11, 2009.

Ann M. Taubenheim,

Principal Investigator, NHLBI.

[FR Doc. E9–6052 Filed 3–18–09; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Center for Scientific Review; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: Center for Scientific Review Special Emphasis Panel. CB IRG Member SEP.

Date: March 24, 2009.

Time: 2 p.m. to 4 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892. (Telephone Conference Call).

Contact Person: Jonathan Arias, PhD, Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5170, MSC 7840, Bethesda, MD 20892. 301–435–2406. *ariasj@csr.nih.gov.*

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

(Catalogue of Federal Domestic Assistance Program Nos. 93.306, Comparative Medicine; 93.333, Clinical Research, 93.306, 93.333, 93.337, 93.393–93.396, 93.837–93.844, 93.846–93.878, 93.892, 93.893, National Institutes of Health, HHS)

Dated: March 13, 2009.

Jennifer Spaeth,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. E9–6028 Filed 3–18–09; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Center for Scientific Review; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: Center for Scientific Review Special Emphasis Panel; Cancer Therapeutics.

Date: April 2, 2009.

Time: 9 a.m. to 10:30 a.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892, (Telephone Conference Call)

Contact Person: Syed M. Quadri, PhD, Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 6210, MSC 7804, Bethesda, MD 20892, 301–435–1211, *quadris@csr.nih.gov.*

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Center for Scientific Review Special Emphasis Panel; Innovative Application of Nanotechnology to Heart, Lung, Blood, and Sleep Disorders.

Date: April 6–7, 2009.

Time: 8 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892, (Virtual Meeting)

Contact Person: Noni Byrnes, PhD, Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5130, MSC 7840, Bethesda, MD 20892, 301–435–1023, *byrnesn@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel; Nephrology and Urology Clinical and Small Business.

Date: April 6–7, 2009.

Time: 8 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892, (Virtual Meeting)

Contact Person: Ryan G. Morris, PhD, Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4205, MSC 7814, Bethesda, MD 20892, 301–435–1501, *morrisr@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel; Molecular Mechanisms of Aging and Neurodegeneration.

Date: April 6, 2009.

Time: 1:15 p.m. to 4:45 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892, (Virtual Meeting)

Contact Person: Lawrence Baizer, PhD, Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4512, MSC 7850, Bethesda, MD 20892, 301–435–1257, *baizerl@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel; Psychopharmacology.

Date: April 8–9, 2009.

Time: 8 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892, (Virtual Meeting)

Contact Person: Christine L. Melchior, PhD, Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5176, MSC 7844, Bethesda, MD 20892, 301–435–1713, *melchioc@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel; Member Conflicts in Molecular Neuroscience.

Date: April 8, 2009.

Time: 2 p.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892, (Telephone Conference Call)

Contact Person: Jonathan K. Ivins, PhD, Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4040A, MSC 7806, Bethesda, MD 20892, 301–594–1245, *ivinsj@csr.nih.gov*.

Name of Committee: Center for Scientific Review Special Emphasis Panel; Topics in Microbiology.

Date: April 13, 2009.

Time: 1 p.m. to 4 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892, (Telephone Conference Call)

Contact Person: Fouad A. El-Zaatari, PhD, Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3206, MSC 7808, Bethesda, MD 20892-9692, 301–435–1149, *elzaataf@csr.nih.gov*.

(Catalogue of Federal Domestic Assistance Program Nos. 93.306, Comparative Medicine; 93.333, Clinical Research, 93.306, 93.333, 93.337, 93.393–93.396, 93.837–93.844, 93.846–93.878, 93.892, 93.893, National Institutes of Health, HHS)

Dated: March 13, 2009.

Jennifer Spaeth,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. E9–6043 Filed 3–18–09; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Eunice Kennedy Shriver National Institute of Child Health & Human Development; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Child Health and Human Development Special Emphasis Panel. Translational Analyses of Chronic Aberrant Behavior Across the Life Span.

Date: March 30, 2009.

Time: 1 p.m. to 4:30 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institute of Child Health and Human Development, 6100 Executive Boulevard, Room 5B01, Bethesda, MD 20892. (Telephone Conference Call).

Contact Person: Marita R. Hopmann, PhD, Scientific Review Administrator, Division of Scientific Review, National Institute of Child Health and Human Development, 6100 Building, Room 5B01, Bethesda, MD 20892. (301) 435–6911. *hopmannm@mail.nih.gov*.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

(Catalogue of Federal Domestic Assistance Program Nos. 93.864, Population Research; 93.865, Research for Mothers and Children; 93.929, Center for Medical Rehabilitation Research; 93.209, Contraception and Infertility Loan Repayment Program, National Institutes of Health, HHS)

Dated: March 10, 2009.

Jennifer Spaeth,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. E9–5972 Filed 3–18–09; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Center for Complementary & Alternative Medicine; Notice of Closed Meeting

Pursuant to Section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the National Advisory Council for Complementary and Alternative Medicine (NACCAM) meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and/or contract proposals and the discussion could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications and/or contract proposals, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Advisory Council for Complementary and Alternative Medicine.

Date: April 7, 2009.

Closed: 1 p.m. to 3 p.m.

Agenda: To review and evaluate grant applications and/or proposals.

Place: National Institutes of Health, 6707 Democracy Blvd., Suite 401, Bethesda, MD 20892. (Teleconference).

Contact Person: Martin H. Goldrosen, PhD, Executive Secretary, Director, Division of Extramural Activities, National Center for Complementary, and Alternative Medicine, National Institutes of Health, 6707 Democracy Blvd., Suite 401, Bethesda, MD 20892. (301) 594–2014.

Dated: March 13, 2009.

Jennifer Spaeth,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. E9–6036 Filed 3–18–09; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute on Aging; Notice of Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of a meeting of the National Advisory Council on Aging.

The meeting will be open to the public as indicated below, with attendance limited to space available. Individuals who plan to attend and need special assistance, such as sign language interpretation or other reasonable accommodations, should notify the Contact Person listed below in advance of the meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and 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 Advisory Council on Aging,

Date: May 19–20, 2009.

Closed: May 19, 2009, 3 p.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Building 31, 31 Center Drive, C Wing, Conference Room 10, Bethesda, MD 20892.

Open: May 20, 2009, 8 a.m. to 1:15 p.m.

Agenda: Call to order and reports from the Task Force Minority Aging Research Report; Consideration of the Working Group on Program Report: Advisory Meetings and RFA Concept Clearances; Council of Councils; Division of Aging Biology Review;

Presentation: Comparative Effectiveness; and Program Highlights.

Place: National Institutes of Health, Building 31, 31 Center Drive, C Wing, Conference Room 10, Bethesda, MD 20892.

Contact Person: Robin Barr, PhD, Director, National Institute on Aging, Office of Extramural Activities, Gateway Building, 7201 Wisconsin Avenue, Bethesda, MD 20814, (301) 496–9322, *barrr@nia.nih.gov.*

Any interested person may file written comments with the committee by forwarding the statement to the Contact Person listed on this notice. The statement should include the name, address, telephone number and when applicable, the business or professional affiliation of the interested person.

In the interest of security, NIH has instituted stringent procedures for entrance onto the NIH campus. All visitor vehicles, including taxicabs, hotel, and airport shuttles will be inspected before being allowed on campus. Visitors will be asked to show one form of identification (for example, a government-issued photo ID, driver's license, or passport) and to state the purpose of their visit.

Information is also available on the Institute's/Center's home page: *http://www.nih.gov/nia/naca/*, where an agenda and any additional information for the meeting will be posted when available.

(Catalogue of Federal Domestic Assistance Program Nos. 93.866, Aging Research, National Institutes of Health, HHS)

Dated: March 13, 2009.

Jennifer Spaeth,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. E9–6045 Filed 3–18–09; 8:45 am]

BILLING CODE 4140–01–P

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. Appendix 2), 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. Insulin Resistance Mentored Awards.

Date: April 2, 2009.

Time: 2 p.m. to 3 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: Michele L. Barnard, PhD, Scientific Review Officer, Review Branch, DEA, NIDDK, National Institutes of Health, Room 753, 6707 Democracy Boulevard, Bethesda, MD 20892–2542. (301) 594–8898. *barnardm@extra.niddk.nih.gov.*

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: National Institute of Diabetes and Digestive and Kidney Diseases Special Emphasis Panel. Renal Transplantation and Cognition Studies.

Date: April 8, 2009.

Time: 3 p.m. to 3:45 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: Lakshmanan Sankaran, PhD, Scientific Review Officer, Review Branch, DEA, NIDDK, National Institutes of Health, Room 755, 6707 Democracy Boulevard, Bethesda, MD 20892–5452. (301) 594–7799. *ls38z@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: March 11, 2009.

Jennifer Spaeth,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. E9–5967 Filed 3–18–09; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Mental Health; Amended Notice of Meeting

Notice is hereby given of a change in the meeting of the Subcommittee for Planning the Annual Strategic Plan Updating Process of the Interagency Autism Coordinating Committee (IACC), March 17, 2009, 12 p.m. to 3 p.m. Eastern Time at the National Institutes of Health, 31 Center Drive, Building 31, C Wing, 6th Floor, Conference Room 10, Bethesda, MD 20892 which was published in the **Federal Register** on March 9, 2009, 74 FR 10059.

The meeting location has been changed. The meeting will be held in the Neuroscience Building, 6001 Executive Boulevard, Conference Room A, Rockville, MD 20852. The time remains the same. The meeting will be open to the public with attendance limited to space available. The meeting will also be open to the public through a conference call phone number (*Dial:* 888–455–2920 and *Access code:* 3857872).

Dated: March 11, 2009.

Jennifer Spaeth,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. E9–5970 Filed 3–18–09; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Allergy and Infectious Diseases; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), 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) and552b(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 Allergy and Infectious Diseases Special Emphasis Panel; NIAID Clinical Trial Implementation (U01) and Planning (R34) Grants.

Date: April 8, 2009.

Time: 11 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6700B Rockledge Drive, Bethesda, MD 20817, (Telephone Conference Call).

Contact Person: Brenda Lange-Gustafson, PhD, Scientific Review Officer, NIH/NIAID/DEA/DHHS, Scientific Review Program, Room 2217, 6700–B Rockledge Drive, MSC–7616, Bethesda, MD 20892–7616, 301–496–2550, *bgustafson@niaid.nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.855, Allergy, Immunology, and Transplantation Research; 93.856, Microbiology and Infectious Diseases Research, National Institutes of Health, HHS)

Dated: March 10, 2009.

Jennifer Spaeth,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. E9–5975 Filed 3–18–09; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Neurological Disorders and Stroke; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Neurological Disorders and Stroke Special Emphasis Panel. Training Special Emphasis Panel.

Date: April 2, 2009.

Time: 12 p.m. to 3 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Neuroscience Center, 6001 Executive Boulevard, Rockville, MD 20852. (Telephone Conference Call).

Contact Person: Shanta Rajaram, PhD, Scientific Review Administrator, Scientific Review Branch, Division of Extramural Research, NINDS/NIH/DHHS/Neuroscience Center, 6001 Executive Blvd., Suite 3208, MSC9529, Bethesda, MD 20852. (301) 435–6033. *rajarams@mail.nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.853, Clinical Research Related to Neurological Disorders; 93.854, Biological Basis Research in the Neurosciences, National Institutes of Health, HHS)

Dated: March 13, 2009.

Jennifer Spaeth,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. E9–6024 Filed 3–18–09; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Eunice Kennedy Shriver National Institute of Child Health & Human Development; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Child Health and Human Development Special Emphasis Panel, Therapeutic Strategies to Augment Muscle Rehabilitation.

Date: April 17, 2009.

Time: 1:30 p.m. to 3 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6100 Executive Boulevard, Room 5B01, Rockville, MD 20852 (Telephone Conference Call).

Contact Person: Gopal M. Bhatnagar, PhD, Scientific Review Administrator, National Institute of Child Health and Human Development, National Institutes of Health, 6100 Executive Blvd., Rm. 5B01, Rockville, MD 20852, (301) 435–6889, *bhatnagg@mail.nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.864, Population Research; 93.865, Research for Mothers and Children; 93.929, Center for Medical Rehabilitation Research; 93.209, Contraception and Infertility Loan Repayment Program, National Institutes of Health, HHS)

Dated: March 13, 2009.

Jennifer Spaeth,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. E9–6048 Filed 3–18–09; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Eunice Kennedy Shriver National Institute of Child Health & Human Development; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Child Health and Human Development Special Emphasis Panel; The Cognitive, Social and Cultural Bases of Early Physical Science Learning.

Date: April 7, 2009.

Time: 1 p.m. to 4:30 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institute of Child Health and Human Development, 6100 Executive Blvd., Room 5B01, Bethesda, MD 20892, (Telephone Conference Call)

Contact Person: Marita R. Hopmann, PhD, Scientific Review Administrator, Division of Scientific Review, National Institute of Child Health and Human Development, 6100 Building, Room 5b01, Bethesda, MD 20892, (301) 435–6911, *hopmannm@mail.nih.gov.*

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

(Catalogue of Federal Domestic Assistance Program Nos. 93.864, Population Research; 93.865, Research for Mothers and Children; 93.929, Center for Medical Rehabilitation Research; 93.209, Contraception and Infertility Loan Repayment Program, National Institutes of Health, HHS)

Dated: March 13, 2009.

Jennifer Spaeth,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. E9–6050 Filed 3–18–09; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of General Medical Sciences; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), 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 General Medical Sciences Special Emphasis Panel, MBRS Grant Applications.

Date: March 31, 2009.

Time: 1 p.m. to 2 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Natcher Building, Room 3AN12, 45 Center Drive, Bethesda, MD 20852 (Telephone Conference Call).

Contact Person: Meredith D. Temple-O'Connor, PhD, Scientific Review Officer, Office of Scientific Review, National Institute of General Medical Sciences, National Institutes of Health, 45 Center Drive, Room 3AN12C, Bethesda, MD 20892, 301–594–2772, *templeocm@mail.nih.gov.*

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: National Institute of General Medical Sciences Special Emphasis Panel, MIDAS Centers of Excellence.

Date: April 7, 2009.

Time: 8 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Hyatt Regency Bethesda, One Bethesda Metro Center, Bethesda, MD 20814.

Contact Person: Brian R. Pike, PhD, Scientific Review Officer, Office of Scientific Review, National Institute of General Medical Sciences, National Institutes of Health, 45 Center Drive, Room 3AN18, Bethesda, MD 20892, 301–594–3907, *pikbr@mail.nih.gov.*

Name of Committee: National Institute of General Medical Sciences Special Emphasis Panel, General Anesthetic Sites on Ligand-Gates Ion Channels.

Date: April 13, 2009.

Time: 1 p.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Natcher Building, Room 3AN18, 45 Center Drive, Bethesda, MD 20892 (Telephone Conference Call).

Contact Person: Margaret J. Weidman, PhD, Scientific Review Officer, Office of Scientific Review, National Institute of General Medical Sciences, National Institutes of Health, 45 Center Drive, Room 3AN18, Bethesda, MD 20892, 301–594–3663.

Name of Committee: National Institute of General Medical Sciences Special Emphasis Panel, K99 Pathway to Independence.

Date: April 14, 2009.

Time: 8 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Hyatt Regency Bethesda, 7400 Wisconsin Avenue, Bethesda, MD 20892.

Contact Person: Meredith D. Temple-O'Connor, PhD, Scientific Review Officer, Office of Scientific Review, National Institute of General Medical Sciences, National Institutes of Health, 45 Center Drive, Room 3AN12C, Bethesda, MD 20892, 301–594–2772, *templeocm@mail.nih.gov.*

Name of Committee: National Institute of General Medical Sciences Special Emphasis Panel, Coagulation and Infection in Trauma Patients.

Date: April 15, 2009.

Time: 2 p.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Natcher Building, Room 3AN18, 45 Center Drive, Bethesda, MD 20892 (Telephone Conference Call).

Contact Person: Brian R. Pike, PhD, Scientific Review Officer, Office of Scientific Review, National Institute of General Medical Sciences, National Institutes of Health, 45 Center Drive, Room 3AN18, Bethesda, MD 20892, 301–594–3907, *pikbr@mail.nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.375, Minority Biomedical Research Support; 93.821, Cell Biology and Biophysics Research; 93.859, Pharmacology, Physiology, and Biological Chemistry Research; 93.862, Genetics and Developmental Biology Research; 93.88, Minority Access to Research Careers; 93.96, Special Minority Initiatives, National Institutes of Health, HHS)

Dated: March 13, 2009.

Jennifer Spaeth,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. E9–6051 Filed 3–18–09; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Cancer Institute; Amended Notice of Meeting

Notice is hereby given of a change in the meeting of the President's Cancer Panel, March 17, 2009, 1 p.m. to 3 p.m. which was published in the **Federal Register** on February 25, 2009, 74 FR 8557.

This meeting is being amended to reschedule the meeting to Monday, March 23, 2009, 12:30 p.m. to 3 p.m. as a telephone conference. The meeting is closed to the public.

Dated: March 13, 2009.

Jennifer Spaeth,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. E9–6046 Filed 3–18–09; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Substance Abuse and Mental Health Services Administration

Agency Information Collection Activities: Submission for OMB Review; Comment Request

Periodically, the Substance Abuse and Mental Health Services Administration (SAMHSA) will publish a summary of information collection requests under OMB review, in compliance with the Paperwork Reduction Act (44 U.S.C. Chapter 35). To request a copy of these documents, call the SAMHSA Reports Clearance Officer on (240) 276–1243.

Project: Cross-Site Evaluation of the National Child Traumatic Stress Initiative (NCTSI)—(OMB No. 0930–0276)—Revision

The Substance Abuse and Mental Health Services Administration's (SAMHSA's), Center for Mental Health Services (CMHS) will conduct the Cross-Site Evaluation of the National Child Traumatic Stress Initiative (NCTSI). The data collected will describe the children and families served by the National Child Traumatic Stress Network (NCTSN) and their outcomes, assess the development and dissemination of effective treatments and services, evaluate intra-network collaboration, and assess the Network's impact beyond the NCTSN.

Data will be collected from caregivers, youth, NCTSN staff (*e.g.*, project directors, researchers, and providers), mental health providers outside of the NCTSN, and non-mental health service providers who provide services to children outside of the NCTSN. Data collection will take place in all Community Treatment and Services Programs (CTS) and Treatment and Service Adaptation Centers (TSA) active during the three-year approval period, and 2 National Centers for Child Traumatic Stress (NCCTS). Currently, there are 37 CTS centers and 13 TSA centers active, though this number could drop to 18 CTS centers and 5 TSA

centers in 2009 depending on the number of new centers funded in that year. Throughout, burden estimates are calculated for an average of 44 centers in each year.

The Cross-site Evaluation is composed of eight distinct study components, seven of which involve data collection and are described below.

Descriptive and Clinical Outcomes

In order to describe the children served, their trauma histories and their clinical and functional outcomes, five instruments will be used to collect data from youth ages 7–18 who are receiving services in the NCTSN, and from caregivers of all children who are receiving NCTSN services. Data will be collected when the child/youth enters services and during subsequent follow-up sessions at three-month intervals over the course of one year. This study relies upon the use of data already being collected as a part of the Network's Core Data Set, and includes the following five instruments:

• The Core Clinical Characteristics Form, which collects demographic, psychosocial and clinical information about the child being served including information about the child's domestic environment and insurance status, indicators of the severity of the child's problems, behaviors and symptoms, and use of non-Network services;

• The Trauma Information/Detail Form, which collects information on the history of trauma(s) experienced by the child being served in the NCTSN including the type of trauma experienced, the age at which the trauma was experienced, type of exposure, whether or not the trauma is chronic, and the setting and perpetrator(s) associated with the traumatic experience;

• The Child Behavior Checklist (CBCL) 1.5–5 and 6–18, which measures symptoms in such domains such as emotionally reactive, anxious/depressed, somatic complaints, withdrawn, attention problems, aggressive behavior, sleep problems, rule-breaking behavior, social problems, thought problems, and withdrawn/depressed;

• The UCLA PTSD Short Form, which screens for exposure to traumatic events and for all DSM–IV PTSD symptoms in children who report traumatic stress experiences; and the

• Trauma Symptoms Checklist for Children-Abbreviated (TSCC–A), which evaluates acute and chronic posttraumatic stress symptoms in children's responses to unspecified traumatic events across several symptom domains.

Approximately 1,900 youth and 2,500 caregivers will participate in the descriptive and clinical outcomes study, with caregivers responding to four instruments, and youth responding to one.

Consumer Satisfaction

In order to assess the level of satisfaction with services received by NCTSN centers, caregivers participating in the descriptive and clinical outcomes study are also given the opportunity to report satisfaction using the Youth Services Survey for Families (YSS–F) instrument. Caregivers complete this survey, via mail or phone, once upon completion of services, or after six months of services, whichever comes first. The survey assesses perceptions of service across five domains: access, participation in treatment, cultural sensitivity, satisfaction, and outcomes. Approximately 2,500 caregivers will participate in the consumer satisfaction study. This study utilizes a single instrument, the YSS–F.

Adoption of Methods and Practices

This study is designed to evaluate the extent to which trauma-related practices, knowledge, methods, and products, particularly products created or disseminated by the NCTSN, are being adopted by Network centers and non-Network partners, and involves data collection using two distinct instruments. The General Adoption and Assessment Survey (GAAS) is used to ascertain the degree to which the various products and practices developed by network members are being adopted by each of the grantee sites. Question areas include the experience and role of the respondent; which products are being adopted; the stage of adoption process; the fidelity of the adoption implementation; the methods employed to bring the product into use; the facilitators of the adoption process; and the barriers to adoption. The GAAS will be administered to approximately 14,040 service providers, 44 project directors, and 44 researchers/evaluators once per year throughout the course of the evaluation. The Adoption and Implementation Factors Interview (AIFI) is a follow-up interview on product adoption that will be conducted with 150 network providers, 45 project directors/principal investigators, and 30 researchers/evaluators. The AIFI obtains information leading to an assessment of successful adoption and implementation processes and an understanding of the characteristics of the centers that result in adoption of network supported methods and practices. This study utilizes two instruments, the GAAS and the AIFI. Three versions of the GAAS will be utilized: The General Adoption Assessment Survey (GAAS) Providers, the General Adoption Assessment Survey (GAAS) Administrators, and the General Adoption Assessment Survey (GAAS) Evaluators. Three versions of the AIFI will be administered: Adoption and Implementation Factors Interview (AIFI) Provider Assessment & Clinical Components, Adoption and Implementation Factors Interview (AIFI) Administrator Assessment & Clinical Components, and the Adoption and Implementation Factors Interview (AIFI).

Network Collaboration

The network collaboration study also utilizes two separate data collection activities. The Network Survey utilizes network analysis techniques to measure the extent to which each NCTSN center interacts with every other center on selected key Network activities (governance/decision-making, information sharing, coordination of activities, product development, product dissemination and adoption, and training and technical assistance). The survey is administered to 84 current or former project directors/principal investigators, and to 44 other current NCTSN staff members. The Child Trauma Partnership Tool assesses the activities and impact of the NCTSN collaboration structures (Work Groups, Committees, Consortia) in terms of membership activities, vision, formalization, leadership, management, communication, decision-making, resource allocation, understanding/valuing, and accomplishments. It is administered approximately 200 NCTSN staff members who make up the formal Network workgroups. The two surveys associated with this data collection, the Network Survey and the Child Trauma Partnership Tool, will be administered in alternating years of the evaluation.

Provider Knowledge and Use of Trauma-informed Services

This study assesses the extent to which funded Network centers enhance the trauma-informed service knowledge base and use among service providers affiliated with the Network through training and outreach activities. The Provider Trauma-informed Services (TIS) Survey, which collects data on respondent characteristics, knowledge acquisition, predicted knowledge utilization, and overall training satisfaction, is administered to providers following Network center-sponsored training events. TIS Survey

data will be collected from approximately 29,250 providers over the next three years of the evaluation. In addition, center trainers complete one TIS Training Summary Form, summarizing the content of the training, for every training event (approximately 1,463 over the next three years). This study utilizes two instruments, the TIS Survey and the TIS Training Summary Form.

Product Development and Dissemination

This study identifies and describes the products developed and disseminated to Network and non-Network partners. Three methods of data collection are used in this study: The Product/Innovation Development and Dissemination Survey (PDDS), telephone interviews with existing NCTSN collaborative workgroup/taskforce coordinators (chairpersons), and case studies. The PDDS is included and completed as part of centers' quarterly progress reports, and is gathered quarterly from 44 project directors/principal investigators. More detailed information on product development and dissemination will be collected as a part of 10 case studies (5 in each alternating year) to be conducted in the next three years of the evaluation (with 10 caregivers, 20 researchers/evaluators from the network, and 20 non-network product developers). These case studies each focus on the development and dissemination of specific Network products/innovations, and include as respondents key informants who are knowledgeable about the development and dissemination of each of these products. In addition, interviews will be conducted with approximately 15 workgroup leaders. The workgroup/taskforce coordinator telephone interviews examine the role and impact of the Network's collaborative workgroups in the development and dissemination of products and innovations, and occur in alternating years, opposite the case studies. This study utilizes the three instruments discussed above: The PDDS, the case study interview guide, and the workgroup/taskforce coordinator interview guide.

National Impact

This study examines the extent to which the existence of the NCTSN has impacted trauma-informed services information, knowledge, policy, and practices among mental health and non-mental health child-serving agencies external to the Network. The National Impact Survey collects data about these agencies' knowledge and awareness of childhood trauma and practices, about their knowledge and connections to the NCTSN centers, and about their policies, practices, and programs targeted to children and adolescents who have been exposed to traumatic experiences. The survey is administered to 1,600 mental health and 1,600 non-mental health service providers from outside the NCTSN. These mental health agency and non-mental health agency data will be collected in alternating years over the course of the evaluation. This study includes a single instrument, the National Impact Survey.

This revision to the currently approved information collection activities includes the extension of Cross-site Evaluation information collection activities for an additional three years beyond the initial three-year approval period. This revision also addresses the following programmatic changes:

• The Trauma-informed Services Survey was shortened to reduce burden in response to NCTSN center feedback, removing four pages from the original 11 page survey. The dropped items focused primarily on the overall content of the training, including types of trauma addressed in the training and specific topics covered in the training.

• The Product Development and Dissemination Survey data is now gathered from an existing quarterly report rather than from a stand-alone instrument,

• GAAS provider respondents are now recruited from the pool of TIS Survey respondents who indicate a willingness to participate in future surveys. In the past, these respondents were recruited using a stand-alone invitation distributed at training events.

The average annual respondent burden is estimated below.

Instrument	Number of respondents	Total avg. number of responses per respondent	Hours per response	Total burden hours	3 yr. avg. annual burden hours
Caregivers					
Child Behavior Checklist 1.5–5/6–18 (CBCL 1.5–5/6–18)	2,475	5	0.3	4,084	1,361
Trauma Information/Detail Form	2,475	5	0.2	2,723	908
Core Clinical Characteristics Form	2,475	5	0.4	4,950	1,650
Youth Services Survey for Families (YSS-F)	2,475	1	0.1	198	66
UCLA-PTSD Short Form (UCLA-PTSD)	2,475	5	0.2	2,104	701
Case Study Interviews	10	1	1.5	15	5
Youth					
Trauma Symptoms Checklist for Children-Abbreviated (TSCC-A)	1,881	5	0.3	3,104	1,035
Service Providers					
Provider Trauma-informed Services Survey (TIS)	29,250	1	0.2	5,850	1,950
General Adoption Assessment Survey (GAAS) Providers	14,040	1	0.5	7,020	2,340
Adoption and Implementation Factors Interview (AIFI) Provider Assessment & Clinical Components	150	1	1.0	150	50
Project Directors/Principal Investigators					
Product/Innovations Development and Dissemination Survey (PDDS)	44	12	1.0	528	176
General Adoption Assessment Survey (GAAS) Administrators	44	3	0.5	66	22

Instrument	Number of respondents	Total avg. number of responses per respondent	Hours per response	Total burden hours	3 yr. avg. annual burden hours
Adoption and Implementation Factors Interview (AIFI) Administrator Assessment & Clinical Components	45	1	1.0	45	15
Network Survey	84	1	1.0	84	28
Other Network Staff					
TIS Training Summary Form	1,463	1	.1	122	41
Workgroup/Taskforce Coordinator Interview	15	1	1.5	23	8
Case Study Interviews	20	1	2.0	40	13
General Adoption Assessment Survey (GAAS) Evaluators	44	3	0.5	66	22
Adoption and Implementation Factors Interview (AIFI)	30	1	1.0	30	10
Network Survey	44	1	1.0	44	15
Child Trauma Partnership Tool (CTPT)	200	2	0.8	320	107
Non-Network Mental Health Professionals					
National Impact Survey	1,600	1	0.5	800	267
Non-Network Non-Mental Health Professionals					
National Impact Survey	1,600	2	0.5	1,600	533.
Non-Network Product Developers					
Case Study Interviews	20	1	1.5	30	10
Total Summary	62,959	61			33,996
Total Annual Summary	20,986	20			11,333

Written comments and recommendations concerning the proposed information collection should be sent by April 20, 2009 to: SAMHSA Desk Officer, Human Resources and Housing Branch, Office of Management and Budget, New Executive Office Building, Room 10235, Washington, DC 20503; due to potential delays in OMB's receipt and processing of mail sent through the U.S. Postal Service, respondents are encouraged to submit comments by fax to: 202–395–6974.

Dated: March 12, 2009.

Elaine Parry,

Director, Office of Program Services.

[FR Doc. E9–5976 Filed 3–18–09; 8:45 am]

BILLING CODE 4162–20–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[Internal Agency Docket No. FEMA–1826–DR; Docket ID FEMA–2008–0018]

Illinois; 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 Illinois (FEMA–1826–DR), dated March 2, 2009, and related determinations.

DATES: *Effective Date:* March 2, 2009.

FOR FURTHER INFORMATION CONTACT: Peggy Miller, Disaster Assistance Directorate, Federal Emergency Management Agency, 500 C Street, SW., Washington, DC 20472, (202) 646–3886.

SUPPLEMENTARY INFORMATION: Notice is hereby given that, in a letter dated March 2, 2009, 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. 5121–5207 (the Stafford Act), as follows:

I have determined that the damage in certain areas of the State of Illinois resulting from a severe winter storm during the period of January 26–28, 2009, 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. 5121–5207 (the Stafford Act). Therefore, I declare that such a major disaster exists in the State of Illinois.

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, Hazard Mitigation throughout the State, and any other forms of assistance under the Stafford Act that you deem appropriate. 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. If Other Needs Assistance under Section 408 of the Stafford Act is later requested and warranted, Federal funding under that program will also be limited to 75 percent of the total eligible costs.

Further, you are authorized to make changes to this declaration to the extent allowable under the Stafford Act.

The Federal Emergency Management Agency (FEMA) hereby gives notice that Nancy M. Casper of FEMA is appointed to act as the Federal Coordinating Officer for this major disaster.

The following areas of the State of Illinois have been designated as adversely affected by this major disaster:

Alexander, Gallatin, Hardin, Johnson, Massac, Pope, Pulaski, Saline and Union Counties for Public Assistance.

All counties within the State of Illinois 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.)

Nancy Ward,

Acting Administrator, Federal Emergency Management Agency.

[FR Doc. E9–6010 Filed 3–18–09; 8:45 am]

BILLING CODE 9111–23–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[Internal Agency Docket No. FEMA–1828–DR; Docket ID FEMA–2008–0018]

Indiana; 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 Indiana (FEMA–1828–DR), dated March 5, 2009, and related determinations.

DATES: *Effective Date:* March 5, 2009.

FOR FURTHER INFORMATION CONTACT: Peggy Miller, Disaster Assistance Directorate, Federal Emergency Management Agency, 500 C Street, SW., Washington, DC 20472, (202) 646–3886.

SUPPLEMENTARY INFORMATION: Notice is hereby given that, in a letter dated March 5, 2009, 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. 5121–5207 (the Stafford Act), as follows:

I have determined that the damage in certain areas of the State of Indiana resulting from a severe winter storm during the period of January 26–28, 2009, 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. 5121–5207 (the Stafford Act). Therefore, I declare that such a major disaster exists in the State of Indiana.

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, Hazard Mitigation throughout the State, and any other forms of assistance under the Stafford Act that you deem appropriate. 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. If Other Needs Assistance under Section 408 of the Stafford Act is later requested and warranted, Federal funding under that program will also be limited to 75 percent of the total eligible costs.

Further, you are authorized to make changes to this declaration to the extent allowable under the Stafford Act.

The Federal Emergency Management Agency (FEMA) hereby gives notice that Regis Leo Phelan, of FEMA is appointed to act as the Federal Coordinating Officer for this major disaster.

The following areas of the State of Indiana have been designated as adversely affected by this major disaster:

Clark, Crawford, Dubois, Floyd, Gibson, Harrison, Jackson, Jefferson, Orange, Perry, Spencer, Switzerland, Vanderburgh, Warrick, and Washington Counties for Public assistance.

All counties within the State of Indiana 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.

Nancy Ward,

Acting Administrator, Federal Emergency Management Agency.

[FR Doc. E9–6004 Filed 3–18–09; 8:45 am]

BILLING CODE 9111–23–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[Internal Agency Docket No. FEMA–1824–DR; Docket ID FEMA–2008–0018]

Oregon; 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 Oregon (FEMA–1824–DR), dated March 2, 2009, and related determinations.

DATES: *Effective Date:* March 2, 2009.

FOR FURTHER INFORMATION CONTACT: Peggy Miller, Disaster Assistance Directorate, Federal Emergency Management Agency, 500 C Street, SW., Washington, DC 20472, (202) 646–3886.

SUPPLEMENTARY INFORMATION: Notice is hereby given that, in a letter dated March 2, 2009, 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. 5121–5207 (the Stafford Act), as follows:

I have determined that the damage in certain areas of the State of Oregon resulting from a severe winter storm, record and near record snow, landslides, and mudslides during the period of December 20–26, 2008, 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. 5121–5207 (the Stafford Act). Therefore, I declare that such a major disaster exists in the State of Oregon.

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; assistance for emergency protective measures (Public Assistance Category B), including snow removal for any continuous 48-hour period during or proximate to the incident period in the designated areas; Hazard Mitigation throughout the State; and any other forms of assistance under the Stafford Act that you deem appropriate. 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. If Other Needs Assistance under Section 408 of the Stafford Act is later requested and warranted, Federal funding under that program will also be limited to 75 percent of the total eligible costs.

Further, you are authorized to make changes to this declaration to the extent allowable under the Stafford Act.

The Federal Emergency Management Agency (FEMA) hereby gives notice that Dolph A. Diemont, of FEMA is appointed to act as the Federal Coordinating Officer for this major disaster.

The following areas of the State of Oregon have been designated as adversely affected by this major disaster:

Clackamas, Clatsop, Columbia, Marion, Multnomah, Polk, and Yamhill Counties for Public Assistance.

Clackamas, Columbia, Hood River, Marion, Multnomah, Polk, Washington, and Yamhill Counties for emergency protective measures (Category B), including snow removal assistance, under the Public Assistance program for any continuous 48-hour period during or proximate to the incident period.

All counties within the State of Oregon 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.)

Nancy Ward,

Acting Administrator, Federal Emergency Management Agency.

[FR Doc. E9–6006 Filed 3–18–09; 8:45 am]

BILLING CODE 9111–2–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[Internal Agency Docket No. FEMA–1825–DR; Docket ID FEMA–2008–0018]

Washington; 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 Washington (FEMA–1825–DR), dated March 2, 2009, and related determinations.

DATES: *Effective Date:* March 2, 2009.

FOR FURTHER INFORMATION CONTACT: Peggy Miller, Disaster Assistance Directorate, Federal Emergency Management Agency, 500 C Street, SW., Washington, DC 20472, (202) 646–3886.

SUPPLEMENTARY INFORMATION: Notice is hereby given that, in a letter dated March 2, 2009, 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. 5121–5207 (the Stafford Act), as follows:

I have determined that the damage in certain areas of the State of Washington resulting from a severe winter storm during the period of December 12, 2008 to January 5, 2009, 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. 5121–5207 (the Stafford Act). Therefore, I declare that such a major disaster exists in the State of Washington.

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; assistance for emergency protective measures (Public Assistance Category B), including snow removal for any continuous 48-hour period during or proximate to the incident period in the designated areas; Hazard Mitigation throughout the State; and any other forms of assistance under the Stafford Act that you deem appropriate. 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. If Other Needs Assistance under Section 408 of the Stafford Act is later requested and warranted, Federal funding under that program will also be limited to 75 percent of the total eligible costs.

Further, you are authorized to make changes to this declaration to the extent allowable under the Stafford Act.

The Federal Emergency Management Agency (FEMA) hereby gives notice that Willie G. Nunn, of FEMA is appointed to act as the Federal Coordinating Officer for this major disaster.

The following areas of the State of Washington have been designated as adversely affected by this major disaster:

Clallam, Clark, Columbia, Cowlitz, Garfield, Grays Harbor, Island, Jefferson, King, Klickitat, Lewis, Lincoln, Mason, Pacific, Pend Oreille, Skagit, Skamania, Snohomish, Spokane, Stevens, Thurston, Wahkiakum, Walla Walla, and Whatcom Counties for Public Assistance.

Adams, Asotin, Benton, Chelan, Clallam, Columbia, Cowlitz, Franklin, Grays Harbor, Jefferson, King, Kittitas, Klickitat, Lewis, Mason, Pacific, Pierce, Skagit, Skamania, Snohomish, Spokane, Thurston, Wahkiakum, Walla Walla, Whatcom, Whitman, and Yakima Counties for emergency protective measures (Category B), including snow removal assistance, under the Public Assistance program for any continuous 48-hour period during or proximate to the incident period.

All counties within the State of Washington 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.)

Nancy Ward,

Acting Administrator, Federal Emergency Management Agency.

[FR Doc. E9–6008 Filed 3–18–09; 8:45 am]

BILLING CODE 9111–23–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[Internal Agency Docket No. FEMA–1827–DR; Docket ID FEMA–2008–0018]

New York; 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 New York (FEMA–1827–DR), dated March 4, 2009, and related determinations.

DATES: *Effective Date:* March 4, 2009.

FOR FURTHER INFORMATION CONTACT: Peggy Miller, Disaster Assistance Directorate, Federal Emergency Management Agency, 500 C Street, SW., Washington, DC 20472, (202) 646–3886.

SUPPLEMENTARY INFORMATION: Notice is hereby given that, in a letter dated March 4, 2009, 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. 5121–5207 (the Stafford Act), as follows:

I have determined that the damage in certain areas of the State of New York resulting from a severe winter storm during the period of December 11–31, 2008, 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. 5121–5207 (the Stafford Act). Therefore, I declare that such a major disaster exists in the State of New York.

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, Hazard Mitigation throughout the State, and any other forms of assistance under the Stafford Act that you deem appropriate. 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. If Other Needs Assistance under Section 408 of the Stafford Act is later requested and warranted, Federal funding under that program will also be limited to 75 percent of the total eligible costs.

Further, you are authorized to make changes to this declaration to the extent allowable under the Stafford Act.

The Federal Emergency Management Agency (FEMA) hereby gives notice that Marianne C. Jackson, of FEMA is appointed to act as the Federal Coordinating Officer for this major disaster.

The following areas of the State of New York have been designated as adversely affected by this major disaster:

Albany, Columbia, Delaware, Greene, Rensselaer, Saratoga, Schenectady, Schoharie, and Washington Counties for Public Assistance (Categories A, B, C, F, and G). Direct Federal Assistance is authorized.

All counties within the State of New York 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.)

Nancy Ward,

Acting Administrator, Federal Emergency Management Agency.

[FR Doc. E9–6001 Filed 3–18–09; 8:45 am]

BILLING CODE 9111–23–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[Internal Agency Docket No. FEMA–1818–DR; Docket ID FEMA–2008–0018]

Kentucky; 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 Commonwealth of Kentucky (FEMA–1818–DR), dated February 5, 2009, and related determinations.

DATES: Effective Date: March 9, 2009.

FOR FURTHER INFORMATION CONTACT: Peggy Miller, Disaster Assistance Directorate, Federal Emergency Management Agency, 500 C Street, SW., Washington, DC 20472, (202) 646–3886.

SUPPLEMENTARY INFORMATION: The notice of a major disaster declaration for the Commonwealth of Kentucky is hereby amended to include the following areas among those areas determined to have been adversely affected by the event declared a major disaster by the President in his declaration of February 5, 2009.

Anderson, Ballard, Barren, Bath, Bourbon, Boyd, Boyle, Bracken, Breathitt, Breckinridge, Bullitt, Butler, Caldwell, Calloway, Campbell, Carlisle, Carroll, Carter, Christian, Clark, Crittenden, Daviess, Edmonson, Elliott, Estill, Fayette, Fleming, Floyd, Franklin, Fulton, Garrard, Grant, Graves, Grayson, Green, Greenup, Hardin, Harrison, Hart, Henderson, Hickman, Hopkins, Jackson, Jefferson, Jessamine, Johnson, Larue, Lawrence, Lee, Lewis, Lincoln, Livingston, Logan, Lyon, Madison, Magoffin, Marion, Marshall, Martin, Mason, McCracken, McLean, Meade, Menifee, Mercer, Metcalfe, Montgomery, Morgan, Muhlenberg, Nelson, Nicholas, Ohio, Oldham, Owen, Owsley, Pendleton, Powell, Robertson, Rockcastle, Rowan, Scott, Shelby, Spencer, Todd, Trigg, Union, Warren, Washington, Webster, and Woodford Counties for Public Assistance [Categories C-G], (already designated for debris removal and emergency protective measures (Categories A and B), including direct Federal Assistance, under the Public Assistance program.

Boone, Casey, Gallatin, Hancock, Henry, Kenton, Simpson, Taylor, Trimble, and Wolfe Counties for Public Assistance.

(The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 97.030, Community Disaster Loans; 97.031, Cora Brown Fund; 97.032, Crisis Counseling; 97.033, Disaster Legal Services; 97.034, Disaster Unemployment Assistance (DUA); 97.046, Fire Management Assistance Grant; 97.048, Disaster Housing Assistance to Individuals and Households in Presidentially Declared Disaster Areas; 97.049, Presidentially Declared Disaster Assistance—Disaster Housing Operations for Individuals and Households; 97.050 Presidentially Declared Disaster Assistance to Individuals and Households—Other Needs; 97.036, Disaster Grants—Public Assistance (Presidentially Declared Disasters); 97.039, Hazard Mitigation Grant.)

Nancy Ward,

Acting Administrator, Federal Emergency Management Agency.

[FR Doc. E9–6003 Filed 3–18–09; 8:45 am]

BILLING CODE 9111–23–P

DEPARTMENT OF THE INTERIOR

Notice; Correction

AGENCY: U.S. Geological Survey.

ACTION: Notice; correction.

SUMMARY: The U.S. Geological Survey published a document in the **Federal Register** on February 9, 2009, regarding increased prices for USGS primary series quadrangles, thematic maps, National Earthquake Information Center maps, and large format and poster maps. The document contained incorrect dates.

FOR FURTHER INFORMATION CONTACT: Kip McCarty, Geographic Information Office, (303) 202–4619 or by e-mail at *kmccarty@usgs.gov.*

Correction

In the **Federal Register** of February 9, 2009, in FR Doc. E9–2609, on page 6416, in the second column, correct the **DATES** caption to read:

DATES: The price increase will be effective March 16, 2009. All map orders received by or postmarked before March 16, 2009 will be subject to the current price. The U.S. Geological Survey Business Partners have received a 30-day advance notification of the impending price increase. The revised prices will be listed at *http://ask.usgs.gov/prices/faqs_prices_usgs_products.html*, which supersedes all pricing notices previously published.

Dated: March 13, 2009

Michael P. McDermott,

Acting Chief, Science Information and Education Office.

[FR Doc. E9–5971 Filed 3–18–09; 8:45 am]

BILLING CODE 4311–AM–P

DEPARTMENT OF THE INTERIOR

Bureau of Reclamation

Central Valley Project Improvement Act, Water Management Plans.

AGENCY: Bureau of Reclamation, Interior.

ACTION: Notice of Availability.

SUMMARY: The following Water Management Plans are available for review:

- Banta-Carbona Irrigation District
- Fresno Irrigation District
- Westlands Water District

To meet the requirements of the Central Valley Project Improvement Act of 1992 (CVPIA) and the Reclamation Reform Act of 1982, the Bureau of Reclamation (Reclamation) developed and published the Criteria for Evaluating Water Management Plans (Criteria). For the purpose of this announcement, Water Management Plans (Plans) are considered the same as Water Conservation Plans. The above entities have developed a Plan, which Reclamation has evaluated and preliminarily determined to meet the requirements of these Criteria. Reclamation is publishing this notice in order to allow the public to review the plans and comment on the preliminary determinations. Public comment on Reclamation's preliminary (i.e., draft) determination is invited at this time.

DATES: All public comments must be received by April 20, 2009.

ADDRESSES: Please mail comments to Ms. Laurie Sharp, Bureau of Reclamation, 2800 Cottage Way, Sacramento, California, 95825, or contact at 916–978–5232 (TDD 978–5608), or e-mail at *lsharp@mp.usbr.gov.*

FOR FURTHER INFORMATION CONTACT: To be placed on a mailing list for any subsequent information, please contact Ms. Laurie Sharp at the e-mail address or telephone number above.

SUPPLEMENTARY INFORMATION: We are inviting the public to comment on our preliminary (i.e., draft) determination of Plan adequacy. Section 3405(e) of the CVPIA (Title 34 Public Law 102–575), requires the Secretary of the Interior to establish and administer an office on Central Valley Project water conservation best management practices that shall "* * * develop criteria for evaluating the adequacy of all water conservation plans developed by project contractors, including those plans required by section 210 of the Reclamation Reform Act of 1982." Also, according to Section 3405(e)(1), these criteria must be developed "* * * with the purpose of promoting the highest level of water use efficiency reasonably achievable by project contractors using best available cost-effective technology and best management practices." These criteria state that all parties (Contractors) that contract with Reclamation for water supplies (municipal and industrial contracts over 2,000 acre-feet and agricultural contracts over 2,000 irrigable acres) must prepare Plans that contain the following information:

1. Description of the District.
2. Inventory of Water Resources.
3. Best Management Practices (BMPs) for Agricultural Contractors.
4. BMPs for Urban Contractors.
5. Plan Implementation.
6. Exemption Process.
7. Regional Criteria.
8. Five-Year Revisions.

Reclamation will evaluate Plans based on these criteria. A copy of these Plans will be available for review at Reclamation's Mid-Pacific (MP) Regional Office located in Sacramento, California, and the local area office. Our practice is to make comments, including names and home addresses of respondents, available for public review.

Before including your name, address, phone number, e-mail address, or other personal identifying information in your comment, you should be aware that your entire comment—including your personal identifying information—may be made publicly available at any time. While you can ask us in your comment to withhold your personal identifying information from public review, we cannot guarantee that we will be able to do so.

If you wish to review a copy of these Plans, please contact Ms. Laurie Sharp to find the office nearest you.

Dated: February 20, 2009.

Richard J. Woodley,

Regional Resources Manager, Mid-Pacific Region, Bureau of Reclamation.

[FR Doc. E9–5992 Filed 3–18–09; 8:45 am]

BILLING CODE 4310–MN–P

INTERNATIONAL TRADE COMMISSION

[Investigation No. 337–TA–629]

In the Matter of Certain Silicon Microphone Packages and Products Containing the Same; Notice of Commission Determination to Review a Final Initial Determination in Part and Set a Schedule for Filing Written Submissions On the Issues Under Review and On Remedy, the Public Interest, and Bonding; Extension of Target Date

AGENCY: U.S. International Trade Commission.

ACTION: Notice.

SUMMARY: Notice is hereby given that the U.S. International Trade Commission has determined to review in part the final initial determination ("ID") issued by the presiding administrative law judge ("ALJ") on January 12, 2009, in the above-captioned investigation. The Commission has also determined to extend the target date by 30 days.

FOR FURTHER INFORMATION CONTACT: Michael Liberman, Esq., Office of the General Counsel, U.S. International Trade Commission, 500 E Street, SW., Washington, DC 20436, telephone (202) 205–3116. Copies of non-confidential documents filed in connection with this investigation are or will be available for inspection during official business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary, U.S. International Trade Commission, 500 E Street, SW., Washington, DC 20436, telephone (202) 205–2000. General information concerning the Commission may also be obtained by accessing its Internet server at *http://www.usitc.gov.* The public record for this investigation may be viewed on the Commission's electronic docket (EDIS) at *http://edis.usitc.gov.* Hearing-impaired persons are advised that information on this matter can be obtained by contacting the Commission's TDD terminal on (202) 205–1810.

SUPPLEMENTARY INFORMATION: The Commission instituted this investigation on January 14, 2008, based on the complaint of Knowles Electronics, LLC of Itasca, Illinois ("Knowles"). 73 FR 2277 (Jan. 14, 2008). The complaint alleges violations of section 337 of the Tariff Act of 1930 (19 U.S.C. 1337) in the importation into the United States, the sale for importation, and the sale within the United States after importation of certain silicon microphone packages or products containing same by reason of

infringement of one or more of claims 1 and 2 of U.S. Patent No. 6,781,231 ("the '231 patent"), and claims 1, 2, 9, 10, 15, 17, 20, 28, and 29 of U.S. Patent No. 7,242,089 ("the '089 patent"). The respondent is MEMS Technology Berhad of Malaysia ("MemsTech").

The evidentiary hearing in this investigation was held on September 22–25, 2008. On January 12, 2009, the ALJ issued an Initial Determination on Violation of Section 337 and Recommended Determination on Remedy and Bond, finding a violation of section 337. All parties to this investigation, including the Commission investigative attorney, filed timely petitions for review of various portions of the final ID, as well as timely responses to the petitions.

Having examined the record in this investigation, including the ALJ's final ID, the petitions for review, and the responses thereto, the Commission has determined to review:

(1) With respect to the '231 patent:

(a) The ALJ's determination that MemsTech's accused products infringe the '231 patent;

(b) The ALJ's determination that U.S. Patent No. 4,533,795 to Baumhauer, Jr. et al. ("Baumhauer") does not anticipate claims 1 and 2 of the '231 patent;

(c) The ALJ's determination that claims 1 and 2 of the '231 patent are not rendered obvious in view of U.S. Patent No. 5,459,368 to Onishi et al. ("Onishi");

(d) The ALJ's determination that U.S. Patent No. 6,522,762 to Mullenborn et al. ("Mullenborn") taken in combination with Baumhauer does not render claim 1 obvious;

(e) The ALJ's determination that the master's thesis by David Patrick Arnold entitled "A MEMS-Based Directional Acoustic Array for Aeroacoustic Measurements" ("Arnold") taken in combination with Baumhauer does not render claims 1 and 2 obvious.

(2) With respect to the '089 patent:

(a) The ALJ's construction of the limitation "electrically coupled" in the asserted claims of the '089 patent;

(b) The ALJ's construction of the limitation "volume" in the asserted claims of the '089 patent;

(c) The ALJ's determination that the MemsTech's accused products infringe the '089 patent;

(d) The ALJ's determination that Knowles SiSonic products practice claim 1 of the '089 patent;

(e) The ALJ's determination that Mullenborn does not anticipate claims 1, 2, 9, 15, 17, 20, 28, and 29 of the '089 patent;

(f) The ALJ's determination that claims 1, 2, 9, 15, 17, 20, 28, and 29 of the '089 patent are not invalid as obvious in view of: (i) Baumhauer alone; (ii) Baumhauer in combination with an article by Kress et al. entitled "Integrated Silicon Pressure Sensor for Automotive Applications with Electronic Trimming," SAE Document 950533 (1995) ("Kress"); (iii) Baumhauer in combination with U.S. Patent No. 4,277,814 to Giachino et al. ("Giachino"); (iv) Onishi;

(g) The ALJ's determination that evidence shows that the commercial success of the SiSonic products is attributable to the '089 patent.

The Commission has determined not to review the remainder of the final ID. The Commission also has determined to extend the target date for completion of the subject investigation by thirty (30) days from Tuesday, April 14, 2009, to Thursday, May 14, 2009.

On review, the Commission requests briefing on the above-listed issues based on the evidentiary record. The Commission is particularly interested in responses to the following questions:

(1) With respect to the '231 patent:

(a) Did the ALJ rely on any exhibits that were not admitted into evidence in reaching his determination that the accused MemsTech products infringe the '231 patent? Please provide the citations in the ALJ's final ID. Is there evidence in the record that sufficiently supports the ALJ's infringement determination without taking into account exhibits that were not admitted into evidence and relied on by the ALJ?

(b) Provided the ALJ's finding that "[t]he substrate in Baumhauer is not exclusive to the transducer, and it extends beyond cover," ID at 65, cannot be used to support his conclusion that "Baumhauer does not disclose a 'microelectromechanical system package,'" *see id.*, is there record evidence to support the ALJ's above conclusion that is consistent with (i) the ALJ's findings (and the infringement analysis that led to such findings) that the accused MemsTech's products are microelectromechanical system packages and that they literally infringe claims 1 and 2 of the '231 patent, *see* ID at 178, 183–84; and (ii) the ALJ's construction of claims 1 and 2 (and specifically, the preambles of claims 1 and 2), *see* ID at 13–16.

(c) Does the record evidence, particularly including RX–363; RX–045; RX–046; RX–33, show, clearly and convincingly, that it would have been obvious to one skilled in the art to modify the teachings of Onishi to arrive at the inventions claimed in claims 1 and 2 of the '231 patent? Does the record evidence show that Onishi teaches away from the '231 patent?

(d) Does the record evidence show, clearly and convincingly, that it would have been obvious to one skilled in the art to modify Mullenborn in view of Baumhauer to arrive at the invention claimed in claim 1 of the '231 patent?

(e) Does the record evidence show, clearly and convincingly, that it would have been obvious to one skilled in the art to modify Arnold in view of Baumhauer to arrive at the inventions claimed in claims 1 and 2 of the '231 patent?

(2) With respect to the '089 patent:

(a) (i) What record evidence, particularly including the prosecution history, supports a finding that the term "electrically coupled" in claim 1 of the '089 patent does not include an indirect electrical connection?

(ii) In distinguishing Cote during prosecution, the inventor made the following assertions: "Cote does not teach or suggest that the transducer is mounted to a surface. As such, Cote cannot teach the further claimed electrical connection between the transducer and the at least one patterned conductive layer formed on the surface to which it is attached. In fact, Cote fails to teach or suggest the formation of a patterned conductive layer associated with any part of the described electret microphone." (RX–255 at 206–207)

Based on record evidence, how should the following sentence quoted above be interpreted: "As such, Cote cannot teach the further claimed electrical connection between the transducer and the at least one patterned conductive layer formed on the surface to which it is attached"? Does it (I) indicate that there is no *electrical connection* because the transducer is not mounted on the surface, (II) simply restate that the transducer is not *mounted* to a surface as mentioned in the previous sentence, or (III) refer to the fact that there is no patterned conductive *layer* as mentioned in the subsequent sentence? What are the implications of each interpretation to the question of whether the inventor distinguished his invention based on the absence of a direct electrical connection in Cote?

(iii) In answering the previous questions, what is the significance of the USPTO's statement that "the prior art of record does not teach or suggest the combination of the surface being formed with at least one patterned conductive layer, the patterned conductive layer being electrically coupled to the transducer"? RX–255 at 366.

(b) Is the ALJ's construction of the term "volume" supported by the Federal Circuit precedent, including the

Federal Circuit decision in *C.R. Bard, Inc.* v. *U.S. Surgical Corp.*, 388 F.3d 858, 864 (Fed. Cir. 2004)?

(c) (i) Does the record evidence support the ALJ's finding that Mullenborn discloses "what can arguably be described as a package," ID at 78?

(ii) Does the record evidence support the ALJ's finding that Mullenborn does not meet the limitation "chamber being defined by the first member and the second member," ID at 79?

(d) Provided the ALJ's finding that "[Baumhauer] does not disclose first or second level connections and it fails to disclose a package substrate," ID at 132, cannot be used to support his conclusion that "Baumhauer fails to teach or suggest a package," *see id.*, is there record evidence to support the ALJ's above conclusion that is consistent with (i) the ALJ's finding (and the infringement analysis that lead to such a finding) that the accused MemsTech's products are surface mountable packages and that they literally infringe claim 1 of the '089 patent, see ID at 197–98, and (ii) the ALJ's construction of claim 1 (and specifically, the preamble of claim 1), *see* ID at 27–29.

In connection with the final disposition of this investigation, the Commission may (1) issue an order that could result in the exclusion of the subject articles from entry into the United States, and/or (2) issue one or more cease and desist orders that could result in the respondent being required to cease and desist from engaging in unfair acts in the importation and sale of such articles. Accordingly, the Commission is interested in receiving written submissions that address the form of remedy, if any, that should be ordered. If a party seeks exclusion of an article from entry into the United States for purposes other than entry for consumption, the party should so indicate and provide information establishing that activities involving other types of entry either are adversely affecting it or are likely to do so. For background, see *In the Matter of Certain Devices for Connecting Computers via Telephone Lines*, Inv. No. 337–TA–360, USITC Pub. No. 2843 (Dec. 1994) (Commission Opinion).

If the Commission contemplates some form of remedy, it must consider the effects of that remedy upon the public interest. The factors the Commission will consider include the effect that an exclusion order and/or cease and desist orders would have on (1) The public health and welfare, (2) competitive conditions in the U.S. economy, (3) U.S. production of articles that are like or directly competitive with those that are subject to investigation, and (4) U.S. consumers. The Commission is therefore interested in receiving written submissions that address the aforementioned public interest factors in the context of this investigation.

If the Commission orders some form of remedy, the President has 60 days to approve or disapprove the Commission's action. During this period, the subject articles would be entitled to enter the United States under bond, in an amount determined by the Commission and prescribed by the Secretary of the Treasury. The Commission is therefore interested in receiving submissions concerning the amount of the bond that should be imposed.

Written Submissions: The parties to the investigation are requested to file written submissions on the issues under review. The submissions should be concise and thoroughly referenced to the record in this investigation. Parties to the investigation, interested government agencies, and any other interested parties are encouraged to file written submissions on the issues of remedy, the public interest, and bonding. Such submissions should address the recommended determination by the ALJ on remedy and bonding. Complainant and the Commission investigative attorney are also requested to submit proposed remedial orders for the Commission's consideration. Complainant is further requested to provide the expiration dates of the asserted patents at issue in this investigation and state the HTSUS number under which the accused articles are imported. The written submissions and proposed remedial orders must be filed no later than the close of business on March 27, 2009. Reply submissions must be filed no later than the close of business on April 3, 2009. No further submissions on these issues will be permitted unless otherwise ordered by the Commission.

Persons filing written submissions must file the original document and 12 true copies thereof on or before the deadlines stated above with the Office of the Secretary. Any person desiring to submit a document (or portion thereof) to the Commission in confidence must request confidential treatment unless the information has already been granted such treatment during the proceedings. All such requests should be directed to the Secretary of the Commission and must include a full statement of the reasons why the Commission should grant such treatment. *See* section 201.6 of the Commission's Rules of Practice and Procedure, 19 CFR 201.6. Documents for which confidential treatment by the Commission is sought will be treated accordingly. All nonconfidential written submissions will be available for public inspection at the Office of the Secretary.

The authority for the Commission's determination is contained in section 337 of the Tariff Act of 1930, as amended (19 U.S.C. 1337), and in sections 210.42–.46 of the Commission's Rules of Practice and Procedure (19 CFR 210.42–.46).

By order of the Commission.

Issued: March 13, 2009.

Marilyn R. Abbott,

Secretary to the Commission.

[FR Doc. E9–5934 Filed 3–19–09; 8:45 am]

BILLING CODE 7020–02–P

INTERNATIONAL TRADE COMMISSION

[USITC SE–09–008]

Government in the Sunshine Act Meeting Notice

AGENCY HOLDING THE MEETING: United States International Trade Commission.

TIME AND DATE: March 24, 2009 at 11 a.m.

PLACE: Room 101, 500 E Street, SW., Washington, DC 20436. Telephone: (202) 205–2000.

STATUS: Open to the public.

MATTERS TO BE CONSIDERED:

1. Agenda for future meetings: None.
2. Minutes.
3. Ratification list.
4. Inv. No. 731–TA–1021 (Review) (Malleable Cast Iron Pipe Fittings From China)—briefing and vote. (The Commission is currently scheduled to transmit its determination and Commissioners' opinions to the Secretary of Commerce on or before April 1, 2009.)
5. Outstanding action jackets: None.

In accordance with Commission policy, subject matter listed above, not disposed of at the scheduled meeting, may be carried over to the agenda of the following meeting.

Issued: March 17, 2009.

By order of the Commission.

William R. Bishop,

Hearings and Meetings Coordinator.

[FR Doc. E9–6088 Filed 3–17–09; 11:15 am]

BILLING CODE 7020–02–P

INTERNATIONAL TRADE COMMISSION

[USITC SE–09–009]

Government in the Sunshine Act Meeting Notice

AGENCY HOLDING THE MEETING: United States International Trade Commission.

TIME AND DATE: March 26, 2009 at 9:30 a.m.

PLACE: Room 101, 500 E Street, SW., Washington, DC 20436, Telephone: (202) 205–2000.

STATUS: Open to the public.

MATTERS TO BE CONSIDERED:

1. Agenda for future meetings: None.
2. Minutes.
3. Ratification List.
4. Inv. No. 731–TA–1145 (Final) (Certain Steel Threaded Rod From China)—briefing and vote. (The Commission is currently scheduled to transmit its determination and Commissioners' opinions to the Secretary of Commerce on or before April 6, 2009.)
5. Outstanding action jackets: None

In accordance with Commission policy, subject matter listed above, not disposed of at the scheduled meeting, may be carried over to the agenda of the following meeting.

By order of the Commission.

Issued: March 17, 2009.

William R. Bishop,

Hearings and Meetings Coordinator.

[FR Doc. E9–6089 Filed 3–17–09; 11:15 am]

BILLING CODE 7020–02–P

DEPARTMENT OF LABOR

Employment and Training Administration

Allotments for Training and Employment Services as Specified in the American Recovery and Reinvestment Act of 2009 (Recovery Act) for Activities Under the Workforce Investment Act of 1998 (WIA); Workforce Investment Act Adult, Dislocated Worker and Youth Activities Program Allotments; Wagner-Peyser Act Allotments, and Reemployment Service (RES) Allotments

AGENCY: Employment and Training Administration, Labor.

ACTION: Notice.

SUMMARY: This Notice announces States' allotments for The Department of Labor (DOL or Department) for training and employment services as specified in the American Recovery and Reinvestment Act of 2009 (Recovery Act) for activities under the Workforce Investment Act of 1998 (WIA)—Workforce Investment Act Adult, Dislocated Worker and Youth Activities Program Allotments; Wagner-Peyser Act Allotments, and Reemployment Service (RES) Allotments. The funds for the allotments announced in this TEGL are part of the funds appropriated in the American Recovery and Reinvestment Act of 2009, Public Law 111–5 (the Recovery Act), signed into law February 17, 2009.

The WIA allotments for States and the final allotments for the Wagner-Peyser Act are based on formulas defined in their respective statutes. The WIA allotments for the outlying areas are based on a formula determined by the Secretary. As required by WIA section 182(d), on February 17, 2000, a Notice of the discretionary formula for allocating PY 2000 funds for the outlying areas (American Samoa, Guam, Marshall Islands, Micronesia, Northern Marianas, Palau, and the Virgin Islands) was published in the **Federal Register** at 65 FR 8236 (February 17, 2000). The rationale for the formula and methodology was fully explained in the February 17, 2000, **Federal Register** Notice. The formula for PY 2008 is the same as used for PY 2000 and is described in the section on Youth Activities program allotments. Comments are invited on the formula used to allot funds to the outlying areas.

DATES: Comments on the formula used to allot funds to the outlying areas must be received by April 20, 2009.

ADDRESSES: Submit written comments to the Employment and Training Administration, Office of Financial and Administrative Management, 200 Constitution Ave., NW., Room N–4702, Washington, DC 20210, *Attention:* Mr. Kenneth Leung, (202) 693–3471 (phone), (202) 693–2859 (fax), *e-mail: Leung.Kenneth@dol.gov.*

FOR FURTHER INFORMATION CONTACT: WIA Youth Activities allotments: Evan Rosenberg at (202) 693–3593 or LaSharn Youngblood at (202) 693–3606; WIA Adult and Dislocated Worker Activities, ES final allotments, and WOTC allotments: Mike Qualter at (202) 693–3014.

SUPPLEMENTARY INFORMATION: The Department of Labor (DOL or Department) is announcing Allotments for training and employment services as specified in the American Recovery and Reinvestment Act of 2009 (Recovery Act) for activities under the Workforce Investment Act of 1998 (WIA)—Workforce Investment Act Adult, Dislocated Worker and Youth Activities Program Allotments; Wagner-Peyser Act Allotments, and Reemployment Service (RES) Allotments. The funds for the allotments announced in this TEGL are part of the funds appropriated in the American Recovery and Reinvestment Act of 2009, Public Law 111–5 (the Recovery Act), signed into law February 17, 2009.

Recovery Act funds for Training and Employment Services under WIA and the Wagner-Peyser Act are available for allotment as follows:

- $1,188,000,000 for youth activities, including summer employment for youth;
- $495,000,000 for adult services, including supportive services and needs-related payments. Priority for receipt of these services is to go to recipients of public assistance and other low-income individuals as described in 134(d)(4)(E) of WIA;
- $1,435,500,000 for dislocated worker training and employment services and national reserve; and
- $396,000,000 for Wagner-Peyser Act activities; $247,500,000 of those funds are to support RES for unemployment insurance claimants.

The above figures represent the amount of Recovery Act funds as specified in the Act less one percent which is authorized to be retained at the Federal level for program administration and oversight.

States are expected to spend Recovery Act funding quickly and effectively. WIA funding for Adults, Dislocated Workers, and Youth are considered to be PY 2008 funds and, therefore, must be expended by the end of PY 2010 (June 30, 2011). Wagner-Peyser funds are available for obligation by the States through September 30, 2010 and must be expended by the end of PY 2010 (June 30, 2011). It is the Congress' intent, as well as that of the Administration, that the majority of these funds will be utilized within the first year of availability.

The Recovery Act is intended to preserve and create jobs, promote the nation's economic recovery, and assist those most impacted by the recession. It provides the U.S. Department of Labor and the public workforce investment system with unprecedented levels of funding for a number of employment and training programs to help Americans acquire new skills and get back to work. If the workforce system is to meet both the letter and the spirit of the law and fulfill its critical role in U.S. economic recovery, we must implement the Act expeditiously and effectively, with full accountability of our expenditure of funds. But the Recovery Act provides more than an injection of

workforce development resources into communities in need across the country. The significant investment of stimulus funds presents an extraordinary and unique opportunity for the workforce system to advance transformational efforts and demonstrate its full capacity to innovate and implement effective One-Stop service delivery strategies. As States and localities plan how their One-Stop systems will make immediate use of the Recovery Act funds, ETA encourages them to take an expansive view of how the funds can be integrated into efforts to improve the effectiveness of the public workforce system. In this system, the needs of workers and employers are equally important in developing thriving communities where all citizens succeed and businesses prosper. Successful implementation of the Recovery Act includes not only quick and effective provision of services and training for workers in need, but also leveraging changes in the system's basic operations to develop a strong, invigorated, innovative public workforce system capable of helping enable future economic growth and advancing shared prosperity for all Americans.

In a stronger, more comprehensive workforce investment system, adults move easily between the labor market and education and training in order to advance in their careers and upgrade their contributions to the workplace, while disconnected youth are able to reconnect through multiple pathways to education and training opportunities necessary to enter and advance in the workforce. Adult education, job training, postsecondary education, registered apprenticeship, career advancement and supportive service activities are fully aligned with economic and community development strategies, so as to meet the skill needs of existing and emerging employers and high growth occupations as well as the needs of under-skilled adults. Under such a dual-customer approach, seamless career pathways would be developed and offered, and support services and needs-based payments would be available, making it far easier for young people and adults to advance and persist through progressive levels of the education and job training system as quickly as possible and gain education and workforce skills of demonstrated value at each level. Education and training at every level would be closely aligned with jobs and industries important to local and regional economies. Every level of education and training would afford students and trainees the ability to advance in school or at work, with assessments and certifications linked to the requirements of the next level of education and employment.

With this infusion of funding, States and local areas should consider how their funding decisions and implementation activities for Recovery Act funds can help achieve this goal of workforce system transformation.

The WIA allotments for States are based on formula provisions defined in the Act (*see* Attachment I for WIA and Wagner-Peyser formula descriptions). The WIA allotments for the outlying areas (*e.g.*, American Samoa, Guam, Northern Marianas, Palau, and the Virgin Islands) are based on a discretionary formula used for PY 2008 funds as authorized under WIA Title I.

To assist States in the implementation, monitoring, and reporting of Recovery Act activities, ETA anticipates providing TEGLs or other documents on the following topics:

• Policy and Planning;
• Participant and Performance Reporting; and
• Financial Reporting.

Pursuant to the intent of the Recovery Act, allotments will be issued no later than 30 days from the date the bill was signed into law, February 17, 2009. The Recovery Act allotment funds will be issued as modifications to the PY 2008 WIA grants, with the funds having the same period of performance as PY 2008 funds. We reiterate the additional Wagner-Peyser obligation requirement for Recovery Act funds which is specified in the Act as September 30, 2010. It should be noted that grant agreements will have new provisions specific to the Recovery Act funding. The following is the schedule for processing the Recovery Act funds:

• Week of March 2, 2009—Amended agreement sent to State grantees;
• Week of March 9, 2009—States return the signed version of the agreement; and
• Week of March 16, 2009—Notice of Obligation allotting funds issued.

Policy and Procedures for Quick and Effective Expenditure of Funds

The intent of the Recovery Act is that funds be spent quickly and effectively in meeting the employment and training needs of the Nation's workforce. In order to accomplish this, ETA will be issuing Notices of Obligation (NOOs) for WIA and Wagner-Peyser funds no later than March 19, 2009, 30 days from the President's signing of the Recovery Act.

In an effort to support States in their rapid deployment of funds and recognizing that normal plan submission and approval procedures may hamper such efforts, ETA has determined that States' approved PY 2008 WIA and Wagner-Peyser Act Strategic State Plans qualify the States to receive Recovery Act allotments pursuant to WIA section 112. To qualify States for PY 2009 allotments, ETA will grant extensions on current WIA and Wagner-Peyser Strategic State Plans for PY 2009. This strategy will permit States to immediately receive and begin expending Recovery Act funds while providing a meaningful period in which to develop plans for the most effective use of Recovery Act and formula funds. Requests for the extension through June 30, 2009, must be submitted to ETA by April 15, 2009. ETA will require that States submit a subsequent modification to the State Plan to incorporate Recovery Act planning by June 30, 2009. Details regarding the State Plan modifications will be provided in a subsequent Policy and Planning TEGL.

Likewise, because approved local plans are already in place, States are required to make the Recovery Act funds for WIA and Wagner-Peyser available to Local Areas not later than 30 days of being made available to the State. States are encouraged to devise a Local Plan modification process that enables local areas to plan for the quickest and most effective use of Recovery Act funds in the local areas while not delaying the rapid allocation of funds to local areas within 30 days of receipt of funds by the State. Therefore, the Local Plans, required by WIA section 118, may be dated and not reflect the economic context altered by the economic downturn or strategies altered by the additional funds available through the Recovery Act. Under 20 CFR 661.355, each Governor sets the policy for when a Local Plan must be modified, such as significant changes in local economic conditions and changes in financing available for WIA title I and partner-provided WIA services. States are encouraged to review their Local Plan modification policy, and to require that Local Plans be modified according to State policy.

State Youth Activities Funds: Title I Subtitle B—Chapter 4—Youth Activities

A. *State Allotments*. The amount available for WIA Youth Activities totals $1,188,000,000, which includes $17,820,000 for Native Americans, $1,167,210,000 for States, and $2,970,000 for outlying areas. Attachment II contains a breakdown of the State WIA Youth Activities program allotments by State. States are expected to spend Recovery Act funding quickly and effectively.

Even though the supplemental funds are part of the PY 2008 grant agreements, the allotment formulas use more recent unemployment data than that used for the PY 2008 allotments in order to more effectively distribute Recovery Act funds to those areas of greatest need. The three data factors required by WIA for the Youth Activities State formula allotments are:

(1) The number of unemployed for Areas of Substantial Unemployment (ASUs), averages for the 12-month period, July 2007 through June 2008, as prepared by the States using special 2000 Census data based on households, obtained under contract with the Census Bureau and provided to States by the Bureau of Labor Statistics (BLS);

(2) The number of excess unemployed individuals or the ASU excess (depending on which is higher), averages for the same 12-month period as used for ASU unemployment data; and

(3) The number of economically disadvantaged youth (age 16 to 21, excluding college students and military), from special 2000 census tabulations.

While the total amount available for States is above the $1 billion threshold, the Recovery Act exempts the program from the additional minimum provisions required by that threshold as specified in WIA Section 127(b)(1)(C)(iv)(IV). Instead, as required by WIA, the JTPA section 262(a)(3) (as amended by section 701 of the Job Training Reform Amendments of 1992) minimums of 90 percent hold-harmless of the prior year allotment percentage and 0.25 percent state minimum floor are applicable. WIA also requires the application of a 130 percent stop-gain of the prior year allotment percentage. For purposes of the hold-harmless provision, the PY 2008 allotment percentages are used for the preceding year.

B. *Within-State Allocations.* Youth Activities funds are to be distributed among local workforce investment areas (subject to reservation of up to 15 percent for statewide workforce investment activities) in accordance with the provisions of WIA Section 128 and according to the approved State Plan.

For purposes of identifying ASUs for the within-state Youth Activities allocation formula, States should continue to use the special 2000 Census data based on households which was obtained under contract with the Census Bureau and provided to States in October 2006 by BLS. These data will continue to be used for this purpose until further notice. For purposes of developing the number of economically disadvantaged Youth Activities for the statutory formula, the special 2000 census data provided to States for the within-state Youth Activities allocations beginning in PY 2004 should continue to be used.

States are to use the same reference periods for the data factors as described above and PY 2008 as the prior year hold-harmless, to be consistent with national office allotment distributions.

C. *Transfers of Funds.* There is no authority for local workforce investment areas to transfer funds to or from the Youth Activities program.

State Adult Employment and Training Activities Funds: Title I Subtitle B—Chapter 5—Adult and Dislocated Worker Employment and Training Activities

A. *State Allotments.* The amount available for Adult Activities is $495,000,000 of which $493,762,500 is for States and $1,237,500 is for outlying areas. Attachment III shows the Adult Activities allotments. States are strongly encouraged to spend Recovery Act funding quickly and effectively. WIA funding for the WIA Adult program is considered to be PY 2008 funds and, therefore, must be expended by June 30, 2011.

Even though the supplemental funds are part of the PY 2008 grant agreements, the allotment formulas use more recent unemployment data than that used for the PY 2008 allotments in order to more effectively distribute Recovery Act funds to those areas of greatest need. The three data factors required by WIA for the Adult State formula allotments are:

(1) The number of unemployed for Areas of Substantial Unemployment (ASUs), averages for the 12-month period, July 2007 through June 2008, as prepared by the States using special 2000 Census data based on households, obtained under contract with the Census Bureau and provided to States by the Bureau of Labor Statistics (BLS);

(2) The number of excess unemployed individuals or the ASU excess (depending on which is higher), averages for the same 12-month period as used for ASU unemployment data; and

(3) The number of economically disadvantaged adults (age 22 to 72, excluding college students and military) from special 2000 census tabulations.

Since the total amount available for the Adult program for States is below the required $960 million threshold specified in WIA Section 132(b)(1)(B)(iv)(IV), the WIA additional minimum provisions are not applicable. Also, like the youth program, the provision applying the 130 percent stop-gain of the prior year allotment percentage was used. For purposes of the hold-harmless provision, the PY 2008 allotment percentages are used for the preceding year.

B. *Within-State Allocations.* Adult allotments are to be distributed among local workforce investment areas (subject to reservation of up to 15 percent for statewide workforce investment activities) in accordance with the provisions in WIA Section 133 and according to the approved State Plan.

For purposes of identifying ASUs for the within-state Adult allocation formula, the special 2000 census data provided to States by BLS in October 2006 is to be used for census sharing until further notice. For purposes of developing the number of economically disadvantaged adults for the statutory formula, the special 2000 census data provided to States for the within-state Adult Activities allocations beginning in PY 2004 should continue to be used.

States are to use the same reference periods for the data factors as described above and PY 2008 as the prior year hold-harmless, to be consistent with national office allotment distributions.

C. *Transfers of Funds.* WIA Section 133(b)(4) provides the authority for local workforce investment areas, with approval of the Governor, to transfer up to 20 percent of the Adult Activities funds to Dislocated Worker Activities, and up to 20 percent of Dislocated Worker Activities funds to Adult Activities. It should be noted that this is different than the 30 percent currently permitted for regular formula funds pursuant to prior year appropriation acts. Additionally, ETA does not anticipate granting waivers that would allow transfers above the 20 percent. As will be described in the forthcoming planning guidance, the waiver to transfer more than 20 percent of local area funds between Dislocated Worker and Adult programs will not apply to Recovery Act funds.

State Dislocated Worker Employment and Training Funds: Title I Subtitle B—Chapter 5—Adult and Dislocated Worker Employment and Training Activities

The amount available for the Dislocated Worker Activities program is $1,435,500,000, with $1,237,500,000 for States, $3,588,750 for outlying areas, and $194,411,250 for the National Reserve. States are expected to spend Recovery Act funding quickly and effectively. Recovery Act funding is considered to be PY 2008 funds and,

therefore, must be expended by June 30, 2011.

A. *State Allotments.* Attachment IV shows Recovery Act Dislocated Worker Activities fund allotments by State.

The three data factors required in WIA for the dislocated worker State formula allotments are:

(1) The number of unemployed, averages for the 12-month period, January 2008 through December 2008;

(2) The number of excess unemployed, averages for the 12-month period, January 2008 through December 2008; and

(3) The number of long-term unemployed, averages for calendar year 2008.

B. *Within-State Allocations.* Dislocated Worker Activities funds for the Recovery Act are to be distributed among local workforce investment areas (subject to reservation of up to 25 percent for statewide rapid response activities and up to 15 percent for statewide workforce investment activities) in accordance with the provisions in WIA Section 133 and according to the approved State Plan.

C. *Transfers of Funds.* WIA Section 133(b)(4) provides the authority for local workforce investment areas, with approval of the Governor, to transfer up to 20 percent of the Adult Activities funds to Dislocated Worker Activities, and up to 20 percent of Dislocated Worker Activities funds to Adult Activities. It should be noted that this is different than the 30 percent currently permitted for regular formula funds pursuant to prior year appropriation acts. Additionally, ETA does not anticipate granting waivers that would allow transfers above the 20 percent. As will be described in the forthcoming planning guidance, the waiver to transfer more than 20 percent of local area funds between Dislocated Worker and Adult programs will not apply to Recovery Act funds.

Wagner-Peyser Act Final Allotments

The amount available for employment service grants totals $396,000,000. Within this amount $247,500,000 is designated for reemployment services (RES) to connect unemployment insurance claimants to employment and training opportunities that will facilitate their reentry to employment. Such funds shall remain available to the States for obligation through September 30, 2010, and must be expended by the end of PY 2010.

After determining the funding for outlying areas, allotments to States are calculated using the formula set forth at section 6 of the Wagner-Peyser Act (29 U.S.C. 49e). Formula allotments are based on each State's share of calendar year 2008 monthly averages of the civilian labor force and unemployment. The distribution of Wagner-Peyser funds includes $395,034,690 for States, as well as $965,310 for outlying areas. Attachment V shows the distribution of Recovery Act amounts under the ES formula.

Under section 7(b) of the Wagner-Peyser Act, ten percent of the total sums allotted to each State shall be reserved for use by the Governor to provide performance incentives, services for groups with special needs, and for the extra costs of exemplary models for delivering job services through the one-stop system.

Reporting

Financial Reporting for the Recovery Act Funds

For the WIA formula programs, States are required to track financial information separately for each of the funding streams. States will submit the standard ETA–9130 reports for statewide youth, statewide adult, statewide dislocated worker, statewide rapid response (Dislocated Worker Activities), local youth, local adult, and local dislocated worker activities. The ETA–9130 reports for Recovery Act funds will be due 10 days after the end of the quarter rather than the current 45 day requirement. States are also to submit the ETA–9130 report each quarter for the Wagner-Peyser Act funds. Final guidance on financial reporting will be issued under a separate document.

Participant and Performance Reporting for the Recovery Act Funds

Accountability guidelines for the Recovery Act emphasize data quality, streamlining data collection, and collection of information that shows measurable program outputs. ETA is developing reporting guidelines that will minimize any new collection burdens. Final guidance on participant and performance reporting will be issued under a separate TEGL.

To the extent that new information or reports are required for Recovery Act activities, ETA will seek OMB clearance through the Paperwork Reduction Act process.

WIA YOUTH: 2009 RECOVERY ACT

State	Allotment
Total	$1,188,000,000
Alabama	11,647,403
Alaska	3,936,018
Arizona	17,830,637
Arkansas	12,065,555
California	186,622,034
Colorado	11,874,970
Connecticut	11,034,723
Delaware	2,918,025
District of Columbia	3,969,821
Florida	42,873,265
Georgia	31,361,665
Hawaii	2,918,025
Idaho	2,918,025
Illinois	62,203,400
Indiana	23,677,573
Iowa	5,172,183
Kansas	7,121,714
Kentucky	17,709,821
Louisiana	20,012,271
Maine	4,293,710
Maryland	11,585,610
Massachusetts	24,838,038
Michigan	73,949,491
Minnesota	17,789,172
Mississippi	18,687,021
Missouri	25,400,077
Montana	2,918,025
Nebraska	2,944,616
Nevada	7,570,212
New Hampshire	2,918,025
New Jersey	20,834,103
New Mexico	6,235,678
New York	71,526,360
North Carolina	25,070,698
North Dakota	2,918,025
Ohio	56,158,510
Oklahoma	8,708,036
Oregon	15,068,081
Pennsylvania	40,647,780
Puerto Rico	42,456,987
Rhode Island	5,611,097
South Carolina	24,712,293
South Dakota	2,918,025
Tennessee	25,099,116
Texas	82,000,708
Utah	5,067,154
Vermont	2,918,025
Virginia	12,982,612
Washington	23,445,432
West Virginia	5,343,318
Wisconsin	13,808,812
Wyoming	2,918,025
State Total	1,167,210,000
American Samoa	170,030
Guam	1,383,998
Northern Marianas	512,149
Palau	86,779
Virgin Islands	817,044
Outlying Areas Total	2,970,000
Native Americans	17,820,000

WIA ADULT: 2009 RECOVERY ACT

State	Allotment
Total	$495,000,000
Alabama	5,103,029
Alaska	1,679,456
Arizona	7,616,346
Arkansas	5,072,930
California	80,117,954
Colorado	4,792,362
Connecticut	4,385,149
Delaware	1,234,406

WIA ADULT: 2009 RECOVERY ACT—Continued

State	Allotment
District of Columbia	1,542,940
Florida	19,448,002
Georgia	13,119,015
Hawaii	1,234,406
Idaho	1,234,406
Illinois	25,790,612
Indiana	9,393,463
Iowa	1,554,835
Kansas	2,702,158
Kentucky	8,192,097
Louisiana	8,703,290
Maine	1,808,086
Maryland	4,909,757
Massachusetts	10,073,668
Michigan	30,857,680
Minnesota	6,952,045
Mississippi	7,772,797
Missouri	10,482,040
Montana	1,234,406
Nebraska	1;234,406
Nevada	3,392,179
New Hampshire	1,234,406
New Jersey	9,386,433
New Mexico	2,659,786
New York	31,516,111
North Carolina	10,337,165
North Dakota	1,234,406
Ohio	23,386,373
Oklahoma	3,650,170
Oregon	6,327,640
Pennsylvania	16,545,744
Puerto Rico	20,128,708
Rhode Island	2,106,542
South Carolina	10,417,221
South Dakota	1,234,406
Tennessee	10,835,862
Texas	34,344,771
Utah	1,798,155
Vermont	1,234,406
Virginia	5,227,634
Washington	9,694,268
West Virginia	2,410,113

WIA ADULT: 2009 RECOVERY ACT—Continued

State	Allotment
Wisconsin	5,183,854
Wyoming	1,234,406
State Total	493,762,500
American Samoa	75,000
Guam	554,734
Northern Marianas	205,279
Palau	75,000
Virgin Islands	327,487
Outlying Areas Total	1,237,500

WIA DISLOCATED WORKER: 2009 RECOVERY ACT

State	Allotment
Total	$1,435,500,000
Alabama	13,193,657
Alaska	3,546,444
Arizona	17,403,029
Arkansas	7,518,483
California	221,906,888
Colorado	14,464,916
Connecticut	14,884,070
Delaware	2,039,325
District of Columbia	3,792,823
Florida	80,551,937
Georgia	43,801,838
Hawaii	2,161,193
Idaho	2,832,818
Illinois	68,533,653
Indiana	26,213,424
Iowa	5,225,689
Kansas	5,203,888
Kentucky	18,713,127
Louisiana	9,258,530
Maine	4,572,069
Maryland	11,255,145
Massachusetts	21,223,446
Michigan	78,452,046

WIA DISLOCATED WORKER: 2009 RECOVERY ACT—Continued

State	Allotment
Minnesota	20,963,288
Mississippi	14,210,277
Missouri	25,830,846
Montana	1,756,038
Nebraska	2,591,113
Nevada	14,311,733
New Hampshire	2,501,984
New Jersey	32,706,420
New Mexico	2,960,889
New York	66,368,188
North Carolina	44,419,273
North Dakota	916,452
Ohio	58,511,252
Oklahoma	6,023,463
Oregon	17,162,449
Pennsylvania	42,482,006
Puerto Rico	29,524,346
Rhode Island	7,945,909
South Carolina	24,705,053
South Dakota	953,834
Tennessee	28,372,248
Texas	53,768,305
Utah	3,536,734
Vermont	1,749,098
Virginia	14,115,351
Washington	22,142,010
West Virginia	3,579,605
Wisconsin	16,059,607
Wyoming	583,791
State Total	1,237,500,000
American Samoa	217,500
Guam	1,608,729
Northern Marianas	595,309
Palau	217,500
Virgin Islands	949,712
Outlying Areas Total	3,588,750
National Reserve Total	194,411,250

EMPLOYMENT SERVICE (WAGNER-PEYSER): 2009 RECOVERY ACT

State	Total allotment	RES	Other
Total	$396,000,000	$247,500,000	$148,500,000
Alabama	5,093,106	3,183,191	1,909,915
Alaska	4,304,709	2,690,443	1,614,266
Arizona	7,022,967	4,389,354	2,633,613
Arkansas	3,309,854	2,068,659	1,241,195
California	46,970,564	29,356,604	17,613,960
Colorado	6,212,434	3,882,771	2,329,663
Connecticut	4,449,594	2,780,996	1,668,598
Delaware	1,106,097	691,311	414,786
District of Columbia	1,427,427	892,142	535,285
Florida	22,146,579	13,841,612	8,304,967
Georgia	11,711,489	7,319,681	4,391,808
Hawaii	1,426,246	891,404	534,842
Idaho	3,586,589	2,241,618	1,344,971
Illinois	16,567,244	10,354,527	6,212,717
Indiana	7,858,143	4,911,339	2,946,804
Iowa	3,726,404	2,329,002	1,397,402
Kansas	3,436,869	2,148,043	1,288,826
Kentucky	5,146,036	3,216,272	1,929,764
Louisiana	5,191,488	3,244,680	1,946,808
Maine	2,132,910	1,333,069	799,841
Maryland	6,688,441	4,180,276	2,508,165
Massachusetts	8,063,456	5,039,660	3,023,796
Michigan	13,858,019	8,661,262	5,196,757

EMPLOYMENT SERVICE (WAGNER-PEYSER): 2009 RECOVERY ACT—Continued

State	Total allotment	RES	Other
Minnesota	6,895,090	4,309,431	2,585,659
Mississippi	3,617,920	2,261,200	1,356,720
Missouri	7,399,208	4,624,505	2,774,703
Montana	2,930,979	1,831,862	1,099,117
Nebraska	3,522,460	2,201,537	1,320,923
Nevada	3,471,160	2,169,475	1,301,685
New Hampshire	1,617,171	1,010,732	606,439
New Jersey	10,662,171	6,663,857	3,998,314
New Mexico	3,289,073	2,055,671	1,233,402
New York	22,855,217	14,284,511	8,570,706
North Carolina	11,091,396	6,932,122	4,159,274
North Dakota	2,984,613	1,865,383	1,119,230
Ohio	15,017,635	9,386,022	5,631,613
Oklahoma	3,912,797	2,445,498	1,467,299
Oregon	4,898,310	3,061,444	1,836,866
Pennsylvania	15,098,730	9,436,706	5,662,024
Puerto Rico	4,645,634	2,903,521	1,742,113
Rhode Island	1,497,925	936,203	561,722
South Carolina	5,604,614	3,502,884	2,101,730
South Dakota	2,758,469	1,724,043	1,034,426
Tennessee	7,414,473	4,634,046	2,780,427
Texas	27,188,088	16,992,555	10,195,533
Utah	4,299,056	2,686,910	1,612,146
Vermont	1,292,224	807,640	484,584
Virginia	8,813,824	5,508,640	3,305,184
Washington	8,230,745	5,144,216	3,086,529
West Virginia	3,157,340	1,973,337	1,184,003
Wisconsin	7,291,549	4,557,218	2,734,331
Wyoming	2,140,154	1,337,596	802,558
State Total	395,034,690	246,896,681	148,138,009
Guam	185,297	115,811	69,486
Virgin Islands	780,013	487,508	292,505
Outlying Areas Total	965,310	603,319	361,991

Signed: At Washington, DC, on this 13th day of March 2009.

Douglas F. Small,

Deputy Assistant Secretary.

[FR Doc. E9–6029 Filed 3–18–09; 8:45 am]

BILLING CODE 4510–FN–P

DEPARTMENT OF LABOR

Employment and Training Administration

Notice of Determinations Regarding Eligibility to Apply for Worker Adjustment Assistance and Alternative Trade Adjustment Assistance

In accordance with Section 223 of the Trade Act of 1974, as amended (19 U.S.C. 2273) the Department of Labor herein presents summaries of determinations regarding eligibility to apply for trade adjustment assistance for workers (TA–W) number and alternative trade adjustment assistance (ATAA) by (TA–W) number issued during the period of February 23 through February 27, 2009.

In order for an affirmative determination to be made for workers of a primary firm and a certification issued regarding eligibility to apply for worker adjustment assistance, each of the group eligibility requirements of Section 222(a) of the Act must be met.

I. Section (a)(2)(A) all of the following must be satisfied:

A. A significant number or proportion of the workers in such workers' firm, or an appropriate subdivision of the firm, have become totally or partially separated, or are threatened to become totally or partially separated;

B. the sales or production, or both, of such firm or subdivision have decreased absolutely; and

C. increased imports of articles like or directly competitive with articles produced by such firm or subdivision have contributed importantly to such workers' separation or threat of separation and to the decline in sales or production of such firm or subdivision; or

II. Section (a)(2)(B) both of the following must be satisfied:

A. A significant number or proportion of the workers in such workers' firm, or an appropriate subdivision of the firm, have become totally or partially separated, or are threatened to become totally or partially separated;

B. there has been a shift in production by such workers' firm or subdivision to a foreign country of articles like or directly competitive with articles which are produced by such firm or subdivision; and

C. One of the following must be satisfied:

1. The country to which the workers' firm has shifted production of the articles is a party to a free trade agreement with the United States;
2. the country to which the workers' firm has shifted production of the articles to a beneficiary country under the Andean Trade Preference Act, African Growth and Opportunity Act, or the Caribbean Basin Economic Recovery Act; or
3. there has been or is likely to be an increase in imports of articles that are like or directly competitive with articles which are or were produced by such firm or subdivision.

Also, in order for an affirmative determination to be made for secondarily affected workers of a firm and a certification issued regarding eligibility to apply for worker adjustment assistance, each of the group eligibility requirements of Section 222(b) of the Act must be met.

(1) Significant number or proportion of the workers in the workers' firm or an appropriate subdivision of the firm have become totally or partially separated, or are threatened to become totally or partially separated;

(2) the workers' firm (or subdivision) is a supplier or downstream producer to a firm (or subdivision) that employed a group of workers who received a certification of eligibility to apply for trade adjustment assistance benefits and such supply or production is related to the article that was the basis for such certification; and

(3) either—

(A) The workers' firm is a supplier and the component parts it supplied for the firm (or subdivision) described in paragraph (2) accounted for at least 20 percent of the production or sales of the workers' firm; or

(B) a loss or business by the workers' firm with the firm (or subdivision) described in paragraph (2) contributed importantly to the workers' separation or threat of separation.

In order for the Division of Trade Adjustment Assistance to issue a certification of eligibility to apply for Alternative Trade Adjustment Assistance (ATAA) for older workers, the group eligibility requirements of Section 246(a)(3)(A)(ii) of the Trade Act must be met.

1. Whether a significant number of workers in the workers' firm are 50 years of age or older.

2. Whether the workers in the workers' firm possess skills that are not easily transferable.

3. The competitive conditions within the workers' industry (*i.e.*, conditions within the industry are adverse).

Affirmative Determinations for Worker Adjustment Assistance

The following certifications have been issued. The date following the company name and location of each determination references the impact date for all workers of such determination.

The following certifications have been issued. The requirements of Section 222(a)(2)(A) (increased imports) of the Trade Act have been met.

None.

The following certifications have been issued. The requirements of Section 222(a)(2)(B) (shift in production) of the Trade Act have been met.

None.

The following certifications have been issued. The requirements of Section 222(b) (supplier to a firm whose workers are certified eligible to apply for TAA) of the Trade Act have been met.

None.

The following certifications have been issued. The requirements of Section 222(b) (downstream producer for a firm whose workers are certified eligible to apply for TAA based on increased imports from or a shift in production to Mexico or Canada) of the Trade Act have been met.

None.

Affirmative Determinations for Worker Adjustment Assistance and Alternative Trade Adjustment Assistance

The following certifications have been issued. The date following the company name and location of each determination references the impact date for all workers of such determination.

The following certifications have been issued. The requirements of Section 222(a)(2)(A) (increased imports) and Section 246(a)(3)(A)(ii) of the Trade Act have been met.

TA–W–65,063; Stabilus, Inc., Gastonia, NC: February 28, 2009.
TA–W–65,070; Seco-Warwick Corporation, A Subsidiary of Seco/Warwick S.A. (Poland), Meadville, PA: January 29, 2008.
TA–W–64,612; Copland Industries, Burlington, NC: November 26, 2007.
TA–W–64,877; AGC Flat Glass North America, Inc., AGC Automotive Americas Company, Bellefontaine, OH: January 12, 2008.
TA–W–64,911; J. Kinderman and Sons, Inc., Brite Star Manufacturing Company, Philadelphia, PA: October 4, 2008.
TA–W–64,921; Hickory Chair, A Subsidiary of HDM Furniture Industries, Hickory, NC: January 16, 2008.
TA–W–64,950; Indepak, Inc., Portland, OR: January 21, 2008.
TA–W–65,031; Kings Choice Neckware, Inc., New York, NY: January 14, 2008.
TA–W–65,062; Sequa Coatings, dba Precoat Metals, McKeesport, PA: January 29, 2008.
TA–W–65,184; Eaton Corporation LLC, Forest City, NC: February 4, 2008.
TA–W–65,232; Mohican Mills, Inc., Division of Fab Industries Corporation, Lincolnton, NC: February 24, 2009.

The following certifications have been issued. The requirements of Section 222(a)(2)(B) (shift in production) and Section 246(a)(3)(A)(ii) of the Trade Act have been met.

TA–W–64,856; Louisiana Pacific, New Limerick, ME: January 9, 2008.
TA–W–65,010; North American Communications, On-Site Leased Workers From Spherion, Labor Ready, Duncansville, PA: January 14, 2008.
TA–W–65,028A; Team Industries Cambridge, Inc., Cambridge, MN: January 28, 2008.
TA–W–65,028B; Team Industries Bagley-Audubon, Inc., Bagley, MN: January 28, 2008.
TA–W–65,028C; Team Industries Audubon, Inc., Audubon, MN: January 28, 2008.
TA–W–65,028D; Team Industries Park Rapids-DL, Inc., Park Rapids, MN: January 28, 2008.
TA–W–65,028E; Team Industries Baxter, Inc., South Baxter, MN: January 28, 2008.
TA–W–65,028; Team Industries, Inc., Detroit Lakes, MN: January 28, 2008.
TA–W–65,057; Dana Holding Corporation, Sealing Product Division, Leased Workers from Manpower, McKenzie, TN: January 30, 2008.
TA–W–65,074; Dynamerica Manufacturing, LLC, West Milton, OH: January 29, 2008.
TA–W–65,093; GKN, Sinter Metals, Salem, IN: September 29, 2008.
TA–W–65,150; Electrolux Home Care Products, Inc., Electrolux Central Vacuum, Systems, AB Electrolux, Webster City, IA: February 5, 2008.
TA–W–65,188; Capital Mercury Apparel, Marion County Shirt Company Division, Yellville, AR: February 6, 2008.
TA–W–65,196; Power Packer Automotive, an Actuant Company, On-Site Lease Workers from Enterforce, Milwaukee, WI: February 6, 2008.
TA–W–65,216; H&H Trailer Co., Clarinda, IA: February 10, 2008.
TA–W–65,250; Eagle Ottawa, LLC, A Subsidiary of the Everett Smith Group, Auburn Hills, MI: February 12, 2008.
TA–W–64,898; Tyco Electronics, Kelly Services, Menlo Park, CA: January 12, 2008.
TA–W–64,916; Panasonic Electronic Devices Corp. of America, Capacitor Group, Knoxville, TN: January 15, 2008.
TA–W–64,990; LexisNexis, Caselaw Content Operations, Colorado Springs, CO: January 22, 2008.
TA–W–65,066; Maxim Integrated Products, Beaverton, OR: January 30, 2008.
TA–W–65,108; Trane U.S. Incorporated, A Subsidiary of Ingersoll-Rand, La Crosse, WI: February 2, 2008.

The following certifications have been issued. The requirements of Section

222(b) (supplier to a firm whose workers are certified eligible to apply for TAA) and Section 246(a)(3)(A)(ii) of the Trade Act have been met.

TA–W–64,614A; Hickory Springs Manufacturing Company, Newton, NC: December 5, 2007.

TA–W–64,614B; Hickory Springs Manufacturing Company, Pontotoc, MS: December 5, 2007.

TA–W–64,614C; Hickory Springs Manufacturing Company, Fort Smith, AR: December 5, 2007.

TA–W–64,614D; Hickory Springs Manufacturing Company, Hickory Sewing, Hickory, NC: December 5, 2007.

TA–W–64,614E; Hickory Springs Manufacturing Company, Hickory Metal, Hickory, NC: December 5, 2007.

TA–W–64,614F; Hickory Springs Manufacturing Company, Corporate Office, Hickory, NC: December 5, 2007.

TA–W–64,614; Hickory Springs Manufacturing Company, Spring Plant, Hickory, NC: December 5, 2007.

TA–W–64,948; Raxon Fabrics Corporation, Allentown, PA: January 21, 2008.

TA–W–64,978; Narroflex, Inc., Stuart, VA: January 21, 2008.

TA–W–64,986; Dana Corporation, Structural Solutions Division, Owensboro, KY: January 15, 2008.

TA–W–65,179; Wellington-Almont, LLC, Almont, MI: February 6, 2008.

TA–W–65,215; Bennett Lumber Products, Inc., Princeton, ID: February 1, 2008.

The following certifications have been issued. The requirements of Section 222(b) (downstream producer for a firm whose workers are certified eligible to apply for TAA based on increased imports from or a shift in production to Mexico or Canada) and Section 246(a)(3)(A)(ii) of the Trade Act have been met.

None.

Negative Determinations for Alternative Trade Adjustment Assistance

In the following cases, it has been determined that the requirements of 246(a)(3)(A)(ii) have not been met for the reasons specified.

The Department has determined that criterion (1) of Section 246 has not been met. The firm does not have a significant number of workers 50 years of age or older.

None.

The Department has determined that criterion (2) of Section 246 has not been met. Workers at the firm possess skills that are easily transferable.

None.

The Department has determined that criterion (3) of Section 246 has not been met. Competition conditions within the workers' industry are not adverse.

None.

Negative Determinations for Worker Adjustment Assistance and Alternative Trade Adjustment Assistance

In the following cases, the investigation revealed that the eligibility criteria for worker adjustment assistance have not been met for the reasons specified.

Because the workers of the firm are not eligible to apply for TAA, the workers cannot be certified eligible for ATAA.

The investigation revealed that criteria (a)(2)(A)(I.A.) and (a)(2)(B)(II.A.) (employment decline) have not been met.

None.

The investigation revealed that criteria (a)(2)(A)(I.B.) (Sales or production, or both, did not decline) and (a)(2)(B)(II.B.) (shift in production to a foreign country) have not been met.

TA–W–64,467; Piramal Glass USA, Inc., Park Hills, MO.

TA–W–65,156A; Friction, LLC, Crawfordsville, IN.

TA–W–65,156; Friction, LLC, Greenwood, MS.

The investigation revealed that criteria (a)(2)(A)(I.C.) (increased imports) and (a)(2)(B)(II.B.) (shift in production to a foreign country) have not been met.

TA–W–64,307; King Controls, Electronic Controlled Systems, Wallace Technologies, Bloomington, MN.

TA–W–64,406A; Tektronix, Performance Oscilloscope Production Group, Beaverton, OR.

TA–W–64,406; Tektronix, Electronic Test and Measurement Division, Logic Analyzer Production Group, Beaverton, OR.

TA–W–64,426; Greif Brothers Corporation, Greenville, OH.

TA–W–64,580; Mohawk Industries, Inc., Pine Tree Plant, Dahlonega, GA.

TA–W–64,618; Mid America Stainless, LLC, East St. Louis, IL.

TA–W–64,629; International Converter, LLC, Belpre, OH.

TA–W–64,679; Entertainment Distribution Company (USA), LLC, EDCI Holdings, Inc., Grover, NC.

TA–W–64,787; J.I.T. Tool and Die, Inc., Brockport, PA.

TA–W–64,817; Boise, Inc., St. Helens, OR.

TA–W–64,962; FTCA, Inc., Formerly known as Fleetwood Folding Trailers, Somerset, PA.

TA–W–65,004; Precision Mold Builders (PMB), Inc., Shaft Department, Poplar Bluff, MO.

TA–W–65,248; Kellwood Company Distribution Services, Trenton, TN.

The workers' firm does not produce an article as required for certification under Section 222 of the Trade Act of 1974.

TA–W–64,885; Scholastic, Inc., Moberly, MO.

TA–W–64,982; W & H Machine Shop, Inc., St. Marys, PA.

TA–W–65,131; Circuit City Stores, Inc., Muncy, PA.

TA–W–65,177; Data 2 Logistics, LLC, Grand Blanc, MI.

The investigation revealed that criteria of Section 222(b)(2) has not been met. The workers' firm (or subdivision) is not a supplier to or a downstream producer for a firm whose workers were certified eligible to apply for TAA.

TA–W–64,291; Rosti (Minden), Inc., Shreveport, LA.

I hereby certify that the aforementioned determinations were issued during the period of February 23 through February 27, 2009. Copies of these determinations are available for inspection in Room N–5428, U.S. Department of Labor, 200 Constitution Avenue, NW., Washington, DC 20210 during normal business hours or will be mailed to persons who write to the above address.

Dated: March 10, 2009.

Linda G. Poole,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. E9–5899 Filed 3–18–09; 8:45 am]

BILLING CODE 4510–FN–P

DEPARTMENT OF LABOR

Employment and Training Administration

Notice of Determinations Regarding Eligibility To Apply for Worker Adjustment Assistance and Alternative Trade Adjustment Assistance

In accordance with Section 223 of the Trade Act of 1974, as amended (19 U.S.C. 2273) the Department of Labor herein presents summaries of determinations regarding eligibility to apply for trade adjustment assistance for workers (TA–W) number and alternative trade adjustment assistance (ATAA) by (TA–W) number issued during the period of March 2 through March 6, 2009.

In order for an affirmative determination to be made for workers of a primary firm and a certification issued regarding eligibility to apply for worker adjustment assistance, each of the group

eligibility requirements of Section 222(a) of the Act must be met.

I. Section (a)(2)(A) all of the following must be satisfied:

A. a significant number or proportion of the workers in such workers' firm, or an appropriate subdivision of the firm, have become totally or partially separated, or are threatened to become totally or partially separated;

B. the sales or production, or both, of such firm or subdivision have decreased absolutely; and

C. increased imports of articles like or directly competitive with articles produced by such firm or subdivision have contributed importantly to such workers' separation or threat of separation and to the decline in sales or production of such firm or subdivision; or

II. Section (a)(2)(B) both of the following must be satisfied:

A. a significant number or proportion of the workers in such workers' firm, or an appropriate subdivision of the firm, have become totally or partially separated, or are threatened to become totally or partially separated;

B. there has been a shift in production by such workers' firm or subdivision to a foreign country of articles like or directly competitive with articles which are produced by such firm or subdivision; and

C. One of the following must be satisfied:

1. The country to which the workers' firm has shifted production of the articles is a party to a free trade agreement with the United States;

2. The country to which the workers' firm has shifted production of the articles to a beneficiary country under the Andean Trade Preference Act, African Growth and Opportunity Act, or the Caribbean Basin Economic Recovery Act; or

3. There has been or is likely to be an increase in imports of articles that are like or directly competitive with articles which are or were produced by such firm or subdivision.

Also, in order for an affirmative determination to be made for secondarily affected workers of a firm and a certification issued regarding eligibility to apply for worker adjustment assistance, each of the group eligibility requirements of Section 222(b) of the Act must be met.

(1) Significant number or proportion of the workers in the workers' firm or an appropriate subdivision of the firm have become totally or partially separated, or are threatened to become totally or partially separated;

(2) The workers' firm (or subdivision) is a supplier or downstream producer to a firm (or subdivision) that employed a group of workers who received a certification of eligibility to apply for trade adjustment assistance benefits and such supply or production is related to the article that was the basis for such certification; and

(3) Either—

(A) The workers' firm is a supplier and the component parts it supplied for the firm (or subdivision) described in paragraph (2) accounted for at least 20 percent of the production or sales of the workers' firm; or

(B) A loss or business by the workers' firm with the firm (or subdivision) described in paragraph (2) contributed importantly to the workers' separation or threat of separation.

In order for the Division of Trade Adjustment Assistance to issue a certification of eligibility to apply for Alternative Trade Adjustment Assistance (ATAA) for older workers, the group eligibility requirements of Section 246(a)(3)(A)(ii) of the Trade Act must be met.

1. Whether a significant number of workers in the workers' firm are 50 years of age or older.

2. Whether the workers in the workers' firm possess skills that are not easily transferable.

3. The competitive conditions within the workers' industry (*i.e.* , conditions within the industry are adverse).

Affirmative Determinations for Worker Adjustment Assistance

The following certifications have been issued. The date following the company name and location of each determination references the impact date for all workers of such determination.

The following certifications have been issued. The requirements of Section 222(a)(2)(A) (increased imports) of the Trade Act have been met.

None.

The following certifications have been issued. The requirements of Section 222(a)(2)(B) (shift in production) of the Trade Act have been met.

None.

The following certifications have been issued. The requirements of Section 222(b) (supplier to a firm whose workers are certified eligible to apply for TAA) of the Trade Act have been met.

None.

The following certifications have been issued. The requirements of Section 222(b) (downstream producer for a firm whose workers are certified eligible to apply for TAA based on increased imports from or a shift in production to Mexico or Canada) of the Trade Act have been met.

None.

Affirmative Determinations for Worker Adjustment Assistance and Alternative Trade Adjustment Assistance

The following certifications have been issued. The date following the company name and location of each determination references the impact date for all workers of such determination.

The following certifications have been issued. The requirements of Section 222(a)(2)(A) (increased imports) and Section 246(a)(3)(A)(ii) of the Trade Act have been met.

TA–W–64,258; Irwin Research and Development, Yakima, WA: October 16, 2007

TA–W–64,407; Northern Tool, Formerly known as Kneeland Industries, A Division of Star Cutter Co., Mio, MI: November 10, 2007

TA–W–64,477; Engineered Machined Products, Escanaba, MI: November 14, 2007

TA–W–64,889; Columbia Machine, Inc., Vancouver, WA: January 12, 2008

TA–W–65,015; Julie Hat Company, Inc., Patterson,GA: January 21, 2008

TA–W–65,142; Nyloncraft of Michigan, Jonesville, MI: January 29, 2008

TA–W–65,333; Valley Mills, Inc., Valley Head, AL: February 20, 2008

The following certifications have been issued. The requirements of Section 222(a)(2)(B) (shift in production) and Section 246(a)(3)(A)(ii) of the Trade Act have been met.

TA–W–65,005; Seagate Technology, LLC, Shrewsbury, MA: July 21, 2008

TA–W–65,098; Lineage Power Corporation, Mesquite, TX: February 2, 2008

TA–W–65,127; MWV Calmar, Addeco, Washington Courthouse, OH: February 2, 2008

TA–W–65,195; Cryovac, Inc., Cedar Rapids, IA: February 9, 2008

TA–W–65,234; Kaz, Inc., Talent Force, Memphis, TN: February 11, 2009

TA–W–65,316; Paige Electric Company, L.P., McConnellsburg, PA: February 19, 2008

TA–W–65,016; MJ Soffe, LLC, A Subsidiary of Delta Apparel, Inc., Fayetteville, NC: January 28, 2008

TA–W–65,017; Bianchi International, Division of Bae Systems, Temecula, CA: January 7, 2008

TA–W–65,078A; Thomas Lighting, Hopkinsville, KY: January 30, 2008

TA–W–65,078; Thomas Lighting, Dyersburg, TN: January 30, 2008

TA–W–64,949; Littelfuse, Inc., Electronic Business Unit, Des Plaines, IL: January 16, 2008

TA–W–65,217; Lumasense Technologies, New A.C., Inc.–dba Andros, Richmond, CA: February 10, 2008
TA–W–65,135; Leggett and Platt, Inc., Ennis Fabric Division, Ennis, TX: February 4, 2008

The following certifications have been issued. The requirements of Section 222(b) (supplier to a firm whose workers are certified eligible to apply for TAA) and Section 246(a)(3)(A)(ii) of the Trade Act have been met.

TA–W–64,961; CNI–Duluth, LLC, Madison Heights, MI: January 15, 2008
TA–W–65,205; U.S. Flock Company, LLC, Easton, PA: February 9, 2008
TA–W–65,235; Troxel Manufacturing, Tyler, TX: February 9, 2008
TA–W–65,269; Bates Acquisition, LLC, Lobelville, TN: February 17, 2008
TA–W–65,270; St. Clair Plastics Company, A Subsidiary of Consolidated Industrial Corp., Chesterfield Twp., MI: February 13, 2008
TA–W–65,323; Woodbridge Corporation, Brodhead, WI: February 16, 2008

The following certifications have been issued. The requirements of Section 222(b) (downstream producer for a firm whose workers are certified eligible to apply for TAA based on increased imports from or a shift in production to Mexico or Canada) and Section 246(a)(3)(A)(ii) of the Trade Act have been met.

None.

Negative Determinations for Alternative Trade Adjustment Assistance

In the following cases, it has been determined that the requirements of 246(a)(3)(A)(ii) have not been met for the reasons specified.

The Department has determined that criterion (1) of Section 246 has not been met. The firm does not have a significant number of workers 50 years of age or older.

None.

The Department has determined that criterion (2) of Section 246 has not been met. Workers at the firm possess skills that are easily transferable.

None.

The Department has determined that criterion (3) of Section 246 has not been met. Competition conditions within the workers' industry are not adverse.

None.

Negative Determinations for Worker Adjustment Assistance and Alternative Trade Adjustment Assistance

In the following cases, the investigation revealed that the eligibility criteria for worker adjustment assistance have not been met for the reasons specified.

Because the workers of the firm are not eligible to apply for TAA, the workers cannot be certified eligible for ATAA.

The investigation revealed that criteria (a)(2)(A)(I.A.) and (a)(2)(B)(II.A.) (employment decline) have not been met.

TA–W–64,992; AK Steel Corporation, Butter Works Division, Butler, PA.
TA–W–65,014; Ralphs Frame Works, Inc., High Point, NC.
TA–W–65,265; Advanced Energy Industries, Inc.—Austin, Austin, TX.
TA–W–65,407; Norton Application Software Services, Inc., Spencer, MA.

The investigation revealed that criteria (a)(2)(A)(I.B.) (Sales or production, or both, did not decline) and (a)(2)(B)(II.B.) (shift in production to a foreign country) have not been met.

None.

The investigation revealed that criteria (a)(2)(A)(I.C.) (increased imports) and (a)(2)(B)(II.B.) (shift in production to a foreign country) have not been met.

TA–W–64,148; Telect, Inc., Liberty Lake, WA.
TA–W–64,239; Diversified Textile Machinery Corporation, Kings Mountain, NC.
TA–W–64,271; Knight Celotex, LLC, A Subsidiary of Knight Industries, LLC, Lisbon Falls, ME.
TA–W–64,532; F.L. Smithe Machine Company, Duncansville, PA.
TA–W–64,847; Brunswick Family Boat Co., Inc., dba US Marine, Plant 2, Trophy Sportsfishing Boats Division, Cumberland, MD.
TA–W–64,906; Fabric Trends International, LLC, West Hartford, CT.
TA–W–64,932; Pratt & Whitney, Maintenance Data Services and Equipment Group, East Hartford, CT.
TA–W–64,979; Fiberweb, PLC, Simpsonville, SC.
TA–W–64,994; Clear Lake Lumber, Inc., Spartansburg, PA.
TA–W–65,009; Lin Creech, Sample Group, Inc., Thomasville, NC.
TA–W–65,064; Cypress Semiconductor Corporation, Boise, ID.
TA–W–65,115; TLD Ace, Windsor, CT.
TA–W–65,225; Reading Truck Body, LLC, Reading, PA.

The workers' firm does not produce an article as required for certification under Section 222 of the Trade Act of 1974.

TA–W–64,851; Glenn Springs Holdings, Inc., A Subsidiary of Occidental Petroleum Corporation, New Castle, DE.
TA–W–64,964; Kennametal, Inc., Farmington Hills, MI.
TA–W–65,000; ConMed Electrosurgery, El Paso, TX.
TA–W–65,146; Computer Aid, Inc., Allentown, PA.
TA–W–65,174; Berry Floor, USA, Racine, WI.
TA–W–65,267; Advanced Energy Industries, Inc., San Jose, CA.
TA–W–65,375; WestPoint Home, Inc., Calhoun Falls, SC.

The investigation revealed that criteria of Section 222(b)(2) has not been met. The workers' firm (or subdivision) is not a supplier to or a downstream producer for a firm whose workers were certified eligible to apply for TAA.

None.

I hereby certify that the aforementioned determinations were issued during the period of March 2 through March 6, 2009. Copies of these determinations are available for inspection in Room N–5428, U.S. Department of Labor, 200 Constitution Avenue, NW., Washington, DC 20210 during normal business hours or will be mailed to persons who write to the above address.

Dated: March 10, 2009.

Linda G. Poole,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. E9–5900 Filed 3–18–09; 8:45 am]

BILLING CODE 4510–FN–P

DEPARTMENT OF LABOR

Employment and Training Administration

Investigations Regarding Certifications of Eligibility To Apply for Worker Adjustment Assistance and Alternative Trade Adjustment Assistance

Petitions have been filed with the Secretary of Labor under Section 221(a) of the Trade Act of 1974 ("the Act") and are identified in the Appendix to this notice. Upon receipt of these petitions, the Director of the Division of Trade Adjustment Assistance, Employment and Training Administration, has instituted investigations pursuant to Section 221(a) of the Act.

The purpose of each of the investigations is to determine whether the workers are eligible to apply for adjustment assistance under Title II, Chapter 2, of the Act. The investigations will further relate, as appropriate, to the determination of the date on which total or partial separations began or threatened to begin and the subdivision of the firm involved.

The petitioners or any other persons showing a substantial interest in the subject matter of the investigations may request a public hearing, provided such request is filed in writing with the Director, Division of Trade Adjustment Assistance, at the address shown below, not later than March 30, 2009.

Interested persons are invited to submit written comments regarding the subject matter of the investigations to the Director, Division of Trade Adjustment Assistance, at the address shown below, not later than March 30, 2009.

The petitions filed in this case are available for inspection at the Office of the Director, Division of Trade Adjustment Assistance, Employment and Training Administration, U.S. Department of Labor, Room N–5428, 200 Constitution Avenue, NW., Washington, DC 20210.

Signed at Washington, DC, this 6th day of March 2009.

Linda G. Poole,

Certifying Officer, Division of Trade Adjustment Assistance.

APPENDIX

[TAA petitions instituted between 2/9/09 and 2/13/09]

TA–W	Subject firm (petitioners)	Location	Date of institution	Date of petition
65163	International Textile Group (Comp)	Cordova, NC	02/09/09	02/06/09
65164	Bradington-Young, LLC (Comp)	Cherryville, NC	02/09/09	02/06/09
65165	Chrysler National Customer Service (UAW)	Rochester Hills, MI	02/09/09	02/04/09
65166	Bradington-Young of Hickory (Wkrs)	Hickory, NC	02/09/09	02/05/09
65167	Anderson Global (Union)	Muskegon Heights, MI	02/09/09	02/06/09
65168	Hewlett Pachard—BCS Fremont Supply Chain Operations (Wkrs).	Fremont, CA	02/09/09	02/05/09
65169	Lyon Workerspace Products, LLC (State)	Montgomery, IL	02/09/09	02/05/09
65170	Johnstown Specialty Casting, Inc. (USW)	Johnstown, PA	02/09/09	01/29/09
65171	Frontier Spinning Mills #6 (Comp)	Cheraw, SC	02/09/09	02/06/09
65172	Summit Polymers, Inc. (Comp)	Portage, MI	02/09/09	01/23/09
65173	Superior Fabrication Company, LLC (Comp)	Kincheloe, MI	02/09/09	02/05/09
65174	Berry Floor, USA (Comp)	Racine, WI	02/09/09	02/06/09
65175	Molded Dimensions, Inc. (State)	Port Washington, WI	02/09/09	02/06/09
65176	HP—Hewlett Pickard (Wkrs)	Boise, ID	02/09/09	01/21/09
65177	Data 2 Logistics, LLC (Wkrs)	Grand Blanc, MI	02/09/09	01/06/09
65178	Louis Lavitt Company, Inc. (Comp)	Hickory, NC	02/09/09	02/06/09
65179	Wellington-Almont, LLC (Comp)	Almont, MI	02/09/09	02/06/09
65180	Moduslink (Comp)	Morrisville, NC	02/09/09	01/30/09
65181	Stanley Access Technologies (State)	Farmington, CT	02/09/09	02/03/09
65182	General Motors Fabricating Division (UAW)	Grand Rapids, MI	02/09/09	01/28/09
65183	National Bearings Company (Comp)	Lancaster, PA	02/09/09	02/06/09
65184	Eaton Corporation, LLC (Wkrs)	Forest City, NC	02/09/09	02/04/09
65185	Victor Insulators (Comp)	Victor, NY	02/10/09	02/09/09
65186	Elkay Manufacturing Company (Comp)	Bolingbrook, IL	02/10/09	02/06/09
65187	Hallmark Cards, Inc. (Wkrs)	Kansas City, MO	02/10/09	02/09/09
65188	Capital Mercury Apparel (State)	Yellville, AR	02/10/09	02/06/09
65189	Fairfield Chair Plant 2 (Wkrs)	Lenoir, NC	02/10/09	02/09/09
65190	Hill Corporation (State)	Anaheim, CA	02/10/09	02/09/09
65191	Rockwell Automation (State)	Ladysmith, WI	02/10/09	02/06/09
65192	Emerson Network Power—Embedded Computing (Comp)	Tempe, AZ	02/10/09	02/09/09
65193	Prime Tanning (Comp)	Hartland, ME	02/10/09	02/09/09
65194	R & R Donnelley/Banta, Inc. (State)	Long Praire, MN	02/10/09	02/09/09
65195	Cryovac, Inc. (Sealed Airp Corp) (Comp)	Cedar Rapids, IA	02/10/09	02/09/09
65196	Power Packer Automotive, an Actuant Company (Comp)	Milwaukee, WI	02/10/09	02/06/09
65197	Republic Door (AFLCIO)	McKenzie, TN	02/10/09	02/06/09
65198	Touch Sensor Technologies, LLC (Wkrs)	Wheaton, IL	02/10/09	02/06/09
65199	ASCO, Inc. (Comp)	Florham Park, NJ	02/10/09	02/09/09
65200	DimcoGray Corporation (Comp)	Centerville, OH	02/10/09	02/06/09
65201	Toho Tenax America, Inc. (Comp)	Rockwood, TN	02/10/09	02/09/09
65202	Bright Wood Corporation (Comp)	Madras, OR	02/10/09	02/05/09
65203	Qimonda 300 mm Facility (Wkrs)	Sandston, VA	02/10/09	02/08/09
65204	Daimler Trucks NA LLC/Gostonia Components and Logistics (Wkrs).	Gastonia, NC	02/10/09	02/03/09
65205	U.S. Flock Company, LLC (Wkrs)	Easton, PA	02/10/09	02/09/09
65206	Millinocket Fabrication and Machine, Inc. (Comp)	Millinocket, ME	02/10/09	02/05/09
65207	International Paper (Comp)	Howell, MI	02/10/09	02/06/09
65208	Citibank/Citigroup (21742)	Hagerstown, MD	02/10/09	02/10/09
65209	Spartan Light Metal Products (State)	Sparta, IL	02/10/09	02/09/09
65210	Syracuse China (Comp)	Syracuse, NY	02/10/09	02/09/09
65211	Cabot Supermetals (Union)	Gilbertsville, PA	02/10/09	02/06/09
65212	Ryder Integrated Logistics (State)	Ledgewood, NJ	02/11/09	02/10/09
65213	Texon USA, Inc. (Wkrs)	Russell, MA	02/11/09	02/10/09
65214	Everett Charles Technologies, Inc. (Comp)	Longmont, CO	02/11/09	02/10/09
65215	Bennett Lumber Products, Inc. (Comp)	Princeton, ID	02/11/09	02/01/09
65216	H&H Trailer Company (Wkrs)	Clarinda, IA	02/11/09	02/10/09
65217	New A.C., Inc. (State)	Richmond, CA	02/11/09	02/10/09
65218	D/E Associates, Inc. (Comp)	Shamokin, PA	02/11/09	02/10/09

APPENDIX—Continued

[TAA petitions instituted between 2/9/09 and 2/13/09]

TA–W	Subject firm (petitioners)	Location	Date of institution	Date of petition
65219	Thomasville Furniture Outlet Store (Comp)	Hudson, NC	02/11/09	02/10/09
65220	Allied Motion Motor Equipment (Wkrs)	Owosso, MI	02/11/09	02/09/09
65221	A1 Polishing and Finishing, Inc. (Comp)	New Holstein, WI	02/11/09	02/10/09
65222	Friction Products Company (Comp)	Crawfordsville, IN	02/11/09	02/06/09
65223	ATI Allegheny Ludlum (USW)	Brackenridge, PA	02/11/09	01/26/09
65224	Panel Products (97537)	Rogue River, OR	02/11/09	02/05/09
65225	Reading Truck Body, LLC (Wkrs)	Reading, PA	02/11/09	02/05/09
65226	Formtek (Wkrs)	Clinton, ME	02/11/09	02/09/09
65227	Tama Manufacturing (UNITE)	Allentown, PA	02/11/09	02/10/09
65228	Carthoplas, Inc. (Wkrs)	Gaffney, SC	02/11/09	01/07/09
65229	Royall Company, Inc. (Wkrs)	Conover, NC	02/12/09	02/10/09
65230	Vishay Vitramon, Inc. (Comp)	Monroe, CT	02/12/09	02/10/09
65231	Rawlings Sporting Goods (Comp)	Washington, MO	02/12/09	02/09/09
65232	Mohican Mills, Inc. (Comp)	Lincolnton, NC	02/12/09	02/11/09
65233	KJP Telecommunications (State)	Fairbault, MN	02/12/09	02/11/09
65234	Kaz, Inc. (Comp)	Memphis, TN	02/12/09	02/11/09
65235	Troxel Manufacturing (Wkrs)	Tyler, TX	02/12/09	02/09/09
65236	Hanesbrands, Inc. (Comp)	Barnwell, SC	02/12/09	02/09/09
65237	CMH Manufacturing, Inc. (Comp)	Ardmore, TN	02/12/09	02/11/09
65238	Allied Air Enterprises, Inc. (Comp)	Blackville, SC	02/12/09	02/12/09
65239	Three Rivers Timber, Inc. (Comp)	Kamlah, ID	02/12/09	02/10/09
65240	St. Marys Carbon Company (IUECWA)	St. Marys, PA	02/12/09	02/11/09
65241	JP Morgan Chase Bank, NA (Wkrs)	Lexington, KY	02/12/09	01/29/09
65242	Sierra Pacific Industries (CICUBC)	Aberdeen, WA	02/13/09	02/02/09
65243	TMD Friction, Inc. (Rep)	Dublin, VA	02/13/09	02/12/09
65244	Muscle Shoals Rubber Company (Comp)	Batesville, MS	02/13/09	02/12/09
65245	Pacific Veneer (Comp)	Aberdeen, WA	02/13/09	02/09/09
65246	I-Level Aberdeen Sawmill (Weyerhaeuser) (CICUBC)	Aberdeen, WA	02/13/09	02/02/09
65247	Indalex Inc. and Indalex Ltd. (Comp)	Lincolnshire, IL	02/13/09	02/09/09
65248	Kellwood Company Distribution Services (Rep)	Trenton, TN	02/13/09	02/11/09
65249	Disston Company (State)	South Deerfield, MA	02/13/09	02/09/09
65250	Eagle Ottawa, LLC (Comp)	Auburn Hills, MI	02/13/09	02/12/09
65251	The H. B. Smith Company, Inc. (Comp)	Westfield, MA	02/13/09	02/12/09
65252	Hutchinson Technology, Inc. (State)	Plymouth, MN	02/13/09	02/09/09
65253	CB and I Constructors, Inc. (IBB)	Warren, PA	02/13/09	02/12/09
65254	North Bergen, Piece Dye (UNITE)	North Bergen, NJ	02/13/09	02/12/09
65255	April Steel Processing (Comp)	Dearborn, MI	02/13/09	02/12/09

[FR Doc. E9–5898 Filed 3–18–09; 8:45 am]

BILLING CODE 4510–FN–P

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–65,247]

Indalex, Inc.; Lincolnshire Corporate Office; Lincolnshire, IL; Notice of Termination of Investigation

Pursuant to Section 221 of the Trade Act of 1974, as amended, an investigation was initiated on February 13, 2009 in response to a worker petition filed by a company official on behalf of workers of Indalex, Inc., Lincolnshire Corporate Office, Lincolnshire, Illinois.

The petitioner has requested that the petition be withdrawn. Consequently, the investigation has been terminated.

Signed at Washington, DC, this 9th day of March 2009.

Richard Church

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. E9–5911 Filed 3–18–09; 8:45 am]

BILLING CODE 4510–FN–P

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–65,396]

Berkline/Benchcraft, LLC, Morristown, TN; Notice of Termination of Investigation

Pursuant to Section 221 of the Trade Act of 1974, as amended, an investigation was initiated on February 26, 2009 in response to a worker petition filed by a company official on behalf of workers of Berkline/Benchcraft, LLC, Morristown, Tennessee.

The petitioner has requested that the petition be withdrawn. Consequently, the investigation has been terminated.

Richard Church,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. E9–5919 Filed 3–18–09; 8:45 am]

BILLING CODE 4510–FN–P

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–65,266]

Advanced Energy Industries, Inc., Vancouver, WA, Notice of Termination of Investigation

Pursuant to Section 221 of the Trade Act of 1974, as amended, an investigation was initiated on February 17, 2009 in response to a petition filed by a company official on behalf of the

workers at Advanced Energy Industries, Inc., Vancouver, Washington.

The petitioner has requested that the petition be withdrawn. Consequently, the investigation has been terminated.

Signed at Washington, DC, this 11th day of March 2009.

Richard Church,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. E9–5912 Filed 3–18–09; 8:45 am]

BILLING CODE 4510–FN–P

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–65,368]

Airtex Products, LP, Fairfield, IL, Notice of Termination of Investigation

Pursuant to Section 221 of the Trade Act of 1974, as amended, an investigation was initiated on February 25, 2009 in response to a worker petition filed by a company official on behalf of workers of Airtex Products, LP, Fairfield, Illinois.

The petitioner has requested that the petition be withdrawn. Consequently, the investigation has been terminated.

Signed at Washington, DC, this 10th day of March 2009.

Richard Church,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. E9–5917 Filed 3–18–09; 8:45 am]

BILLING CODE 4510–FN–P

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–65,325]

Amphenol Backplane Systems, Nashua, NH; Notice of Termination of Investigation

Pursuant to Section 221 of the Trade Act of 1974, as amended, an investigation was initiated on February 20, 2009, in response to a petition filed on behalf of workers of Amphenol Backplane Systems, Nashua, New Hampshire.

The petitioner has requested that the petition be withdrawn. Consequently, the investigation has been terminated. Further investigation in this case would serve no purpose.

Signed at Washington, DC, this 11th day of March, 2009.

Elliott S. Kushner,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. E9–5915 Filed 3–18–09; 8:45 am]

BILLING CODE 4510–FN–P

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–65,376]

Biotage, LLC, Charlottesville, VA; Notice of Termination of Investigation

Pursuant to Section 221 of the Trade Act of 1974, as amended, an investigation was initiated on February 25, 2009 in response to a petition filed by a company official on behalf of workers of Biotage, LLC, Charlottesville, Virginia.

The petitioner has requested that the petition be withdrawn. Consequently, the investigation has been terminated.

Signed at Washington. DC, this 10th day of March 2009.

Linda G. Poole,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. E9–5918 Filed 3–18–09; 8:45 am]

BILLING CODE 4510–FN–P

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–64,825]

Briggs-Shaffner Company, Simpsonville, SC; Notice of Termination of Investigation

Pursuant to Section 221 of the Trade Act of 1974, as amended, an investigation was initiated on January 7, 2009 in response to a petition filed by a company official on behalf of workers of Briggs-Shaffner Company, Simpsonville, South Carolina.

The petitioner has requested that the petition be withdrawn. Consequently, the investigation has been terminated.

Signed at Washington, DC, this 11th day of March 2009.

Linda G. Poole,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. E9–5901 Filed 3–18–09; 8:45 am]

BILLING CODE 4510–FN–P

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–65,029]

Comau Automation; Novi, MI; Notice of Termination of Investigation

Pursuant to Section 221 of the Trade Act of 1974, as amended, an investigation was initiated on January 29, 2009 in response to a petition filed by the Wiseman Automation Employees Association on behalf of workers of Comau Automation.

The petitioner has requested that the petition be withdrawn. Consequently, the investigation has been terminated.

Signed at Washington, DC, this 10th day of March 2009.

Linda G. Poole,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. E9–5905 Filed 3–18–09; 8:45 am]

BILLING CODE 4510–FN–P

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–65,029]

Comau, Inc., Novi, MI; Notice of Termination of Investigation

Pursuant to Section 221 of the Trade Act of 1974, as amended, an investigation was initiated on January 29, 2009 in response to a petition filed by the Wiseman Automation Employees Association on behalf of workers of Comau, Inc., Novi, Michigan.

The petitioner has requested that the petition be withdrawn. Consequently, the investigation has been terminated.

Signed at Washington, DC, this 10th day of March 2009.

Linda G. Poole,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. E9–5904 Filed 3–18–09; 8:45 am]

BILLING CODE 4510–FN–P

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–65,464]

Delphi Steering; Saginaw, MI; Notice of Termination of Investigation

Pursuant to Section 221 of the Trade Act of 1974, as amended, an investigation was initiated on March 4, 2009 in response to a petition filed by

a company official on behalf of workers of Delphi Steering, Saginaw, Michigan.

The petitioner has requested that the petition be withdrawn. Therefore, the investigation under this petition has been terminated.

Signed at Washington, DC, this 11th day of March, 2009.

Linda G. Poole,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. E9–5924 Filed 3–18–09; 8:45 am]

BILLING CODE 4510–FN–P

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–65,442]

Freudenberg Nok; Vibration Control Technologies Division; Plymouth, MI; Notice of Termination of Investigation

Pursuant to Section 221 of the Trade Act of 1974, as amended, an investigation was initiated on March 2, 2009 in response to a worker petition filed by a One Stop Operator in the state of Colorado on behalf of workers at Freudenberg NOK, Vibration Control Technologies, Plymouth, Michigan.

As a One Stop Operator in the State of Colorado, the petitioner is not authorized to file a petition on behalf of a worker group outside of Colorado. Thus the petition has been deemed invalid and the investigation has been terminated.

Signed at Washington, DC, this 4th day of March 2009.

Richard Church,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. E9–5922 Filed 3–18–09; 8:45 am]

BILLING CODE 4510–FN–P

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–65,222].

Friction, LLC, Crawfordsville, IN; Notice of Termination of Investigation

Pursuant to Section 221 of the Trade Act of 1974, as amended, investigations were initiated on February 6, 2009 and February 22, 2009 in response to petitions filed by a company official on behalf of workers of Friction LLC, Greenwood, Mississippi (TA–W–65,156) and Friction, LLC, Crawfordsville, Indiana (TA–W–65,222), respectively.

The petition filed on behalf of workers at Friction, LLC, Crawfordsville, Indiana, was determined under TA–W–65,156.

Consequently, further investigation of this case, TA–W–65,222, would serve no purpose, and the investigation has been terminated.

Signed at Washington, DC, this 5th day of March 2009.

Richard Church,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. E9–5910 Filed 3–18–09; 8:45 am]

BILLING CODE 4510–FN–P

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–65,071]

Frito Lay/Pepsico; San Antonio, TX; Notice of Termination of Investigation

Pursuant to Section 221 of the Trade Act of 1974, as amended, an investigation was initiated on February 3, 2009 in response to a petition filed by a company official on behalf of workers of Frito Lay/PepsiCo, San Antonio, Texas.

The petitioner has requested that the petition be withdrawn. Consequently, the investigation has been terminated.

Signed at Washington, DC, this 10th day of March 2009.

Linda G. Poole,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. E9–5907 Filed 3–18–09; 8:45 am]

BILLING CODE 4510–FN–P

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–65,047]

Gehl Company, Corporate Office and Research and Development Center, West Bend, WI; Notice of Termination of Investigation

Pursuant to Section 221 of the Trade Act of 1974, as amended, an investigation was initiated on January 30, 2009, in response to a worker petition filed by the State of Wisconsin on behalf of workers at Gehl Company, Corporate Office and Research and Development Center, West Bend, Wisconsin.

The petitioner has requested that the petition be withdrawn. Consequently, the investigation has been terminated.

Signed at Washington, DC this 11th day of March 2009.

Elliott S. Kushner,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. E9–5906 Filed 3–18–09; 8:45 am]

BILLING CODE 4510–FN–P

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–65,519]

Goodyear Tire and Rubber Company, Union City, TN; Notice of Termination of Investigation

Pursuant to Section 221 of the Trade Act of 1974, as amended, an investigation was initiated on March 9, 2009 in response to a worker petition filed by the United Steelworkers of America, Local 878, on behalf of workers of Goodyear Tire and Rubber Company, Union City, Tennessee.

The petitioner has requested that the petition be withdrawn. Consequently, the investigation has been terminated.

Signed at Washington, DC, this 10th day of March 2009.

Richard Church,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. E9–5897 Filed 3–18–09; 8:45 am]

BILLING CODE 4510–FN–P

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–65,444]

Graphic Visual Solution Inc., Greensboro, NC; Notice of Termination of Investigation

Pursuant to Section 221 of the Trade Act of 1974, as amended, an investigation was initiated on February 2, 2009 in response to a petition filed by a company official on behalf of workers of Graphic Visual Solution Inc., Greensboro, North Carolina.

This petition is a photocopy of petition TA–W–65,455 that is the subject of an ongoing investigation for which a determination has not yet been issued.

Further investigation in this case would serve no purpose and this petition is terminated.

Signed at Washington, DC this 10th day of March, 2009.

Linda G. Poole,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. E9–5923 Filed 3–18–09; 8:45 am]

BILLING CODE 4510–FN–P

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–65,176]

Hewlett Packard, Personal Laser Solutions Division, Boise, ID; Notice of Termination of Investigation

Pursuant to Section 221 of the Trade Act of 1974, as amended, an investigation was initiated on February 9, 2009 in response to a worker petition filed on behalf of workers of Hewlett Packard, Personal Laser Solutions Division, Boise, Idaho.

The petitioners have requested that the petition be withdrawn. Consequently, the investigation has been terminated.

Signed at Washington, DC, this 9th day of March 2009.

Richard Church,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. E9–5909 Filed 3–18–09; 8:45 am]

BILLING CODE 4510–FN–P

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–65,303]

Hospira, Inc.; Morgan Hill, CA; Notice of Termination of Investigation

Pursuant to Section 221 of the Trade Act of 1974, as amended, an investigation was initiated on February 19, 2009 in response to a worker petition filed by a company official on behalf of workers of Hospira, Inc., Morgan Hill, California.

The petitioner has requested that the petition be withdrawn. Consequently, the investigation has been terminated.

Signed at Washington, DC, this 10th day of March 2009.

Richard Church,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. E9–5914 Filed 3–18–09; 8:45 am]

BILLING CODE 4510–FN–P

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–65,340]

Johnston Textiles, Inc., Valley, AL; Notice of Termination of Investigation

Pursuant to Section 221 of the Trade Act of 1974, as amended, an investigation was initiated on February 23, 2009 in response to a worker petition filed by workers of Johnston Textiles, Inc., Valley, Alabama.

The petitioner has requested that the petition be withdrawn. Consequently, the investigation has been terminated.

Signed at Washington, DC this 12th day of March 2009.

Elliott S. Kushner,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. E9–5916 Filed 3–18–09; 8:45 am]

BILLING CODE 4510–FN–P

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–65,439]

Mazer Corporation, Creative Services Division, Dayton, OH; Notice of Termination of Investigation

Pursuant to Section 221 of the Trade Act of 1974, as amended, an investigation was initiated on March 2, 2009 in response to a worker petition filed on behalf of workers of Mazer Corporation, Creative Services Division, Dayton, Ohio.

The petitioners have requested that the petition be withdrawn. Consequently, the investigation has been terminated.

Signed at Washington, DC, this 11th day of March 2009.

Richard Church,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. E9–5921 Filed 3–18–09; 8:45 am]

BILLING CODE 4510–FN–P

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–65,003]

NEPTCO, Incorporated, Lenoir, NC; Notice of Termination of Investigation

Pursuant to Section 221 of the Trade Act of 1974, as amended, an investigation was initiated on January 27, 2009 in response to a petition filed by a company official on behalf of workers NEPTCO, Incorporated, Lenoir Division, Lenoir, North Carolina.

The petitioner has requested that the petition be withdrawn. Consequently, the investigation has been terminated.

Signed at Washington, DC, this 10th day of March 2009.

Linda G. Poole,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. E9–5903 Filed 3–18–09; 8:45 am]

BILLING CODE 4510–FN–P

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–65,425]

Pass & Seymour/Legrand, Whitsett, NC; Notice of Termination of Investigation

Pursuant to Section 221 of the Trade Act of 1974, as amended, an investigation was initiated on February 27, 2009 in response to a worker petition filed by a company official on behalf of workers of Pass & Seymour/Legrand, Whitsett, North Carolina.

The petitioner has requested that the petition be withdrawn. Consequently, the investigation has been terminated.

Signed at Washington, DC, this 9th day of March 2009.

Richard Church,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. E9–5920 Filed 3–18–09; 8:45 am]

BILLING CODE 4510–FN–P

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–65,474]

Smart Apparel (US), Inc.; Quakertown, PA; Notice of Termination of Investigation

Pursuant to Section 221 of the Trade Act of 1974, as amended, an investigation was initiated on March 4, 2009 in response to a petition filed on behalf of the workers at Smart Apparel US, Inc., Quakertown, Pennsylvania.

The petitioners have requested that the petition be withdrawn. Consequently, the investigation has been terminated.

Signed at Washington, DC, this 10th day of March 2009.

Richard Church,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. E9–5925 Filed 3–18–09; 8:45 am]

BILLING CODE 4510–FN–P

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–65,161]

TG Missouri Corporation; Perryville, MO; Notice of Termination of Investigation

Pursuant to Section 221 of the Trade Act of 1974, as amended, an investigation was initiated on February 6, 2009 in response to a worker petition filed by a company official on behalf of workers of TG Missouri Corporation, Perryville, Missouri.

The petitioner has requested that the petition be withdrawn. Consequently, the investigation has been terminated.

Signed at Washington, DC this 5th day of March 2009.

Richard Church,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. E9–5908 Filed 3–18–09; 8:45 am]

BILLING CODE 4510–FN–P

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–64,886]

Trane Residential Systems, Ft. Smith, AR; Notice of Termination of Investigation

Pursuant to Section 221 of the Trade Act of 1974, as amended, an investigation was initiated on January 14, 2009, in response to a worker petition filed by the State of Arkansas on behalf of workers at Trane Residential Systems, Ft. Smith, Arkansas.

The petitioner has requested that the petition be withdrawn. Consequently, the investigation has been terminated.

Signed at Washington, DC this 10th day of March 2009.

Elliott S. Kushner,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. E9–5902 Filed 3–18–09; 8:45 am]

BILLING CODE 4510–FN–P

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[Notice (09–027)]

NASA Advisory Council; Science Committee; Astrophysics Subcommittee; Meeting

AGENCY: National Aeronautics and Space Administration.

ACTION: Notice of meeting.

SUMMARY: The National Aeronautics and Space Administration (NASA) announces a meeting of the Astrophysics Subcommittee of the NASA Advisory Council (NAC). This Subcommittee reports to the Science Committee of the NAC. The Meeting will be held for the purpose of soliciting from the scientific community and other persons scientific and technical information relevant to program planning.

DATES: Wednesday, April 8, 2009, 8:15 a.m. to 3:15 p.m. Eastern Daylight Time.

ADDRESSES: NASA Headquarters, 300 E Street, SW., Room 8R40, Washington, DC 20546.

FOR FURTHER INFORMATION CONTACT: Ms. Marian Norris, Science Mission Directorate, NASA Headquarters, Washington, DC 20546, (202) 358–4452, fax (202) 358–4118, or *mnorris@nasa.gov*.

SUPPLEMENTARY INFORMATION: The meeting will be open to the public up to the capacity of the room. The agenda for the meeting includes the following topics:

— Astrophysics Division Update.

— Wide Field Infrared Survey Explorer Mission Presentation.

— Exoplanet Exploration Program Analysis Group Presentation.

It is imperative that the meeting be held on these dates to accommodate the scheduling priorities of the key participants. Attendees will be requested to sign a register and to comply with NASA security requirements, including the presentation of a valid picture ID, before receiving an access badge. Foreign nationals attending this meeting will be required to provide a copy of their passport, visa, or green card in addition to providing the following information no less than 7 working days prior to the meeting: Full name; gender; date/place of birth; citizenship; visa/green card information (number, type, expiration date); passport information (number, country, expiration date); employer/affiliation information (name of institution, address, country, telephone); title/position of attendee. To expedite admittance, attendees with U.S. citizenship can provide identifying information 3 working days in advance by contacting Marian Norris via e-mail at *mnorris@nasa.gov* or by telephone at (202) 358–4452.

Dated: March 11, 2009.

P. Diane Rausch,

Advisory Committee Management Officer, National Aeronautics and Space Administration.

[FR Doc. E9–5850 Filed 3–18–09; 8:45 am]

BILLING CODE 7510–13–P

NATIONAL FOUNDATION ON THE ARTS AND THE HUMANITIES

National Endowment for the Arts; Submission for OMB Review: Comment Request

The National Endowment for the Arts (NEA) has submitted the following public information collection request (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]. Copies of this ICR, with applicable supporting documentation, may be obtained by contacting Sarah Cunningham via telephone at 202–682–5515 (this is not a toll-free number) or e-mail at *cunninghams@arts.gov*. Individuals who use a telecommunications device for the deaf (TTY/TDD) may call 202–682–5496 between 10 a.m. and 4 p.m. Eastern time, Monday through Friday.

Comments should be sent to the Office of Information and Regulatory Affairs, Attn: OMB Desk Officer for the National Endowment for the Arts, Office of Management and Budget, Room 10235, Washington, DC 20503, 202–395–7316, within 30 days from the date of this publication in the **Federal Register**.

The Office of Management and Budget (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 submissions of responses.

Agency: National Endowment for the Arts.

Title: Research Study: Improving the Assessment of Student Learning in the Arts.

OMB Number: New.

Frequency: One time.

Affected Public: State arts agencies, County arts agencies, arts organizations, cultural organizations, institutes of higher learning with arts programs, school districts, public schools, arts education evaluators.

Estimated Number of Respondents: 130,244.

Estimated Time per Respondent: 30 minutes.

Total Burden Hours: 65,122.

Total Annualized Capital/Startup Costs: 0.

Total Annual Costs (Operating/Maintaining Systems or Purchasing Services): $40,000.

Description: The National Endowment for the Arts plans to conduct a survey to collect information about assessment of student learning in the arts. The survey is part of a research project in cooperation with WestEd, designed to collect and analyze data on current practices and trends in the assessment of K–12 student arts learning and to identify models that might be most effective in various learning environments. The activities include collecting uniform data from State arts agencies, County arts agencies, local arts organizations, institutes of higher education with arts programs, districts and schools that provide arts instruction to K–12 students, and people that have evaluated arts education programs.

ADDRESSES: Sarah Cunningham, National Endowment for the Arts, 1100 Pennsylvania Avenue, NW., Room 703, Washington, DC 20506–0001, telephone (202) 682–5515 (this is not a toll-free number), fax 202/682–5002.

Kathryn Plowitz-Worden,

Panel Coordinator, National Endowment for the Arts.

[FR Doc. E9–6011 Filed 3–18–09; 8:45 am]

BILLING CODE 7537–01–P

NUCLEAR REGULATORY COMMISSION

[NRC–2009–0109]

Agency Information Collection Activities: Proposed Collection; Comment Request

AGENCY: U.S. Nuclear Regulatory Commission (NRC).

SUMMARY: The NRC invites public comment about our intention to request the OMB's approval for renewal of an existing information collection that is summarized below. We are required to publish this notice in the **Federal Register** under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35).

Information pertaining to the requirement to be submitted:

1. *The title of the information collection:* NRC Form 590, Application/Permit for Use of the Two White Flint North (TWFN) Auditorium.
2. *Current OMB approval number:* 3150–0181.
3. *How often the collection is required:* Occasionally. Each time public use of the auditorium is requested.
4. *Who is required or asked to report:* Members of the public requesting use of the NRC Auditorium.
5. *The number of annual respondents:* 5.
6. *The number of hours needed annually to complete the requirement or request:* 1.25 hours (5 requests × 15 minutes per request).
7. *Abstract:* In accordance with the Public Buildings Act of 1959, an agreement was reached between the Maryland-National Capital Park and Planning Commission (MPPC), the General Services Administration (GSA), and the Nuclear Regulatory Commission that the NRC auditorium will be made available for public use. Public users of the auditorium will be required to complete NRC Form 590, Application/Permit for Use of Two White Flint North (TWFN) Auditorium. The information is needed to allow for administrative and security review and scheduling, and to make a determination that there are no anticipated problems with the requester prior to utilization of the facility.

Submit, by May 18, 2009, comments that address the following questions:

1. Is the proposed collection of information necessary for the NRC to properly perform its functions? Does the information have practical utility?
2. Is the burden estimate accurate?
3. Is there a way to enhance the quality, utility, and clarity of the information to be collected?
4. How can the burden of the information collection be minimized, including the use of automated collection techniques or other forms of information technology?

A copy of the draft supporting statement may be viewed free of charge at the NRC Public Document Room, One White Flint North, 11555 Rockville Pike, Room O–1 F21, Rockville, MD 20852. OMB clearance requests are available at the NRC worldwide Web site: *http://www.nrc.gov/public-involve/doc-comment/omb/index.html.* The document will be available on the NRC home page site for 60 days after the signature date of this notice. Comments submitted in writing or in electronic form will be made available for public inspection. 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. Comments submitted should reference Docket No. NRC–2009–0109. You may submit your comments by any of the following methods. Electronic comments: Go to *http://www.regulations.gov* and search for Docket No. NRC–2009–0109. Mail comments to NRC Clearance Officer, Gregory R. Trussell (T–5 F52), U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001. Questions about the information collection requirements may be directed to the NRC Clearance Officer, Gregory R. Trussell (T–5 F52), U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, by telephone at 301–415–6445, or by e-mail to *INFOCOLLECTS.Resource@NRC.GOV.*

Dated at Rockville, Maryland, this 10th day of March 2009.

For the Nuclear Regulatory Commission.

Gregory R. Trussell,

NRC Clearance Officer, Office of Information Services.

[FR Doc. E9–5997 Filed 3–18–09; 8:45 am]

BILLING CODE 7590–01–P]

NUCLEAR REGULATORY COMMISSION

[Docket No. 030–20836, License No. 25–21479–01, EA–08–271, NRC–2009–0119]

In the Matter of Mattingly Testing Services, Inc., Molt, Montana: Confirmatory Order Modifying License (Effective Immediately)

I

Mattingly Testing Services, Inc. (Mattingly or licensee) is the holder of Materials License No. 25–21479–01

issued by the Nuclear Regulatory Commission (NRC or Commission) pursuant to 10 CFR part 34, last amended on September 11, 2008, and due to expire on February 28, 2016. The license authorizes Mattingly to possess and use byproduct material for industrial radiographic operations in NRC jurisdiction, and in areas of exclusive Federal jurisdiction within Agreement States. Mattingly's main office is located in Molt, Montana.

This Confirmatory Order is the result of an agreement reached during an alternative dispute resolution (ADR) mediation session conducted on February 5, 2009, at the NRC Region IV offices in Arlington, Texas.

II

On November 5, 2007, the NRC Office of Investigations (OI) began an investigation (OI Case No. 4–2008–009) into Mattingly's activities. Based on the evidence developed during its investigation and associated inspection, nine apparent violations were identified. In addition, the NRC was concerned that willfulness may have been associated with five of those apparent violations. The results of the investigation and inspection, completed on November 19, 2008, were sent to Mattingly in a letter dated December 15, 2008. In response to NRC's December 15, 2008, letter, Mattingly requested ADR to resolve these issues.

On February 5, 2009, the NRC and Mattingly met in an ADR session mediated by a professional mediator, arranged through Cornell University's Institute on Conflict Resolution. ADR is a process in which a neutral mediator with no decision-making authority assists the parties in reaching an agreement on resolving any differences regarding the dispute. This confirmatory order is issued pursuant to the agreement reached during the ADR process.

III

During the February 5, 2009, ADR session, a preliminary settlement agreement was reached. *The elements of the agreement consisted of the following:*

Pursuant to the Nuclear Regulatory Commission Office of Enforcement's ADR process, the following are the terms and conditions agreed upon in principle by Mattingly and the NRC relating to Inspection Report No. 030–20836/2007–003 issued by the NRC to Mattingly on December 15, 2008.

Whereas, NRC's inspection and investigation conducted between November 5, 2007, and November 19, 2008, identified nine apparent violations of NRC requirements;

Whereas, the nine apparent violations involved were:

(1) The failure to provide complete and accurate information to the Commission;

(2) A radiographer's assistant performing radiographic operations without wearing a personnel dosimeter;

(3) A radiographer's assistant using a radiographic exposure device without being under the personal supervision of a radiographer;

(4) The failure to secure a radiographic exposure device containing radioactive material with a minimum of two independent physical controls when the device was not under constant surveillance by the licensee;

(5) The failure to remove from service a radiographic exposure device after it had sustained damage to the locking mechanism and no longer operated correctly;

(6) The failure to notify NRC within 24 hours after the discovery of an event involving damage to the locking mechanism of a radiographic exposure device;

(7) Permitting an individual to act as a radiographer's assistant without completion of a practical examination on the use of radiographic equipment;

(8) Using pocket dosimeters during radiographic operations that had not been checked for correct response to radiation every 12 months as required; and,

(9) The failure to have a functional alarm system to allow the licensee to monitor, detect, assess, and respond to unauthorized access to radioactive material when left unattended in a portable darkroom;

Whereas, NRC acknowledges the extensive corrective actions Mattingly has already implemented associated with the apparent violations, which include:

(1) Hiring three new office employees to assume various management duties;

(2) Implementing an electronic document storage system;

(3) Reviewing current practical exam records for accuracy;

(4) RSO and assistant RSO performing quality reviews of paperwork;

(5) RSO and assistant RSO performing unannounced inspections at jobsites;

(6) Requiring self and peer-checking for proper dosimetry;

(7) Requiring radiographer or assistant remain with the truck when the radiographic exposure device is within;

(8) Requiring regular truck inspections and alarm testing;

(9) Implementing a safety checklist;

(10) Preparing notification forms to help ensure NRC notifications are made;

(11) Purchasing additional dosimetry devices;

(12) Requiring practical exams to take place within Mattingly's shop;

(13) Improving the Mattingly continuing education program;

(14) Sending assistant RSO to the Radiation Safety Academy;

(15) Establishing a company library and encouraging self-study;

(16) Submitting a license amendment request to replace the current RSO; and

(17) Implementing a tracking system for dosimetry calibration;

Whereas, during a subsequent inspection in June 2008, the NRC reviewed the effectiveness of these actions and found no safety-significant violations;

Whereas, the NRC is concerned that willfulness may be associated with apparent violations 1, 3, 5, 7, and 8 above;

Whereas, Mattingly agrees that apparent violations 2, 4, 6, 8, and 9 did occur, but denies any willfulness was involved;

Whereas, Mattingly denies that apparent violations 1, 3, 5, and 7 occurred and denies that any willfulness was involved;

Whereas, NRC and Mattingly disagree on the number of violations that occurred and whether willfulness was involved;

Whereas, these terms and conditions shall not be binding on either party until memorialized in a confirmatory order issued by the NRC to Mattingly relating to this matter;

Therefore, the parties agree to the following terms and conditions:

1. Mattingly shall contract with an independent consultant to evaluate the effectiveness of its radiation safety and compliance programs.

(1) Within 60 days of the date of this Order, Mattingly will submit to the NRC for approval, the name(s) and qualifications of an independent consultant(s) to review and evaluate Mattingly's radiation safety program and compliance program.

(2) Within 30 days of NRC approval of the consultant, the consultant will commence an assessment of Mattingly's radiation safety program.

(3) The consultant shall review Mattingly's training program and provide recommendations for improvement.

(4) The consultant shall review Mattingly's Operating and Emergency Procedures and provide recommendations for improvement.

(5) Within 30 days following completion of his reviews, the consultant will provide Mattingly a report discussing its findings and

recommendations for program improvements. At the same time the consultant provides its report to Mattingly, the consultant will send a copy to the Director, Division of Nuclear Materials Safety, U.S. NRC Region IV.

(6) Within 30 days of receiving the consultant's report, Mattingly will provide the NRC, in writing, its position on how it will address the consultant's findings. In its correspondence to the NRC, Mattingly will identify which of the consultant's recommendations it will implement and the time frame in which it will implement the recommendations. For those recommendations Mattingly does not accept, Mattingly will provide the NRC with its justification.

(7) Within 60 days of receiving the consultant's report, Mattingly shall submit a license amendment request incorporating updated procedures based on Mattingly's implementation of the consultant's recommendations.

(8) The consultant shall perform an annual audit of Mattingly's radiation safety program through calendar year 2012, starting with an audit of calendar year 2009 (this will result in 4 annual audits). This audit shall be performed in accordance with the suggested audit format in NUREG 1556, Volume 2, "Program-Specific Guidance About Industrial Radiography Licenses," Appendix I.

The consultant will send a copy of his annual audit results to the Director, Division of Nuclear Materials Safety, U.S. NRC Region IV.

(9) The consultant shall perform field audits of the performance of radiography at temporary jobsites, and these field audits shall be performed in accordance with NUREG 1556, Volume 2, Appendix H. The field audits shall be unannounced and the auditor shall observe Mattingly radiographers actually performing radiographic operations. The auditor must make these observations in a manner such that the radiographers are unaware of his presence. After observing the radiographers perform work, the auditor may announce himself to the radiographers in order to continue the audit. These audits shall be conducted at least every six months through calendar year 2012, beginning within 30 days of NRC approval of the consultant. The consultant shall provide NRC with a copy of these audits within one week after the audit is completed.

2. Mattingly shall contract with an independent consultant to provide training.

(1) Within 60 days of the date of this Order, Mattingly will submit to the NRC for approval, the name(s) and qualifications of an independent consultant(s) to provide training;

(2) Within 30 days of NRC approval of the consultant, the consultant will provide training to the licensee's personnel who engage in licensed activities. The training shall include:

(1) A review of radiation mishaps involving radiography devices or gauges;

(2) A review of the consequences of and the potential actions that NRC may take against an individual for deliberate violations of NRC requirements;

(3) A review of NRC requirements and Mattingly's license conditions;

(4) A review of Mattingly's Operating and Emergency Procedures;

(5) Lessons learned from the circumstances surrounding each of the violations and apparent violations identified by the NRC in its December 15, 2008, letter;

(6) Reporting requirements of 10 CFR 30.50 and 10 CFR 34.101; and

(7) NRC's employee protection requirements contained in 10 CFR 30.7.

3. Mattingly may, during the effective period of this order, choose to change consultants to fulfill the requirements above after Mattingly submits the name(s) and qualifications of the new independent consultant(s) and receives NRC approval for the change.

4. Within 30 days of the date of this order, Mattingly shall submit a license amendment request incorporating updated procedures which:

(a) Require a radiographer or assistant must remain with the radiographic exposure device unless the device is properly secured in the truck or an approved storage location;

(b) Require the truck alarm system must be tested immediately prior to leaving the truck unattended if the truck is serving as secure storage for the radiographic exposure device;

(c) Include a pre-job safety checklist assuring:

(1) The radiographer and assistant check each other to assure each is wearing properly calibrated, tested, and functioning dosimetry as required;

(2) Radiographers must have, on their person, their certification card while at a job site;

(d) Require the RSO or his assistant to review each document required by NRC regulations for accuracy and completeness within 10 days of creation of said document, indicating such review by initialing and dating the document;

(e) Require the RSO or his assistant to review all training records, exams, and certifications of each employee and sign a statement that the person is authorized to work with licensed material prior to the person functioning in the position of a radiographer or radiographer's assistant;

(f) Provide additional guidance on the reporting requirements contained in 10 CFR 30.50 and 10 CFR 34.101;

(g) Provide guidance on when a radiographic exposure device is considered damaged such that it must not be used; and

(h) Provide employees with a policy statement regarding the requirements of 10 CFR 30.7.

5. Within 30 days from the date of this order, Mattingly will develop and implement a disciplinary program with a graded approach for infractions. This disciplinary program will consider minor infractions up to willful failures to follow the regulations. The disciplinary program will emphasize individual responsibility for radiation safety and radioactive material security, and will encourage reporting safety and security concerns.

6. In consideration of the above actions on the part of Mattingly, NRC agrees to limit the civil penalty amount in this enforcement action to $8,000. Accordingly, within 1 year of the date of this order, Mattingly shall pay the civil penalty in the amount of $8,000 in accordance with NUREG/BR–0254 and submit to the Director, Office of Enforcement, U.S. Nuclear Regulatory Commission, Washington, DC 20555, a statement indicating when and by what method payment was made.

7. The NRC agrees not to pursue any further enforcement action against Mattingly in connection with the apparent violations identified in the NRC's December 15, 2008 letter to Mattingly and will not count this matter as previous enforcement for the purposes of assessing potential future enforcement action in accordance with Section VI.C of the Enforcement Policy.

8. The license which is the subject of this order is modified in accordance with the requirements of the order. As such, in the event of the transfer of the NRC license for Mattingly, by virtue of sale, merger, bankruptcy, agreement or otherwise, the requirements of this confirmatory order shall survive any such transfer and shall be binding on the new license holder.

On March 5, 2009, the Licensee consented to issuing this Order with the commitments, as described in Section V below. The Licensee further agreed that this Order is to be effective upon issuance and that it has waived its right to a hearing.

IV

Since the licensee has agreed to take additional actions to address NRC

concerns, as set forth in Item III above, the NRC has concluded that its concerns can be resolved through issuance of this Order.

I find that the Licensee's commitments as set forth in Section V are acceptable and necessary and conclude that with these commitments the public health and safety are reasonably assured. In view of the foregoing, I have determined that public health and safety require that the Licensee's commitments be confirmed by this Order. Based on the above and the Licensee's consent, this Order is immediately effective upon issuance.

V

Accordingly, pursuant to Sections 81, 161b, 161i, 161o, 182 and 186 of the Atomic Energy Act of 1954, as amended, and the Commission's regulations in 10 CFR 2.202 and 10 CFR part 34, *it is hereby ordered, effective immediately, that license no. 25–21479–01 is modified as follows:*

1. Mattingly shall contract with an independent consultant to evaluate the effectiveness of its radiation safety and compliance programs.

(1) Within 60 days of the date of this Order, Mattingly will submit to the NRC for approval, the name(s) and qualifications of an independent consultant(s) to review and evaluate Mattingly's radiation safety program and compliance program.

(2) Within 30 days of NRC approval of the consultant, the consultant will commence an assessment of Mattingly's radiation safety program.

(3) The consultant shall review Mattingly's training program and provide recommendations for improvement.

(4) The consultant shall review Mattingly's Operating and Emergency Procedures and provide recommendations for improvement.

(5) Within 30 days following completion of his reviews, the consultant will provide Mattingly a report discussing its findings and recommendations for program improvements. At the same time the consultant provides its report to Mattingly, the consultant will send a copy to the Director, Division of Nuclear Materials Safety, U.S. NRC Region IV.

(6) Within 30 days of receiving the consultant's report, Mattingly will provide the NRC, in writing, its position on how it will address the consultant's findings. In its correspondence to the NRC, Mattingly will identify which of the consultant's recommendations it will implement and the timeframe in which it will implement the recommendations. For those recommendations Mattingly does not accept, Mattingly will provide the NRC with its justification.

(7) Within 60 days of receiving the consultant's report, Mattingly shall submit a license amendment request incorporating updated procedures based on Mattingly's implementation of the consultant's recommendations.

(8) The consultant shall perform an annual audit of Mattingly's radiation safety program through calendar year 2012, starting with an audit of calendar year 2009 (this will result in 4 annual audits). This audit shall be performed in accordance with the suggested audit format in NUREG 1556, Volume 2 "Program-Specific Guidance About Industrial Radiography Licenses," Appendix I. The consultant will send a copy of his annual audit results to the Director, Division of Nuclear Materials Safety, U.S. NRC Region IV.

(9) The consultant shall perform field audits of the performance of radiography at temporary jobsites, and these field audits should be performed in accordance with NUREG 1556, Volume 2, Appendix H. The field audits shall be unannounced and the auditor shall observe Mattingly radiographers actually performing radiographic operations. The auditor must make these observations in a manner such that the radiographers are unaware of his presence. After observing the radiographers perform work, the auditor may announce himself to the radiographers in order to continue the audit. These audits shall be conducted at least every 6 months through calendar year 2012, beginning within 30 days of NRC approval of the consultant. The consultant shall provide NRC with a copy of these audits within one week after the audit is completed.

2. Mattingly shall contract with an independent consultant to provide training.

(a) Within 60 days of the date of this Order, Mattingly will submit to the NRC for approval, the name(s) and qualifications of an independent consultant(s) to provide training;

(b) Within 30 days of NRC approval of the consultant, the consultant will provide training to the licensee's personnel who engage in licensed activities. The training shall include:

(1) A review of radiation mishaps involving radiography devices or gauges;

(2) A review of the consequences of and the potential actions that NRC may take against an individual for deliberate violations of NRC requirements;

(3) A review of NRC requirements and Mattingly's license conditions;

(4) A review of Mattingly's Operating and Emergency Procedures;

(5) Lessons learned from the circumstances surrounding each of the violations and apparent violations identified by the NRC in its December 15, 2008, letter;

(6) Reporting requirements of 10 CFR 30.50 and 10 CFR 34.101; and

(7) NRC's employee protection requirements contained in 10 CFR 30.7.

3. Mattingly may, during the effective period of this order, choose to change consultants to fulfill the requirements above after Mattingly submits the name(s) and qualifications of the new independent consultant(s) and receives NRC approval for the change.

4. Within 30 days of the date of this order, Mattingly shall submit a license amendment request incorporating updated procedures which:

(a) Require a radiographer or assistant must remain with the radiographic exposure device unless the device is properly secured in the truck or an approved storage location;

(b) Require the truck alarm system must be tested immediately prior to leaving the truck unattended if the truck is serving as secure storage for the radiographic exposure device;

(c) Include a pre-job safety checklist assuring:

(1) The radiographer and assistant check each other to assure each is wearing properly calibrated, tested, and functioning dosimetry as required;

(2) Radiographers must have, on their person, their certification card while at a job site;

(d) Require the RSO or his assistant to review each document required by NRC regulations for accuracy and completeness within 10 days of creation of said document, indicating such review by initialing and dating the document;

(e) Require the RSO or his assistant to review all training records, exams, and certifications of each employee and sign a statement that the person is authorized to work with licensed material prior to the person functioning in the position of a radiographer or radiographer's assistant;

(f) Provide additional guidance on the reporting requirements contained in 10 CFR 30.50 and 10 CFR 34.101;

(g) Provide guidance on when a radiographic exposure device is considered damaged such that it must not be used; and

(h) Provide employees with a policy statement regarding the requirements of 10 CFR 30.7.

5. Within 30 days from the date of this order, Mattingly will develop and implement a disciplinary program with

a graded approach for infractions. This disciplinary program will consider minor infractions up to willful failures to follow the regulations. The disciplinary program will emphasize individual responsibility for radiation safety and radioactive material security, and will encourage reporting safety and security concerns.

6. In consideration of the above actions on the part of Mattingly, NRC agrees to limit the civil penalty amount in this enforcement action to $8,000. Accordingly, within 1 year of the date of this order, Mattingly shall pay the civil penalty in the amount of $8,000 in accordance with NUREG/BR–0254 and submit to the Director, Office of Enforcement, U.S. Nuclear Regulatory Commission, Washington, DC 20555, a statement indicating when and by what method payment was made.

7. The license which is the subject of this order is modified in accordance with the requirements of the order. As such, in the event of the transfer of the NRC license for Mattingly, by virtue of sale, merger, bankruptcy, agreement or otherwise, the requirements of this confirmatory order shall survive any such transfer and shall be binding on the new license holder.

The Regional Administrator, Region IV, may, in writing, relax or rescind any of the above conditions upon demonstration by the Licensee of good cause.

VI

Any person adversely affected by this Confirmatory Order, other than the Licensee, may request a hearing within 20 days of its issuance. Where good cause is shown, consideration will be given to extending the time to request a hearing. A request for extension of time must be directed to the Director, Office of Enforcement, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, and include a statement of good cause for the extension.

A request for a hearing must be filed in accordance with the NRC E-Filing rule, which the NRC promulgated in August 2007, 72 FR 49139 (Aug. 28, 2007). The E-Filing process requires participants to submit and serve documents over the Internet or, in some cases, to mail copies on electronic optical storage media. Participants may not submit paper copies of their filings unless they seek a waiver in accordance with the procedures described below.

To comply with the procedural requirements associated with E-Filing, at least five (5) days prior to the filing deadline the requestor must contact the Office of the Secretary by e-mail at *HEARINGDOCKET@NRC.GOV*, or by calling (301) 415–1677, to request (1) a digital ID certificate, which allows the participant (or its counsel or representative) to digitally sign documents and access the E-Submittal server for any NRC proceeding in which it is participating; and/or (2) creation of an electronic docket for the proceeding (even in instances when the requestor (or its counsel or representative) already holds an NRC-issued digital ID certificate). Each requestor will need to download the Workplace Forms Viewer™ to access the Electronic Information Exchange (EIE), a component of the E-Filing system. The Workplace Forms Viewer™ is free and is available at *http://www.nrc.gov/site-help/e-submittals/install-viewer.html*. Information about applying for a digital ID certificate also is available on NRC's public Web site at *http://www.nrc.gov/site-help/e-submittals/apply-certificates.html*.

Once a requestor has obtained a digital ID certificate, had a docket created, and downloaded the EIE viewer, it can then submit a request for a hearing through EIE. Submissions should be in Portable Document Format (PDF) in accordance with NRC guidance available on the NRC public Web site at *http://www.nrc.gov/site-help/e-submittals.html*. A filing is considered complete at the time the filer submits its document through EIE. To be timely, electronic filings must be submitted to the EIE system no later than 11:59 p.m. Eastern Time on the due date. Upon receipt of a transmission, the E-Filing system time-stamps the document and sends the submitter an e-mail notice confirming receipt of the document. The EIE system also distributes an e-mail notice that provides access to the document to the NRC Office of the General Counsel and any others who have advised the Office of the Secretary that they wish to participate in the proceeding, so that the filer need not serve the document on those participants separately. Therefore, any others who wish to participate in the proceeding (or their counsel or representative) must apply for and receive a digital ID certificate before a hearing request is filed so that they may obtain access to the document via the E-Filing system.

A person filing electronically may seek assistance through the "Contact Us" link located on the NRC Web site at *http://www.nrc.gov/site-help/e-submittals.html* or by calling the NRC technical help line, which is available between 8:30 a.m. and 4:15 p.m., Eastern Time, Monday through Friday. The electronic filing Help Desk can be contacted by telephone at 1–866–672–7640 or by e-mail at *MSHD.Resource@nrc.gov*.

Participants who believe that they have good cause for not submitting documents electronically must file a motion, 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.

Documents submitted in adjudicatory proceedings will appear in NRC's electronic hearing docket which is available to the public at *http://ehd.nrc.gov/EHD_Proceeding/home.asp*, unless excluded pursuant to an order of the Commission, an Atomic Safety and Licensing Board, or a Presiding Officer. Participants are requested not to include personal privacy information, such as social security numbers, home addresses, or home phone numbers in their filings. 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 works.

If a person other than Mattingly requests a hearing, that person shall set forth with particularity the manner in which his interest is adversely affected by this Order and shall address the criteria set forth in 10 CFR 2.309(d) and (f).

If the hearing is requested by a person whose interest is adversely affected, the Commission will issue an Order designating the time and place of any hearing. If a hearing is held, the issue to be considered at such hearing shall be whether this Confirmatory Order should be sustained. In the absence of any request for hearing, or written approval of an extension of time in which to request a hearing, the provisions specified in Section V above shall be final 20 days from the date of this Order

without further order or proceedings. If an extension of time for requesting a hearing has been approved, the provisions specified in Section V shall be final when the extension expires if a hearing request has not been received. *A request for hearing shall not stay the immediate effectiveness of this order.*

For the nuclear regulatory commission.

Dated this 6th day of March 2009.

Elmo E. Collins,

Regional Administrator.

[FR Doc. E9–5999 Filed 3–18–09; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[IA–08–055; NRC–2009–0120]

In the Matter of Mr. Mark M. Ficek; Confirmatory Order (Effective Immediately)

I

Mr. Mark M. Ficek is the President of Mattingly Testing Services, Inc., (Mattingly) in Molt, Montana. Mattingly is the holder of Materials License No. 25–21479–01 issued by the Nuclear Regulatory Commission (NRC or Commission) pursuant to 10 CFR Part 34, last amended on September 11, 2008, and due to expire on February 28, 2016. The license authorizes Mattingly to possess and use byproduct material for industrial radiographic operations in NRC jurisdiction, and in areas of exclusive Federal jurisdiction within Agreement States. Mattingly's main office is located in Molt, Montana.

This Confirmatory Order is the result of an agreement reached during an alternative dispute resolution (ADR) mediation session conducted on February 5, 2009, at the NRC Region IV offices in Arlington, Texas.

II

On November 5, 2007, the NRC Office of Investigations began an investigation (Office of Investigations Case No. 4–2008–009) to determine, in part, if Mr. Ficek violated 10 CFR 30.10. Based on the evidence developed during its investigation, one apparent violation was identified. The results of the investigation, completed on September 12, 2008, were sent to Mr. Ficek in a letter dated December 15, 2008. In response to NRC's December 15, 2008, letter, Mr. Ficek requested ADR to resolve this issue.

On February 5, 2009, the NRC and Mr. Ficek met in an ADR session mediated by a professional mediator, arranged through Cornell University's Institute on Conflict Resolution. ADR is a process in which a neutral mediator with no decisionmaking authority assists the parties in reaching an agreement on resolving any differences regarding the dispute. This confirmatory order is issued pursuant to the agreement reached during the ADR process.

III

In response to the NRC's offer, Mr. Ficek requested use of the NRC ADR process to resolve differences he had with the NRC. During that ADR session, a preliminary settlement agreement was reached. The elements of the agreement consisted of the following:

Pursuant to the Nuclear Regulatory Commission Office of Enforcement's ADR process, the following are the terms and conditions agreed upon in principle by Mr. Mark M. Ficek, and the NRC relating to NRC Investigation Report No. 4–2008–009 (IA–08–055) characterized by the NRC to Mr. Ficek in a letter dated December 15, 2008.

Whereas, NRC's investigation completed September 12, 2008, identified one apparent violation of 10 CFR 30.10;

Whereas, NRC acknowledges that this is the first apparent violation identified by the NRC concerning Mr. Ficek during his tenure as RSO and President of Mattingly Testing Services, Inc;

Whereas, Mr. Ficek does not agree that a violation of 10 CFR 30.10 occurred;

Whereas, Mr. Ficek and the NRC agree to disagree on whether a violation of 10 CFR 30.10 occurred;

Whereas, these terms and conditions shall not be binding on either party until memorialized in a confirmatory order issued by the Nuclear Regulatory Commission to Mr. Ficek relating to this matter;

Therefore, the parties agree to the following terms and conditions:

1. Mr. Mark Ficek agrees to refrain from engaging in licensed activities for a period of two years. Therefore, Mr. Mark Ficek is prohibited for two years from the date of this Order from engaging in NRC-licensed activities. NRC-licensed activities are those activities that are conducted pursuant to a specific or general license issued by the NRC, including, but not limited to, those activities of Agreement State licensees conducted pursuant to the authority granted by 10 CFR 150.20.

2. For a period of one year after the two year period of prohibition has expired, Mr. Ficek shall, within 20 days of his becoming involved in NRC-licensed activities, as defined in Paragraph 1 above, provide notice to the Director, Office of Enforcement, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, of the name, address, and telephone number of the employer or the entity where he is, or will be, involved in the NRC-licensed activities. In the notification, Mr. Ficek shall include a statement of his commitment to compliance with regulatory requirements and the basis why the Commission should have confidence that he will now comply with applicable NRC requirements.

3. The NRC agrees not to pursue any further enforcement action against Mr. Ficek in connection with the apparent violation identified in the NRC's December 15, 2008, letter to him.

On March 5, 2009, Mr. Ficek consented to issuing this Order with the commitments, as described in Section V below. Mr. Ficek further agreed that this Order is to be effective upon issuance and that he has waived his right to a hearing.

IV

Since Mr. Ficek has agreed to take additional actions to address NRC concerns, as set forth in Item III above, the NRC has concluded that its concerns can be resolved through issuance of this Order.

I find that Mr. Ficek's commitments as set forth in Section V are acceptable and necessary and conclude that with these commitments the public health and safety are reasonably assured. In view of the foregoing, I have determined that public health and safety require that Mr. Ficek's commitments be confirmed by this Order. Based on the above and Mr. Ficek's consent, this Order is immediately effective upon issuance.

V

Accordingly, pursuant to Sections 81, 161b, 161i, 161o, 182 and 186 of the Atomic Energy Act of 1954, as amended, and the Commission's regulations in 10 CFR 2.202 and 10 CFR Parts 30 and 34, *it is hereby ordered, effective immediately, that:*

1. Mr. Mark Ficek agrees to refrain from engaging in licensed activities for a period of two years. Therefore, Mr. Mark Ficek is prohibited for two years from the date of this Order from engaging in NRC-licensed activities. NRC-licensed activities are those activities that are conducted pursuant to a specific or general license issued by the NRC, including, but not limited to, those activities of Agreement State licensees conducted pursuant to the authority granted by 10 CFR 150.20.

2. For a period of one year after the two year period of prohibition has expired, Mr. Ficek shall, within 20 days of his becoming involved in NRC-

licensed activities, as defined in Paragraph 1 above, provide notice to the Director, Office of Enforcement, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, of the name, address, and telephone number of the employer or the entity where he is, or will be, involved in the NRC-licensed activities. In the notification, Mr. Ficek shall include a statement of his commitment to compliance with regulatory requirements and the basis why the Commission should have confidence that he will now comply with applicable NRC requirements.

The Regional Administrator, NRC Region IV, may, in writing, relax or rescind any of the above conditions upon demonstration by Mr. Ficek of good cause.

VI

Any person adversely affected by this Confirmatory Order, other than Mr. Ficek, may request a hearing within 20 days of its issuance. Where good cause is shown, consideration will be given to extending the time to request a hearing. A request for extension of time must be directed to the Director, Office of Enforcement, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, and include a statement of good cause for the extension.

A request for a hearing must be filed in accordance with the NRC E-Filing rule, which the NRC promulgated in August 2007, 72 FR 49139 (Aug. 28, 2007). The E-Filing process requires participants to submit and serve documents over the internet or, in some cases, to mail copies on electronic optical storage media. Participants may not submit paper copies of their filings unless they seek a waiver in accordance with the procedures described below.

To comply with the procedural requirements associated with E-Filing, at least five (5) days prior to the filing deadline the requestor must contact the Office of the Secretary by e-mail at *HEARINGDOCKET@NRC.GOV*, or by calling (301) 415–1677, to request (1) a digital ID certificate, which allows the participant (or its counsel or representative) to digitally sign documents and access the E-Submittal server for any NRC proceeding in which it is participating; and/or (2) creation of an electronic docket for the proceeding (even in instances when the requestor (or its counsel or representative) already holds an NRC-issued digital ID certificate). Each requestor will need to download the Workplace Forms Viewer™ to access the Electronic Information Exchange (EIE), a component of the E-Filing system. The Workplace Forms Viewer™ is free and is available at *http://www.nrc.gov/site-help/e-submittals/install-viewer.html.* Information about applying for a digital ID certificate also is available on NRC's public Web site at *http://www.nrc.gov/site-help/e-submittals/apply-certificates.html.*

Once a requestor has obtained a digital ID certificate, had a docket created, and downloaded the EIE viewer, it can then submit a request for a hearing through EIE. Submissions should be in Portable Document Format (PDF) in accordance with NRC guidance available on the NRC public Web site at *http://www.nrc.gov/site-help/e-submittals.html.* A filing is considered complete at the time the filer submits its document through EIE. To be timely, electronic filings must be submitted to the EIE system no later than 11:59 p.m. Eastern Time on the due date. Upon receipt of a transmission, the E-Filing system time-stamps the document and sends the submitter an e-mail notice confirming receipt of the document. The EIE system also distributes an e-mail notice that provides access to the document to the NRC Office of the General Counsel and any others who have advised the Office of the Secretary that they wish to participate in the proceeding, so that the filer need not serve the document on those participants separately. Therefore, any others who wish to participate in the proceeding (or their counsel or representative) must apply for and receive a digital ID certificate before a hearing request is filed so that they may obtain access to the document via the E-Filing system.

A person filing electronically may seek assistance through the "Contact Us" link located on the NRC Web site at *http://www.nrc.gov/site-help/e-submittals.html* or by calling the NRC technical help line, which is available between 8:30 a.m. and 4:15 p.m., Eastern Time, Monday through Friday. The electronic filing Help Desk can be contacted by telephone at 1–866–672–7640 or by e-mail at *MSHD.Resource@nrc.gov.*

Participants who believe that they have good cause for not submitting documents electronically must file a motion, 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.

Documents submitted in adjudicatory proceedings will appear in NRC's electronic hearing docket which is available to the public at *http://ehd.nrc.gov/EHD_Proceeding/home.asp,* unless excluded pursuant to an order of the Commission, an Atomic Safety and Licensing Board, or a Presiding Officer. Participants are requested to not include personal privacy information, such as social security numbers, home addresses, or home phone numbers in their filings. With respect to copyrighted works, except for limited excerpts that serve the purpose of the adjudicatory filings and would constitute a Fair Use application, participants are requested not to include copyrighted materials in their works.

If a person other than Mr. Ficek requests a hearing, that person shall set forth with particularity the manner in which his interest is adversely affected by this Order and shall address the criteria set forth in 10 CFR 2.309(d) and (f).

If the hearing is requested by a person whose interest is adversely affected, the Commission will issue an Order designating the time and place of any hearing. If a hearing is held, the issue to be considered at such hearing shall be whether this Confirmatory Order should be sustained.

In the absence of any request for hearing, or written approval of an extension of time in which to request a hearing, the provisions specified in Section V above shall be final 20 days from the date of this Order without further order or proceedings. If an extension of time for requesting a hearing has been approved, the provisions specified in Section V shall be final when the extension expires if a hearing request has not been received. A request for hearing shall not stay the immediate effectiveness of this order.

Dated this 6th day of March 2009.

For the Nuclear Regulatory Commission.

Elmo E. Collins,

Regional Administrator.

[FR Doc. E9–5998 Filed 3–18–09; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[Docket No. 03004530; NRC–2009–0123]

Notice of Availability of Environmental Assessment and Finding of No Significant Impact for License Amendment to Byproduct Materials License No. 19–00915–03, Held by U.S. Department of Agriculture, Beltsville, MD, To Authorize Disposal of Contaminated Soil

AGENCY: Nuclear Regulatory Commission.

ACTION: Issuance of Environmental Assessment and Finding of No Significant Impact for License Amendment.

FOR FURTHER INFORMATION CONTACT: James Schmidt, Health Physicist, Decommissioning Branch, Division of Nuclear Materials Safety, Region 1, 475 Allendale Road, King of Prussia, Pennsylvania; telephone 610–337–5276; facsimile 610–337–5269; or by e-mail: *jim.schmidt@nrc.gov*.

SUPPLEMENTARY INFORMATION:

I. Introduction

The U.S. Nuclear Regulatory Commission (NRC) is considering the issuance of a license amendment to Byproduct Materials License No. 19–00915–03. This license is held by the U.S. Department of Agriculture (USDA) (the Licensee), for its facility located in Beltsville, Maryland (the Facility). License No. 19–00915–03 was issued by the U.S. Atomic Energy Commission to the USDA in the mid-1950s and later by the NRC, pursuant to Title 10 Code of Federal Regulations part 30 (10 CFR part 30) and has been amended periodically since that time. This license authorized USDA to use unsealed byproduct material with atomic numbers 1 through 83 and sealed byproduct material with atomic numbers 1 through 95 for purposes of conducting research and development activities at specific USDA locations and facilities and at temporary job sites in the United States, as authorized by the Licensee's Radiation Safety Committee.

Pursuant to the provisions in 10 CFR 20.2002, issuance of the license amendment would authorize the transfer and offsite disposal of approximately 4,500,000 kilograms (5,000 tons) of soil contaminated with small amounts of radionuclides that do not exceed the values listed in Table 1. The contaminated soil was or will be excavated from the Beltsville Agricultural Research Center waste burial site located in Beltsville, Maryland, as part of decommissioning activities at the USDA site. The contaminated soil would be disposed of at the U.S. Ecology Idaho's Grand View (USEI Grand View) hazardous waste disposal facility located near Grand View, Idaho. The U.S. Ecology facility is a Subtitle C Resource Conservation and Recovery Act (RCRA) hazardous waste disposal facility that is regulated by the State of Idaho, Department of Environmental Quality. Any disposal at this facility must comply with State requirements. This action, if approved, would exempt the contaminated material disposed of at the Idaho facility from further Atomic Energy Act (AEA) and NRC licensing requirements.

TABLE 1—MAXIMUM CONCENTRATION OF RADIONUCLIDES

Radionuclide	Maximum concentration (picocurie per gram)
H-3	337.56
C-14	183.19
Sr-90	1.59
Cl-36	0.02
Ni-63	7.83
Ra-226	0.03
Na-22	0.04
Fe-55	0.16
Pb-210	5.42
Cs-137	0.8

The licensee requested this action in a letter dated October 5, 2007. The NRC has prepared an Environmental Assessment (EA) in support of this proposed action in accordance with the requirements in 10 CFR part 51. Based on the EA, the NRC has concluded that a Finding of No Significant Impact (FONSI) is appropriate with respect to the proposed action. The requested amendment will be issued to the Licensee following the publication of this FONSI and EA in the **Federal Register**.

II. Environmental Assessment

Identification of Proposed Action

The proposed action would approve the Licensee's October 5, 2007, license amendment request to authorize the transfer of approximately 4,500,000 kilograms of contaminated soil excavated from its Beltsville waste burial site to the USEI Grand View hazardous waste disposal facility located near Grand View, Idaho. In addition to granting the license amendment request, the proposed action would also grant, pursuant to 10 CFR 30.11(a), an exemption to USEI Grand View from 10 CFR part 30 licensing requirements. This site would receive soils contaminated with small amounts of radioactive material generated as part of the cleanup of the Beltsville waste disposal site. 10 CFR 30.11(a) provides that the Commission may, upon application by an interested person or "upon its own initiative, grant such exemptions" from 10 CFR part 30 requirements "as it determines are authorized by law and will not endanger life or property or the common defense and security and are otherwise in the public interest." Under the exemption granted to USEI Grand View, any contaminated soil from the Facility would upon its receipt at USEI Grand View, no longer be subject to NRC regulations and would no longer be NRC licensed material. In a letter dated August 25, 2008, U.S. Ecology Idaho reported to the NRC staff that the waste, as characterized by the Licensee, meets the hazardous waste disposal facility waste acceptance criteria and therefore, pending NRC approval, would be acceptable for disposal at the USEI Grand View facility.

Need for the Proposed Action

The licensee needs this license amendment in order to dispose of approximately 4,500,000 kilograms of slightly contaminated soil at an appropriate waste disposal facility. This soil is being removed from a previously used waste facility being remediated at the USDA Beltsville location. NRC is fulfilling its responsibilities under the Atomic Energy Act and the National Environmental Policy Act to make a timely decision on a proposed license amendment that ensures protection of public health and safety and the environment.

Environmental Impacts of the Proposed Action

The NRC staff reviewed the license amendment request to allow disposal of the contaminated soil at the USEI Grand View hazardous waste facility and examined the impacts associated with this request. Potential impacts included dose to workers, dose to members of the public, and risks associated with transportation of the material to the Idaho disposal site. As part of its October 5, 2007, amendment request, the Licensee submitted a detailed safety assessment regarding the likely consequences associated with the rail transport and subsequent disposal of the USDA soil in the USEI Grand View facility. The licensee considered three distinct population groups: transportation workers, disposal site facility workers, and members of the public residing near the disposal site. The licensee estimated that for each

population group, the annual dose equivalent received from the proposed action would be less than 0.01 millisievert (1 millirem). The NRC staff conducted an independent technical review of this estimate and concluded that the Licensee's dose estimate was technically sound. This dose is far below the dose limits established in 10 CFR part 20 for occupational workers and members of the public and is considered to be as low as is reasonably achievable.

The risk to human health from the transportation of radioactive material in the U.S. was evaluated in NUREG–0586, "Generic Environmental Impact Statement on Decommissioning of Nuclear Facilities." As evaluated there, the impacts associated with rail transport of decommissioning wastes are not detectable, and the potential impacts are small. The NRC staff finds that the transportation impacts of the proposed action are bounded by those evaluated in NUREG–0586, and that the proposed action poses no danger to public heath and safety. The NRC staff finds that the proposed action will result in minimal risk to workers and the public. The NRC has identified no other radiological or non-radiological activities connected with the proposed action that would result in cumulative environmental impacts, and concludes that the proposed action will not have a significant effect on the quality of the human environment.

Environmental Impacts of the Alternatives to the Proposed Action

The only alternative to the proposed soil disposal action is no action. This no action alternative is unacceptable because it conflicts with 10 CFR 30.36(d) which requires that decommissioning of byproduct material facilities be completed and approved by the NRC after license activities at a site cease. The no action alternative would keep radioactive material on site and halt the remediation activities associated with cleanup of the Beltsville Agricultural Research Center waste burial site.

Conclusion

The NRC staff has concluded that the proposed action is consistent with NRC guidance and regulations. Because the proposed action will not significantly impact the quality of the human environment, the NRC staff concludes that the proposed action is the preferred alternative.

Agencies and Persons Consulted

NRC provided a draft of this Environmental Assessment to the Idaho Department of Environmental Quality and the Maryland Radiological Health Program for review on October 1, 2008. On October 6, 2008, the Idaho Department of Environmental Quality responded by electronic mail. The State of Idaho agreed with the conclusions of the EA, and otherwise had no comments. On November 10, 2008, the Maryland Radiological Health Program responded by electronic mail. The State of Maryland agreed with the conclusions of the EA, and otherwise had no comments.

The NRC staff has determined that the proposed action of authorizing disposal of material meeting the waste acceptance criteria of an existing approved RCRA hazardous waste disposal facility is of a procedural nature, and will not affect listed species or critical habitat. Therefore, no further consultation is required under Section 7 of the Endangered Species Act. The NRC staff has also determined that the proposed action is not the type of activity that has the potential to cause effects on historic properties. Therefore, no further consultation is required under Section 106 of the National Historic Preservation Act.

III. Finding of No Significant Impact

The NRC staff has prepared this EA in support of the proposed action. On the basis of this EA, the NRC finds that there are no significant environmental impacts from the proposed action, and that preparation of an environmental impact statement is not warranted. Accordingly, the NRC has determined that a Finding of No Significant Impact is appropriate.

IV. Further Information

Documents related to this action, including the application for license 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 Document Access and Management System (ADAMS), which provides text and image files of NRC's public documents. The documents related to this action are listed below, along with their ADAMS accession numbers.

1. Title 10 Code of Federal Regulations, part 20, "Standards for Protection Against Radiation;"
2. Title 10, Code of Federal Regulations, part 51, "Environmental Protection Regulations for Domestic Licensing and Related Regulatory Functions;"
3. Title 10, Code of Federal Regulation, part 30, "Rules of General Applicability to Domestic Licensing of Byproduct Material;" and
4. Letter dated October 5, 2007 from USDA to NRC [ML073110166]
5. Letter dated August 25, 2008 from USEI to NRC [ML082480279]

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, O 1 F21, One White Flint North, 11555 Rockville Pike, Rockville, MD 20852. The PDR reproduction contractor will copy documents for a fee.

Dated at King of Prussia, Pennsylvania this 12th day of March, 2009.

For The Nuclear Regulatory Commission.

Randolph C. Ragland, Jr.,

Chief, Decommissioning Branch, Division of Nuclear Materials Safety, Region 1.

[FR Doc. E9–6000 Filed 3–18–09; 8:45 am]

BILLING CODE 7590–01–P

OFFICE OF PERSONNEL MANAGEMENT

Excepted Service

AGENCY: U.S. Office of Personnel Management (OPM).

ACTION: Notice.

SUMMARY: This gives notice of OPM decisions granting authority to make appointments under Schedules A, B, and C in the excepted service as required by 5 CFR 6.6 and 213.103.

FOR FURTHER INFORMATION CONTACT: Glenda Haendschke, Acting Group Manager, Executive Resources Services Group, Center for Human Resources, Division for Human Capital Leadership and Merit System Accountability, 202–606–2246.

SUPPLEMENTARY INFORMATION: Appearing in the listing below are the individual authorities established under Schedules A, B, and C between January 1, 2009, and January 31, 2009. Future notices will be published on the fourth Tuesday of each month, or as soon as possible thereafter. A consolidated listing of all authorities as of September 30 is published each year. The following Schedules are not codified in the Code of Federal Regulations. These are agency specific exceptions.

Schedule A

Schedule A authorities in the month of January 2009.

Section 213.3113. The authority is amended to read:

Section 213.3113 U.S. Department of Agriculture

(f)(2) Positions of Agricultural Commodity Graders, Agricultural Commodity Technicians, and Agricultural Commodity Aides at grades GS–11 and below in the cotton, raisin, peanut, and processed and fresh fruit and vegetable commodities and the following positions in support of these commodities: Clerks, Office Automation Clerks, and Computer Clerks and Operators at GS–5 and below; Clerk-Typists at grades GS–4 and below; and, under the Federal Wage System, High Volume Instrumentation (HVI) Operators and HVI Operator Leaders at WG/WL–2 and below, respectively, Instrument Mechanics/Workers/Helpers at WG–10 and below, and Laborers. Employment under this authority may not exceed 180 days in a service year. In unforeseen situations such as bad weather or crop conditions, unanticipated plant demands, or increased imports, employees may work up to 240 days in a service year. Cotton Agricultural Commodity Graders, GS–5, may be employed as trainees for the first appointment for an initial period of 6 months for training without regard to the service year limitation.

Section 213.3106. The authority is amended to read:

213.3106 Department of Defense

(b)(10) "Temporary or time-limited positions in direct support of U.S. Government efforts to rebuild and create an independent, free, and secure Iraq and Afghanistan, when no other appropriate appointing authority applies. Positions will generally be located in Iraq or Afghanistan, but may be in other locations, including the United States, when directly supporting operations in Iraq or in Afghanistan. No new appointments may be made under this authority after October 1, 2012."

Schedule B

No Schedule B appointments were approved for January 2009.

Schedule C

The following Schedule C appointments were approved during January 2009.

Section 213.3318 Environmental Protection Agency

EPGS09005 Special Assistant to the Associate Administrator for Policy, Economics and Innovation. Effective January 30, 2009.

Section 213.3343 Farm Credit Administration

FLOT00080 Executive Assistant to Member, Farm Credit Administration Board. Effective January 13, 2009.

Section 213.3344 Occupational Safety and Health Review Commission

SHGS90002 Confidential Assistant to the Commission Member (Chairman). Effective January 14, 2009.

Section 213.3382 National Endowment for the Arts

NAGS00062 Counselor to the Chairman, National Endowment for the Arts. Effective January 22, 2009.

Authority: 5 U.S.C. 3301 and 3302; E.O. 10577, 3 CFR 1954–1958 Comp., p. 218.

Kathie Ann Whipple,

Acting Director, U.S. Office of Personnel Management.

[FR Doc. E9–5982 Filed 3–18–09; 8:45 am]

BILLING CODE 6325–39–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. IC–28646; File No. 812–13600]

ING USA Annuity and Life Insurance Company, et al.

March 13, 2009.

AGENCY: Securities and Exchange Commission ("SEC" or "Commission").

ACTION: Notice of Application for an Order Pursuant to Section 6(c) of the Investment Company Act of 1940 (the "Act").

APPLICANTS: ING USA Annuity and Life Insurance Company (ING USA) (the "Life Company"), Separate Account B of ING USA Annuity and Life Insurance Company (the "Account"), and Directed Services LLC (DSL) (collectively, the "Applicants").

SUMMARY OF THE APPLICATION: The Applicants hereby request the Commission to issue an order pursuant to Section 6(c) of the Act to exempt them from the provisions of Sections 2(a)(32) and 27(i)(2)(A) of the Act and Rule 22c–1 thereunder to the extent necessary to permit recapture of certain bonuses applied to purchase payments with respect to (1) the deferred variable annuity contracts, including data pages, riders and endorsements, described herein that the Life Company intends to issue (the "Current Contracts"), (2) the deferred variable annuity contracts, including data pages, riders and endorsements, substantially similar to the Current Contracts that the Life Company may issue in the future (the "Future Contracts") (Current Contracts and Future Contracts referred to collectively as the "Contracts"), (3) any other separate accounts of the Life Company and its successors in interest ("Future Accounts") that support the Contracts, and (4) any Financial Industry Regulatory Authority, Inc. ("FINRA") member broker-dealers controlling, controlled by, or under common control with any Applicant, whether existing or created in the future, that in the future, may act as principle underwriter for the Contracts ("Future Underwriters"). The circumstances under which the Contracts would allow the recapture of all or a portion of certain bonus credits (previously applied to premium payments) are where the bonus credits were applied and (1) the contract owner exercises his or her "free look" right, (2) in the event of the contract owner's death within 12 months of the bonus credit being applied and any bonus credit applied after the contract owner's death (unless the deceased contract owner's spouse chooses to continue the Contract), or (3) upon a surrender or withdrawal where the surrender charge is waived due to the contract owner's receipt of qualified extended medical care, or the owner is diagnosed with a qualifying terminal illness, as defined in the Contract, in which event the Life Company will recapture all bonus credits applied during the 12 months prior to receipt of such care or date of diagnosis, as applicable.

FILING DATE: The application was originally filed on November 7, 2008; amended and restated applications were filed on March 6, 2009, and March 11, 2009.

HEARING OR NOTIFICATION OF HEARING: An order granting the application will be issued unless the Commission orders a hearing. Interested persons may request a hearing by writing to the Secretary of the Commission and serving the Applicants with a copy of the request, personally or by mail. Hearing requests must be received by the Commission by 5:30 p.m. on April 3, 2009, and should be accompanied by proof of service on the Applicant in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons may request notification of a hearing by writing to the Secretary of the Commission.

ADDRESSES: Secretary, Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549. Applicant, c/o John S. (Scott) Kreighbaum, Esq.,

ING, 1475 Dunwoody Drive, West Chester, Pennsylvania 19380.

FOR FURTHER INFORMATION CONTACT: Patrick Scott, Senior Counsel, Office of Insurance Products, Division of Investment Management, SEC, at (202) 551–6763, or Zandra Bailes, Branch Chief, at (202) 551–6975.

SUPPLEMENTARY INFORMATION: Following is a summary of the application. The application is available for a fee from the Commission's Public Reference Branch, 100 F Street, NE., Washington, DC 20549; (tel. (202) 551–8090).

Applicants' Representations

1. ING USA is an Iowa stock life insurance company, which was originally incorporated in Minnesota on January 2, 1973. ING USA is a wholly owned subsidiary of Lion Connecticut Holdings, Inc. ("Lion Connecticut") which in turn is an indirect wholly owned subsidiary of ING Groep N.V. ("ING Group"), a global financial services holding company based in The Netherlands. ING USA is authorized to sell insurance and annuities in all states, except New York, and the District of Columbia. For purposes of the Act, ING USA is the depositor and sponsor for Account B, as those terms have been interpreted by the Commission with respect to variable annuity separate accounts. ING USA also serves as depositor for several currently existing Future Accounts, one or more of which may support obligations under the Contracts. ING USA may establish one or more additional Future Accounts for which it will serve as depositor.

2. ING USA established the Account as a segregated investment account under Delaware law on July 14, 1988. The Account is a "separate account" as defined by Rule 0–1(e) under the Act, is registered with the Commission as a unit investment trust (File No. 811–05626), and interests in the Account offered through the Contracts are registered on form N–4 (File No. 333–153622).

3. The Account is divided into a number of subaccounts. Each subaccount invests exclusively in shares representing an interest in a separate corresponding investment portfolio of one of several series-type open-end management investment companies. The assets of the Account support one or more varieties of variable annuity contracts, including the Contracts.

4. DSL is a wholly owned subsidiary of Lion Connecticut Holdings, Inc., which is in turn a wholly owned subsidiary of ING Group. It serves as the principal underwriter of a number of ING USA separate accounts registered as unit investment trusts under the Act, including the Account, and is the distributor of the variable life insurance contracts and variable annuity contracts issued through such separate accounts, including the Contracts. DSL is registered as a broker-dealer under the Securities Exchange Act of 1934 and is a member of FINRA. DSL may act as principal underwriter for Future Accounts of the Life Company and as distributor for Contracts. Future Underwriters also may act as principal underwriter for the Account and as distributor for any of the Contracts.

5. The Contracts are flexible premium deferred combination variable and fixed annuity contracts that the Life Company may issue to individuals or groups on a "non-qualified" basis or in connection with employee benefit plans that receive favorable federal income tax treatment under the Internal Revenue Code of 1986, as amended. The Contracts may only be purchased with a minimum initial premium of $25,000. The Contracts make available a number of subaccounts of the Accounts to which an owner may allocate net premium payments and associated bonus credits (described below) and to which an owner may transfer contract value. The Contracts also offer fixed-interest allocation options under which the Life Company credits guaranteed rates of interest for various periods. A market value adjustment applies to the fixed-interest allocation options under the Contracts. Subject to certain restrictions, an owner may make transfers of contract value at any time among and between the subaccounts, and among and between the subaccounts and the fixed-interest allocation options.

6. The Contracts offer a variety of annuity payment options to an owner. The owner may annuitize any time following the first contract anniversary. In the event of an owner's (or the annuitant's, if any owner is not an individual) death prior to annuitization, the beneficiary may elect to receive the death benefit in the form of one of the annuity payment options instead of a lump sum. The Contracts also offer living benefits that guarantee a minimum income benefit or lifetime withdrawals.

7. The Life Company may deduct a premium tax charge from premium payments in certain states, but otherwise deducts a charge for premium taxes upon surrender or annuitization of the Contract or upon the payment of a death benefit, depending upon the jurisdiction. The Contracts provide for an annual administrative charge of $40 that a Life Company deducts on each Contract Anniversary, the annuity commencement date and upon a full surrender of a Contract. The Life Company currently waives this charge and anticipates waving this charge for the foreseeable future on contract value or premiums of $100,000 or more when it is due to be deducted. A daily mortality and expense risk charge is deducted from the assets of the Accounts at a rate depending on the death benefit chosen as described below. The range of maximum mortality and expense risk charges is 2.65% to 3.20% annually. A daily administrative charge is deducted from the assets of the Account at an annual rate of 0.15%. The Contracts provide for a charge of $25 for each transfer of contract value in excess of twelve transfers per contract year. The Life Company currently waives this charge and anticipates waiving this charge for the foreseeable future. The Contracts have a surrender charge in the form of a contingent deferred sales charge as described more fully below. A quarterly charge is assessed depending on the type of optional living benefit chosen, if any, as described below.

8. The contingent deferred sales charge (the "CDSC") is equal to a percentage of each premium payment surrendered or withdrawn as specified in the table below. The CDSC is separately calculated and applied to each premium payment at any time that the premium payment (or part of the premium payment) is surrendered or withdrawn. The CDSC applicable to each premium payment diminishes to zero as the payment ages.

Number of full years since payment of each premium	Charge (%)
0	9.0
1	9.0
2	9.0
3	8.0
4	7.0
5	6.0
6	5.0
7	4.0
8	2.0
9+	0

9. The CDSC does not apply when a death benefit is payable under the Contracts. Also, no CDSC applies to contract value representing an annual free withdrawal amount or to contract value in excess of aggregate premium payments (less prior withdrawals of premium payments) ("earnings"). The CDSC is calculated using the assumption that premium payments are withdrawn on a first-in, first-out basis. The CDSC also is calculated using the assumption that contract value is withdrawn in the following order: (1) The annual free withdrawal amount for

that contract year, (2) premium payments, and (3) earnings. The annual free withdrawal amount is 10% of contract value, measured at the time of withdrawal, less any prior withdrawals made in that contract year.

10. An owner may purchase one of the optional living benefit riders described below, subject to availability in a given state and/or broker/dealer approval. The Applicants may add other optional living benefit riders to the Contract in the future. The minimum guaranteed income benefit rider (the "MGIB Rider") guarantees that a minimum amount of annuity income will be available to the owner, regardless of fluctuating market conditions, if the owner annuitizes on or after the rider's exercise date. The minimum guaranteed amount of annuity income will depend on: The amount of premiums paid and credits received during the specified number of contract years after the owner purchases the MGIB Rider; how the owner allocates the contract value among the subaccounts and fixed-interest allocations; and any withdrawals and transfers the owner makes while the MGIB Rider is in effect. The Life Company will deduct a maximum annual charge of 1.50% (currently, 0.75%) quarterly of the MGIB Charge Base (as defined in the MGIB Rider).

11. The minimum guaranteed withdrawal benefit rider (the "MGWB Rider") guarantees a minimum amount may be withdrawn annually from the Contract for the lifetime of the annuitant, regardless of market performance and even if these withdrawals reduce the contract value to zero. The Life Company has a version of the MGWB Rider that guarantees the annual withdrawal amount for a second designated life as well. The Life Company will deduct a maximum annual charge of 1.30% (currently, 0.75%), or 1.50% (currently 0.95%), quarterly of the charge base (as set forth in the MGWB Rider) for the single life or joint life MGWB rider, respectively.

12. If an owner dies before the annuity start date, the Contracts provide for a death benefit payable to a beneficiary, computed as of the date a Life Company receives written notice and due proof of death. The death benefit payable to the beneficiary depends on the death benefit option selected by the owner: (1) Standard death benefit, (2) ratchet death benefit, or (3) combination (ratchet and rollup) death benefit. In addition to the death benefit options, the owner may select the earnings multiplier benefit, which provides a benefit equal to a percentage of any earnings on the Contract to be added to the death benefit payable. The Applicants may add other death benefit options to the Contract in the future.

13. The standard death benefit equals the greater of the (1), (2) or (3), where: (1) Is the contract value less bonus credits applied since or within 12 months prior to death; (2) is the standard death benefit, which is the sum of the standard death benefit base for covered funds and the contract value allocated to excluded funds—less the bonus credits applied since or within 12 months prior to death; and (3) is the Contract's cash surrender value. The maximum daily mortality and risk charge for the standard death benefit is the annual rate of 2.65% (currently 1.60%).

14. The ratchet death benefit equals the greater of (1), (2), (3) or (4), where: (1) Is the contract value less bonus credits applied since or within 12 months prior to death; (2) is the standard death benefit; (3) is the ratchet death benefit, which is the sum of the ratchet death benefit base for covered funds and the contract value allocated to excluded funds—less bonus credits applied since or within 12 months prior to death; and (4) is the Contract's cash surrender value. The maximum daily mortality and risk charge for the ratchet death benefit is the annual rate of 2.95% (currently 1.90%).

15. The combination (ratchet and rollup) death benefit equals the greater of (1), (2), (3), (4) or (5), where: (1) Is the contract value less bonus credits applied since or within 12 months prior to death; (2) is the standard death benefit; (3) is the ratchet death benefit; and (4) is the lesser of (a) or (b) less bonus credits applied since or within 12 months prior to death, where (a) is the rollup death benefit, which equals the sum of the rollup death benefit base for each of covered funds and special funds, and the contract value allocated to excluded funds, and (b) is the maximum rollup death benefit, which is equal to (i) multiplied by (ii) minus (iii), where (i) is the sum of all premiums paid and credits received, (ii) is the maximum rollup death benefit multiplier, currently 2.5, and (iii) is any adjustments for withdrawals; and (5) is the Contract's cash surrender value. The maximum daily mortality and risk charge for the roll-up death benefit is the annual rate of 3.20% (currently 2.15%).

16. Each death benefit base (standard, ratchet or rollup) for covered funds or special funds starts out equaling premiums paid and credits received, adjusted for any withdrawals or transfers. Withdrawals and transfers reduce, on a pro-rata basis, each death benefit base. The ratchet death benefit bases are recalculated on each contract anniversary. The rollup death benefit bases are recalculated daily.

17. Funds designated as covered funds participate fully in the guarantees in calculating the death benefit. Special funds may participate at less than the full rate, and excluded funds do not participate in the guarantees in calculating the death benefit due to their potential volatility; however, no funds are currently designated as excluded funds. These fund designations are disclosed in the prospectus. The Life Company may, at any time, designate any new and/or existing subaccount as a special fund with 30 days prior notice to contract owners.

18. The earnings multiplier death benefit rider provides a benefit equal to a percentage of any earnings on the Contract, up to a maximum amount, to be added to the death benefit payable. This rider provides additional funds to the beneficiary that be used to help pay the taxes on the death benefit. Upon the owner's death, this amount is payable as part of the death benefit payable. The maximum charge is 0.70% (currently 0.30%).

19. The Life Company intends to offer a bonus credit provision under the Contracts, pursuant to which the Life Company credits the contract value with a bonus credit amount that is a percentage of each premium payment made. The Life Company allocates the bonus credit for the applicable premium payment among the subaccounts and fixed-interest allocations the owner selects in proportion to the premium payment allocated to each investment option. The bonus credit varies based on the sum of all premiums paid: 5% on premiums up to $499,999.99; 6% on premiums between $500,000 and $999,999.99; and 7% on premiums of $1,000,000 or more. Additional premiums paid within 90 days of contract issuance will be included in determining the applicable bonus percentage.

20. The Life Company recaptures or retains the bonus credits in several circumstances. First, the Life Company recaptures the bonus credits in the event that the contract owner exercises his or her "free look" right. Second, the Life Company recaptures the bonus credits applied since or months prior to the contract owner's death and any bonus credits applied after the contract owner's death (unless the deceased contract owner's spouse chooses to continue the Contract). Third, the Life Company also will recapture the bonus credits upon surrender or withdrawal of corresponding premium payments

where the surrender charge is waived due to the owner's receipt of qualified extended medical care, or the owner is diagnosed with a qualifying terminal illness, as defined in the Contract, in which event the Life Company will recapture all bonus credits applied during the 12 months prior to receipt of such care or date of diagnosis, as applicable.

21. Because of the recapture provisions discussed above, the value of a bonus credit only vests or belongs irrevocably to the owner after the recapture period for the bonus credit expires. As to bonus credits resulting from premiums paid before the free look period ends, no part of the bonus credit vests for the owner until the expiration of the free look period. After the expiration of the free look period, all bonus credits vest in full for the owner 12 months after the Life Company applies them to an owner's contract value. Under the bonus credit provisions, the Life Company applies the bonus credit to an owner's contract value either by "purchasing" accumulation units of an appropriate subaccount or by adding to the owner's fixed interest allocation option values. Bonus credits are allocated according to the contract owner's premium allocation instructions.

22. With regard to variable contract value, several consequences flow from the foregoing. First, increases in the value of accumulation units representing bonus credits accrue to the owner immediately, but the initial value of such units only belongs to the owner when, or to the extent that, each vests. Second, decreases in the value of accumulation units representing bonus credits do not diminish the dollar amount of contract value subject to recapture. Therefore, additional accumulation units must become subject to recapture as their value decreases. Stated differently, the proportionate share of any owner's variable contract value (or the owner's interest in the Account) that a Life Company can "recapture" increases as variable contract value (or the owner's interest in the Account) decreases. This dilutes somewhat the owner's interest in the Account vis-à-vis a Life Company and other owners, and in his or her variable contract value vis-à-vis a Life Company. Lastly, because it is not administratively feasible to track the unvested value of bonus credits in the Account, a Life Company deducts the daily mortality and expense risk charge and the daily administrative charge from the entire net asset value of the Account. As a result, the daily mortality and expense risk charge, the daily administrative charge, and the daily bonus credit rider paid by any owner is greater than that which he or she would pay without the bonus credit.

23. Applicants previously have received an order for exemptive relief to permit the recapture of certain bonus credits on the prior contracts in similar circumstances to those described above. That order encompassed relief for future contracts substantially similar to the prior contracts. Applicants assert that the Contracts described in the application differ from the prior contracts in the following respects. The range of maximum mortality and expense risk charges is higher, between 2.65% and 3.20% annually. The mortality and expense risk charge depends on the death benefit option chosen, each having a maximum charge that is guaranteed within the range. The range for the prior contracts was from 1.30% to 1.75% annually. The contingent deferred sales charge is slightly higher, by 1% more in years 0–2, 7 and 8. The bonus credit is also higher, up to 7% of each premium payment, and is based on aggregate premiums instead of age: 5% on premiums up to $499,999.99; 6% on premiums between $500,000 and $999,999.99; and 7% on premiums of $1,000,000 or more. However, the circumstances under which the Life Company would recapture the bonus credits remain the same. Because the Applicants believe the Commission may view these differences as material, Applicants are seeking an additional order as set forth in the application.

Legal Analysis

1. Subsection (i) of Section 27 provides that Section 27 does not apply to any registered separate account supporting variable annuity contracts, or to the sponsoring insurance company and principal underwriter of such account, except as provided in paragraph (2) of subsection (i). Paragraph (2) provides that it shall be unlawful for a registered separate account or sponsoring insurance company to sell a variable annuity contract supported by the separate account unless the "* * * contract is a redeemable security; and* * * [t]he insurance company complies with Section 26(f)* * *".

2. Section 2(a)(32) defines a "redeemable security" as any security, other than short-term, paper, under the terms of which the holder, upon presentation to the issuer, is entitled to receive approximately his proportionate share of the issuer's current net assets, or the cash equivalent thereof.

3. Rule 22c–l imposes requirements with respect to both the amount payable on redemption of a redeemable security and the time as of which such amount is calculated. Specifically, Rule 22c–l, in pertinent part, prohibits a registered investment company issuing any redeemable security, a person designated in such issuer's prospectus as authorized to consummate transactions in any such security, and a principal underwriter of, or dealer in, such security from selling, redeeming or repurchasing any such security, except at a price based on the current net asset value of such security which is next computed after receipt of a tender of such security for redemption, or of an order to purchase or sell such security.

4. Section 6(c) of the Act authorizes the Commission to exempt any person, security or transaction, or any class or classes of persons, securities or transactions from the provisions of the Act and the rules promulgated thereunder, if and to the extent that such exemption is necessary or appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the Act.

5. Applicants submit that the requested exemptions are appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the Act. Because the provisions described above may be inconsistent with recapture of a bonus credit, Applicants request exemptions from the Contracts described herein, and for future contracts that are substantially similar to the Contracts described herein, from Sections 27(i)(2)(A) and 2(a)(32) of the Act, and Rule 22c–1 thereunder, pursuant to Section 6(c), to the extent necessary to recapture the bonus credit applied to a premium payment in the instances described above. Applicants seek exemptions therefrom out of an abundance of caution in order to avoid any question concerning the Contracts' compliance with the Act and rules thereunder.

6. To the extent that the recapture of the bonus credits arguably could be seen as a discount from the net asset value, or arguably could be viewed as resulting in the payment to an owner of less than the proportional share of the issuer's net assets, in violation of Sections 2(a)(32) or 27(i)(2)(A) of the Act, the bonus credit recapture would trigger the need for relief absent some exemption from the Act. Rule 6c–8 provides, in relevant part, that a registered separate account, and any depositor of such account, shall

be exempt from Sections 2(a)(32) 27(c)(1), 27(c)(2) and 27(d) of the Act and Rule 22c–1 thereunder to the extent necessary to permit them to impose a deferred sales loan on any variable annuity contract participating in such account. However, the bonus credit recapture is not a sales load. Rather, it is a recapture of a bonus credit previously applied to an owner's premium payments. The Life Company provides the bonus credit from its general account on a guaranteed basis. The Contracts are designed to be long-term investment vehicles. In undertaking this financial obligation, the Life Company contemplates that an owner will retain a Contract over an extended period, consistent with the long-term nature of the Contracts. The Life Company designed the product so that it would recover its costs (including the bonus credits) over an anticipated duration while a Contract is in force. If an owner withdraws his or her money during the free look period, a death benefit is paid, or a withdrawal or surrender is made before this anticipated period, a Life Company must recapture the bonus credits subject to recapture in order to avoid a loss.

7. Applicants submit that the proposed bonus credit rider would not violate Section 2(a)(32) or 27(i)(2)(A) of the Act. The Life Company would grant bonus credits out of its general account assets and the amount of the bonus credits (although not the earnings on such amounts) would remain the Life Company's until such amounts vest with the owner. Until the appropriate recapture period expires, a Life Company retains the right to and interest in each owner's contract value representing the dollar amount of any unvested bonus credits. Therefore, if the Life Company recaptures any bonus credit in the circumstances described above, it would merely be retrieving its own assets. To the extent that the Life Company may grant and recapture bonus credits in connection with variable contract value, it would not, at either time, deprive any owner of his or her then proportionate share of the Account's assets.

8. Applicants further submit that the dynamics of the proposed bonus credit provisions would not violate Section 2(a)(32) or 27(i)(2)(A) of the Act because the recapture of bonus credits would not, at any time, deprive an owner of his or her proportionate share of the current net assets of the Account. Section 2(a)(32) defines a redeemable security as one "under the terms of which the holder, upon presentation to the issuer, is entitled to receive approximately his proportionate share of the issuer's current net asset value." Taken together, these two sections of the Act do not require that the holder receive the exact proportionate share that his or her security represented at a prior time. Therefore, the fact that the proposed bonus credit provisions have a dynamic element that may cause the relative ownership positions of a Life Company and a Contract owner to shift due to Account performance and the vesting of such credits, would not cause the provisions to conflict with Section 2(a)(32) or 27(i)(2)(A). Nonetheless, in order to avoid any uncertainty as to full compliance with the Act, Applicants seek exemptions from these two sections.

9. The Life Company's granting of bonus credits would have the result of increasing an owner's contract value in a way that arguably could be viewed as the purchase of an interest in the Account at a price below the current net asset value. Similarly, a Life Company's recapture of any bonus credit arguably could be viewed as the redemption of such an interest at a price above the current net asset value. If such is the case, then the bonus credits arguably could be viewed as conflicting with Rule 22c–1. Applicants contend that these are not correct interpretations or applications of these statutory and regulatory provisions. Applicants also contend that the bonus credits do not violate Rule 22c–1.

10. Rule 22c–1 was intended to eliminate or reduce, as far as was reasonably practicable, (1) the dilution of the value of outstanding redeemable securities of registered investment companies through their sale at a price below net asset value or their redemption at a price above net asset value, or (2) other unfair results, including speculative trading practices. Applicants submit that the evils prompting the adoption of Rule 22c–1 were primarily the result of backward pricing, the practice of basing the price of a mutual fund share on the net asset value per share determined as of the close of the market on the previous day. Backward pricing permitted certain investors to take advantage of increases or decreases in net asset value that were not yet reflected in the price, thereby diluting the values of outstanding shares.

11. The bonus credit provisions do not give rise to either of the two evils that Rule 22c–1 was designed to address. First, the bonus credit provisions pose no such threat of dilution. An owner's interest in his or her contract value or in the Account would always be offered at a price based on the net asset value next calculated after receipt of the order. The granting of a bonus credit does not reflect a reduction of that price. Instead, the Life Company will purchase with its general account assets, on behalf of the owner, an interest in the Account equal to the bonus credit. Because the bonus credit will be paid out of the general account assets, not the Account assets, no dilution will occur as a result of the bonus credit. Recaptures of bonus credits result in a redemption of the Life Company's interest in an owner's contract value or in the Account at a price determined based on the Account's current net asset value and not at an inflated price. Moreover, the amount recaptured will always equal the amount that the Life Company paid from its general account for the bonus credits. Similarly, although an owner is entitled to retain any investment gains attributable to the bonus credits, the amount of such gains would always be computed at a price determined based on net asset value.

12. Second, Applicants submit that speculative trading practices calculated to take advantage of backward pricing will not occur as a result of the Life Company's recapture of the bonus credit. Variable annuities are designed for long-term investment, and by their nature, do not lend themselves to the kind of speculative short-term trading that Rule 22c–1 was designed to prevent. More to the point, the bonus credit recapture simply does not create the opportunity for speculative trading.

13. Rule 22c–1 should have no application to the bonus credit available, as neither of the harms that Rule 22c–1 was intended to address arise in connection with the proposed bonus credit. Nonetheless, in order to avoid any uncertainty as to full compliance with the Act, Applicants request an exemption from the provisions of Rule 22c–1.

14. Applicants submit that the Commission should grant the exemptions requested in the application even if the bonus credit provisions arguably conflict with Section 2(a)(32) or 27(i)(2)(A) of the Act or Rule 22c–1 thereunder. The bonus credit provisions are generally beneficial to an owner. The recapture provisions of the Contract temper this benefit somewhat, but unless the owner dies, the owner retains the ability to avoid the bonus credit recapture in the circumstances described herein. While there would be downside in a declining market in that the owner would bear any losses attributable to the bonus credit, it is the converse of the benefits an owner would receive on the bonus amounts in a rising market because earnings on the bonus

credit amount vest with him or her immediately.

15. The bonus credit recapture provisions are necessary for the Life Company to offer the bonus credits and avoid anti-selection against it. It would be unfair to the Life Company to permit an owner to keep his or her bonus credits upon his or her exercise of the Contract's "free look" provision. Because no CDSC applies to the exercise of the "free look" provision, the owner could obtain a quick profit in the amount of the bonus credit at the Life Company's expense by exercising that right. Likewise, because no additional CDSC applies upon death of an owner (or annuitant) or where the CDSC is waived upon a surrender or withdrawal due to the owner's receipt of qualified extended medical care or the owner is diagnosed with a qualifying terminal illness, a death or this type of surrender or withdrawal shortly after the award of bonus credits would afford an owner or a beneficiary a similar profit at the Life Company's expense.

16. In the event of such profits to an owner or beneficiary, the Life Company could not recover the cost of granting the bonus credits. This is because the Life Company intends to recoup the costs of providing the bonus credits through the charges under the Contract, particularly the daily mortality and expense risk charge and the daily administrative charge. If the profits described above are permitted, an owner could take advantage of them, reducing the base from which the daily charges are deducted and greatly increasing the amount of bonus credits that the Life Company must provide. Therefore, the recapture provisions are a price of offering the bonus credits. The Life Company simply cannot offer the proposed bonus credits without the ability to recapture those credits in the limited circumstances described herein.

17. Applicants state that the Commission's authority under Section 6(c) of the Act to grant exemptions from various provisions of the Act and rules thereunder is broad enough to permit orders of exemption that cover classes of unidentified persons. Applicants request an order of the Commission that would exempt them, the Life Company's successors in interest, Future Accounts and Future Underwriters from the provisions of Sections 2(a)(32) and 27(i)(2)(A) of the Act and Rule 22c–1 thereunder with respect to the Contracts. The exemption of these classes of persons is appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the Act because all of the potential members of the class could obtain the foregoing exemptions for themselves on the same basis as the Applicants, but only at a cost to each of them that is not justified by any public policy purpose. As discussed below, the requested exemptions would only extend to persons that in all material respects are the same as the Applicants. The Commission has previously granted exemptions to classes of similarly situated persons in various contexts and in a wide variety of circumstances, including class exemptions for recapturing bonus credits under variable annuity contracts.

18. Applicants represent that any contracts in the future will be substantially similar in all material respects to the Contracts, but particularly with respect to the bonus credits and recapture of bonus credits, and that each factual statement and representation about the bonus credit provisions will be equally true of any Contracts in the future. Applicants also represent that each material representation made by them about the Account and DSL will be equally true of Future Accounts and Future Underwriters, to the extent that such representations relate to the issues discussed in the application. In particular, each Future Underwriter will be registered as a broker-dealer under the Securities Exchange Act of 1934 and be a FINRA member.

19. For the reasons above, Applicants submit that the bonus credit provisions involve none of the abuses to which provision of the Act and rules thereunder are directed. The owner will always retain the investment experience attributable to the bonus credit and will retain the principal amount in all cases except under the circumstances described herein. Further, the Life Company should be able to recapture such bonus credits to limit potential losses associated with such bonus credits.

Conclusion

Applicants submit that the exemptions requested are necessary or appropriate in the public interest, consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the Act, and consistent with and supported by Commission precedent. Applicants also submit, based on the analysis listed above, that the provisions for recapture of any bonus credit under the Contracts does not violate Section 2(a)(32) and 27(i)(2)(A) of the Act and Rule 22c–1 thereunder. The Applicants hereby request that the Commission issue an order pursuant to Section 6(c) of the Act to exempt the Applicants with respect to (1) the Contracts, (2) Future Accounts that support the Contracts, and (3) Future Underwriters from the provisions of Sections 2(a)(32) and 27(i)(2)(A) of the Act and Rule 22c–1 thereunder, to the extent necessary to permit the recapture of the bonus credits (previously applied to premium payments) in the circumstances described above.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

Florence E. Harmon,

Deputy Secretary.

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–59578; File No. S7–06–09]

Order Granting Temporary Exemptions Under the Securities Exchange Act of 1934 in Connection with Request of Chicago Mercantile Exchange Inc. and Citadel Investment Group, L.L.C. Related to Central Clearing of Credit Default Swaps, and Request for Comments

March 13, 2009.

I. Introduction

In response to the recent turmoil in the financial markets, the Securities and Exchange Commission ("Commission") has taken multiple actions to protect investors and ensure the integrity of the nation's securities markets.[1] Today the

[1] A nonexclusive list of the Commission's actions to stabilize financial markets during this credit crisis include: Adopting a package of measures to strengthen investor protections against naked short selling, including rules requiring a hard T+3 close-out, eliminating the options market maker exception of Regulation SHO, and expressly targeting fraud in short selling transactions (*See* Securities Exchange Act Release No. 58572 (September 17, 2008), 73 FR 54875 (September 23, 2008)); issuing an emergency order to enhance protections against naked short selling in the securities of primary dealers, Federal National Mortgage Association ("Fannie Mae"), and Federal Home Loan Mortgage Corporation ("Freddie Mac") (*See* Securities Exchange Act Release No. 58166 (July 15, 2008), 73 FR 42379 (July 21, 2008)); taking temporary emergency action to ban short selling in financial securities (*See* Securities Exchange Act Release No. 58592 (September 18, 2008), 73 FR 55169 (September 24, 2008)); approving emergency rulemaking to ensure disclosure of short positions by hedge funds and other institutional money managers (*See* Securities Exchange Act Release No. 58591A (September 21, 2008), 73 FR 55557 (September 25, 2008)); proposing rules to strengthen the regulation of credit rating agencies and making the limits and purposes of credit ratings clearer to investors (*See* Securities Exchange Act Release No. 57967 (June 16, 2008), 73 FR 36212 (June 25, 2008)); entering into a Memorandum of

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Commission is taking further action designed to address concerns related to the market in credit default swaps ("CDS"). The over-the-counter ("OTC") market for CDS has been a source of concerns to us and other financial regulators. These concerns include the systemic risk posed by CDS, highlighted by the possible inability of parties to meet their obligations as counterparties and the potential resulting adverse effects on other markets and the financial system.[2] Recent credit market events have demonstrated the seriousness of these risks in a CDS market operating without meaningful regulation, transparency,[3] or central counterparties ("CCPs").[4] These events have emphasized the need for CCPs as mechanisms to help control such risks.[5] A CCP for CDS could be an important step in reducing the counterparty risks inherent in the CDS market, and thereby help mitigate potential systemic impacts. In November 2008, the President's Working Group on Financial Markets stated that the implementation of a CCP for CDS was a top priority[6] and, in furtherance of this recommendation, the Commission, the FRB and the Commodity Futures Trading Commission ("CFTC") signed a Memorandum of Understanding[7] that establishes a framework for consultation and information sharing on issues related to CCPs for CDS. Given the continued uncertainty in this market, taking action to help foster the prompt development of CCPs, including granting conditional exemptions from certain provisions of the Federal securities laws, is in the public interest.

A CDS is a bilateral contract between two parties, known as counterparties. The value of this financial contract is based on underlying obligations of a single entity or on a particular security or other debt obligation, or an index of several such entities, securities, or obligations. The obligation of a seller under a CDS to make payments under a CDS contract is triggered by a default or other credit event as to such entity or entities or such security or securities. Investors may use CDS for a variety of reasons, including to offset or insure against risk in their fixed-income portfolios, to take positions in bonds or in segments of the debt market as represented by an index, or to capitalize on the volatility in credit spreads during times of economic uncertainty. In recent years, CDS market volumes have rapidly increased.[8] This growth has coincided with a significant rise in the types and number of entities participating in the CDS market.[9]

The Commission's authority over this OTC market for CDS is limited. Specifically, Section 3A of the Securities Exchange Act of 1934 ("Exchange Act") limits the Commission's authority over swap agreements, as defined in Section 206A of the Gramm-Leach-Bliley Act.[10] For those CDS that are swap agreements, the exclusion from the definition of security in Section 3A of the Exchange Act, and related provisions, will continue to apply. The Commission's action today does not affect these CDS, and this Order does not apply to them. For those CDS that are not swap agreements ("non-excluded CDS"), the Commission's action today provides conditional exemptions from certain requirements of the Exchange Act.

The Commission believes that using well-regulated CCPs to clear transactions in CDS would help promote efficiency and reduce risk in the CDS market and among its participants. These benefits could be particularly significant in times of market stress, as CCPs would mitigate the potential for a market participant's failure to destabilize other market participants, and reduce the effects of misinformation and rumors. CCP-maintained records of CDS transactions would also aid the Commission's efforts to prevent and detect fraud and other abusive market practices.

A well-regulated CCP also would address concerns about counterparty risk by substituting the creditworthiness and liquidity of the CCP for the creditworthiness and liquidity of the counterparties to a CDS. In the absence of a CCP, participants in the OTC CDS market must carefully manage their counterparty risks because the default by a counterparty can render worthless, and payment delay can reduce the usefulness of, the credit protection that has been bought by a CDS purchaser. CDS participants currently attempt to manage counterparty risk by carefully selecting and monitoring their counterparties, entering into legal agreements that permit them to net gains and losses across contracts with a defaulting counterparty, and often requiring counterparty exposures to be collateralized.[11] A CCP could allow participants to avoid these risks specific to individual counterparties because a CCP "novates" bilateral trades by entering into separate contractual arrangements with both counterparties—becoming buyer to one

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Understanding with the Board of Governors of the Federal Reserve System ("FRB") to make sure key Federal financial regulators share information and coordinate regulatory activities in important areas of common interest (*See* Memorandum of Understanding Between the U.S. Securities and Exchange Commission and the Board of Governors of the Federal Reserve System Regarding Coordination and Information Sharing in Areas of Common Regulatory and Supervisory Interest (July 7, 2008), *http://www.sec.gov/news/press/2008/2008-134_mou.pdf).*

[2] In addition to the potential systemic risks that CDS pose to financial stability, we are concerned about other potential risks in this market, including operational risks, risks relating to manipulation and fraud, and regulatory arbitrage risks.

[3] *See* Policy Objectives for the OTC Derivatives Market, The President's Working Group on Financial Markets, November 14, 2008, available at *http://www.ustreas.gov/press/releases/reports/policyobjectives.pdf* ("Public reporting of prices, trading volumes and aggregate open interest should be required to increase market transparency for participants and the public.").

[4] *See* The Role of Credit Derivatives in the U.S. Economy Before the H. Agric. Comm., 110th Cong. (2008) (Statement of Erik Sirri, Director of the Division of Trading and Markets, Commission).

[5] *See id.*

[6] *See* Policy Objectives for the OTC Derivatives Market, The President's Working Group on Financial Markets (November 14, 2008), *http://www.ustreas.gov/press/releases/reports/policyobjectives.pdf. See also* Policy Statement on Financial Market Developments, The President's Working Group on Financial Markets (March 13, 2008), *http://www.treas.gov/press/releases/reports/pwgpolicystatemktturmoil_03122008.pdf;* Progress Update on March Policy Statement on Financial Market Developments, The President's Working Group on Financial Markets (October 2008), *http://www.treas.gov/press/releases/reports/q4progress%20update.pdf.*

[7] *See* Memorandum of Understanding Between the Board of Governors of the Federal Reserve System, the U.S. Commodity Futures Trading Commission and the U.S. Securities and Exchange Commission Regarding Central Counterparties for Credit Default Swaps (November 14, 2008), *http://www.treas.gov/press/releases/reports/finalmou.pdf.*

[8] *See* Semiannual OTC derivatives statistics at end-December 2007, Bank for International Settlements ("BIS"), available at *http:/www.bis.org/statistics/otcder/dt1920a.pdf.*

[9] CDS were initially created to meet the demand of banking institutions looking to hedge and diversify the credit risk attendant with their lending activities. However, financial institutions such as insurance companies, pension funds, securities firms, and hedge funds have entered the CDS market.

[10] 15 U.S.C. 78c–1. Section 3A excludes both a non-security-based and a security-based swap agreement from the definition of "security" under Section 3(a)(10) of the Exchange Act, 15 U.S.C. 78c(a)(10). Section 206A of the Gramm-Leach-Bliley Act defines a "swap agreement" as "any agreement, contract, or transaction between eligible contract participants (as defined in section 1a(12) of the Commodity Exchange Act * * *) * * * the material terms of which (other than price and quantity) are subject to individual negotiation." 15 U.S.C. 78c note.

[11] *See generally* R. Bliss and C. Papathanassiou, "Derivatives clearing, central counterparties and novation: The economic implications" (March 8, 2006), at 6. *See also* "New Developments in Clearing and Settlement Arrangements for OTC Derivatives," Committee on Payment and Settlement Systems, BIS, at 25 (March 2007), available at *http://www.bis.org/pub/cpss77.pdf;* "Reducing Risks and Improving Oversight in the OTC Credit Derivatives Market," Before the Sen. Subcomm. On Secs., Ins. and Investments, 110th Cong. (2008) (Statement of Patrick Parkinson, Deputy Director, Division of Research and Statistics, FRB).

and seller to the other.[12] Through novation, it is the CCP that assumes counterparty risks.

For this reason, a CCP for CDS would contribute generally to the goal of market stability. As part of its risk management, a CCP may subject novated contracts to initial and variation margin requirements and establish a clearing fund. The CCP also may implement a loss-sharing arrangement among its participants to respond to a participant insolvency or default.

A CCP would also reduce CDS risks through multilateral netting of trades.[13] Trades cleared through a CCP would permit market participants to accept the best bid or offer from a dealer in the OTC market with very brief exposure to the creditworthiness of the dealer. In addition, by allowing netting of positions in similar instruments, and netting of gains and losses across different instruments, a CCP would reduce redundant notional exposures and promote the more efficient use of resources for monitoring and managing CDS positions. Through uniform margining and other risk controls, including controls on market-wide concentrations that cannot be implemented effectively when counterparty risk management is decentralized, a CCP can help prevent a single market participant's failure from destabilizing other market participants and, ultimately, the broader financial system.

In this context, The Chicago Mercantile Exchange Inc. ("CME") and Citadel Investment Group, L.L.C. ("Citadel") have requested that the Commission grant exemptions from certain requirements under the Exchange Act with respect to their proposed activities in clearing and settling certain CDS, as well as the proposed activities of certain other persons, as described below.[14]

Based on the facts that CME and Citadel have presented and the representations they have made,[15] and for the reasons discussed in this Order, the Commission temporarily is exempting, subject to certain conditions, CME from the requirement to register as a clearing agency under Section 17A of the Exchange Act solely to perform the functions of a clearing agency for certain non-excluded CDS transactions. The Commission also temporarily is exempting eligible contract participants and others from certain Exchange Act requirements with respect to non-excluded CDS cleared by CME. The Commission's exemptions are temporary and will expire on December 14, 2009. To facilitate the operation of one or more CCPs for the CDS market, the Commission has also approved interim final temporary rules providing exemptions under the Securities Act of 1933 and the Exchange Act for non-excluded CDS.[16] Finally, the Commission has provided temporary exemptions in connection with Sections 5 and 6 of the Exchange Act for transactions in non-excluded CDS.[17]

II. Discussion

A. Description of CME and Citadel's Proposal

The exemptive request by CME and Citadel describes how their proposed arrangements for central clearing of CDS would operate, and makes representations about the safeguards associated with those arrangements, as described below:

1. CME Organization

CME Group Inc. ("CME Group"), a Delaware stock corporation, is the holding company for CME, as well as Board of Trade of the City of Chicago, Inc., New York Mercantile Exchange, Inc., Commodity Exchange, Inc. and their subsidiaries.

CME is a designated contract market ("DCM"), regulated by the CFTC, for the trading of futures and options on futures contracts. In addition, CME Group operates its own clearing house, which is a division of CME. The CME clearing house is a derivates clearing organization ("DCO") regulated by the CFTC. The clearing house clears, settles and guarantees the performance of all transactions matched through the execution facilities and on third party exchanges for which CME Group provides clearing services. The clearing house operates with the oversight of the Clearing House Risk Committee ("CHRC"). The CHRC is made up of a group of clearing member representatives who represent the interests of the clearing house as well as clearing members of CME Group.

CME is required to comply with the eighteen CFTC Core Principles applicable to registered DCMs and the fourteen CFTC Core Principles applicable to DCOs.[18] The CFTC conducts regular audits or risk reviews of CME with respect to these Core Principles. CME is registered and in good standing with the CFTC. In addition, CME is notice registered with the Commission as a special purpose national securities exchange for the purpose of trading securities futures products. In the U.K., CME is a Recognised Overseas Investment Exchange and a Recognised Overseas Clearing House, subject to regulation by the U.K. Financial Services Authority.

2. CME Central Counterparty Services for CDS

CME as part of its clearing services would be interposed as central counterparty for transactions in Cleared CDS (as defined below).[19] CME would provide clearing and settlement services for transactions in Cleared CDS submitted to or executed on the CMDX platform.[20] CME would also accept for clearing directly from participants trades in Cleared CDS that are not executed on or processed through CMDX.

[12] "Novation" is a "process through which the original obligation between a buyer and seller is discharged through the substitution of the CCP as seller to buyer and buyer to seller, creating two new contracts." Committee on Payment and Settlement Systems, Technical Committee of the International Organization of Securities Commissioners, Recommendations for Central Counterparties (November 2004) at 66.

[13] *See* "New Developments in Clearing and Settlement Arrangements for OTC Derivatives," *supra* note 11, at 25. Multilateral netting of trades would permit multiple counterparties to offset their open transaction exposure through the CCP, spreading credit risk across all participants in the clearing system and more effectively diffusing the risk of a counterparty's default than could be accomplished by bilateral netting alone.

[14] *See* Letter from Adam Cooper, Citadel Investment Group, L.L.C. and Ann K. Shuman, Chicago Mercantile Exchange, Inc., to Elizabeth M. Murphy, Secretary, Commission, March 12, 2008.

[15] *See id.* The exemptions we are granting today are based on representations made by CME and Citadel. We recognize, however, that there could be legal uncertainty in the event that one or more of the underlying representations were to become inaccurate. Accordingly, if any of these exemptions were to become unavailable by reason of an underlying representation no longer being materially accurate, the legal status of existing open positions in non-excluded CDS associated with persons subject to those unavailable exemptions would remain unchanged, but no new positions could be established pursuant to the exemptions until all of the underlying representations were again accurate.

[16] *See* Securities Act Release No. 8999 (January 14, 2009).

[17] *See* Securities Exchange Act Release No. 59165 (December 24, 2008).

[18] The DCM and DCO Core Principles are set forth in 7 U.S.C. 7(b), 7a–1(c)(2)(A).

[19] *See* note 29, *infra*.

[20] Citadel and CME have entered into a joint venture (to be named "CMDX") to provide a trading and clearing solution for CDS. CMDX trading, booking and migration services would be available only to persons that satisfy the definition of an "eligible contract participant" in Section 1a(12) of the Commodity Exchange Act ("CEA") (other than paragraph (C) thereof). In addition, each participant on the CMDX platform must be a clearing member of CME or have a clearing relationship with a CME clearing member that agrees to assume responsibility for the participant's CDS contracts cleared by CME. Initially, CMDX would offer CDS that mirror as closely as possible the terms of existing OTC CDS. The coupons and maturities would be standardized to the extent necessary to permit centralized clearing.

Specifically, CME would accept for clearing (i) trades that are matched on the CMDX platform, (ii) pre-existing non-standard trades that are submitted to clearing through the CMDX migration facility, and (iii) new bilaterally-executed trades in standardized products that are submitted to CME for clearing directly by the participants (using CME's Clearing 360™ API or similar facility that CME makes available).[21]

The trades submitted to or executed on the CMDX platform would be processed straight-through to CME for clearing and settlement. CME clearing and settlement of Cleared CDS would operate using the established systems, procedures and financial safeguards package that stand behind trading in CME's primary futures market, and such activities would be subject to CFTC oversight of risk management and collateralization procedures. CME Rulebook Chapter 8–F sets forth the rules governing clearing and settlement of all products, instruments, and contracts in OTC derivatives, including but not limited to CDS contracts, swaps and forward rate agreements that the CME clearinghouse has designated as eligible for clearing.

3. CME Risk Management

CME clearing members that are broker-dealers or futures commission merchants maintain capital and liquidity in accordance with relevant SEC and CFTC rules and regulations. In addition, CME has requirements for minimum capital contribution, contribution to the guaranty fund based on risk factors, maintenance margin, and mark to market with immediate payment of losses applicable to clearing member firms.

CME has adopted a risk-based capital requirement. Capital requirements are monitored by CME's Audit Department and vary to reflect the risk of each clearing member's positions as well as CME's assessment of each clearing member's internal controls, risk management policies and back office operations.

Clearing members also would have tools to manage appropriate requirements with respect to their customers. CME Rule 982 requires clearing members to establish written risk management policies and procedures, including monitoring the risks assumed by specific customers. To facilitate such controls with respect to CDS transactions, CME's clearing systems include functionality that permits clearing members to register customer accounts and specify customer credit limits.

CME would extend its current monitoring procedures to Cleared CDS cleared by CME. CME would monitor for and investigate unusual trading patterns or volumes. Customer account reporting would allow CME to view the positions held by individual accounts. The positions of each account would be analyzed throughout the day to monitor any accounts that may have significant losses due to market moves. In addition, significant changes in positions from day to day would be analyzed and reported to CME clearing house senior management.

CME would include stress testing of the different CDS clearing house margin factors to capture moves beyond the one-day 99% standard on the macro and sector moves and the five-day 99% standard for the idiosyncratic shocks. This would be considered in designing the financial safeguards package, adding concentration types of margining and routine stress testing. Also, the CDS clearing house margin factor parameters would be reviewed daily as a back-testing procedure to ensure the parameters are providing the desired coverage. CME would also review on a daily basis the margin collected by CME on CDS portfolios and compare those amounts to next-day market moves so that actual portfolio effects can be determined and gauged against the margin coverage. In addition, CME would evaluate the concentration of CDS positions beyond the margin factors and compare them against overall open interest and liquidity in the CDS market.

CME will extend its scenario based stress testing techniques for concentration margining to Cleared CDS. The concentration stress test results will be evaluated relative to excess adjusted net capital for each segregated pool. If the hypothetical losses exceed the excess adjusted net capital for a clearing member's segregated pool, then an additional margin charge will be applied to the clearing member's position. The additional margin charge is calculated based on the magnitude of the hypothetical losses in excess of the clearing member's excess adjusted net capital.

CME determines the acceptability of different collateral types and determines appropriate haircuts.[22] Collateral requirements for Cleared CDS would endeavor to reflect the specific risks of Cleared CDS, including jump-to-default and the consequences of a liquidity event caused by the defaults.

4. Member Default

If a clearing member is troubled (*i.e.*, it fails to meet minimum financial requirements or its financial or operational condition may jeopardize the integrity of the CME, or negatively impact the financial markets), the CME may take action pursuant to Rules 974 (Failure To Meet Minimum Financial Requirements) or 975 (Emergency Financial Conditions). In the event of a default by a clearing member of CME, the process would be governed by applicable CME Rules.[23]

In the event of a member default, CME may access its financial safeguard package as necessary. CME's financial safeguards package is a combination of each clearing member's collateral on deposit to support its positions, the collateral of its customers to support their positions, CME surplus funds, security deposits and assessment powers.[24]

5. Customer Rules and Other Requirements

Prior to issuance of an order from the CFTC under Section 4d of the CEA ("4d order"), all Cleared CDS submitted to CME for clearing for the account of a clearing member's customer must be assigned and held in an account subject to CFTC Regulation 30.7.[25] Regulation

[21] Non-standard trades that are migrated to CME would ultimately be converted to a standard, centrally cleared contract. Migration may only occur if both counterparties to a trade agree to the process and both are clearing members or have the appropriate relationship with a clearing member. CMDX would also supply participants a data file of the original bilateral positions that were accepted into clearing via the migration process, so that participants may send appropriate exit records to the DTCC Trade Information Warehouse.

[22] A list of acceptable collateral and applicable haircuts is available at *www.cme.com*.

[23] *See, e.g.*, CME Rulebook Chapter 8–F (Over-the-Counter Derivative Clearing), including but not limited to Rules 8F06 (Clearing Member Default), 8F07 (Security Deposit) and 8F13 (Insolvency and Liquidation). Chapter 8-F further incorporates the general CME Rules relating to defaults, including but not limited to Rules 913 (Withdrawal From Clearing Membership), 974 (Failure To Meet Minimum Financial Requirements), 975 (Emergency Financial Conditions), 976 (Suspension of Clearing Members), 978 (Open Trades of Suspended Clearing Members), and 979 (Suspended or Expelled Clearing Members).

[24] CME indicates that excluding collateral supporting open positions, which total approximately $116 billion, the total financial safeguards package is nearly $7 billion, comprised of: (1) CME surplus funds of $57 million; (2) clearing member security deposits of approximately $1.751 billion; and (3) assessment powers of approximately $4.816 billion (as of December 31, 2008). Clearing members that clear Cleared CDS would be subject to an additional $5 million security deposit requirement. Furthermore, the calculation of that portion of a clearing member's security deposit that is related to the risk of its CDS position would be scaled upward by a factor of three.

[25] 17 CFR 30.7.

30.7 requires that customer positions and property be separately held and accounted for from the positions and property of the futures commission merchant, and that customer property be deposited under an account name that clearly identifies it as customer property. CME Rule 8F03 reiterates that "[a]ll collateral deposited as performance bond to support positions in such Regulation § 30.7 account and all positions, collateral or cash in such account shall be segregated from the Clearing Member's proprietary account."

Upon the issuance of a 4d order from the CFTC, the segregation and protection of customer funds and property would be controlled by Section 4d of the CEA [26] and the regulations pertinent thereto; all funds and property received from customers of futures commission merchants in connection with purchasing, selling or holding CDS positions would be subject to the requirements of CFTC Regulation 1.20, *et seq.* promulgated under Section 4d. This regulation would apply to the purchasing, selling, and holding of CDS positions. This regulation would require that customer positions and property be separately accounted for and segregated from the positions and property of the futures commission merchant. Customer property will be deposited under an account name that clearly identifies it as such and shows it is appropriately segregated as required by the CEA and Regulation 1.20, *et seq.*

In addition, customer margin requirements for a broker-dealer are generally set by the broker-dealer's self-regulatory organizations (*e.g.*, the Financial Industry Regulatory Authority, commonly referred to as "FINRA"). One purpose for customer margin requirements is to assure that broker-dealers collect sufficient margin from customers to protect the broker-dealer against the event that an adverse price move causes a customer default, leaving the broker-dealer with the responsibility for the transaction. FINRA intends to amend its customer margin rule to include margin requirements for Cleared CDS.[27]

B. Temporary Conditional Exemption From Clearing Agency Registration Requirement

Section 17A of the Exchange Act sets forth the framework for the regulation and operation of the U.S. clearance and settlement system, including CCPs. Specifically, Section 17A directs the Commission to use its authority to promote enumerated Congressional objectives and to facilitate the development of a national clearance and settlement system for securities transactions. Absent an exemption, a CCP that novates trades of non-excluded CDS that are securities and generates money and settlement obligations for participants is required to register with the Commission as a clearing agency.

Section 36 of the Exchange Act authorizes the Commission to conditionally or unconditionally exempt any person, security, or transaction, or any class or classes of persons, securities, or transactions, from any provision or provisions of the Exchange Act or any rule or regulation thereunder, by rule, regulation, or order, to the extent that such exemption is necessary or appropriate in the public interest, and is consistent with the protection of investors.[28]

Accordingly, pursuant to Section 36 of the Exchange Act, the Commission finds that it is necessary or appropriate in the public interest and is consistent with the protection of investors to exercise its authority to grant an exemption until December 14, 2009 to CME from Section 17A of the Exchange Act, solely to perform the functions of a clearing agency for Cleared CDS,[29] subject to the conditions discussed below.

Our action today balances the aim of facilitating the prompt establishment of CME as a CCP for non-excluded CDS transactions—which should help reduce systemic risks during a period of extreme turmoil in the U.S. and global financial markets—with ensuring that important elements of Commission oversight are applied to the non-excluded CDS market. In doing so, we are mindful that applying the full scope of the Exchange Act to transactions involving non-excluded CDS could deter the prompt establishment of CME as a CCP to settle those transactions.

While we are acting so that the prompt establishment of CME as a CCP for non-excluded CDS will not be delayed by the need to apply the full scope of Exchange Act Section 17A's requirements that govern clearing agencies, the relief we are providing is temporary and conditional. The limited duration of the exemptions will permit the Commission to gain more direct experience with the non-excluded CDS market after CME becomes operational, giving the Commission the ability to oversee the development of the centrally cleared non-excluded CDS market as it evolves. During the exemptive period, the Commission will closely monitor the impact of the CCPs on the CDS market. In particular, the Commission will seek to assure itself that the CCPs do not act in anticompetitive manner or indirectly facilitate anticompetitive behavior with respect to fees charged to members, the dissemination of market data and the access to clearing services by independent CDS exchanges or CDS trading platforms. The Commission will take that experience into account in future actions.

Moreover, this temporary exemption in part is based on CME's representation that it meets the standards set forth in the Committee on Payment and Settlement Systems ("CPSS") and International Organization of Securities Commissions ("IOSCO") report entitled: *Recommendation for Central Counterparties* ("RCCP").[30] The RCCP establishes a framework that requires a CCP to have: (i) The ability to facilitate the prompt and accurate clearance and settlement of CDS transactions and to safeguard its users' assets; and (ii) sound risk management, including the ability to appropriately determine and collect clearing fund and monitor its users' trading. This framework is generally

[26] 7 U.S.C. 6d.

[27] *See* SR–FINRA–2009–012, available at *http://www.finra.org/Industry/Regulation/RuleFilings/2009/P118121.*

[28] 15 U.S.C. 78mm.

[29] For purposes of this exemption, and the other exemptions addressed in this Order, "Cleared CDS" means a credit default swap that is submitted (or offered, purchased, or sold on terms providing for submission) to CME, that is offered only to, purchased only by, and sold only to eligible contract participants (as defined in Section 1a(12) of the Commodity Exchange Act as in effect on the date of this Order (other than a person that is an eligible contract participant under paragraph (C) of that section)), and in which: (1) The reference entity, the issuer of the reference security, or the reference security is one of the following: (i) An entity reporting under the Exchange Act, providing Securities Act Rule 144A(d)(4) information, or about which financial information is otherwise publicly available; (ii) a foreign private issuer whose securities are listed outside the United States and that has its principal trading market outside the United States; (iii) a foreign sovereign debt security; (iv) an asset-backed security, as defined in Regulation AB, issued in a registered transaction with publicly available distribution reports; or (v) an asset-backed security issued or guaranteed by the Fannie Mae, the Freddie Mac, or the Government National Mortgage Association ("Ginnie Mae"); or (2) the reference index is an index in which 80 percent or more of the index's weighting is comprised of the entities or securities described in subparagraph (1). As discussed above, the Commission's action today does not affect CDS that are swap agreements under Section 206A of the Gramm-Leach-Bliley Act. *See* text at note 10, *supra.*

[30] The RCCP was drafted by a joint task force ("Task Force") composed of representative members of IOSCO and CPSS and published in November 2004. The Task Force consisted of securities regulators and central bankers from 19 countries and the European Union. The U.S. representatives on the Task Force included staff from the Commission, the FRB, and the CFTC.

consistent with the requirements of Section 17A of the Exchange Act.

In addition, this Order is designed to assure that—as CME and Citadel have represented—information will be available to market participants about the terms of the CDS cleared by CME, the creditworthiness of CME or any guarantor, and the clearing and settlement process for the CDS. Moreover, to be within the definition of Cleared CDS for purposes of this exemption (as well as the other exemptions granted through this Order), a CDS may only involve a reference entity, a reference security, an issuer of a reference security, or a reference index that satisfies certain conditions relating to the availability of information about such persons or securities. For non-excluded CDS that are index-based, the definition provides that at least 80 percent of the weighting of the index must be comprised of reference entities, issuers of a reference security, or reference securities that satisfy the information conditions. The definition does not prescribe the type of financial information that must be available nor the location of the particular information, recognizing that eligible contract participants have access to information about reference entities and reference securities through multiple sources. The Commission believes, however, that it is important in the CDS market, as in the market for securities generally, that parties to transactions should have access to financial information that would allow them to appropriately evaluate the risks relating to a particular investment and make more informed investment decisions.[31] Such information availability also will assist CME and the buyers and sellers in valuing their Cleared CDS and their counterparty exposures. As a result of the Commission's actions today, the Commission believes that information should be available for market participants to be able to make informed investment decisions, and value and evaluate their Cleared CDS and their counterparty exposures.

This temporary exemption is subject to a number of conditions that are designed to enable Commission staff to monitor CME's clearance and settlement of CDS transactions and help reduce risk in the CDS market. These conditions require that CME: (i) Make available on its Web site its annual audited financial statements; (ii) preserve records of all activities related to the business of CME as a CCP for Cleared CDS for at least five years (in an easily accessible place for the first two years); (iii) supply information relating to its Cleared CDS clearance and settlement services[32] to the Commission and provide access to the Commission to conduct on-site inspections of facilities and records related to its Cleared CDS clearance and settlement services and will provide the Commission access to its personnel to answer reasonable questions during any such inspections;[33] (iv) notify the Commission about material disciplinary actions taken against CME clearing members with respect to Cleared CDS clearance and settlement services, and about the involuntary termination of the membership of an entity using those services; (v) notify the Commission of all changes to rules as defined under the CFTC rules, fees, and any other material events affecting its Cleared CDS clearance and settlement services; (vi) provide the Commission with reports prepared by independent audit personnel that are generated in accordance with risk assessment of the areas set forth in the Commission's Automation Review Policy Statements[34] and its annual audited financial statements prepared by independent audit personnel; (vii) report all significant systems outages to the Commission; and (viii) not materially change its methodology for determining Cleared CDS margin levels without prior written approval from the Commission, and from FINRA with respect to customer margin requirements that would apply to broker-dealers.

In addition, this relief is conditioned on CME, directly or indirectly, making available to the public on terms that are fair and reasonable and not unreasonably discriminatory: (i) All end-of-day settlement prices and any other prices with respect to Cleared CDS that CME may establish to calculate mark-to-market margin requirements for CME participants; and (ii) any other pricing or valuation information with respect to Cleared CDS as is published or distributed by CME. The Commission believes this is an appropriate condition for CME's exemption from registration as a clearing agency. In Section 11A of the Exchange Act, Congress found that "[i]t is in the public interest and appropriate for the protection of investors and the maintenance of fair and orderly markets to assure * * * the availability to brokers, dealers, and investors of information with respect to quotations for and transactions in securities."[35] The President's Working Group on Financial Markets has stated that increased transparency is a policy objective for the over-the-counter derivatives market,[36] which includes the market for CDS. The condition is designed to further this policy objective of both Congress and the President's Working Group by requiring CME to make useful pricing data available to the public on terms that are fair and reasonable and not unreasonably discriminatory. Congress adopted these standards for the distribution of data in Section 11A. The Commission long has applied the standards in the specific context of securities market data, and it anticipates that CME will distribute its data on terms that generally are consistent with the application of these standards to securities market data. For example, data distributors generally are required to treat subscribers equally and not grant special access, fees, or other privileges to favored customers of the distributor. Similarly, distributors must make their data feeds reasonably available to data vendors for those subscribers who wish to receive their data indirectly through a vendor rather than directly from the distributor. In addition, a distributor's attempt to tie data products that must be made available to the public with other products or services of the distributor would be inconsistent with the statutory requirements. The Commission carefully evaluates any type of

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[31] The Commission notes the recommendations of the President's Working Group on Financial Markets regarding the informational needs and due diligence responsibilities of investors. *See* Policy Statement on Financial Market Developments, The President's Working Group on Financial Markets, March 13, 2008, available at *http://www.treas.gov/press/releases/reports/pwgpolicystatemktturmoil_03122008.pdf*.

[32] Clearance and settlement services would include services in association with CME's CMDX migration facility, as well as activities associated with margin services.

[33] The Commission will conduct routine examinations no more often than annually, although it may inspect more frequently for cause. Moreover, the Commission will limit the scope of such inspections to confirming compliance with the requirements set forth in this Order, including compliance with the securities laws applicable to CME's Cleared CDS business and operations. The Commission will make reasonable efforts to coordinate any inspections with the CFTC or other regulatory bodies with jurisdiction in order to conduct joint inspections where possible.

[34] *See* Automated Systems of Self-Regulatory Organization, Exchange Act Release No. 27445 (November 16, 1989), File No. S7–29–89, and Automated Systems of Self-Regulatory Organization (II), Exchange Act Release No. 29185 (May 9, 1991), File No. S7–12–91.

[35] 15 U.S.C. 78k–1(a)(1)(C)(iii). *See also* 15 U.S.C. 78k–1(a)(1)(D).

[36] *See* President's Working Group on Financial Markets, Policy Objectives for the OTC Derivatives Market (November 14, 2008), available at *http://www.ustreas.gov/press/releases/reports/policyobjectives.pdf* ("Public reporting of prices, trading volumes and aggregate open interest should be required to increase market transparency for participants and the public.").

discrimination with respect to subscribers and vendors to assess whether there is a reasonable basis for the discrimination given, among other things, the Exchange Act objective of promoting price transparency. Moreover, preventing unreasonable discrimination is a practical means to promote fair and reasonable terms for data distribution because distributors are more likely to act appropriately when the terms applicable to the broader public also must apply to any favored classes of customers.

As a CCP, CME will collect and process information about CDS transactions and positions from all of its participants. With this information, a CCP will, among other things, calculate and disseminate current values for open positions for the purpose of setting appropriate margin levels. The availability of such information can improve fairness, efficiency, and competitiveness of the market—all of which enhance investor protection and facilitate capital formation. Moreover, with pricing and valuation information relating to Cleared CDS, market participants would be able to derive information about underlying securities and indexes. This may improve the efficiency and effectiveness of the securities markets by allowing investors to better understand credit conditions generally.

C. Temporary General Exemption for CME and Certain Eligible Contract Participants

Applying the full panoply of Exchange Act requirements to participants in transactions in non-excluded CDS likely would deter some participants from using CCPs to clear CDS transactions. At the same time, it is important that the antifraud provisions of the Exchange Act apply to transactions in non-excluded CDS; indeed, OTC transactions subject to individual negotiation that qualify as security-based swap agreements already are subject to these antifraud provisions.[37]

We thus believe that it is appropriate in the public interest and consistent with the protection of investors temporarily to apply substantially the same framework to transactions by market participants in non-excluded CDS that applies to transactions in security-based swap agreements. Applying substantially the same set of requirements to participants in transactions in non-excluded CDS as apply to participants in OTC CDS transactions will avoid deterring market participants from promptly using CCPs, which would detract from the potential benefits of central clearing.

Accordingly, pursuant to Section 36 of the Exchange Act, the Commission finds that it is necessary or appropriate in the public interest and is consistent with the protection of investors to exercise its authority to grant an exemption until December 14, 2009 from certain requirements under the Exchange Act. This temporary exemption applies to CME and to certain eligible contract participants[38] other than: Eligible contract participants that receive or hold funds or securities for the purpose of purchasing, selling, clearing, settling, or holding Cleared CDS positions for other persons;[39] eligible contract participants that are self-regulatory organizations; or eligible contract participants that are registered brokers or dealers).[40]

Under this temporary exemption, and solely with respect to Cleared CDS, these persons generally are exempt from provisions of the Exchange Act and the rules and regulations thereunder that do not apply to security-based swap agreements. Those persons thus would still be subject to those Exchange Act requirements that explicitly are applicable in connection with security-based swap agreements.[41] In addition, all provisions of the Exchange Act related to the Commission's enforcement authority in connection with violations or potential violations of such provisions would remain applicable.[42] In this way, the temporary exemption would apply the same Exchange Act requirements in connection with non-excluded CDS as apply in connection with OTC credit default swaps.

This temporary exemption, however, does not extend to Sections 5 and 6 of the Exchange Act. The Commission separately issued a conditional exemption from these provisions to all broker-dealers and exchanges.[43] This temporary exemption also does not extend to Section 17A of the Exchange Act; instead, CME is exempt from registration as a clearing agency under the conditions discussed above. In addition, this exemption does not apply to Exchange Act Sections 12, 13, 14, 15(d), and 16;[44] eligible contract participants and other persons instead should refer to the interim final temporary rules issued by the

[37] While Section 3A of the Exchange Act excludes "swap agreements" from the definition of "security," certain antifraud and insider trading provisions under the Exchange Act explicitly apply to security-based swap agreements. *See* (a) paragraphs (2) through (5) of Section 9(a), 15 U.S.C. 78i(a), prohibiting the manipulation of security prices; (b) Section 10(b), 15 U.S.C. 78j(b), and underlying rules prohibiting fraud, manipulation or insider trading (but not prophylactic reporting or recordkeeping requirements); (c) Section 15(c)(1), 15 U.S.C. 78o(c)(1), which prohibits brokers and dealers from using manipulative or deceptive devices; (d) Sections 16(a) and (b), 15 U.S.C. 78p(a) and (b), which address disclosure by directors, officers and principal stockholders, and short-swing trading by those persons, and rules with respect to reporting requirements under Section 16(a); (e) Section 20(d), 15 U.S.C. 78t(d), providing for antifraud liability in connection with certain derivative transactions; and (f) Section 21A(a)(1), 15 U.S.C. 78u–1(a)(1), related to the Commission's authority to impose civil penalties for insider trading violations.

"Security-based swap agreement" is defined in Section 206B of the Gramm-Leach-Bliley Act as a swap agreement in which a material term is based on the price, yield, value, or volatility of any security or any group or index of securities, or any interest therein.

[38] This exemption in general applies to eligible contract participants, as defined in Section 1a(12) of the Commodity Exchange Act as in effect on the date of this Order, other than persons that are eligible contract participants under paragraph (C) of that section.

[39] Solely for purposes of this requirement, an eligible contract participant would not be viewed as receiving or holding funds or securities for purpose of purchasing, selling, clearing, settling, or holding Cleared CDS positions for other persons, if the other persons involved in the transaction would not be considered "customers" of the eligible contract participant in a parallel manner when certain persons would not be considered "customers" of a broker-dealer under Exchange Act Rule 15c3–3(a)(1). For these purposes, and for the purpose of the definition of "Cleared CDS," the terms "purchasing" and "selling" mean the execution, termination (prior to its scheduled maturity date), assignment, exchange, or similar transfer or conveyance of, or extinguishing the rights or obligations under, a Cleared CDS, as the context may require. This is consistent with the meaning of the terms "purchase" or "sale" under the Exchange Act in the context of security-based swap agreements. *See* Exchange Act Section 3A(b)(4).

A separate temporary conditional exemption addresses members of CME that hold funds or securities for the purpose of purchasing, selling, clearing, settling, or holding Cleared CDS positions for other persons. *See* Part II.D, *infra*.

[40] A separate temporary exemption addresses the Cleared CDS activities of registered-broker-dealers. *See* Part II.E, *infra*. Solely for purposes of this Order, a registered broker-dealer, or a broker or dealer registered under Section 15(b) of the Exchange Act, does not refer to someone that would otherwise be required to register as a broker or dealer solely as a result of activities in Cleared CDS in compliance with this Order.

[41] *See* note 37, *supra*.

[42] Thus, for example, the Commission retains the ability to investigate potential violations and bring enforcement actions in the Federal courts and administrative proceedings, and to seek the full panoply of remedies available in such cases.

[43] *See* note 17, *supra*. A national securities exchange that effects transactions in Cleared CDS would continue to be required to comply with all requirements under the Exchange Act applicable to such transactions. A national securities exchange could form subsidiaries or affiliates that operate exchanges exempt under that order. Any subsidiary or affiliate of a registered exchange could not integrate, or otherwise link, the exempt CDS exchange with the registered exchange including the premises or property of such exchange for effecting or reporting a transaction without being considered a "facility of the exchange." *See* Section 3(a)(2), 15 U.S.C. 78c(a)(2).

[44] 15 U.S.C. 78*l*, 78m, 78n, 78o(d), 78p.

Commission. Finally, this temporary exemption does not extend to the Commission's administrative proceeding authority under Sections 15(b)(4) and (b)(6),[45] or to certain provisions related to government securities.[46]

D. Conditional Temporary General Exemption for Certain Clearing Members of CME

Absent an exception, persons that effect transactions in non-excluded CDS that are securities may be required to register as broker-dealers pursuant to Section 15(a)(1) of the Exchange Act.[47] Moreover, certain reporting and other requirements of the Exchange Act could apply to such persons, as broker-dealers, regardless of whether they are registered with the Commission.

It is consistent with our investor protection mandate to require that intermediaries in securities transactions that receive or hold funds and securities on behalf of others comply with standards that safeguard the interests of their customers. For example, registered broker-dealers are required to segregate assets held on behalf of customers from proprietary assets, because segregation will assist customers in recovering assets in the event the intermediary fails. To the extent that funds and securities are not segregated, they could be used by a participant to fund its own business and could be attached to satisfy debts of the participant were the participant to fail. Moreover, the maintenance of adequate capital and liquidity protects customers, CCPs and other market participants. Adequate books and records (including both transactional and position records) are necessary to facilitate day to day operations as well as to help resolve situations in which a participant fails and either a regulatory authority or receiver is forced to liquidate the firm. Appropriate records also are necessary to allow examiners to review for improper activities, such as insider trading or fraud.

At the same time, requiring intermediaries that receive or hold funds and securities on behalf of customers in connection with transactions in non-excluded CDS to register as broker-dealers may deter the use of CCPs in CDS transactions, to the detriment of the markets and market participants generally. Also, as noted above with regard to other eligible contract participants to non-excluded CDS transactions, immediately applying the panoply of Exchange Act requirements to centrally cleared transactions may deter the use of CCPs for CDS transactions.

Those factors argue in favor of flexibility in applying the requirements of the Exchange Act to these intermediaries. Along with those factors, in granting an exemption here we are particularly relying on the representation of CME that CME's rules alone or in combination with laws and regulations applicable to CME and its clearing members require that any CME clearing member that purchases, sells, or holds CDS positions for other persons, solely as they relate to CDS: (1) Must be registered with the CFTC as a futures commission merchant; (2) effectively segregates funds and securities of other persons (except positions held in proprietary accounts of the clearing member, which may include, for example, positions of employees or affiliates of the clearing member) that it holds in its custody or control for the purpose of purchasing, selling, or holding CDS positions; (3) maintains adequate capital and liquidity; and (4) maintains sufficient books and records to establish (a) that the CME clearing member is maintaining adequate capital and liquidity, and (b) separate ownership of the funds, securities, and positions it may hold for the purpose of purchasing, selling, or holding CDS positions for other persons and those it holds for its proprietary accounts.

Accordingly, pursuant to Section 36 of the Exchange Act, the Commission finds that it is necessary or appropriate in the public interest and is consistent with the protection of investors to exercise its authority to grant a conditional exemption until December 14, 2009 from certain Exchange Act requirements. In general, we are providing a temporary exemption, subject to the conditions discussed below, to any CME clearing member registered as a futures commission merchant pursuant to Section 4f(a)(1) of the Commodity Exchange Act ("FCM") (but that is not registered as a broker-dealer under Section 15(b) of the Exchange Act (other than paragraph (11) thereof)) that receives or holds funds or securities for the purpose of purchasing, selling, clearing, settling or holding Cleared CDS positions for other persons. Solely with respect to Cleared CDS, those members generally will be exempt from those provisions of the Exchange Act and the underlying rules and regulations that do not apply to security-based swap agreements.

As with the exemption discussed above that is applicable to CME and certain eligible contract participants, and for the same reasons, this exemption for CME clearing members that receive or hold funds and securities does not extend to Exchange Act provisions that explicitly apply in connection with security-based swap agreements,[48] or to related enforcement authority provisions.[49] As with the exemption discussed above, we also are not exempting those members from Sections 5, 6, 12(a) and (g), 13, 14, 15(b)(4), 15(b)(6), 15(d), 16 and 17A of the Exchange Act.[50]

This temporary exemption is subject to the member complying with conditions that are important for protecting customer funds and securities. Particularly, the member must be in material compliance with the rules of CME, and applicable laws and

[45] Exchange Act Sections 15(b)(4) and 15(b)(6), 15 U.S.C. 78o(b)(4) and (b)(6), grant the Commission authority to take action against broker-dealers and associated persons in certain situations. Accordingly, while this exemption generally extends to persons that act as inter-dealer brokers in the market for Cleared CDS and do not hold funds or securities for others, such inter-dealer brokers may be subject to actions under Sections 15(b)(4) and (b)(6) of the Exchange Act.

In addition, such inter-dealer brokers may be subject to actions under Exchange Act Section 15(c)(1), 15 U.S.C. 78o(c)(1), which prohibits brokers and dealers from using manipulative or deceptive devices. As noted above, Section 15(c)(1) explicitly applies to security-based swap agreements. Sections 15(b)(4), 15(b)(6) and 15(c)(1), of course, would not apply to persons subject to this exemption who do not act as broker-dealers or associated persons of broker-dealers.

[46] This exemption specifically does not extend to the Exchange Act provisions applicable to government securities, as set forth in Section 15C, 15 U.S.C. 78o–5, and its underlying rules and regulations; nor does the exemption extend to related definitions found at paragraphs (42) through (45) of Section 3(a), 15 U.S.C. 78c(a). The Commission does not have authority under Section 36 to issue exemptions in connection with those provisions. See Exchange Act Section 36(b), 15 U.S.C. 78mm(b).

[47] 15 U.S.C. 78o(a)(1). This section generally provides that, absent an exception or exemption, a broker or dealer that uses the mails or any means of interstate commerce to effect transactions in, or to induce or attempt to induce the purchase or sale of, any security must register with the Commission.

Section 3(a)(4) of the Exchange Act generally defines a "broker" as "any person engaged in the business of effecting transactions in securities for the account of others," but provides 11 exceptions for certain bank securities activities. 15 U.S.C. 78c(a)(4). Section 3(a)(5) of the Exchange Act generally defines a "dealer" as "any person engaged in the business of buying and selling securities for his own account," but includes exceptions for certain bank activities. 15 U.S.C. 78c(a)(5). Exchange Act Section 3(a)(6) defines a "bank" as a bank or savings association that is directly supervised and examined by State or Federal banking authorities (with certain additional requirements for banks and savings associations that are not chartered by a Federal authority or a member of the Federal Reserve System). 15 U.S.C. 78c(a)(6).

[48] *See* note 37, *supra*.

[49] *See* note 42, *supra*.

[50] Nor are we exempting those members from provisions related to government securities, as discussed above.

regulations, relating to capital, liquidity, and segregation of customers'[51] funds and securities (and related books and records provisions) with respect to non-excluded CDS.[52] Also, to the extent that the member receives or holds funds or securities of U.S. eligible contract participants for the purpose of purchasing, selling, clearing, settling or holding non-excluded CDS positions for those persons, this exemption is predicated on the member satisfying the following condition: The member must segregate such funds and securities of U.S. customers from the member's own assets (*i.e.*, the member may not permit U.S. customers to "opt out" of applicable segregation requirements for such funds and securities even if regulations or laws would permit the person to "opt out").

E. Temporary General Exemption for Certain Registered Broker-Dealers Including Certain Broker-Dealer-FCMs

The temporary exemptions addressed above—with regard (i) to CME and certain eligible contract participants and (ii) to certain CME clearing members that receive or hold funds and securities of others—are not available to persons that are registered as broker-dealers with the Commission (other than those that are notice registered pursuant to Section 15(b)(11)).[53] The Exchange Act and its underlying rules and regulations require broker-dealers to comply with a number of obligations that are important to protecting investors and promoting market integrity. We are mindful of the need to avoid creating disincentives to the prompt use of CCPs, and we recognize that the factors discussed above suggest that the full panoply of Exchange Act requirements should not immediately be applied to registered broker-dealers that engage in transactions involving Cleared CDS. At the same time, we also are sensitive to the critical importance of certain broker-dealer requirements to promoting market integrity and protecting customers (including those broker-dealer customers that are not involved with CDS transactions).

This calls for balancing the facilitation of the development and prompt implementation of CCPs with the preservation of certain key investor protections. Pursuant to Section 36 of the Exchange Act, the Commission finds that it is necessary or appropriate in the public interest and is consistent with the protection of investors to exercise its authority to grant an exemption until December 14, 2009 from certain Exchange Act requirements. Consistent with the temporary exemptions discussed above, and solely with respect to Cleared CDS, we are exempting registered broker-dealers (including registered broker-dealers that are also FCMs ("BD–FCMs")) in general from provisions of the Exchange Act and its underlying rules and regulations that do not apply to security-based swap agreements. As above, we are not excluding registered broker-dealers, including BD–FCMs, from Exchange Act provisions that explicitly apply in connection with security-based swap agreements or from related enforcement authority provisions.[54] As above, and for similar reasons, we are not exempting registered broker-dealers, including BD–FCMs, from: Sections 5, 6, 12(a) and (g), 13, 14, 15(b)(4), 15(b)(6), 15(d), 16 and 17A of the Exchange Act.[55]

Further we are not exempting registered broker-dealers from the following additional provisions under the Exchange Act: (1) Section 7(c),[56] which addresses the unlawful extension of credit by broker-dealers; (2) Section 15(c)(3),[57] which addresses the use of unlawful or manipulative devices by broker-dealers; (3) Section 17(a),[58] regarding broker-dealer obligations to make, keep and furnish information; (4) Section 17(b),[59] regarding broker-dealer records subject to examination; (5) Regulation T,[60] a Federal Reserve Board regulation regarding extension of credit by broker-dealers; (6) Exchange Act Rule 15c3–1, regarding broker-dealer net capital; (7) Exchange Act Rule 15c3–3, regarding broker-dealer reserves and custody of securities; (8) Exchange Act Rules 17a–3 through 17a–5, regarding records to be made and preserved by broker-dealers and reports to be made by broker-dealers; and (9) Exchange Act Rule 17a–13, regarding quarterly security counts to be made by certain exchange members and broker-dealers.[61] Registered broker-dealers should comply with these provisions in connection with their activities involving non-excluded CDS because these provisions are especially important to helping protect customer funds and securities, ensure proper credit practices and safeguard against fraud and abuse.[62]

However, CME clearing members that are BD–FCMs that holds customer funds and securities for the purpose of purchasing, selling, clearing, settling or holding CDS positions cleared by CME in a futures account (as that term is defined in Rule 15c3–3(a)(15) [17 CFR 240.15c3–3(a)(15)]) also shall be exempt from Exchange Act Rule 15c3–3, subject to the following conditions: (1) The CME clearing member shall be in material compliance with the rules of CME, and applicable laws and regulations, relating to capital, liquidity, and segregation of customers' funds and securities (and related books and records provisions) with respect to Cleared CDS;[63] (2) the CME clearing member shall segregate such funds and securities of U.S. customers from the CME clearing member's own assets (*i.e.*, the member may not permit U.S. customers to "opt out" of applicable segregation requirements for such funds and securities even if regulations or laws would permit the customer to "opt out"); and (3) the CME clearing member shall comply with the margin rules for Cleared CDS of the self-regulatory

[51] The term "customer," solely for purposes of Part III(c) and (d), *infra*, and corresponding references in this Order, means a "customer" as defined under CFTC Regulation 1.3(k). 17 CFR 1.3(k).

[52] A member would not be "in material compliance" if it failed in any way to segregate customer funds and securities consistent with these rules, laws and regulations. In that circumstance, the member could not rely on this exemption.

[53] Exchange Act Section 15(b)(11) provides for notice registration of certain persons that effect transactions in security futures products. 15 U.S.C. 78o(b)(11).

[54] *See* notes 37 and 42, *supra*. As noted above, broker-dealers also would be subject to Section 15(c)(1) of the Exchange Act, which prohibits brokers and dealers from using manipulative or deceptive devices, because that provision explicitly applies in connection with security-based swap agreements. In addition, to the extent the Exchange Act and any rule or regulation thereunder imposes any other requirement on a broker-dealer with respect to security-based swap agreements (*e.g.*, requirements under Rule 17h-1T to maintain and preserve written policies, procedures, or systems concerning the broker or dealer's trading positions and risks, such as policies relating to restrictions or limitations on trading financial instruments or products), these requirements would continue to apply to broker-dealers' activities with respect to Cleared CDS.

[55] We also are not exempting those members from provisions related to government securities, as discussed above.

[56] 15 U.S.C. 78g(c).

[57] 15 U.S.C. 78o(c)(3).

[58] 15 U.S.C. 78q(a).

[59] 15 U.S.C. 78q(b).

[60] 12 CFR 220.1 *et seq.*

[61] Solely for purposes of this exemption, in addition to the general requirements under the referenced Exchange Act sections, registered broker-dealers shall only be subject to the enumerated rules under the referenced Exchange Act sections. Broker-dealers will, however, continue to be subject to applicable rules of self-regulatory organizations of which they are a member, including applicable margin rules.

[62] Indeed, Congress directed the Commission to promulgate broker-dealer financial responsibility rules, including rules regarding custody, the use of customer securities and the use of customers' deposits or credit balances, and regarding establishment of minimum financial requirements.

[63] *See* note 52, *supra*.

organization that is its designated examining authority [64] (*e.g.*, FINRA).

F. Solicitation of Comments

The Commission intends to monitor closely the development of the CDS market and intends to determine to what extent, if any, additional regulatory action may be necessary. For example, as circumstances warrant, certain conditions could be added, altered, or eliminated. Moreover, because these exemptions are temporary, the Commission will in the future consider whether they should be extended or allowed to expire. The Commission believes it would be prudent to solicit public comment on its action today, and on what action it should take with respect to the CDS market in the future. The Commission is soliciting public comment on all aspects of these exemptions, including:

1. Whether the length of this temporary exemption (until December 14, 2009) is appropriate. If not, what should the appropriate duration be?
2. Whether the conditions to these exemptions are appropriate. Why or why not? Should other conditions apply? Are any of the present conditions to the exemptions provided in this Order unnecessary? If so, please specify and explain why such conditions are not needed.
3. Whether CME ultimately should be required to register as a clearing agency under the Exchange Act. Why or why not?
4. Whether CME members that receive or hold funds or securities for the purpose of purchasing, selling, clearing, settling or holding non-excluded CDS positions for other persons ultimately should be required to register as broker-dealers? Why or why not?

Comments may be submitted by any of the following methods:

Electronic Comments

• Use the Commission's Internet comment form (*http://www.sec.gov/rules/other.shtml*); or

• Send an e-mail to *rule-comments@sec.gov*. Please include File Number S7–06–09 on the subject line; or

• Use the Federal eRulemaking Portal (*http://www.regulations.gov/*). Follow the instructions for submitting comments.

Paper Comments

• Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549–1090.

All submissions should refer to File Number S7–06–09. This file number should be included on the subject line if e-mail is used. To help us process and review your comments more efficiently, please use only one method. We will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/other.shtml*). Comments are also available for public inspection and copying in the Commission's Public Reference Room, 100 F Street, NE., Washington, DC 20549, on official business days between the hours of 10 a.m. and 3 p.m. All comments received will be posted without change; we do not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly.

III. Conclusion

It is hereby ordered, pursuant to Section 36(a) of the Exchange Act, that, until December 14, 2009:

(a) Exemption from Section 17A of the Exchange Act.

The Chicago Mercantile Exchange Inc. ("CME") shall be exempt from Section 17A of the Exchange Act solely to perform the functions of a clearing agency for Cleared CDS (as defined in paragraph (e) of this Order), subject to the following conditions:

(1) CME shall make available on its Web site its annual audited financial statements.

(2) CME shall keep and preserve records of all activities related to the business of CME as a central counterparty for Cleared CDS. These records shall be kept for at least five years and for the first two years shall be held in an easily accessible place.

(3) CME shall supply such information and periodic reports relating to its Cleared CDS clearance and settlement services as may be reasonably requested by the Commission. CME shall also provide access to the Commission to conduct on-site inspections of all facilities (including automated systems and systems environment), and records related to its Cleared CDS clearance and settlement services. CME will provide the Commission with access to its personnel to answer reasonable questions during any such inspections related to its Cleared CDS clearance and settlement services.

(4) CME shall notify the Commission, on a monthly basis, of any material disciplinary actions taken against any CME clearing members utilizing its Cleared CDS clearance and settlement services, including the denial of services, fines, or penalties. CME shall notify the Commission promptly when CME involuntarily terminates the membership of an entity that is utilizing CME's Cleared CDS clearance and settlement services. Both notifications shall describe the facts and circumstances that led to CME's disciplinary action.

(5) CME shall notify the Commission of all changes to rules as defined under the CFTC rules, fees, and any other material events affecting its Cleared CDS clearance and settlement services, including material changes to risk management models. In addition, CME will post any rule or fee changes on the CME Web site. CME shall provide the Commission with notice of all changes to its rules not less than one day prior to effectiveness or implementation of such rule changes or, in exigent circumstances, as promptly as reasonably practicable under the circumstances. Such notifications will not be deemed rule filings that require Commission approval.

(6) CME shall provide the Commission with annual reports and any associated field work concerning its Cleared CDS clearance and settlement services prepared by independent audit personnel that are generated in accordance with risk assessment of the areas set forth in the Commission's Automation Review Policy Statements. CME shall provide the Commission (beginning in its first year of operation) with its annual audited financial statements prepared by independent audit personnel for CME.

(7) CME shall report to the Commission all significant outages of clearing systems having a material impact on its Cleared CDS clearance and settlement services. If it appears that the outage may extend for 30 minutes or longer, CME shall report the systems outage immediately. If it appears that the outage will be resolved in less than 30 minutes, CME shall report the systems outage within a reasonable time after the outage has been resolved.

(8) CME, directly or indirectly, shall make available to the public on terms that are fair and reasonable and not unreasonably discriminatory: (i) All end-of-day settlement prices and any other prices with respect to Cleared CDS that CME may establish to calculate mark-to-market margin requirements for CME clearing members; and (ii) any other pricing or valuation information with respect to Cleared CDS as is published or distributed by CME.

(9) CME shall not materially change its methodology for determining Cleared CDS margin levels without prior written approval from the Commission, and from FINRA with respect to customer margin requirements that would apply

[64] *See* 17 CFR 240.17d–1 for a description of a designated examining authority.

to broker-dealers. (b) Exemption for CME and certain eligible contract participants.

(1) Persons eligible. The exemption in paragraph (b)(2) is available to:

(i) CME; and

(ii) Any eligible contract participant (as defined in Section 1a(12) of the Commodity Exchange Act as in effect on the date of this Order (other than a person that is an eligible contract participant under paragraph (C) of that section)), other than: (A) An eligible contract participant that receives or holds funds or securities for the purpose of purchasing, selling, clearing, settling, or holding Cleared CDS positions for other persons; (B) an eligible contract participant that is a self-regulatory organization, as that term is defined in Section 3(a)(26) of the Exchange Act; or (C) a broker or dealer registered under Section 15(b) of the Exchange Act (other than paragraph (11) thereof).

(2) Scope of exemption.

(i) In general. Such persons generally shall, solely with respect to Cleared CDS, be exempt from the provisions of the Exchange Act and the rules and regulations thereunder that do not apply in connection with security-based swap agreements. Accordingly, under this exemption, those persons would remain subject to those Exchange Act requirements that explicitly are applicable in connection with security-based swap agreements (*i.e.*, paragraphs (2) through (5) of Section 9(a), Section 10(b), Section 15(c)(1), paragraphs (a) and (b) of Section 16, Section 20(d) and Section 21A(a)(1) and the rules thereunder that explicitly are applicable to security-based swap agreements). All provisions of the Exchange Act related to the Commission's enforcement authority in connection with violations or potential violations of such provisions also remain applicable.

(ii) Exclusions from exemption. The exemption in paragraph (b)(2)(i), however, does not extend to the following provisions under the Exchange Act:

(A) Paragraphs (42), (43), (44), and (45) of Section 3(a);

(B) Section 5;

(C) Section 6;

(D) Section 12 and the rules and regulations thereunder;

(E) Section 13 and the rules and regulations thereunder;

(F) Section 14 and the rules and regulations thereunder;

(G) Paragraphs (4) and (6) of Section 15(b);

(H) Section 15(d) and the rules and regulations thereunder;

(I) Section 15C and the rules and regulations thereunder;

(J) Section 16 and the rules and regulations thereunder; and

(K) Section 17A (other than as provided in paragraph (a)).

(c) Exemption for certain CME clearing members.

Any CME clearing member registered as a futures commission merchant pursuant to Section 4f(a)(1) of the Commodity Exchange Act (but that is not registered as a broker or dealer under Section 15(b) of the Exchange Act (other than paragraph (11) thereof)) that receives or holds funds or securities for the purpose of purchasing, selling, clearing, settling or holding Cleared CDS for other persons shall be exempt from the provisions of the Exchange Act and the rules and regulations thereunder specified in paragraph (b)(2), solely with respect to Cleared CDS, subject to the following conditions:

(1) The CME clearing member shall be in material compliance with the rules of CME, and applicable laws and regulations, relating to capital, liquidity, and segregation of customers' funds and securities (and related books and records provisions) with respect to Cleared CDS; and

(2) To the extent that the CME clearing member receives or holds funds or securities of U.S. customers for the purpose of purchasing, selling, clearing, settling, or holding Cleared CDS positions, the CME clearing member shall segregate such funds and securities of U.S. customers from the CME clearing member's own assets (*i.e.*, the member may not permit U.S. customers to "opt out" of applicable segregation requirements for such funds and securities even if regulations or laws would permit the customer to "opt out").

(d) Exemption for certain registered broker-dealers.

A broker or dealer registered under Section 15(b) of the Exchange Act (other than paragraph (11) thereof) shall be exempt from the provisions of the Exchange Act and the rules and regulations thereunder specified in paragraph (b)(2), solely with respect to Cleared CDS, except:

(1) Section 7(c);

(2) Section 15(c)(3);

(3) Section 17(a);

(4) Section 17(b);

(5) Regulation T, 12 CFR 200.1 *et seq.*;

(6) Rule 15c3–1;

(7) Rule 15c3–3;

(8) Rule 17a–3;

(9) Rule 17a–4;

(10) Rule 17a–5; and

(11) Rule 17a–13;

provided, that a CME clearing member that is a broker or dealer registered under Section 15(b) of the Exchange Act (other than paragraph (11) thereof) and that is also registered as a futures commission merchant pursuant to Section 4f(a)(1) of the Commodity Exchange Act and that holds customer funds and securities for the purpose of purchasing, selling, clearing, settling or holding Cleared CDS in a futures account (as that term is defined in Rule 15c3–3(a)(15) [17 CFR 240.15c3–3(a)(15)]) also shall be exempt from Exchange Act Rule 15c3–3, subject to the following conditions:

(1) The CME clearing member shall be in material compliance with the rules of CME, and applicable laws and regulations, relating to capital, liquidity, and segregation of customers' funds and securities (and related books and records provisions) with respect to Cleared CDS;

(2) The CME clearing member shall segregate such funds and securities of U.S. customers from the CME clearing member's own assets (*i.e.*, the member may not permit U.S. customers to "opt out" of applicable segregation requirements for such funds and securities even if regulations or laws would permit the customer to "opt out"); and

(3) The CME clearing member shall collect from each customer the amount of margin that is not less than the amount required for Cleared CDS under the margin rule of the self-regulatory organization that is its designated examining authority.

(e) For purposes of this Order, "Cleared CDS" shall mean a credit default swap that is submitted (or offered, purchased or sold on terms providing for submission) to CME, that is offered only to, purchased only by, and sold only to eligible contract participants (as defined in Section 1a(12) of the Commodity Exchange Act as in effect on the date of this Order (other than a person that is an eligible contract participant under paragraph (C) of that section)), and in which:

(1) The reference entity, the issuer of the reference security, or the reference security is one of the following:

(i) An entity reporting under the Exchange Act, providing Securities Act Rule 144A(d)(4) information, or about which financial information is otherwise publicly available;

(ii) a foreign private issuer whose securities are listed outside the United States and that has its principal trading market outside the United States;

(iii) a foreign sovereign debt security;

(iv) an asset-backed security, as defined in Regulation AB, issued in a registered transaction with publicly available distribution reports: or

(v) an asset-backed security issued or guaranteed by Fannie Mae, Freddie Mac or Ginnie Mae; or

(2) the reference index is an index in which 80 percent or more of the index's weighting is comprised of the entities or securities described in subparagraph (1).

By the Commission.

Florence E. Harmon,

Deputy Secretary.

[FR Doc. E9–5927 Filed 3–18–09; 8:45 am]

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–59563; File No. SR–FINRA–2009–009]

Self-Regulatory Organizations; Financial Industry Regulatory Authority, Inc.; Notice of Filing of Proposed Rule Change To Adopt FINRA Rule 1122 (Filing of Misleading Information as to Membership or Registration) in the Consolidated FINRA Rulebook

March 12, 2009.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on March 3, 2009, Financial Industry Regulatory Authority, Inc. ("FINRA") (f/k/a National Association of Securities Dealers, Inc. ("NASD")) filed with the Securities and Exchange Commission ("SEC" or "Commission") the proposed rule change as described in Items I, II, and III below, which Items have been prepared by FINRA. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

FINRA is proposing to adopt NASD Interpretative Material 1000–1 ("IM–1000–1") (Filing of Misleading Information as to Membership or Registration) as a FINRA rule in the consolidated FINRA rulebook with minor changes. The proposed rule change would renumber NASD IM–1000–1 as FINRA Rule 1122 in the consolidated FINRA rulebook.

The text of the proposed rule change is available on FINRA's Web site at *http://www.finra.org*, at the principal office of FINRA and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, FINRA included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. FINRA has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

As part of the process of developing a new consolidated rulebook ("Consolidated FINRA Rulebook"),[3] FINRA is proposing to adopt NASD Interpretative Material 1000–1 ("IM–1000–1") (Filing of Misleading Information as to Membership or Registration) as a FINRA rule in the consolidated FINRA rulebook with minor changes discussed below.

NASD IM–1000–1 provides that the filing of membership or registration information as a Registered Representative with FINRA which is incomplete or inaccurate so as to be misleading, or which could in any way tend to mislead, or the failure to correct such filing after notice thereof, may be deemed conduct inconsistent with just and equitable principles of trade and may be subject to disciplinary action.

FINRA proposes to adopt NASD IM–1000–1 as FINRA Rule 1122 as it believes that this rule continues to be an important tool in ensuring that members and persons associated with members provide complete and accurate membership and registration information. FINRA proposes to clarify its applicability to members and persons associated with members by specifying that "no member or person associated with a member" shall file incomplete or misleading membership or registration information. FINRA also proposes to eliminate the reference to the filing of registration information "as a Registered Representative" to clarify that the rule applies to the filing of registration information regarding any category of registration. In addition, FINRA proposes to delete the reference that the prohibited conduct may be deemed inconsistent with just and equitable principles of trade and subject to disciplinary action as unnecessary and to better reflect the proposed adoption of the NASD IM as a stand-alone FINRA rule.

FINRA will announce the implementation date of the proposed rule change in a *Regulatory Notice* to be published no later than 90 days following Commission approval.

2. Statutory Basis

FINRA believes that the proposed rule change is consistent with the provisions of Section 15A(b)(6) of the Act,[4] which requires, among other things, that FINRA rules must be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, and, in general, to protect investors and the public interest. FINRA believes that the proposed rule change helps to ensure the accuracy and completeness of membership and registration information filed with FINRA.

B. Self-Regulatory Organization's Statement on Burden on Competition

FINRA does not believe that the proposed rule change will result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

Written comments were neither solicited nor received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

(A) By order approve such proposed rule change, or

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[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] The current FINRA rulebook consists of (1) FINRA Rules; (2) NASD Rules; and (3) rules incorporated from NYSE ("Incorporated NYSE Rules") (together, the NASD Rules and Incorporated NYSE Rules are referred to as the "Transitional Rulebook"). While the NASD Rules generally apply to all FINRA members, the Incorporated NYSE Rules apply only to those members of FINRA that are also members of the NYSE ("Dual Members"). The FINRA Rules apply to all FINRA members, unless such rules have a more limited application by their terms. For more information about the rulebook consolidation process, *see* FINRA *Information Notice*, March 12, 2008 (Rulebook Consolidation Process).

[4] 15 U.S.C. 78*o*–3(b)(6).

(B) Institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an e-mail to *rule-comments@sec.gov*. Please include File Number SR–FINRA–2009–009 on the subject line.

Paper Comments

- Send paper comments in triplicate to Elizabeth M. Murphy, Secretary, Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–FINRA–2009–009. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room, 100 F Street, NE., Washington, DC 20549, on official business days between the hours of 10 a.m. and 3 p.m. Copies of such filing also will be available for inspection and copying at the principal office of FINRA. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–FINRA–2009–009 and should be submitted on or before April 9, 2009.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[5]

Florence E. Harmon,

Deputy Secretary.

[FR Doc. E9–5929 Filed 3–18–09; 8:45 am]

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[5] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–59566; File No. SR–Phlx–2009–18]

Self-Regulatory Organizations; NASDAQ OMX PHLX, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Relating to Fee Caps on Equity Option Transaction Charges on Dividend, Merger and Short Stock Interest Strategies

March 12, 2009.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")[1], and Rule 19b–4 thereunder,[2] notice is hereby given that on February 24, 2009, NASDAQ OMX PHLX, Inc. ("Phlx" or "Exchange") filed with the Securities and Exchange Commission ("SEC" or "Commission") the proposed rule change as described in Items I, II, and III, below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to make permanent the pilot program for the $1,000 and $25,000 fee caps on equity option transaction charges on dividend,[3] merger,[4] and short stock interest[5] strategies ("Pilot")[6]. This Pilot previously included $1,000 and $25,000 fee caps on transaction and comparison charges on dividend, merger and short stock interest strategies as well as a license fee of $0.05 per contract side imposed on dividend and short stock interest strategies. The comparison charges as well as a license fee of $0.05 per contract side were subsequently eliminated.[7] Other than requesting to make the Pilot permanent, no other changes to the Exchange's current dividend, merger and short stock interest strategy program are being proposed at this time.

The text of the proposed rule change is available on the Exchange's Web site at *http://www.nasdaqtrader.com/micro.aspx?id=PHLXRulefilings*, at the principal office of the Exchange, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

Currently, the Exchange imposes a fee cap on equity option transaction charges on dividend, merger and short stock interest strategies executed on the same trading day in the same options class. Specifically, Registered Options Trader ("ROT") and specialist net equity option

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] For purposes of this proposal, the Exchange defines a "dividend strategy" as transactions done to achieve a dividend arbitrage involving the purchase, sale and exercise of in-the-money options of the same class, executed prior to the date on which the underlying stock goes ex-dividend. *See e.g.*, Securities Exchange Act Release No. 54174 (July 19, 2006), 71 FR 42156 (July 25, 2006) (SR–Phlx–2006–40).

[4] For purposes of this proposal, the Exchange defines a "merger strategy" as transactions done to achieve a merger arbitrage involving the purchase, sale and exercise of options of the same class and expiration date, executed prior to the date on which shareholders of record are required to elect their respective form of consideration, *i.e.*, cash or stock. *Id.*

[5] For purposes of this proposal, the Exchange defines a "short stock interest strategy" as transactions done to achieve a short stock interest arbitrage involving the purchase, sale and exercise of in-the-money options of the same class. *Id.*

[6] The current fee caps are in effect as a pilot program that is scheduled to expire on March 1, 2009. *See* Securities Exchange Act Release No. 57420 (March 3, 2008), 73 FR 12790 (March 10, 2008) (SR–Phlx–2008–16).

[7] *See* Securities Exchange Act Release Nos. 59243 (January 13, 2009), 74 FR 4272, (January 23, 2009) (SR–Phlx–2008–86) (eliminating the comparison charge); 58772 (October 10, 2008), 73 FR 63037 (October 22, 2008) (SR–Phlx–2008–72) (eliminating reference to the $ 0.05 per contract side license fee for dividend strategies and short stock interest strategies).

transaction charges are capped at $1,000 for dividend, merger and short stock interest strategies executed on the same trading day in the same options class.[8] In addition, there is a $25,000 per member organization fee cap on equity option transaction charges incurred in one month for dividend, merger and short stock interest strategies combined. The purpose of making the Pilot permanent for the fee caps on equity option transaction charges on dividend, merger and short stock interest strategies is to continue to attract additional liquidity to the Exchange and to remain competitive with other options exchanges in connection with these types of options strategies.

The Exchange's Pilot also included fee caps on comparison charges on dividend, merger and short stock interest strategies, however the comparison charges were eliminated by a previous rule filing.[9] Additionally, the Pilot also included a license fee of $0.05 per contract side imposed on dividend and short stock interest strategies, which was also eliminated by a previous rule filing.[10]

2. Statutory Basis

The Exchange believes that its proposal to amend its schedule of fees is consistent with Section 6(b) of the Act[11] in general, and furthers the objectives of Section 6(b)(4) of the Act[12] in particular, in that it is an equitable allocation of reasonable fees and other charges among Exchange members. The Exchange believes that its proposal to make the Pilot permanent is beneficial to its members by providing additional trading opportunities at an efficient cost.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments were either solicited or received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change has become effective pursuant to Section 19(b)(3)(A)(ii) of the Act[13] and paragraph (f)(2) of Rule 19b–4[14] thereunder. At any time within 60 days of the filing of the proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Ccomments

• Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or

• Send an e-mail to *rule-comments@sec.gov*. Please include File Number SR–Phlx–2009–18 on the subject line.

Paper Comments

• Send paper comments in triplicate to Elizabeth M. Murphy, Secretary, Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–Phlx–2009–18. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room, 100 F Street, NE., Washington, DC 20549, on official business days between the hours of 10 a.m. and 3 p.m. Copies of the filing will also be available for inspection and copying at the principal office of the self-regulatory organization. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–Phlx–2009–18 and should be submitted on or before April 9, 2009.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[15]

Florence E. Harmon,

Deputy Secretary.

[FR Doc. E9–5930 Filed 3–18–09; 8:45 am]

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–59562; File No. SR–NYSEArca–2009–20]

Self-Regulatory Organizations; NYSE Arca, Inc.; Notice of Filing of Proposed Rule Change Relating to the Listing and Trading of the Safety First Trust Certificates Linked to the S&P 500® Index

March 12, 2009.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (the "Act")[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on March 6, 2009, NYSE Arca, Inc. ("NYSE Arca" or "Exchange") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange, through its wholly-owned subsidiary NYSE Arca Equities, Inc. ("NYSE Arca Equities" or the "Corporation"), proposes to list under NYSE Arca Equities Rule 5.2(j)(7) ("Trust Certificates") Safety First Trust Series 2009–1, Principal-Protected Trust Certificates Linked to the S&P 500® Index. The text of the proposed rule change is available on the Exchange's Web site at *http://www.nyse.com*, at the

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[8] *Id.*

[9] *See* footnote 7.

[10] *See* footnote 7.

[11] 15 U.S.C. 78f(b).

[12] 15 U.S.C. 78f(b)(4).

[13] 15 U.S.C. 78s(b)(3)(A)(ii).

[14] 17 CFR 240.19b–4(f)(2).

[15] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

Exchange's principal office and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of those statements may be examined at the places specified in Item 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

Trust Certificates are certificates representing an interest in a special purpose trust created pursuant to a trust agreement. The trust only issues Trust Certificates, which may or may not provide for the repayment of the original principal investment amount. The sole purpose of the trust is to invest the proceeds from its initial public offering to provide for a return linked to the performance of specified assets and to engage only in activities incidental to these objectives. Trust Certificates pay an amount at maturity based upon the performance of an underlying index or indexes of equity securities an ("Equity Index Reference Asset"); instruments that are direct obligations of the issuing company, either exercisable throughout their life (*i.e.*, American style) or exercisable only on their expiration date (*i.e.*, European style), entitling the holder to a cash settlement in U.S. dollars to the extent that the foreign or domestic index has declined below (for a put warrant) or increased above (for a call warrant) the pre-stated cash settlement value of the index ("Index Warrants"); or a combination of two or more Equity Index Reference Assets or Index Warrants, as set forth in Rule 5.2(j)(7).

The Exchange proposes to list under Rule 5.2(j)(7) the Safety First Trust Series 2009–1, Principal-Protected Trust Certificates Linked to the S&P 500® Index ("Certificates").[3] According to the Registration Statement, the Certificates are preferred securities of Safety First Trust Series 2009–1 ("Trust") and will mature on a specified date in 2014 ("Maturity Date").[4] Investors will receive at maturity for each certificate held intact (that is, that has not been exchanged by the holder, as described below) an amount in cash equal to $10 plus a "Supplemental Distribution Amount," which may be positive or zero. The Supplemental Distribution Amount will be based on the percentage change of the value of the S&P 500 Index ("Index") during the term of the Certificates. The Supplemental Distribution Amount for each Certificate will equal the product of (a) $10, (b) the percentage change in the value of the Index and (c) the Participation Rate, which is 90%–100%,[5] provided that the Supplemental Distribution Amount will not be less than zero.[6]

A holder of the Certificates has an interest in two separate securities—equity index participation securities ("Securities") and equity index warrants ("Warrants") of Citigroup Funding Inc.[7] The assets of the Trust will consist of the Securities and the Warrants. Beginning on the date the Certificates are issued and ending one business day prior to the Valuation Date,[8] a holder can exercise an "exchange right." A holder can exercise the exchange right by providing notice to his or her broker and instructing the broker to forward that notice to the institutional trustee for the Certificates (U.S. Bank National Association), on any business day, to exchange the Certificates the investor holds for a pro rata portion of the assets of the Trust, which consist of the Securities and the Warrants. According to the Registration Statement, such holders will lose the benefit of principal protection at maturity, and this could result in their receiving substantially less than the amount of the original investment in the Certificates. In order to exercise the exchange right, the investor's account must be approved for options trading.[9]

The Securities will mature on the Maturity Date. At maturity, each Security will pay a "Security Payment" equal to $10 plus a "Security Return Amount," which could be positive, zero or negative. If the value of the Index on the Valuation Date is greater than its value on the pricing date, the Security Return Amount for each Security will equal the product of (a) $10, (b) the percentage increase in the Index and (c) the Participation Rate, which equals 90%–100% (*e.g.*, assuming a Participation Rate of 90%, if the Index rises 30%, the Security Return Amount would be $2.70 ($10 times 0.30 times 0.90), and the Security Payment would be $12.70 ($10 plus $2.70)).

If the value of the Index on the Valuation Date is less than or equal to its value on the pricing date, the Security Return Amount for each security will equal the product of (a) $10 and (b) the percentage decrease in the Index. Thus, because the holder's participation in the depreciation of the S&P 500 is not limited by the Participation Rate, if the value of the Index on the Valuation Date is less than its value on the pricing date, investors will participate fully in the depreciation of the Index (*e.g.*, if the Index falls 30%, the Security Return Amount would be $3.00 ($10 times 0.30) and the Security Payment would be $7.00 ($10 minus $3.00). The Security Return Amount will be used only for the purpose of determining the Security Payment for the Securities and is different from the Supplemental Distribution Amount used in determining the maturity payment on the Certificates.

The Warrants will be automatically exercised on the Maturity Date. If the value of the Index increases or does not change, the Warrants will pay zero. If the value of the Index decreases, the warrants will pay a positive amount equal to the product of (a) $10 and (b) the percentage decrease in the value of the Index.

The Certificates are similar to securities previously approved by the Commission for listing on the Exchange, including Trust Certificates issued by Citigroup Funding, Inc. based on the Index.[10] At least one million publicly

[3] *See* the Registration Statement for Safety First Trust Series 2009–1, dated October 31, 2008 (Nos. 333–154914, 154914–08, 154914–11); Registration Statement for Safety First Trust Series 2009–1, dated February 19, 2009 (Nos. 333–157386 and 333–157386–01) ("Registration Statements").

[4] The Certificates will be subject to acceleration to an earlier Maturity Date upon one of the acceleration events described in the Registration Statements.

[5] The Participation Rate will be determined at the time of issuance of the Certificates.

[6] The Trust payments will not be guaranteed pursuant to a financial guaranty insurance policy.

[7] The Securities and Warrants will not be exchange-listed and may trade over-the-counter.

[8] Capitalized terms used but not defined herein have the meanings set forth in the Registration Statements.

[9] *See* NYSE Arca Equities Rule 5.2(j)(7). Commentary .08.

[10] *See* Securities Exchange Act Release No. 59051 (December 4, 2008), 73 FR 75155 (December 10, 2008) (SR–NYSEArca–2008–123) (order approving Rule 5.2(j)(7) and listing on the Exchange of 14 issues thereunder). Three of the issues in SR–NYSEArca–2008–123 related to Trust Certificates based on the Index: Safety First Investments TIERS® Principal-Protected Minimum Return Trust Certificates, Series S&P 2003–23; Safety First Trust Series 2008–2 Principal-Protected Trust Certificates Linked to the Index; and Safety First Trust Series 2008–4 Principal-Protected Trust Certificates Linked to the Index. The Certificates have similar characteristics and payout provisions to the Trust

Continued

held trading units will be issued prior to listing and trading on the Exchange, with at least 400 public beneficial holders. The issuer of the Certificates, Citigroup Funding, Inc., has total assets of at least $100 million and net worth of at least $10 million. In addition, the issuer will be required to have a minimum tangible net worth of $250,000,000, and, in the alternative, the issuer will be required to have a minimum tangible net worth of $150,000,000 and the original issue price of the Certificates combined with all of the issuer's other Trust Certificates listed on a national securities exchange or otherwise publicly traded in the United States, must not be greater than 25 percent of the issuer's tangible net worth at the time of issuance.[11] The Certificates also will be subject to the continued listing criteria of Rule 5.2(j)(7)[12] and will meet all other criteria of Rule 5.2(j)(7).

Additional information relating to Citigroup Funding, Inc., the Trust, Certificates, Securities, Warrants, exercise right, Security Return Amount, Supplemental Distribution Amount, and risks is included in the Registration Statements.

Exchange Rules Applicable to Trust Certificates

The Certificates will be subject to all Exchange rules governing the trading of equity securities. The Exchange's equity margin rules will apply to transactions in Trust Certificates. The Certificates will trade during trading hours set forth in Rule 7.34(a).[13]

Trading Halts

With respect to trading halts, the Exchange may consider all relevant factors in exercising its discretion to halt or suspend trading in Trust Certificates. Trading may be halted because of market conditions or for reasons that, in the view of the Exchange, make trading in Trust Certificates inadvisable. These may include: (1) The extent to which trading is not occurring in the underlying securities; or (2) whether other unusual conditions or circumstances detrimental to the maintenance of a fair and orderly market are present.[14]

Information Dissemination

The value of the Index is calculated and disseminated on at least a 15-second basis. If the Index is not being disseminated as required, the Exchange may halt trading during the day on which the interruption first occurs. If such interruption persists past the trading day in which it occurred, the Exchange will halt trading no later than the beginning of the trading day following the interruption.

Quotation and last sale information will be disseminated by the Exchange via the Consolidated Tape. The value of the Index is widely disseminated by major market data vendors and financial publications.

Firewalls

Standard & Poor's ("S&P"),[15] which publishes the Index, is not a registered broker-dealer, and Citigroup Funding, Inc. is not affiliated with S&P. With respect to any index upon which the value of an issue of Trust Certificates is based that is maintained by a broker-dealer, the Exchange would require that such broker-dealer erect a "firewall" around personnel responsible for the maintenance of such index or who have access to information concerning adjustments to the index, and the index would be required to be calculated by a third party who is not a broker-dealer.

Surveillance

The Exchange intends to utilize its existing surveillance procedures applicable to derivative products, which include Trust Certificates, to monitor trading in the securities. The Exchange represents that these procedures are adequate to properly monitor Exchange trading of the securities in all trading sessions and to deter and detect violations of Exchange rules and applicable Federal securities laws.

The Exchange's current trading surveillance focuses on detecting when securities trade outside their normal patterns. When such situations are detected, surveillance analysis follows and investigations are opened, where appropriate, to review the behavior of all relevant parties for all relevant trading violations.

The Exchange may obtain information via ISG from other exchanges who are members of the ISG.[16]

In addition, the Exchange also has a generally policy prohibiting the distribution of material, non-public information by its employees.

Information Bulletin

Prior to the commencement of trading, the Exchange will inform its ETP Holders in an Information Bulletin of the special characteristics and risks associated with trading an issue of Trust Certificates and suitability recommendation requirements.

Specifically, the Information Bulletin will discuss the following: (1) The procedures for purchases and exchanges of Trust Certificates; (2) NYSE Arca Equities Rule 9.2(a), which imposes a duty of due diligence on its ETP Holders to learn the essential facts relating to every customer prior to trading an issue of Trust Certificates; (3) trading hours; and (4) trading information.

In addition, the Information Bulletin will reference that an issue of Trust Certificates is subject to various fees and expenses described in the applicable prospectus.

2. Statutory Basis

The proposed rule change is consistent with Section 6(b)[17] of the Act in general and furthers the objectives of Section 6(b)(5)[18] in particular in that it is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transaction in securities, and, in general to protect investors and the public interest. The proposed rule change will permit listing on the Exchange in a timely manner of the

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Certificates approved by the Commission in SR–NYSEArca–2008–123.

[11] The parameters relating to number of units, number of public beneficial holders and issuer assets and net worth and minimum tangible net worth are similar to those in NYSE Arca Equities Rule 5.2(j)(6)(A).

[12] Commentary .01 provides criteria for continued listing and provides that the Corporation will commence delisting or removal proceedings with respect to an issue of Trust Certificates (unless the Commission has approved the continued trading of such issue) (i) if the aggregate market value or the principal amount of the securities publicly held is less than $400,000; (ii) if the value of the index or composite value of the indexes is no longer calculated or widely disseminated on at least a 15-second basis with respect to indexes containing only securities listed on a national securities exchange, or on at least a 60-second basis with respect to indexes containing foreign country securities; or (iii) if such other event shall occur or condition exists which in the opinion of the Corporation makes further dealings on the Corporation inadvisable.

[13] Pursuant to NYSE Arca Equities Rule 7.34(a), the NYSE Arca Marketplace will have three trading sessions each day the Corporation is open for business unless otherwise determined by the Corporation:

Opening Session—begins at 1:00:00 a.m. (Pacific Time) and concludes at the commencement of the Core Trading Session. The Opening Auction and the Market Order Auction shall occur during the Opening Session.

Core Trading Session—begins for each security at 6:30:00 a.m. (Pacific Time) or at the conclusion of the Market Order Auction, whichever comes later, and concludes at 1:00:00 p.m. (Pacific Time).

Late Trading Session—begins following the conclusion of the Core Trading Session and concludes at 5:00:00 p.m. (Pacific Time).

Telephone conversation between Michael Cavalier, Chief Counsel, NYSE Euronext, and Edward Cho, Special Counsel, Division of Trading and Markets, Commission, dated March 11, 2009.

[14] *See* NYSE Arca Equities Rule 7.12, Commentary .04.

[15] S&P is a division of The McGraw-Hill Companies, Inc.

[16] For a list of current members of the ISG, *see http://www.isgportal.org.*

[17] 15 U.S.C. 78f(b).

[18] 15 U.S.C. 78f(b)(5).

Certificates. The Exchange believes that the provisions of Rule 5.2(j)(7), together with the Exchange's applicable surveillance, serve to foster investor protection and the public interest.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

No written comments were solicited or received with respect to the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the Exchange consents, the Commission will:

(A) By order approve the proposed rule change, or

(B) institute proceedings to determine whether the proposed rule change should be disapproved.

The Exchange has requested accelerated approval of this proposed rule change prior to the 30th day after the date of publication of the notice in the **Federal Register**. The Commission is considering granting accelerated approval of the proposed rule change at the end of a 21-day comment period.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form *(http://www.sec.gov/rules/sro.shtml)*; or
- Send an e-mail to *rule-comments@sec.gov*. Please include File No. SR–NYSEArca–2009–20 on the subject line.

Paper Comments

- Send paper comments in triplicate to Elizabeth M. Murphy, Secretary, Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–NYSEArca–2009–20. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site *(http://www.sec.gov/rules/sro.shtml)*. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room, on official business days between the hours of 10 a.m. and 3 p.m. Copies of 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–NYSEArca–2009–20 and should be submitted on or before April 9, 2009.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[19]

Florence E. Harmon,

Deputy Secretary.

[FR Doc. E9–5928 Filed 3–18–09; 8:45 am]

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[19] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–59569; File No. SR–FICC–2009–03]

Self-Regulatory Organizations; The Fixed Income Clearing Corporation; Notice of Filing of Proposed Rule To Impose a Charge on Members With a Fail-to-Deliver in Treasury Securities

March 12, 2009.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),[1] notice is hereby given that on February 25, 2009, The Fixed Income Clearing Corporation ("FICC") filed with the Securities and Exchange Commission ("Commission") proposed rule change No. SR–FICC–2009–03, which is described in Items I, II, and III below and have been prepared primarily by the FICC. The Commission is publishing this notice to solicit comments from interested parties on the proposed rule change as.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The proposed rule change will impose a charge on members with a fail-to-deliver position in treasury securities.[2]

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, FICC 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. FICC has prepared summaries, set forth in sections (A), (B), and (C) below, of the most significant aspects of these statements.[3]

(A) Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The Treasury Markets Practices Group ("TMPG"), a group of market participants active in the treasury securities market that is sponsored by the Federal Reserve Bank of New York (the "FRBNY"), has been in the process of devising ways to address the persistent settlement fails in treasury securities transactions that have arisen, according to the TMPG, due to the recent market turbulence and low short-term interest rates. In order to encourage market participants to resolve fails promptly, the TMPG has proposed for adoption a "best practice" that would call for the market-wide assessment of a charge on fail-to-deliver positions. As part of this implementation of this "best practice," the TMPG has asked the Government Securities Division of FICC ("GSD") to impose this charge on failed positions involving treasury securities within FICC.

[1] 15 U.S.C. 78s(b)(1).

[2] The exact text of the FICC's proposed rule change can be found in Attachment 1 of this filing or at *http://www.dtcc.com/downloads/legal/rule_filings/2009/ficc/2009–03.pdf*.

[3] The Commission has modified portions of the text of the summaries prepared by the FICC.

The proposed charge will be equal to the product of net money due on the failed position and three (3) percent per annum minus the Target Fed funds target rate that is effective at 5 p.m. Eastern Standard Time on the business day prior to the originally scheduled settlement date and will be capped at three (3) percent per annum. The charge will be applied daily and will be a debit on the member's GSD monthly bill for a fail-to-deliver position and a credit on the member's GSD monthly bill for those with fail-to-receive position.

The following example illustrates the manner in which the proposed fails charge would apply:

Member A fails to deliver today on a $50 million position on which he is owed $50.1 million. The Target Fed funds rate yesterday at 5 p.m. was one (1) percent. The fails charge will be two (2) percent per annum and will be applied to the funds amount of $50.1 million, thus equaling a charge of $2,783.33 for that day. The bill of the member failing to deliver will reflect a debit of $2,783.33.

In the event that FICC is the failing party because, for example, it received securities too close to the close of the Fedwire for redelivery, the fail charge will be distributed pro rata to the netting members based upon usage of the GSD's services, which is the same methodology that is used when FICC incurs finance charges.[4]

The proposed rule change provides that the Credit and Market Risk Management Committee of FICC's Board of Directors will retain the right to revoke application of the charge if industry events or practices warrant such revocation.

2. Statutory Basis

FICC believes the proposed rule change is consistent with the requirements of Section 17A of the Act, as amended,[5] and the rules and regulations thereunder because the proposed rule change will promote the prompt and accurate clearance and settlement of securities transactions by discouraging persistent fails-to-deliver in treasury securities and thereby not adversely affecting the safeguarding of securities or funds in FICC's control or for which it is responsible.

(B) Self-Regulatory Organization's Statement on Burden on Competition

FICC does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

(C) Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

FICC has neither solicited nor received written comments on the proposed rule change. FICC will notify the Commission of any written comments received by FICC.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within thirty-five days of the date of publication of this notice in the **Federal Register** or within such longer period: (i) As the Commission may designate up to ninety days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

(A) By order approve such proposed rule change or

(B) Institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

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–FICC–2009–03 in 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–FICC–2009–03. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section, 100 F Street, NE., Washington, DC 20549, on official business days between the hours of 10 a.m. and 3:30 p.m. Copies of such filings also will be available for inspection and copying at the principal office of the FICC and on the FICC's Web site, *http://www.ficc.com*. 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–FICC–2009–03 and should be submitted on or before April 9, 2009.

For the Commission by the Division of Trading and Markets, pursuant to delegated authority.[6]

Florence E. Harmon,

Deputy Secretary.

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[4] FICC Rules, Section 6 of Rule 12.

[5] 15 U.S.C. 78q–1.

[6] 17 CFR 200.30–3(a)(12).

ATTACHMENT 1

Underlined, boldface text indicates additional language
Bracketed, boldface text indicates deleted language

GOVERNMENT SECURITIES DIVISION RULEBOOK

RULE 11 – NETTING SYSTEM

Section 14 – Fails Charge

If a Netting Member does not satisfy a Deliver Obligation of Treasury securities on a particular Business Day, the Corporation shall apply a debit charge on the funds amount associated with the Netting Member's failed position (the "fails charge"). If a Netting Member fails to receive Securities representing its Receive Obligation of Treasury securities on a particular Business Day, the Corporation shall credit the Member in the amount of the fails charge.

The fails charge shall be the product of the (i) funds associated with a failed position and (ii) 3 percent per annum minus the Target Fed funds target rate that is effective at 5 p.m. EST on the Business Day prior to the originally scheduled settlement date, capped at 3 percent per annum.

In the event that the Corporation is the failing party because the Corporation received Securities too near the close of Fedwire for redelivery or for any other reason, the fail charge will be distributed pro rata to the Netting Members based upon usage of the Government Securities Division's services.

At the end of each calendar month, the Corporation shall accrue a Netting Member's debits and credits and the resulting amount (either a debit or credit) shall be included in the Member's monthly bill.

The Board shall have the right, in its sole discretion, to revoke application of the charge if industry events or practices warrant such revocation.

[FR Doc. E9–5978 Filed 3–18–09; 8:45 am]

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–59570; File No. SR–NYSE–2009–28]

Self-Regulatory Organizations; New York Stock Exchange LLC; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change Amending NYSE Rules 13, 902, 903, 904, 905 and Rule 906 To Eliminate Certain Order Types From the Off-Hours Trading Facility

March 12, 2009.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on March 11, 2009, New York Stock Exchange LLC ("NYSE" or "Exchange") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I and II below, which Items have been prepared by the Exchange. NYSE filed the proposed rule change pursuant to Section 19(b)(3)(A) of the Act[3] and Rule 19b–4(f)(6) thereunder,[4] which renders the proposal effective upon filing with the Commission. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to amend NYSE Rules 13 (Definitions of Orders), 902 (Off-Hours Trading Orders), 903 (Off-Hours Transactions), 904 (Priority of Off-Hours Trading Orders), 905 (Off-Hours Trading Reports and Recordkeeping) and Rule 906 (Impact of Trading Halts on Off-Hours Trading) to eliminate certain order types from the off-hours trading facility. The text of the proposed rule change is available at the Exchange, the Commission's Public Reference Room, and *http://www.nyse.com*.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the 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 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

Through this filing, the Exchange seeks to amend NYSE Rules 902, 903, 904 and 906 to remove certain off-hours trading functions from the Exchange's Crossing Session I. The Exchange is making this change in connection with certain technology upgrades it expects to begin rolling out on or about March 16, 2009.

As explained more fully below, customers who previously relied on the trading functions in Crossing Session I that are being eliminated will be able to execute their off-hours trades through the NYSE MatchPoint® system. The Exchange will continue to accommodate certain types of off-hours trading (error offset trades and trades between a member and the DMM for the purpose of offsetting a market-on-close imbalance) in Crossing Session I.

I. Background

The Exchange initiated its Off-Hours Trading Facility in June 1991.[5] In connection with its implementation, the Exchange adopted the "900" series of rules to govern trading, order eligibility, order entry and recordkeeping requirements.

In one application of the Off-Hours Trading Facility, members and member organizations may enter orders to be executed at the NYSE closing price, that is, the price established by the last regular way sale in a security at the official closing of the 9:30 a.m. to 4 p.m. trading session ("Crossing Session I"). Orders may be entered for any Exchange-listed issue, other than a security that is subject to a trading halt at the close of the regular trading session[6] or is halted after 4 p.m. Crossing Session I normally runs from 4:15 p.m. to 5 p.m. on each trading day.

Under Rule 902(a)(i) and (ii)(A) respectively, members may enter single-sided orders (*i.e.*, either an order to buy or an order to sell) and coupled orders (*i.e.*, both a buy and a sell order) into Crossing Session I. In addition, pursuant to Rule 902(b), the Exchange will migrate into Crossing Session I for possible execution any good-til-cancelled ("GTC") orders that have been designated as eligible for execution in the Off-Hours Trading Facility.[7] These types of orders entered into Crossing Session I are usually executed at the end of the Session, *i.e.*, at 5 p.m.

Rules 903 and 904 describe, in pertinent part, how orders that are entered into the off-hours trading facility establish priority, and the execution protocols for such orders. Specifically, Rule 903 provides that single-sided and migrated GTX orders are to be executed against opposite side single-sided and GTX orders in the Off-Hours trading Facility, while coupled orders are to be executed against the other side of the coupled order. Rule 904 provides that GTX orders retain the priority among themselves that existed when they were entered into Display Book®, while the priority of coupled orders will be determined based upon their sequence of entry into the Off-Hours Trading facility.

Rule 905 requires that certain records be maintained by members and member organizations with respect to off-hours trading.

Rule 906 outlines procedures under which Off-Hours Trading Facility orders in an NYSE-listed security may go unexecuted if such security was subject to a trading halt.

II. Proposed Changes to Off-Hours Order Processing and Rule Amendments

The Exchange is preparing to institute a number of technology changes to its systems that will foster more efficient and cost effective processing of orders it receives. As part of these changes, the Exchange is phasing out the SuperDOT® system and will replace it with a system referred to as Super Display Book ("SDBK").

Because the Off-Hours Trading Facility relies on the SuperDOT system for certain trade processing functions, the Exchange plans to eliminate the ability for single-sided, coupled orders and GTX to be entered or migrated into the off-hours trading facility known as

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] 15 U.S.C. 78s(b)(3)(A).

[4] 17 CFR 240.19b–4(f)(6).

[5] *See* Securities Exchange Act Release No. 29237 (May 31, 1991), 56 FR 24853 (June 3, 1991) approving File Nos. SR–NYSE–90–52 and 90–53 which established the NYSE Off-Hours Trading Facility on a pilot basis. *See* also, Securities Exchange Act Release No. 33992 (May 2, 1994), 59 FR 23907 (May 9, 1994) approving the NYSE Off-Hours Trading Facility on a permanent basis.

[6] This includes any market-wide trading halt instituted under Exchange Rule 80B (Trading Halts Due to Extraordinary Market Volatility).

[7] *See* NYSE Rule 13 (Definitions of Orders). GTC orders that have been designated as "Off-Hours Eligible" under this rule are referred to as "GTX orders."

Crossing Session I, and to instead direct customers to use the NYSE's MatchPoint system to effect those types of trades. Accordingly, the Exchange is proposing to amend Rules 902, 903, 905 and 906 and to rescind Rule 904 in its entirety to remove the provisions that relate to closing price single-sided, coupled and GTX orders. The Exchange also proposes to amend Rule 13 to remove provisions relating to GTX orders as these will no longer be supported by Exchange systems.

1. Proposed Amendments

a. Rule 13 (Definitions of Orders)

When the Exchange created its Off-Hours Trading Facility, it decided to provide a means for good-til-cancelled (GTC) orders to become automatically eligible for execution in this facility if the person or entity who had entered the GTC order so desired. This would then provide a possible source of liquidity to the Off-Hours Trading Facility, and could increase a GTC order's chance of being executed since it could access additional liquidity that was entered into the Off-Hours Trading Facility that was not available during the Exchange's regular trading session. At the same time, the Exchange provided that the GTC orders designated to migrate to the Off-Hours Trading Facility would return to the Display Book, and retain their original priority on Display Book, if not executed in the Off-Hours Trading Facility. This would provide a further incentive to migrate GTC orders since they would not lose their standing on the Display Book as a result of the migration.

The language indicating that a good-til-cancelled order may be designated as "Off-Hours eligible" and executed through the "Off-Hours Trading Facility" is proposed for deletion as this order type is being eliminated. The Exchange also proposes to add language to the definition of the good-til-cancelled order type to indicate that these orders are not eligible for execution in any Off-Hours Trading Facility of the Exchange.

b. Rule 902 (Off-Hours Trading Orders)

The Exchange proposes to delete paragraph (a)(i) (Closing-Price Orders) and paragraph (a)(ii)(A) (Closing-Price Coupled Orders) in their entirety to eliminate these as order types eligible for entry and execution in the Off-Hours Trading Facility.[8] Paragraph (b) (Migration of Orders) is also proposed to be deleted to reflect the elimination of GTX, as that paragraph explains the migration of GTC orders from the regular hours trading session to the Off-Hours Trading Session. Paragraph (d) is proposed to be deleted since it explains that a migrated order (*i.e.*, a GTX order) or a closing price order may be cancelled before execution. Paragraph (e) (Disposition of Unexecuted Orders) is proposed for deletion as it relates to migration of unexecuted GTX orders back to the Display Book if they are not executed in the Off-Hours Trading Facility, and to the fact that unexecuted closing-price orders expire if unexecuted in the Off-Hours trading Facility. References to closing-price orders and paragraphs (a)(ii) and (b) are proposed for deletion in paragraph (g) (Odd-Lots and Partial Round Lots).

c. Rule 903 (Off-Hours Transactions)

Paragraph (a) (Priority of Single-Sided Orders) is proposed for deletion as it relates solely to this order type, which is being eliminated. In paragraphs (b) (Priority of Coupled Orders) and (c) (Binding Nature), references to closing-price, paragraph (a)(ii) of Rule 902 and paragraph (a) of Rule 903 are proposed for deletion as they will no longer be valid references. References to single-sided and coupled closing-price orders in (d) (Executions of Orders) are also proposed for deletion.

d. Rule 904 (Priority of Off-Hours Trading Orders)

The Exchange proposes to delete this rule entirely. Rule 904 (Priority of Off-Hours Trading Orders) relates to the priority of GTX among themselves as existed when these orders were on the Display Book, and the priority of closing-price orders entered into the Off-Hours Trading Facility.

e. Rule 905 (Off-Hours Trading Reports and Recordkeeping)

A reference to closing price and migrated orders is proposed for deletion in paragraph (b) (Off-Hours Trading Records) of this rule.

f. Rule 906 (Impact of Trading Halts on Off-Hours Trading)

Paragraph (a) (Security Halts Prior to Off-Hours Trading) is proposed to be deleted in its entirety as it relates to closing-price and migrated orders, which are both being eliminated. Paragraph (b) (Corporate Developments during Off-Hours Trading Session) of the rule establishes the Exchange's ability to halt trading in a security during the time it is open for Off-Hours Trading as a result of a corporate development. The Exchange proposes to delete subparagraphs (i), (ii) and (iii), which relate to closing-price and migrated GTC orders since they are being eliminated. The provision in the rule relating the permissibility of entry or the exemption from cancellation for closing price orders entered by Designated Market Makers ("DMMs") in stocks that would otherwise be cancelled or prohibited from entry as a result of corporate developments to offset all or part of a market-on-close imbalance that existed in a stock prior to the close of the Exchange's regular trading session is being retained.[9] In these instances, the DMM and the member organization taking the other side have already agreed to trade in the stock at the closing price and this agreement is not affected by the ensuing corporate development. The Exchange is therefore proposing to add the phrase "as a result of corporate developments during the Off-Hours Trading Session" to paragraph (b) to complete the last sentence of the paragraph.

2. Availability of MatchPoint for Off-Hours Trading

In the Exchange's view these changes will not significantly affect the experience of customers who would have previously submitted orders to Crossing Session I for execution since similar functionality exists in the MatchPoint system. MatchPoint is an NYSE electronic equity-trading facility that matches aggregated orders at predetermined fixed times with prices that are derived from primary markets. There are seven matching sessions at fixed times throughout the trading day, and, of particular relevance to this filing, an after-hours matching session at 4:45 p.m.

Orders in MatchPoint are executed at a single trading price (known as the "reference price") that, for the 4:45 match is equal to the NYSE official closing price for NYSE-listed securities and the official closing price of the primary market for all non-NYSE-listed securities.[10] Customers who previously executed single-sided and coupled trades through Crossing Session I at the NYSE's official closing price can submit single-sided and coupled orders for execution through MatchPoint.

[8] The Exchange is retaining the Aggregate-Price Coupled Order type, as defined in Rule 900 (Off-Hours Trading: Applicability and Definitions), paragraph (e)(i). This order type is specified for coupled buy and sell orders representing 15 or more securities having a total market value of $1 million or more. These orders are entered and executed in Crossing Session II.

[9] These types of orders are entered pursuant to Rule 902(a)(ii)(B).

[10] *See*, generally, NYSE Rule 1500 (NYSE MatchPoint℠) and Securities Exchange Act Release No. 57058 (December 28, 2007), 73 FR 903 (January 4, 2008) approving adoption of that rule.

It should be noted that certain other order types allowed under Rule 902 will not be affected by the proposed changes, although after the phase-out, the Exchange will process these trades on a different system instead of through SuperDOT. In particular, Rule 902(a)(ii)(C) permits a coupled order to be submitted in Crossing Session I to address situations where a member or member organization wishes to close out an error at the closing price on the Exchange, and the Designated Market Maker has agreed to take the other side of the error trade. NYSE Rule 902(a)(ii)(B) permits entry of coupled orders when one side of such coupled order is for the account of a specialist member organization entered in those instances in which the coupled order reflects contra side interest to offset an imbalance of market-on-close orders [11] that existed at the regular 4 p.m. close. The Exchange is not deleting these provisions from its rules, and member organizations will continue to be able to execute these trades in the same manner that they do today.

2. Statutory Basis

The Exchange believes that its proposal is consistent with Section 6(b) of the Act,[12] in general, and furthers the objectives of Section 6(b)(5) of the Act,[13] in particular, in that it is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest. The Exchange believes the proposed rule change will facilitate the timely and efficient execution of securities on the Exchange by eliminating the use of an under-utilized order types and thus ultimately serve to protect investors and the public interest.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments were solicited or received with respect to the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Because the foregoing proposed rule change: (1) Does not significantly affect the protection of investors or the public interest; (2) does not impose any significant burden on competition; and (3) by its terms does not become operative for 30 days after the date of this filing, or such shorter time as the Commission may designate if consistent with the protection of investors and the public interest, the proposed rule change has become effective pursuant to Section 19(b)(3)(A) [14] of the Act and subparagraph (f)(6) of Rule 19b–4 [15] thereunder.

A proposed rule change filed under Rule 19b–4(f)(6) normally does not become operative for 30 days after the date of filing. However, Rule 19b–4(f)(6)(iii) permits the Commission to designate a shorter time if such action is consistent with the protection of investors and the public interest. The Exchange requests that the Commission waive the 30-day operative delay so that the Exchange can implement a number of technology changes to its system related to off-hours trading immediately. The Exchange states that the proposed rule change does not significantly affect the protection of investors or the public interest and does not impose any significant burden on competition. NYSE believes that the proposed rule change is non-controversial in that it serves to allow the Exchange to merely eliminate duplicate functions with respect to entry of off-hours orders.

The Commission believes that waiving the 30-day operative delay is consistent with the protection of investors and the public interest.[16] Because customers who previously relied on trading functions in Crossing Session I will be able to execute their off-hours trades through the NYSE MatchPoint® system, the elimination of such functionality within the Exchange's system does not appear to present any novel or significant regulatory issues or impose any significant burden on competition. For these reasons, the Commission designates the proposed rule change as operative upon filing.

At any time within 60 days of the filing of the proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an e-mail to *rule-comments@sec.gov*. Please include File Number SR–NYSE–2009–28 on the subject line.

Paper Comments

- Send paper comments in triplicate to Elizabeth M. Murphy, Secretary, Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR-NYSE–2009–28. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room, 100 F Street, NE., Washington,

[11] A "market-on-close order is a market" order which is to be executed in its entirety at the closing price, on the Exchange, of the stock named in the order, and if not so executed, is to be treated as cancelled. *See* NYSE Rule 13.

[12] 15 U.S.C. 78f(b).

[13] 15 U.S.C. 78f(b)(5).

[14] 15 U.S.C. 78s(b)(3)(A).

[15] 17 CFR 240.19b–4(f)(6). In addition, Rule 19b–4(f)(6)(iii) requires a self-regulatory organization to provide the Commission with written notice of its intent to file the proposed rule change, along with a brief description and text of the proposed rule change, at least five business days prior to the date of filing of the proposed rule change, or such shorter time as designated by the Commission. The Exchange has satisfied this requirement.

[16] For purposes only of waiving the 30-day operative delay, the Commission has also considered the proposed rule's impact on efficiency, competition, and capital formation. *See* 15 U.S.C. 78c(f).

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–NYSE–2009–28 and should be submitted on or before April 9, 2009.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[17]

Florence E. Harmon,

Deputy Secretary.

[FR Doc. E9–5931 Filed 3–18–09; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–59575; File No. SR–NYSEALTR–2009–24]

Self-Regulatory Organizations; NYSE Alternext U.S. LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Amending Certificate of Formation, Amended and Restated Operating Agreement, Rules, and Company Guide To Change the Name of the Exchange to NYSE Amex LLC

March 13, 2009.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on March 3, 2009, NYSE Alternext U.S. LLC ("NYSEALTR" 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 NYSEALTR. The Exchange has designated this proposal as one concerned solely with the administration of the Exchange pursuant to Section 19(b)(3)(A)(iii) of the Act[3] and Rule 19b–4(f)(3) thereunder,[4] which renders the proposal effective upon filing with the Commission. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to amend its Certificate of Formation, Amended and Restated Operating Agreement, Rules, and Company Guide to change the name of the Exchange to NYSE Amex LLC.

The text of the proposed rule change is available at NYSE Alternext, the Commission's Public Reference Room, and *http://www.nyse.com.*

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, NYSEALTR 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. NYSEALTR has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The purpose of this proposed rule change is to change the name of the Exchange to "NYSE Amex LLC." At the time of the acquisition of the American Stock Exchange LLC ("Amex") by NYSE Euronext on October 1, 2008, the name of the Exchange, as the successor entity to Amex, was initially established as "NYSE Alternext U.S. LLC." After further analysis following the acquisition, the Exchange has determined that for branding purposes it would be desirable to retain some reference to the historic Amex exchange in the name of the Exchange.

Specifically, the Certificate of Formation of the Exchange shall be amended to remove all references to "NYSE Alternext U.S. LLC" and replace them with "NYSE Amex LLC." The Amended and Restated Operating Agreement of NYSE Alternext U.S. LLC shall again be amended and restated to become the Amended and Restated Operating Agreement of NYSE Amex LLC, with the word "Company" to be redefined to represent "NYSE Amex LLC" and ARTICLE I, Section 1.01 to be revised to state the name of the limited liability company as "NYSE Amex LLC." In the Exchange's Rules and its Company Guide, all references to "Alternext" or "Alternext US" will be replaced with the word "Amex." None of the foregoing changes are substantive. Two minor non-substantive corrections to the lettering format in one rule will also be made.

2. Statutory Basis

The Exchange believes the proposed rule change is consistent with Section 6(b)[5] of the Securities Exchange Act of 1934 (the "Act"), in general, and furthers the objectives of Section 6(b)(5)[6] in particular in that it is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in facilitating transactions in securities, to remove impediments to and perfect the mechanism of a free and open market and a national market system and, in general, to protect investors and the public interest. More specifically, changing the name of the Exchange to include a reference to the historic Amex exchange may help eliminate potential confusion among investors and assist in clarifying for them the role of the Exchange in the marketplace and the types of companies whose securities are listed here.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

No written comments were solicited or received with respect to the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Because the foregoing proposed rule change is concerned solely with the administration of the Exchange, it has become effective pursuant to Section 19(b)(3)(A) of the Act[7] and subparagraph (f)(3) of Rule 19b–4 thereunder.[8] At any time within 60 days of the filing of the proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public

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[17] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] 15 U.S.C. 78s(b)(3)(A)(iii).

[4] 17 CFR 240.19b–4(f)(3).

[5] 15 U.S.C. 78f(b).

[6] 15 U.S.C. 78f(b)(5).

[7] 15 U.S.C. 78s(b)(3)(A).

[8] 17 CFR 240.19b–4(f)(3).

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–NYSEALTR–2009–24 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–NYSEALTR–2009–24. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room, 100 F Street, NE., Washington, DC 20549, on official business days. between the hours of 10 a.m. and 3 p.m. Copies of such filing also will be available for inspection and copying at the principal office of NYSEALTR. 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–NYSEALTR–2009–24 and should be submitted on or before April 9, 2009.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[9]

Florence E. Harmon,

Deputy Secretary.

[FR Doc. E9–5979 Filed 3–18–09; 8:45 am]

BILLING CODE 8011–01–P

[9] 17 CFR 200.30–3(a)(12).

SMALL BUSINESS ADMINISTRATION

[Disaster Declaration #11692 and #11693]

Pennsylvania Disaster #PA–00020

AGENCY: Small Business Administration.

ACTION: Notice.

SUMMARY: This is a notice of an Administrative declaration of a disaster for the State of Pennsylvania dated 03/12/2009.

Incident: Fire.

Incident Period: 01/24/2009.

Effective Date: 03/12/2009.

Physical Loan Application Deadline Date: 5/11/2009.

Economic Injury (EIDL) Loan Application Deadline Date: 12/12/2009.

ADDRESSES: Submit completed loan applications to: U.S. Small Business Administration, Processing and Disbursement Center, 14925 Kingsport Road, Fort Worth, TX 76155.

FOR FURTHER INFORMATION CONTACT: A. Escobar, Office of Disaster Assistance, U.S. Small Business Administration, 409 3rd Street, SW., Suite 6050, Washington, DC 20416.

SUPPLEMENTARY INFORMATION: Notice is hereby given that as a result of the Administrator's disaster declaration, applications for disaster loans may be filed at the address listed above or other locally announced locations.

The following areas have been determined to be adversely affected by the disaster:

Primary Counties: Chester.

Contiguous Counties:

Delaware: New Castle.

Maryland: Cecil.

Pennsylvania: Berks, Delaware, Lancaster, and Montgomery.

The Interest Rates are:

	Percent
Homeowners With Credit Available Elsewhere	5.375
Homeowners Without Credit Available Elsewhere	2.687
Businesses With Credit Available Elsewhere	7.750
Businesses & Small Agricultural Cooperatives Without Credit Available Elsewhere	4.000
Other (Including Non-Profit Organizations) With Credit Available Elsewhere	4.500
Businesses And Non-Profit Organizations Without Credit Available Elsewhere	4.000

The number assigned to this disaster for physical damage is 11692 5 and for economic injury is 11693 0.

The States which received an EIDL Declaration # are: Pennsylvania, Delaware, and Maryland.

(Catalog of Federal Domestic Assistance Numbers 59002 and 59008)

Dated: March 12, 2009.

Darryl K. Hairston,

Acting Administrator.

[FR Doc. E9–5974 Filed 3–18–09; 8:45 am]

BILLING CODE 8025–01–P

SOCIAL SECURITY ADMINISTRATION

Agency Information Collection Activities: Proposed Request and Comment Request

The Social Security Administration (SSA) publishes a list of information collection packages requiring clearance by the Office of Management and Budget (OMB) in compliance with Public Law (Pub. L.) 104–13, the Paperwork Reduction Act of 1995, effective October 1, 1995. This notice includes revisions and extensions of OMB-approved Information Collections.

SSA is soliciting comments on the accuracy of the agency's burden estimate; the need for the information; its practical utility; ways to enhance its quality, utility, and clarity; and ways to minimize the burden on respondents, including the use of automated collection techniques or other forms of information technology. Mail, e-mail, or fax your comments and recommendations on the information collection(s) to the OMB Desk Officer and the SSA Reports Clearance Officer to the addresses or fax numbers listed below.

(OMB) *Office of Management and Budget, Attn:* Desk Officer for SSA, *Fax:* 202–395–6974. *E-mail address: OIRA_Submission@omb.eop.gov.*

(SSA) *Social Security Administration, DCBFM, Attn:* Reports Clearance Officer, 1332 Annex Building, 6401 Security Blvd., Baltimore, MD 21235. *Fax:* 410–965–6400, *E-mail address: OPLM.RCO@ssa.gov.*

I. The information collection below is pending at SSA. SSA will submit it to OMB within 60 days from the date of this notice. To be sure that we consider your comments, we must receive them no later than May 18, 2009. Individuals

can obtain copies of the collection instrument by calling the SSA Reports Clearance Officer at 410–965–3758 or by writing to the e-mail address listed above.

1. Representative Payee Report—Special Veterans Benefits—20 CFR 408.665—0960–0621. Title VIII allows the payment of monthly benefits by the Commissioner of Social Security to qualified World War II veterans who reside outside the United States. An SSA-appointed representative payee may receive and manage the monthly payment for the beneficiary's use and benefit. SSA uses information from the SSA–2001–F6 to determine if the payee has used the benefits properly and continues to demonstrate strong concern for the beneficiary. Respondents are persons or organizations who act on behalf of beneficiaries receiving Special Veterans Benefits.

Type of Request: Revision of an OMB-approved information collection.
Number of Respondents: 100.
Frequency of Response: 1.
Average Burden per Response: 10 minutes.
Estimated Annual Burden: 17 hours.

2. Request for Business Entity Taxpayer Information—0960–0731. SSA uses Form SSA–1694 to collect information from law firms or other business entities that have partners or employees to whom SSA pays fees SSA has authorized as compensation for the representation of claimants before SSA. SSA uses the information to meet Form 1099–MISC requirements for issuance. The respondent law firms or other business entities have partners or employees who are attorneys or other qualified individuals representing claimants before SSA.

Type of Request: Revision of an OMB-approved information collection.
Number of Respondents: 2,000.
Frequency of Response: 1.
Average Burden per Response: 10 minutes.
Estimated Annual Burden: 333 hours.

II. SSA has submitted the information collections listed below to OMB for clearance. To be sure that we consider your comments, we must receive them no later than April 20, 2009.

You can obtain a copy of the OMB clearance packages by calling the SSA Reports Clearance Officer at 410–965–3758, or by writing to the above listed address.

1. Physician's/Medical Officer's Statement of Patient's Capability to Manage Benefits—20 CFR 404.2015 and 416.615—0960–0024. SSA uses the information collected on Form SSA–787 to determine an individual's capability to handle his or her own benefits. This information assists SSA in determining the need for a representative payee. The respondents are physicians of the beneficiaries' or medical officers of the institution in which the beneficiaries reside.

Number of Respondents: 24,000.
Frequency of Response: 1.
Average Burden per Response: 15 minutes.
Estimated Annual Burden: 6,000 hours.

Note: This is a correction notice. SSA published this information collection as an extension on January 15, 2009 at 74 FR 2642. Since we are revising the Privacy Act Statement, this is now a revision of an OMB-approved information collection.

2. Partnership Questionnaire—20 CFR 404.1080–404.1082—0960–0025. SSA uses the information reported on Form SSA–7104 to establish several aspects of eligibility for Social Security benefits, including the accuracy of reported partnership earnings, the veracity of a retirement, and lag earnings. The respondents are applicants for and recipients of Social Security Old Age, Survivors, and Disability Insurance Benefits.

Type of Request: Revision of an OMB-approved information collection.
Number of Respondents: 12,350.
Frequency of Response: 1.
Average Burden per Response: 30 minutes.
Estimated Annual Burden: 6,175 hours.

Note: This is a correction notice: SSA published this information collection as an extension on December 11, 2008 at 73 FR 75489. Since we are revising the Privacy Act Statement, this is now a revision of an OMB-approved information collection.

3. Letter to Employer Requesting Wage Information—20 CFR 404.726—0960–0138. SSA uses Form SSA–L4201 to collect information from employers to establish and/or verify wage information for Supplemental Security Income (SSI) claimants and recipients. SSA also uses the information to determine eligibility and proper payment for SSI. The respondents are the applicant's employers and recipients of SSI payments.

Type of Request: Revision of an OMB-approved information collection.
Number of Respondents: 133,000.
Frequency of Response: 1.
Average Burden per Response: 30 minutes.
Estimated Annual Burden: 66,500 hours.

Note: This is a correction notice. SSA published this information collection as an extension on January 15, 2009 at 74 FR 2642. Since we are revising the Privacy Act Statement, this is now a revision of an OMB-approved information collection.

4. Statement of Living Arrangements, In-Kind Support and Maintenance—20 CFR 416.1130–416.1148—0960–0174. SSA uses Form SSA–8006–F4 to establish in-kind support and maintenance for SSI applicants and recipients. A recipient's need is the basis for determining SSI payments. Need is measured, in part, by the amount of income an individual receives. Income includes in-kind support and maintenance in the form of food and shelter provided by other persons. Form SSA–8006–F4 collects information to ensure recipients are eligible to receive SSI payments and to determine the correct amount of payments due. The information permits SSA Administrative Law Judges to determine the income value of in-kind support and maintenance SSI applicants and recipients receive. The respondents are individuals who apply for SSI payments or complete an SSI eligibility redetermination.

Type of Request: Revision of an OMB-approved information collection.
Number of Respondents: 173,380.
Frequency of Response: 1.
Average Burden per Response: 7 minutes.
Estimated Annual Burden: 20,228 hours.

Note: This is a correction notice. SSA published this information collection as an extension on January 15, 2009 at 74 FR 2642. Since we are revising the Privacy Act Statement, this is now a revision of an OMB-approved information collection.

5. Supplemental Security Income (SSI) Claim Information Notice—20 CFR 416–210–0960–0324. SSA uses Form SSA–L8050–U3 to collect information on whether an SSI recipient is using all sources of potential income for his or her own support. SSI supplements other income the SSI recipient receives. Respondents are SSI applicants or recipients who may be eligible for benefits from public or private programs.

Type of Request: Revision of an OMB-approved information collection.
Number of Respondents: 7,500
Frequency of Response: 1.
Average Burden per Response: 10 minutes.
Estimated Annual Burden: 1,250 hours.

Note: This is a correction notice. SSA published this information collection as an extension on January 15, 2009 at 74 FR 2642. Since we are revising the Privacy Act Statement, this is now a revision.

6. Permanent Residence under Color of the Law (PRUCOL)—20 CFR

416.1618–0960–0451. As discussed in SSA regulations at 20 CFR 416.1415 and 416.1618, a PRUCOL alien must present evidence of his/her alien status at application and periodically thereafter as part of the eligibility determination process for SSI. SSA verifies the validity of the evidence of PRUCOL for grandfathered nonqualified aliens with the Department of Homeland Security (DHS). SSA determines whether the individual is PRUCOL, based on the DHS response. Without this information, SSA is unable to determine whether the individual is eligible for SSI payments. The respondents are individuals who have alien status and live in the United States.

Type of Request: Revision of an OMB-approved information collection.

Number of Respondents: 1,300.

Frequency of Response: 1

Average Burden per Response: 5 minutes.

Estimated Annual Burden: 108 hours.

7. Filing Claims Under the Federal Tort Claims Act—20 CFR 429.101–429.110–0960–0667. SSA uses the information claimants provide to investigate and determine whether to make an award, compromise, or settlement under the Federal Tort Claims Act. The Federal Tort Claims Act is the legal mechanism for compensating persons injured by negligent or wrongful acts that occur during the performance of official duties by Federal employees. In accordance with the law, SSA accepts monetary claims filed under the Federal Tort Claims Act for damages against the United States, for loss of property, personal injury, or death that results from an SSA employee's negligent or wrongful act or omission. The respondents are individuals/entities making a claim under the Federal Tort Claims Act.

Type of Request: Extension of an OMB-approved information collection.

CFR Section	Annual number of responses	Frequency of response	Average burden per response (minutes)	Estimated annual burden (hours)
429.102; 429.103 [1]				
429.104(a)	30	1	5	3
429.104(b)	25	1	5	2
429.104(c)	2	1	5	.17
429.106(b)	10	1	10	2
Totals	68			8

[1] We are not reporting a burden for this collection because respondents complete OMB-approved form SF–95.

8. Administrative Review Process for Adjudicating Initial Disability Claims—20 CFR 404.961, 405.330, 405.366, 404.950, 405.332, 404.949, 405.334, 404.957(a), 405.380(a), 405.381, 405.382, 405.425(b), 404.982, 405.505, 404.987, 405.601(b), 404.988 and 405.601(b)–0960–0710. SSA collects information to establish: (1) The claimant's right to administrative review; (2) the severity of the claimant's alleged impairments; and (3) the State Disability Determination Services (DDS) performance level. SSA uses the information these regulations collect to determine eligibility and/or entitlement to disability insurance benefits and/or SSI, and to permit appeals of these determinations. The respondents are applicants for Title II disability insurance benefits and/or SSI payments.

Type of Request: Revision of an OMB-approved information collection.

Section No.	Number of respondents	Frequency of response	Average burden per response	Estimated annual burden (hours)
404.961	11,725	1	20 minutes	3,908 *
405.330	396	1	20 minutes	132
405.366	99	1	20 minutes	33
404.950(d)	1,040	1	20 minutes	347
404.949	2,868	1	1 hour	2,868
405.334	20	1	1 hour	20
404.957(a)	20,395	1	10 minutes	3,399
405.380(a)	646	1	10 minutes	108
405.381 & 405.382	37	1	30 minutes	19
405.425(b)	200	1	1 hour	200
404.982	1,317	1	30 minutes	659
404.987 & 404.988	10,610	1	30 minutes	5,305
405.601(b)	52	1	30 minutes	26
Total	49,405			17,024

9. Certification of Low Birth Weight for SSI Eligibility of Funds You Provided to Another and Statement of Funds You Received—20 CFR 416.931, 416.926a(m), (7) & (8) and 416.924–0960–0720. Form SSA–3830 assists hospitals and claimants who file on behalf of children by providing local field offices (FO) and DDSs with medical information for determining disability of low birth weight infants. FOs use the forms as protective filing statements, and the medical information for making presumptive disability findings, which allow expedited payment to eligible claimants. DDSs use the medical information to determine a disability and a continuing disability. The respondents are hospitals that have information identifying low birth weight babies and the medical conditions those babies may have.

Type of Request: Revision of an OMB-approved information collection.

Number of Respondents: 24,000.

Frequency of Response: 1.

Average Burden per Response: 15 minutes.

Estimated Annual Burden: 6,000 hours.

Note: This is a correction notice. SSA published this information collection as an extension on January 15, 2009 at 74 FR 2642. Since we are revising the Privacy Act Statement, this is now a revision of an OMB-approved information collection.

Dated: March 13, 2009.

John Biles,

Reports Clearance Officer, Center for Reports Clearance, Social Security Administration.

[FR Doc. E9–5994 Filed 3–18–09; 8:45 am]

BILLING CODE 4191–02–P

DEPARTMENT OF TRANSPORTATION

Federal Motor Carrier Safety Administration

[Docket No. FMCSA–2008–0224]

Parts and Accessories Necessary for Safe Operation; Grant of Exemption for Greyhound Lines, Inc.

AGENCY: Federal Motor Carrier Safety Administration (FMCSA), DOT.

ACTION: Notice of final disposition.

SUMMARY: The Federal Motor Carrier Safety Administration (FMCSA) announces its decision to grant an exemption to Greyhound Lines, Inc. (Greyhound) that will enable video event recorders to be mounted on its buses lower in the windshield than is currently permitted by the Agency's regulations. Greyhound requested the exemption so that it would be able to use the video event recorders to increase safety through (1) identification and remediation of risky driving behaviors such as distracted driving and drowsiness; (2) enhanced monitoring of passenger behavior; and (3) enhanced collision review and analysis. FMCSA believes that permitting these devices to be mounted lower than currently allowed, but still outside the driver's sight lines to the road and highway signs and signals, will maintain a level of safety that is equivalent to, or greater than, the level of safety achieved without the exemption.

DATES: This exemption is effective from March 19, 2009 through March 21, 2011.

FOR FURTHER INFORMATION CONTACT: Mr. Luke W. Loy, Vehicle and Roadside Operations Division, Office of Bus and Truck Standards and Operations, MC–PSV, (202) 366–0676, Federal Motor Carrier Safety Administration, 1200 New Jersey Avenue, SE., Washington, DC 20590–0001.

SUPPLEMENTARY INFORMATION:

Background

Under 49 U.S.C. 31315 and 31136(e), FMCSA may grant an exemption from the prohibition on obstructions to the driver's field of view requirements in 49 CFR 393.60(e) for a two-year period if it finds "such exemption would likely achieve a level of safety that is equivalent to, or greater than, the level of safety that would be achieved absent such exemption" (49 CFR 381.305(a)).

Greyhound's Request for Exemption

Greyhound applied for an exemption from 49 CFR 393.60(e)(1) to allow it to install video event recorders on some or all its bus fleet, which totals approximately 1,650 buses.

Section 393.60(e)(1) of the Federal Motor Carrier Safety Regulations (FMCSRs) prohibits the obstruction of the driver's field of view by devices mounted at the top of the windshield. Antennas, transponders and similar devices (devices) must not be mounted more than 152 mm (6 inches) below the upper edge of the windshield. These devices must be located outside the area swept by the windshield wipers and outside the driver's sight lines to the road and highway signs and signals.

Greyhound states that over the last several years, the structural and aesthetic design of buses has changed considerably to include larger windshields that encompass a larger percentage of the front area of a motor coach and that extend well beyond the driver's useable sight line. As a result, manufacturers have voluntarily installed larger windshield wipers on these windshields that increase the swept area beyond the minimum required by Federal Motor Vehicle Safety Standard (FMVSS) No. 104, "Windshield wiping and washing systems." FMVSS No. 104 establishes the requirements applicable to vehicle and equipment manufacturers for windshield wiper system coverage for passenger cars, multi-purpose passenger vehicles, trucks and buses.

Greyhound states that video event recorders, for optimal effectiveness, are mounted on the vehicle windshield on the interior of the vehicle in a position that enables the video-capture of what is happening in front of the vehicle as well as an internal video-capture of the driver and passengers. The view of what is happening in front of the vehicle requires that the forward lens of the recorder be in the swept area of the windshield for a clear view in inclement weather. Greyhound states:

"Section 393.60(e)(1) was designed to avoid placement of devices on the windshield that would obstruct a driver's useful view of the roadway. However, because of the increase of the size of motorcoach windows and the corresponding increase in the area swept by the windshield wipers, video event recorders now must be mounted so high on the window as to limit the view of drivers, passengers, and collision events. Thus, the level of safety that can be produced by use of video event recorders is limited by the current regulation. By comparison, the proposed alternative will enable Greyhound to lower the placement of the video event recorders to a level, which will maximize the external and internal views of the recorders while still having them mounted high enough so as not to limit the field of vision of the driver."

Greyhound notes in its exemption application that the Commercial Vehicle Safety Alliance (CVSA) submitted a petition for rulemaking to FMCSA on October 18, 2007, to amend 49 CFR 393.60(e). The CVSA petition requests that the FMCSRs be amended to permit video event recorders and similar devices that require a clear forward facing visual field to be mounted not more than 50 mm (2 inches) below the upper edge of the area swept by the windshield wipers, provided that they are located outside the driver's sight lines to the road and highway signs and signals. Greyhound proposes to comply with the language proposed by CVSA during the period of the exemption. A copy of Greyhound's application for exemption and the CVSA petition are available for review in the docket for this notice.

Comments

On August 11, 2008, FMCSA published notice of this application, and asked for public comment (73 FR 46704). No comments were received.

Terms and Conditions for the Exemption

Based on its evaluation of the application for an exemption, FMCSA has decided to grant Greyhound's exemption application. The Agency believes that the safety performance of Greyhound during the 2-year exemption period will likely achieve a level of safety that is equivalent to, or greater than, the level of safety achieved without the exemption because (1) the video event recorders would not obstruct drivers' views of the roadway, highway signs and surrounding traffic because the panoramic windshields encompass a large percentage of the front of buses and extend well above the driver's sight lines; (2) larger wipers increase the swept area well beyond that which is recommended by the Society

of Automotive Engineers guidelines for commercial vehicles; and (3) placement of video event recorders just below the larger swept area of the wipers will be well outside of useable driver's sight lines, and will not negatively affect safety. The Agency believes that the potential safety gains from the use of video event recorders to improve driver behavior will improve the overall level of safety to the motoring public.

The Agency hereby grants the exemption for a two-year period, beginning March 19, 2009 and ending March 21, 2011.

During the exemption period, Greyhound must ensure that all video event recorders are mounted not more than 50 mm (2 inches) below the upper edge of the area swept by the windshield wipers, and outside the driver's sight lines to the road and highway signs and signals.

Interested parties possessing information that would demonstrate that Greyhound is not achieving the requisite statutory level of safety should immediately notify FMCSA. The Agency will evaluate any such information and, if safety is being compromised or if the continuation of the exemption is not consistent with 49 U.S.C. 31315(b) and 31136(e), will take immediate steps to revoke Greyhound's exemption, if warranted.

Preemption

During the period the exemption is in effect, no State shall enforce any law or regulation that conflicts with or is inconsistent with this exemption with respect to a person operating under the exemption.

Issued on: March 12, 2009.

Rose A. McMurray,

Acting Deputy Administrator.

[FR Doc. E9–5990 Filed 3–18–09; 8:45 am]

BILLING CODE 4910–EX–P

DEPARTMENT OF TRANSPORTATION

Federal Railroad Administration

Notice of Informational Filing

For informational purposes only, the Federal Railroad Administration (FRA) is providing notice that it has received an informational filing from BNSF Railway Company (BNSF) to continue testing Version II of the railroad's Electronic Train Management System (ETMS) submitted pursuant to Title 49 Code of Federal Regulations § 236.913. The informational filing is described below, including the submitting party and the requisite docket number where the informational filing and any related information may be found. The document is available for public inspection; however, FRA is not accepting public comment on the document.

BNSF Railway Company (Docket Number FRA–2006–23687)

The BNSF Railway Company (BNSF) has submitted an informational filing to FRA to extend operational testing of ETMS Version II on to its Wichita Falls Subdivision. This continued testing will allow BNSF to obtain the necessary information required to amend its currently approved Product Safety Plan for ETMS Version I for a future submittal to FRA. The informational filing has been placed under Docket Number FRA–2006–23687 and is available for public inspection.

Interested parties are invited to review the informational filing and associated documents at the DOT Docket Management facility during regular business hours (9 a.m.–5 p.m.) at 1200 New Jersey Avenue, SE., Room W12–140, Washington, DC 20590. All documents in the public docket are also available for inspection and copying on the internet at *http://www.regulations.gov.*

Anyone is able to search the electronic form of any written communications received into any of our dockets by name of the individual submitting the document (or signing the document, if submitted on behalf of an association, business, labor union, etc.). You may review the DOT's complete Privacy Act Statement in the **Federal Register** published on April 11, 2000 (Volume 65, Number 70; Pages 19477–78).

Issued in Washington, DC on March 12, 2009.

Grady C. Cothen, Jr.,

Deputy Associate Administrator for Safety Standards and Program Development.

[FR Doc. E9–5842 Filed 3–18–09; 8:45 am]

BILLING CODE 4910–06–P

DEPARTMENT OF TRANSPORTATION

Federal Transit Administration

[FTA Docket No. FTA–2009–0014]

Agency Information Collection Activity Under OMB Review

AGENCY: Federal Transit Administration, DOT.

ACTION: Notice of request for comments.

SUMMARY: The Federal Transit Administration invites public comments about our intention to request the Office of Management and Budget's (OMB's) approval of the following new information collection:

Grant Accrual Surveys of FTA Grantees

The information to be collected is necessary to determine the grantees' average billing cycle for various FTA programs and projects and the amount payable to the grantees at the end of the accounting period. FTA will use the information to calculate a reasonable grant accrual liability estimate that will be included in its financial statements. This will satisfy the requirements of the financial statements audit and the Chief Financial Officer Act.

The **Federal Register** Notice with a 60-day comment period soliciting comments was published on December 19, 2008.

DATES: Comments must be submitted before April 20, 2009. A comment to OMB is most effective if OMB receives it within 30 days of publication.

FOR FURTHER INFORMATION CONTACT: Sylvia L. Marion, Office of Administration, Office of Management Planning, (202) 366–6680.

SUPPLEMENTARY INFORMATION: *Title:* The Federal Transit Administration (FTA) administers over 40 programs which include Formula grants, New Starts, Fixed Guideway Modernization and the Bus and Bus Facilities Program. FTA is required to estimate and record accrued liability and expenses in its financial statements for grant expenses incurred but not yet submitted to FTA for reimbursement by grantees. This is required by the Department of Transportation, Office of the Secretary, and the Federal Accounting Standards Advisory Board guidelines. The surveys covered in this request will provide FTA with a means to gather data directly from its grantees. The information obtained from the surveys will be used to assess how FTA estimates the amount owed to its grantees at the end of each accounting period. FTA needs the survey information to meet its Chief Financial Officer's Act financial statement audit requirements. The surveys will be limited to data collections that solicit voluntary opinions and will not involve information that is required by regulations.

Estimated Total Annual Burden: 750 hours.

ADDRESSES: All written comments must refer to the docket number that appears at the top of this document and be submitted to the Office of Information and Regulatory Affairs, Office of Management and Budget, 725–17th Street, NW., Washington, DC 20503, *Attention:* FTA Desk Officer.

Comments are Invited On: Whether the proposed collection of information is necessary for the proper performance of the functions of the Department, including whether the information will have practical utility; the accuracy of the Department's estimate of the burden of the proposed information collection; ways to enhance the quality, utility, and clarity of the information to be collected; and ways to minimize the burden of the collection of information on respondents, including the use of automated collection techniques or other forms of information technology.

Issued on: March 13, 2009.

Ann M. Linnertz,

Associate Administrator for Administration.

[FR Doc. E9–5973 Filed 3–18–09; 8:45 am]

BILLING CODE 4910–57–P

DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

[STB Docket No. AB–33 (Sub-No. 261)]

Union Pacific Railroad Company—Abandonment—in New Madrid, Scott, and Stoddard Counties, MO

On February 27, 2009, Union Pacific Railroad Company (UP) filed with the Board an application for permission to abandon its Essex to Miner Line, extending from milepost 196.7, near Essex, to milepost 216.27, near Miner, a distance of 19.57 miles, in New Madrid, Scott, and Stoddard Counties, MO (the line).[1] The line includes the stations of Hunterville (milepost 198.7), Morehouse (milepost 205.4), Sikeston (milepost 211.4), and Miner (milepost 214.5), and traverses United States Postal Service ZIP Codes 63846, 63801, and 63868.

The line does not contain Federally granted rights-of-way. Any documentation in UP's possession will be made available promptly to those requesting it. UP's entire case for abandonment was filed with the application.

This line of railroad has appeared on UP's system diagram map or has been included in its narrative in category 1 since January 16, 2008.

The interest of railroad employees will be protected by the conditions set forth in *Oregon Short Line R. Co.—Abandonment—Goshen,* 360 I.C.C. 91 (1979).

Any interested person may file with the Surface Transportation Board written comments concerning the proposed abandonment or protests (including the protestant's entire opposition case), by April 13, 2009. All interested persons should be aware that, following any abandonment of rail service and salvage of the line, the line may be suitable for other public use, including interim trail use. Any request for a public use condition under 49 U.S.C. 10905 (49 CFR 1152.28) and any request for a trail use condition under 16 U.S.C. 1247(d) (49 CFR 1152.29) must be filed by April 13, 2009. Each trail use request must be accompanied by a $200 filing fee. *See* 49 CFR 1002.2(f)(27). Applicant's reply to any opposition statements and its response to trail use requests must be filed by April 28, 2009. *See* 49 CFR 1152.26(a). A final decision will be issued by June 17, 2009.

Persons opposing the proposed abandonment who wish to participate actively and fully in the process should file a protest. Persons who may oppose the abandonment but who do not wish to participate fully in the process by submitting verified statements of witnesses containing detailed evidence should file comments. Persons seeking information concerning the filing of protests should refer to 49 CFR 1152.25. Persons interested only in seeking public use or trail use conditions should also file comments.

In addition, a commenting party or protestant may provide: (i) An offer of financial assistance (OFA) for continued rail service, pursuant to 49 U.S.C. 10904 (due 120 days after the application is filed or 10 days after the application is granted by the Board, whichever occurs sooner); (ii) recommended provisions for protection of the interests of employees; (iii) a request for a public use condition under 49 U.S.C. 10905; and (iv) a statement pertaining to prospective use of the right-of-way for interim trail use and rail banking under 16 U.S.C. 1247(d) and 49 CFR 1152.29.

Written comments and protests, including all requests for public use and trail use conditions, must indicate the proceeding designation STB Docket No. AB–33 (Sub-No. 261) and must be sent to: (1) Surface Transportation Board, 395 E Street, SW., Washington, DC 20423–0001, and (2) Gabriel S. Meyer, Assistant General Attorney, 1400 Douglas Street, STOP 1580, Omaha, NE 68179. The original and 10 copies of all comments or protests shall be filed with the Board with a certificate of service. Except as otherwise set forth in 49 CFR 1152, every document filed with the Board must be served on all parties to the abandonment proceeding. 49 CFR 1104.12(a).

The line sought to be abandoned will be available for subsidy or sale for continued rail use, if the Board decides to permit the abandonment, in accordance with applicable laws and regulations (49 U.S.C. 10904 and 49 CFR 1152.27). Each OFA must be accompanied by a $1,500 filing fee. *See* 49 CFR 1002.2(f)(25). No subsidy arrangement approved under 49 U.S.C. 10904 shall remain in effect for more than 1 year unless otherwise mutually agreed by the parties (49 U.S.C. 10904(f)(4)(B)). Applicant will promptly provide upon request to each interested party an estimate of the subsidy and minimum purchase price required to keep the line in operation. UP's representative to whom inquiries may be made concerning sale or subsidy terms is set forth above.

Persons seeking further information concerning abandonment procedures may contact the Board's Office of Public Assistance, Governmental Affairs, and Compliance at (866) 254–1792 or refer to the full abandonment regulations at 49 CFR 1152. Questions concerning environmental issues may be directed to the Board's Section of Environmental Analysis (SEA) at (202) 245–0305. [Assistance for the hearing impaired is available through the Federal Information Relay Service (FIRS) at 1–800–877–9339.]

An environmental assessment (EA) (or environmental impact statement (EIS), if necessary) prepared by SEA will be served upon all parties of record and upon any agencies or other persons who commented during its preparation. Any other persons who would like to obtain a copy of the EA (or EIS) may contact SEA. EAs in this type of abandonment proceeding normally will be made available within 33 days of the filing of the application. The deadline for submission of comments on the EA will generally be within 30 days of its service. The comments received will be addressed in the Board's decision. A supplemental EA or EIS may be issued where appropriate.

Board decisions and notices are available on our Web site at *"http://www.stb.dot.gov."*

Decided: March 13, 2009.

By the Board, Joseph H. Dettmar, Acting Director, Office of Proceedings.

Jeffrey Herzig,

Clearance Clerk.

[FR Doc. E9–5940 Filed 3–18–09; 8:45 am]

BILLING CODE 4915–01–P

[1] In addition to the 19.57 miles of branch line, the line includes approximately 4.4 miles of sidings and industrial track.

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Proposed Collection; Comment Request for Form 8932

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)). Currently, the IRS is soliciting comments concerning Form 8932, Credit for Employer Differential Wage Payments.

DATES: Written comments should be received on or before May 18, 2009 to be assured of consideration.

ADDRESSES: Direct all written comments to R. Joseph Durbala, Internal Revenue Service, room 6129, 1111 Constitution Avenue NW., Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the form and instructions should be directed to Allan Hopkins, (202) 622–6665, at Internal Revenue Service, room 6129, 1111 Constitution Avenue NW., Washington, DC 20224, or through the Internet at *Allan.M.Hopkins@irs.gov.*

SUPPLEMENTARY INFORMATION:

Title: Credit for Employer Differential Wage Payments.

OMB Number: 1545–2126.

Form Number: Form 8932.

Abstract: Qualified employers will file Form 8932 to claim the credit for qualified differential wage payments paid to qualified employees after June 17, 2008, and before January 1, 2010. Authorized under I.R.C. section 45P.

Current Actions: There is no change in the paperwork burden previously approved by OMB. This form is being submitted for renewal purposes only.

Type of Review: Extension of a currently approved collection.

Affected Public: Businesses and other for-profit organizations.

Estimated Number of Respondents: 21,100.

Estimated Time Per Respondent: 2 hours 58 minutes.

Estimated Total Annual Burden Hours: 62,456.

The following paragraph applies to all of the collections of information covered by this notice:

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

Request For Comments: Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Approved: March 3, 2009.

R. Joseph Durbala,

IRS Reports Clearance Officer.

[FR Doc. E9–5880 Filed 3–18–09; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Proposed Collection; Comment Request for Form 712

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)). Currently, the IRS is soliciting comments concerning Form 712, Life Insurance Statement.

DATES: Written comments should be received on or before May 18, 2009 to be assured of consideration.

ADDRESSES: Direct all written comments to R. Joseph Durbala, Internal Revenue Service, Room 6129, 1111 Constitution Avenue NW., Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the form and instructions should be directed to Carolyn N. Brown at (202) 622–6688, Internal Revenue Service, Room 6129, 1111 Constitution Avenue NW., Washington, DC 20224 or through the Internet at *Carolyn.N.Brown@irs.gov.*

SUPPLEMENTARY INFORMATION:

Title: Life Insurance Statement.

OMB Number: 1545–0022.

Form Number: 712.

Abstract: Form 712 provides taxpayers and the IRS with information to determine if insurance on the decedent's life is includible in the gross estate and to determine the value of the policy for estate and gift tax purposes. The tax is based on the value of the life insurance policy.

Current Actions: There are no changes being made to Form 712 at this time.

Type of Review: Extension of a currently approved collection.

Affected Public: Businesses or other for-profit organizations.

Estimated Number of Responses: 60,000.

Estimated Time Per Response: 18 hrs. 40 minutes.

Estimated Total Annual Burden Hours: 1,120,200.

The following paragraph applies to all of the collections of information covered by this notice:

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

Request for Comments: Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility;

(b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Approved: March 4, 2009.

R. Joseph Durbala,

IRS Reports Clearance Officer.

[FR Doc. E9–5881 Filed 3–18–09; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

[CO–68–87; CO–69–87; CO–18–90]

Proposed Collection; Comment Request for Regulation Project

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)). Currently, the IRS is soliciting comments concerning existing final regulations, CO–68–87 and CO–69–87 (TD 8352), Final Regulations Under Sections 382 and 383 of the Internal Revenue Code of 1986; Pre-change Attributes, and CO–18–90 (TD 8531), Final Regulations Under Section 382 of the Internal Revenue Code of 1986; Limitations on Corporate Net Operating Loss Carryforwards (§§ 1.382–4 and 1.382–2T).

DATES: Written comments should be received on or before May 18, 2009 to be assured of consideration.

ADDRESSES: Direct all written comments to Glenn Kirkland, Internal Revenue Service, room 6129, 1111 Constitution Avenue NW., Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the regulation should be directed to R. Joseph Durbala, (202) 622–3634, or at Internal Revenue Service, room 6129, 1111 Constitution Avenue NW., Washington, DC 20224, or through the Internet at *RJoseph.Durbala@irs.gov.*

SUPPLEMENTARY INFORMATION:

Title: CO–68–87 and CO–69–87 (TD 8352), Final Regulations Under Sections 382 and 383 of the Internal Revenue Code of 1986; Pre-change Attributes, and CO–18–90 (TD 8531), Final Regulations Under Section 382 of the Internal Revenue Code of 1986; Limitations on Corporate Net Operating Loss Carryforwards.

OMB Number: 1545–1120.

Regulation Project Number: CO–68–87; CO–69–87; CO–18–90.

Abstract: (CO–68–87 and CO–69–87) These regulations require reporting by a corporation after it undergoes an "ownership change" under Code sections 382 and 383. Corporations required to report under these regulations include those with capital loss carryovers and excess credits. (CO–18–90) These regulations provide rules for the treatment of options under Code section 382 for purposes of determining whether a corporation undergoes an ownership change. The regulation allows for certain elections for corporations whose stock is subject to options.

Current Actions: There is no change to these existing regulations.

Type of Review: Extension of a currently approved collection.

Affected Public: Business or other for-profit organizations.

Estimated Number of Respondents: 75,150.

Estimated Time Per Respondent: 2 hours, 56 minutes.

Estimated Total Annual Burden Hours: 220,575.

The following paragraph applies to all of the collections of information covered by this notice:

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

Request for Comments:

Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record.

Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Approved: February 23, 2009.

R. Joseph Durbala,

IRS Reports Clearance Officer.

[FR Doc. E9–5889 Filed 3–18–09; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Proposed Collection; Comment Request for Notice 97–19 and Notice 98–34

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)). Currently, the IRS is soliciting comments concerning Notice 97–19 and Notice 98–34, Guidance for Expatriates under Internal Revenue Code sections 877, 2501, 2107 and 6039F.

DATES: Written comments should be received on or before May 18, 2009 to be assured of consideration.

ADDRESSES: Direct all written comments to Glenn Kirkland, Internal Revenue Service, room 6129, 1111 Constitution Avenue NW., Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the regulations should be directed to R. Joseph Durbala at Internal Revenue Service, room 6129, 1111 Constitution Avenue NW., Washington, DC 20224, or at (202) 622–3634, or through the Internet at *RJoseph.Durbala@irs.gov.*

SUPPLEMENTARY INFORMATION:

Title: Guidance for Expatriates under Internal Revenue Code section 877, 2501, 2107 and 6039F.

OMB Number: 1545–1531.

Notice Number: Notice 97–19 and Notice 98–34.

Abstract: Notice 97–19 and Notice 98–34 provide guidance regarding the federal tax consequences for certain individuals who lose U.S. citizenship, cease to be taxed as U.S. lawful permanent residents, or are otherwise subject to tax under Code section 877. The information required by these notices will be used to help make a determination as to whether these taxpayers expatriated with a principal purpose to avoid tax.

Current Actions: There are no changes being made to the notices at this time.

Type of Review: Extension of currently approved collection.

Affected Public: Individuals or households.

Estimated Number of Respondents: 12,350.

Estimated Time Per Respondent: 32 minutes.

Estimated Total Annual Burden Hours: 6,525.

The following paragraph applies to all of the collections of information covered by this notice:

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

Request for Comments: Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Approved: February 23, 2009.

R. Joseph Durbala,

IRS Reports Clearance Officer.

[FR Doc. E9–5939 Filed 3–18–09; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

[IA–74–93]

Proposed Collection; Comment Request For Regulation Project

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)). Currently, the IRS is soliciting comments concerning an existing final regulation, IA–74–93, (TD 8623), Substantiation Requirement for Certain Contributions (§ 1.170A–13).

DATES: Written comments should be received on or before May 18, 2009 to be assured of consideration.

ADDRESSES: Direct all written comments to Glenn Kirkland, Internal Revenue Service, room 6129, 1111 Constitution Avenue NW., Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of this regulation should be directed to R. Joseph Durbala, at (202) 622–3634, or at Internal Revenue Service, room 6129, 1111 Constitution Avenue NW., Washington, DC, 20224, or through the Internet, at *RJoseph.Durbala@irs.gov.*

SUPPLEMENTARY INFORMATION:

Title: Substantiation Requirement for Certain Contributions.

OMB Number: 1545–1431.

Regulation Project Number: IA–74–93 (Final).

Abstract: These regulations provide that, for purposes of substantiation for certain charitable contributions, consideration does not include de minimis goods or services. It also provides guidance on how taxpayers may satisfy the substantiation requirement for contributions of $250 or more.

Current Actions: There is no change to this existing regulation.

Type of Review: Extension of a currently approved collection.

Affected Public: Individuals or households, business or other for-profit organizations, and non-profit institutions.

Estimated Number of Respondents: 16,000.

Estimated Time per Respondent: 3 hours, 13 minutes.

Estimated Total Annual Burden Hours: 51,500.

The following paragraph applies to all of the collections of information covered by this notice:

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number.

Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

Request for Comments: Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Approved: February 23, 2009.

R. Joseph Durbala,

IRS Reports Clearance Officer.

[FR Doc. E9–5944 Filed 3–18–09; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Proposed Collection; Comment Request for Revenue Procedure 2004–53

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)). Currently, the IRS is soliciting comments concerning Revenue Procedure 96–60, Procedure for filing Forms W–2 in certain acquisitions.

DATES: Written comments should be received on or before May 18, 2009 to be assured of consideration.

ADDRESSES: Direct all written comments to Glenn P. Kirkland, Internal Revenue Service, room 6129, 1111 Constitution Avenue NW., Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the revenue procedure should be directed to R. Joseph Durbala, at (202) 622–3634, or at Internal Revenue Service, room 6129, 1111 Constitution Avenue NW., Washington, DC 20224, or through the internet, at *RJoseph.Durbala@irs.gov.*

SUPPLEMENTARY INFORMATION:

Title: Procedure for filing Forms W–2 in certain acquistions.

OMB Number: 1545–1510.

Revenue Procedure Number: Revenue Procedure 2004–53.

Abstract: The information is required by the Internal Revenue Service to assist predecessor and successor employers in complying with the reporting requirements under Internal Revenue Code sections 6051 and 6011 for Forms W–2 and 941.

Current Actions: There are no changes being made to the revenue procedure at this time.

Type of Review: Extension of a currently approved collection.

Affected Public: Business or other for-profit organizations.

Estimated Number of Respondents: 553,500.

Estimated Time Per Respondent: 12 minutes.

Estimated Total Annual Burden Hours: 110,700.

The following paragraph applies to all of the collections of information covered by this notice:

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

Request for Comments: Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Approved: February 23, 2009.

R. Joseph Durbala,

IRS Reports Clearance Officer.

[FR Doc. E9–5945 Filed 3–18–09; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

[PS–105–75]

Proposed Collection; Comment Request for Regulation Project

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)). Currently, the IRS is soliciting comments concerning an existing final regulation, PS–105–75 (TD 8348), Limitations on Percentage Depletion in the Case of Oil and Gas Wells (Section 1.613A–3(l)).

DATES: Written comments should be received on or before May 18, 2009 to be assured of consideration.

ADDRESSES: Direct all written comments to Glenn Kirkland, Internal Revenue Service, room 6129, 1111 Constitution Avenue NW., Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the regulation should be directed to R. Joseph Durbala, at (202) 622–3634, or at Internal Revenue Service, room 6129, 1111 Constitution Avenue NW., Washington, DC 20224, or through the Internet, at *RJoseph.Durbala@irs.gov.*

SUPPLEMENTARY INFORMATION:

Title: Limitations on Percentage Depletion in the Case of Oil and Gas Wells.

OMB Number: 1545–0919.

Regulation Project Number: PS–105–75.

Abstract: Section 1.613A–3(1) of the regulation requires each partner to separately keep records of his or her share of the adjusted basis of partnership oil and gas property and requires each partnership, trust, estate, and operator to provide to certain persons the information necessary to compute depletion with respect to oil or gas.

Current Actions: There is no change to this existing regulation.

Type of Review: Extension of a currently approved collection.

Affected Public: Business or other for-profit organizations.

The burden associated with this collection of information is reflected on Forms 1065, 1041, and 706.

The following paragraph applies to all of the collections of information covered by this notice:

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

Request for Comments: Comments submitted in response to this notice will

be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Approved: February 23, 2009.

R. Joseph Durbala,

IRS Reports Clearance Officer.

[FR Doc. E9–5947 Filed 3–18–09; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

[IA–7–88]

Proposed Collection; Comment Request for Regulation Project

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)). Currently, the IRS is soliciting comments concerning an existing final regulation, IA–7–88 (TD 8379), Excise Tax Relating to Gain or Other Income Realized by Any Person on Receipt of Greenmail (§§ 155.6011–1, 155.6001–1, 155.6081–1, and 155.6161–1).

DATES: Written comments should be received on or before May 18, 2009 to be assured of consideration.

ADDRESSES: Direct all written comments to R. Joseph Durbala, Internal Revenue Service, room 6129, 1111 Constitution Avenue, NW., Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the regulations should be directed to Carolyn N. Brown at Internal Revenue Service, room 6129, 1111 Constitution Avenue, NW., Washington, DC 20224, or at (202) 622–6688, or through the Internet at *Carolyn.N.Brown@irs.gov.*

SUPPLEMENTARY INFORMATION:

Title: Excise Tax Relating to Gain or Other Income Realized By Any Person on Receipt of Greenmail.

OMB Number: 1545–1049.

Regulation Project Number: IA–7–88.

Abstract: The regulations provide rules relating to the manner and method of reporting and paying the nondeductible 50 percent excise tax imposed by section 5881 of the Internal Revenue Code with respect to the receipt of greenmail. The reporting requirements will be used to verify that the excise tax imposed under section 5881 is properly reported and timely paid.

Current Actions: There is no change to this existing regulation.

Type of Review: Extension of a currently approved collection.

Affected Public: Individuals and business or other for-profit organizations.

Estimated Number of Respondents: 4.

Estimated Time per Respondent: 30 minutes.

Estimated Total Annual Burden Hours: 2.

The following paragraph applies to all of the collections of information covered by this notice:

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

Request for Comments: Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Approved: March 6, 2009.

R. Joseph Durbala,

IRS Reports Clearance Officer.

[FR Doc. E9–5948 Filed 3–18–09; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

[FI–182–78]

Proposed Collection; Comment Request for Regulation Project

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)). Currently, the IRS is soliciting comments concerning an existing NPRM regulation, FI–182–78, Transfers of Securities Under Certain Agreements (Section 1.1058–1(b)).

DATES: Written comments should be received on or before May 18, 2009 to be assured of consideration.

ADDRESSES: Direct all written comments to R. Joseph Durbala, Internal Revenue Service, room 6129, 1111 Constitution Avenue, NW., Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the regulations should be directed to Carolyn N. Brown at Internal Revenue Service, room 6129, 1111 Constitution Avenue, NW., Washington, DC 20224, or at (202) 622–6688, or through the Internet at *Carolyn.N.Brown@irs.gov.*

SUPPLEMENTARY INFORMATION: *Title:* Transfers of Securities Under Certain Agreements.

OMB Number: 1545–0770.

Regulation Project Number: FI–182–78.

Abstract: Section 1058 of the Internal Revenue Code provides tax-free

treatment for transfers of securities pursuant to a securities lending agreement. The agreement must be in writing and is used by the taxpayer, in a tax audit situation, to justify nonrecognition treatment of gain or loss on the exchange of the securities.

Current Actions: There is no change to this existing regulation.

Type of Review: Extension of a currently approved collection.

Affected Public: Business or other for-profit organizations, individuals, and not-for-profit institutions.

Estimated Number of Respondents: 11,742.

Estimated Time Per Respondent: 50 minutes.

Estimated Total Annual Burden Hours: 9,781.

The following paragraph applies to all of the collections of information covered by this notice:

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

Request for Comments: Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Approved: March 9, 2009.

R. Joseph Durbala,

IRS Reports Clearance Officer.

[FR Doc. E9–5949 Filed 3–18–09; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

[FI–7–94; FI–36–92]

Proposed Collection; Comment Request for Regulation Project

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)). Currently, the IRS is soliciting comments concerning existing final regulations, FI–7–94 (TD 8718; TD 8538) and FI–36–92 (TD 8476), Arbitrage Restrictions on Tax-Exempt Bonds (Sec. Sec. 1.148–2, 1.148–3, 1.148–4, 1.148–7, and 1.148–11).

DATES: Written comments should be received on or before May 18, 2009 to be assured of consideration.

ADDRESSES: Direct all written comments to Glenn P. Kirkland, Internal Revenue Service, room 6129, 1111 Constitution Avenue, NW., Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of regulations should be directed to R. Joseph Durbala, at (202) 622–3634, or at Internal Revenue Service, room 6129, 1111 Constitution Avenue, NW., Washington, DC 20224, or through the Internet, at *RJoseph.Durbala@irs.gov.*

SUPPLEMENTARY INFORMATION:

Title: Arbitrage Restrictions on Tax-Exempt Bonds.

OMB Number: 1545–1347.

Regulation Project Numbers: FI–36–92; FI–7–94.

Abstract: Section 148 of the Internal Revenue Code requires issuers of tax-exempt bonds to rebate certain arbitrage profits earned on nonpurpose investments acquired with the bond proceeds. Under FI–36–92, issuers are required to file a Form 8038–T and remit the rebate.

Issuers are also required to keep records of certain interest rate hedges so that the hedges are taken into account in determining arbitrage profits. Under FI–7–94, the scope of interest rate hedging transactions covered by the arbitrage regulations was broadened by requiring that hedges entered into prior to the sale date of the bonds are covered as well.

Current Actions: There is no change to these existing regulations.

Type of Review: Extension of a currently approved collection.

Affected Public: State, local or Tribal governments.

Estimated Number of Respondents: 3,100.

Estimated Time per Respondent: 14 hr., 34 min.

Estimated Total Annual Burden Hours: 42,050.

The following paragraph applies to all of the collections of information covered by this notice:

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

Request for Comments: Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Approved: March 3, 2009.

R. Joseph Durbala,

IRS Reports Clearance Officer.

[FR Doc. E9–5963 Filed 3–18–09; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

[IA–14–91]

Proposed Collection; Comment Request for Regulation Project

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)). Currently, the IRS is soliciting comments concerning an existing final regulation, IA–14–91 (TD 8454), Adjusted Current Earnings (section 1.56(g)–1).

DATES: Written comments should be received on or before May 18, 2009 to be assured of consideration.

ADDRESSES: Direct all written comments to Glenn P. Kirkland, Internal Revenue Service, room 6129, 1111 Constitution Avenue NW., Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of this regulation should be directed to R. Joseph Durbala, at (202) 622–3634, Internal Revenue Service, room 6129, 1111 Constitution Avenue NW., Washington, DC 20224, or through the Internet at *RJoseph.Durbala@irs.gov*.

SUPPLEMENTARY INFORMATION:

Title: Adjusted Current Earnings.

OMB Number: 1545–1233.

Regulation Project Number: IA–14–91 (Final).

Abstract: Section 1.56(g)–1(r) of the regulation sets forth rules pursuant to section 56(g) of the Internal Revenue Code that permit taxpayers to elect a simplified method of computing their inventory amounts in order to compute their alternative minimum tax.

Current Actions: There is no change to this existing regulation.

Type of Review: Extension of a currently approved collection.

Affected Public: Business or other for-profit organizations.

Estimated Number of Respondents: 1,000.

Estimated Time Per Respondent: 1 hour.

Estimated Total Annual Burden Hours: 1,000.

The following paragraph applies to all of the collections of information covered by this notice:

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number.

Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

Request For Comments: Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Approved: February 23, 2009.

R. Joseph Durbala,

IRS Reports Clearance Officer.

[FR Doc. E9–5965 Filed 3–18–09; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Open Meeting of the Area 2 Taxpayer Advocacy Panel (Including the States of Delaware, North Carolina, South Carolina, New Jersey, Maryland, Pennsylvania, Virginia, West Virginia and the District of Columbia)

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice of meeting.

SUMMARY: An open meeting of the Area 2 Taxpayer Advocacy Panel will be conducted. The Taxpayer Advocacy Panel is soliciting public comments, ideas, and suggestions on improving customer service at the Internal Revenue Service.

DATES: The meeting will be held Thursday, April 23, 2009 and Friday, April 24, 2009.

FOR FURTHER INFORMATION CONTACT: Marianne Ayala at 1–888–912–1227 or 954–423–7978.

SUPPLEMENTARY INFORMATION: Notice is hereby given pursuant to section 10(a)(2) of the Federal Advisory Committee Act, 5 U.S.C. App. (1988) that an open meeting of the Area 2 Taxpayer Advocacy Panel will be held Thursday, April 23, 2009, 8 a.m. to 5 p.m. and Friday, April 24, 2009, 8 a.m. to 3 p.m. Eastern Time in Philadelphia, PA. The public is invited to make oral comments or submit written statements for consideration. Notification of intent to participate must be made with Marianne Ayala. For more information please contact Mrs. Ayala at 1–888–912–1227 or 954–423–7978, or write TAP Office, 1000 South Pine Island Road, Suite 340, Plantation, FL 33324, or post comments to the Web site: *http://www.improveirs.org*.

The agenda will include various IRS issues.

March 9, 2009.

Shawn F. Collins,

Acting Director, Taxpayer Advocacy Panel.

[FR Doc. E9–5942 Filed 3–18–09; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Open Meeting of the Area 6 Taxpayer Advocacy Panel (Including the States of Arizona, Colorado, Idaho, Montana, New Mexico, North Dakota, Oregon, South Dakota, Utah, Washington, and Wyoming)

AGENCY: Internal Revenue Service (IRS) Treasury.

ACTION: Notice of Meeting.

SUMMARY: An open meeting of the Area 6 Taxpayer Advocacy Panel will be conducted. The Taxpayer Advocacy Panel is soliciting public comments, ideas, and suggestions on improving customer service at the Internal Revenue Service.

DATES: The meeting will be held Thursday, April 23, 2009, Friday, April 24, 2009, and Saturday, April 25, 2009.

FOR FURTHER INFORMATION CONTACT: Dave Coffman at 1–888–912–1227 or 206–220–6096

SUPPLEMENTARY INFORMATION: Notice is hereby given pursuant to Section 10(a)(2) of the Federal Advisory Committee Act, 5 U.S.C. App. (1988) that an open meeting of the Area 6 Taxpayer Advocacy Panel will be held Thursday, April 23, 2009 from 1 p.m. to 4:30 p.m., Friday, April 24, 2009 from 8:30 a.m. to 4:30 p.m., and Saturday, April 25, 2009 from 8:30 a.m. to 11:30 a.m. Pacific Time in Seattle, Washington. The public is invited to make oral comments or submit written statements for consideration. Notification of intent to participate must

be made with David Coffman. For more information please contact Mr. Coffman at 1–888–912–1227 or 206–220–6096, or write TAP Office, 915 2nd Avenue, MS W–406, Seattle, WA 98174 or post comments to the Web site: *http://www.improveirs.org*.

The agenda will include various IRS issues.

Dated: March 9, 2009.

Shawn F. Collins,

Acting Director, Taxpayer Advocacy Panel.

[FR Doc. E9–5946 Filed 3–18–09; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Art Advisory Panel—Notice of Closed Meeting

AGENCY: Internal Revenue Service, Treasury.

ACTION: Notice of closed meeting of Art Advisory Panel.

SUMMARY: Closed meeting of the Art Advisory Panel will be held in Washington, DC.

DATES: The meeting will be held April 7 and 8, 2009.

ADDRESSES: The closed meeting of the Art Advisory Panel will be held on April 7 and 8, 2009, in Room 4136 beginning at 9:30 a.m., Franklin Court Building, 1099 14th Street, NW., Washington, DC 20005.

FOR FURTHER INFORMATION CONTACT: Karen Carolan, C:AP:ART, 1099 14th Street, NW., Washington, DC 20005. Telephone (202) 435–5609 (not a toll free number).

SUPPLEMENTARY INFORMATION: Notice is hereby given pursuant to section 10(a)(2) of the Federal Advisory Committee Act, 5 U.S.C. App., that a closed meeting of the Art Advisory Panel will be held on April 7 and 8, 2009, in Room 4136 beginning at 9:30 a.m., Franklin Court Building, 1099 14th Street, NW., Washington, DC 20005.

The agenda will consist of the review and evaluation of the acceptability of fair market value appraisals of works of art involved in Federal income, estate, or gift tax returns. This will involve the discussion of material in individual tax returns made confidential by the provisions of 26 U.S.C. 6103.

A determination as required by section 10(d) of the Federal Advisory Committee Act has been made that this meeting is concerned with matters listed in 5 U.S.C. section 552b(c)(3), (4), (6), and (7), and that the meeting will not be open to the public.

Sarah Hall Ingram,

Chief, Appeals.

[FR Doc. E9–5941 Filed 3–18–09; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Open Meeting of the Taxpayer Advocacy Panel Earned Income Tax Credit Issue Committee

AGENCY: Internal Revenue Service (IRS) Treasury.

ACTION: Notice of Meeting.

SUMMARY: An open meeting of the Taxpayer Advocacy Panel Earned Income Tax Credit Issue Committee will be conducted. The Taxpayer Advocacy Panel is soliciting public comments, ideas and suggestions on improving customer service at the Internal Revenue Service.

DATES: The meeting will be Friday, May 1, 2009 and Saturday, May 2, 2009.

FOR FURTHER INFORMATION CONTACT: Audrey Y. Jenkins at 1–888–912–1227 or 718–488–2085.

SUPPLEMENTARY INFORMATION: Notice is hereby given pursuant to Section 10(a)(2) of the Federal Advisory Committee Act, 5 U.S.C. App. (1988) that an open meeting of the Taxpayer Advocacy Panel Earned Income Tax Credit Issue Committee will be held Friday, May 1, 2009 from 8:30 a.m. to 5 p.m. and Saturday, May 2, 2009 from 8:30 a.m. to 12 p.m. Eastern Time in New York City, NY. The public is invited to make oral comments or submit written statements for consideration. Due to limited conference lines, notification of intent to participate must be made with Audrey Y. Jenkins. For more information please contact Ms. Jenkins at 1–888–912–1227 or 718–488–2085, or write TAP Office, 10 MetroTech Center, 625 Fulton Street, Brooklyn, NY 11201, or contact us at the Web site: *http://www.improveirs.org*.

The agenda will include various IRS issues.

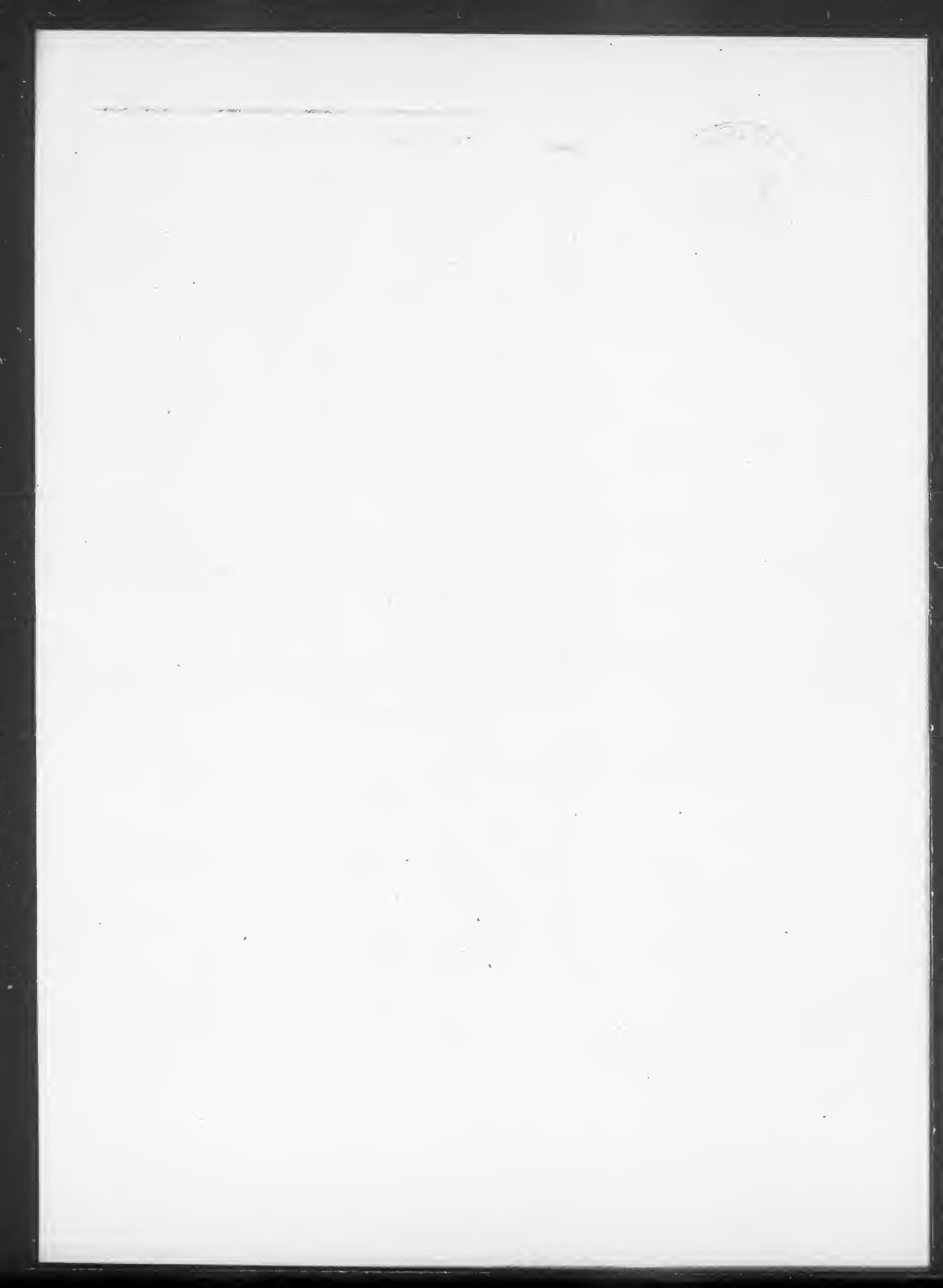
March 9, 2009.

Shawn F. Collins,

Acting Director, Taxpayer Advocacy Panel.

[FR Doc. E9–5943 Filed 3–18–09; 8:45 am]

BILLING CODE 4830–01–P



Thursday,

March 19, 2009

Part II

Department of Defense

General Services Administration

National Aeronautics and Space Administration

48 CFR Chapter 1 and Parts 1, 3, et al.
Federal Acquisition Regulations; Final Rules, Interim Rules, and Small Entity Compliance Guide

DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

48 CFR Chapter 1

[Docket FAR 2009–0001, Sequence 2]

Federal Acquisition Regulation; Federal Acquisition Circular 2005–31; Introduction

AGENCIES: Department of Defense (DoD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

ACTION: Summary presentation of rules.

SUMMARY: This document summarizes the Federal Acquisition Regulation (FAR) rules agreed to by the Civilian Agency Acquisition Council and the Defense Acquisition Regulations Council in this Federal Acquisition Circular (FAC) 2005–31. A companion document, the Small Entity Compliance Guide (SECG), follows this FAC. The FAC, including the SECG, is available via the Internet at *http://www.regulations.gov.*

DATES: For effective dates and comment dates, see separate documents, which follow.

FOR FURTHER INFORMATION CONTACT: The analyst whose name appears in the table below in relation to each FAR case. Please cite FAC 2005–31 and the specific FAR case numbers. For information pertaining to status or publication schedules, contact the FAR Secretariat at (202) 501–4755.

LIST OF RULES IN FAC 2005–31

Item	Subject	FAR case	Analyst
I	Small Business Size Rerepresentation	2006–032	Cundiff
II	Clarification of Submission of Cost or Pricing Data on Non-Commercial Modifications of Commercial Items (Interim).	2008–012	Chambers
III	Amendments to Incorporate New Wage Determinations	2008–014	Woodson
IV	Least Developed Countries that are Designated Countries	2008–021	Murphy
V	Federal Food Donation Act of 2008 (Interim)	2008–017	Jackson
VI	Technical Amendments		

SUPPLEMENTARY INFORMATION: Summaries for each FAR rule follow. For the actual revisions and/or amendments to these FAR cases, refer to the specific item number and subject set forth in the documents following these item summaries.

FAC 2005–31 amends the FAR as specified below:

Item I—Small Business Size Rerepresentation (FAR Case 2006–032)

This rule amends the Federal Acquisition Regulation (FAR) to adopt as final, with changes, an interim FAR rule published in the **Federal Register** at 72 FR 36852, July 5, 2007, amending the FAR to implement the Small Business Administration's (SBA) final rule published on November 15, 2006 (71 FR 66434), entitled Small Business Size Regulations; Size for Purposes of Governmentwide Acquisition Contracts, Multiple Award Schedule Contracts and Other Long-Term Contracts; 8(a) Business Development/Small Disadvantaged Business; Business Status Determinations. The purpose of the SBA rule and this FAR rule is to improve the accuracy of small business size status reporting, at the prime contract level, over the life of certain contracts (long-term contracts, novations, acquisitions, and mergers). Contractors are required to rerepresent their size status prior to the end of the fifth year of a contract that is more than five years in duration (long-term contract); prior to exercising any option thereafter; following execution of a novation agreement on any contract; or following a merger or acquisition, regardless of whether there is a novation agreement. A change in the size status does not change the terms and conditions of the contract, but the agency may no longer include the value of options exercised or orders issued against the contract in its small business prime contracting goal achievements.

Item II—Clarification of Submission of Cost or Pricing Data on Non-Commercial Modifications of Commercial Items (FAR Case 2008–012) (Interim)

The Civilian Agency Acquisition Council and the Defense Acquisition Regulations Council (Councils) are issuing an interim final rule amending the Federal Acquisition Regulation (FAR) to harmonize the thresholds for cost or pricing data on non-commercial modifications of commercial items to reflect the Truth In Negotiation Act (TINA) threshold for cost and pricing data.

The Councils are hereby implementing a requirement of the National Defense Authorization Act (NDAA) for FY 2008. Specifically, Section 814 of the Act requires the harmonization of the threshold for cost or pricing data on non-commercial modifications of commercial items with the TINA threshold for cost and pricing data. By linking the threshold for cost or pricing data on non-commercial modifications of commercial items with the TINA threshold at FAR 15.403–4, whenever the TINA threshold is adjusted the threshold for cost or pricing data on non-commercial modifications of commercial items will be automatically adjusted as well.

Item III—Amendments to Incorporate New Wage Determinations(FAR Case 2008–014)

The final rule amends the Federal Acquisition (FAR) to correct an inconsistency between FAR 15.206(c) and 22.404–5(c)(3), by revising the language at 22.404–5(c). This change requires the contracting officer to amend solicitations to incorporate new Davis Bacon wage determinations (WD) and furnish the wage rate information only to all offerors that have not been eliminated from the competition, if the closing date for receipt of offers has already passed. The revision is necessary to ensure consistency with FAR 15.206(c), and eliminate a possible scenario where incorporation of an updated WD into the solicitation process, could cause an unnecessary and counterproductive reevaluation of proposals already eliminated from competition. This change is consistent with the intent of the Department of Labor regulations, ensuring that the most current WD is placed in the contract at the time of award for

compliance at the start of contract performance.

Item IV—Least Developed Countries that are Designated Countries (FAR Case 2008–021)

This final rule amends the Federal Acquisition Regulation (FAR) to revise the definition of designated country, adding Liberia and removing Cape Verde. Least Developed Countries form a subset of designated countries. The list of Least Developed Countries is derived from a United Nations list of Least Developed Countries. The United States Trade Representative has updated the list of Least Developed Countries that are treated as designated countries. In acquisitions that are covered by the World Trade Organization Government Procurement Agreement, contracting officers must acquire only U.S.-made or designated country end products, or U.S. or designated-country services, unless offers of such end products or services are not received or are insufficient to fulfill the requirement (FAR 25.403(c)).

Item V—Federal Food Donation Act of 2008 (Pub. L. 110–247) (FAR Case 2008–017) (Interim)

This interim rule amends the Federal Acquisition Regulation (FAR) Parts 26, 31, and 52 to encourage executive agencies and their contractors to donate apparently wholesome excess food to nonprofit organizations that provide assistance to food-insecure people in the United States. This change implements the Federal Food Donation Act of 2008 (Pub. L. 110–247) which encourages executive agencies and their contractors, in contracts for the provision, service, or sale of food to encourage the contractors, to the maximum extent practicable and safe, to donate apparently wholesome excess food to nonprofit organizations that provide assistance to food-insecure people in the United States. The rule is effective for all solicitations and contracts greater than $25,000 for the provision, service, or sale of food in the United States issued on or after the effective date of the rule.

Item VI—Technical Amendments

Editorial changes are made at FAR 3.503–2, 47.103–1, and 52.225–11.

Dated: March 13, 2009

Al Matera,

Director, Office of Acquisition Policy.

Federal Acquisition Circular

Federal Acquisition Circular (FAC) 2005-31 is issued under the authority of the Secretary of Defense, the Administrator of General Services, and the Administrator for the National Aeronautics and Space Administration.

Unless otherwise specified, all Federal Acquisition Regulation (FAR) and other directive material contained in FAC 2005-31 is effective March 19, 2009, except for Items I and III, which are effective April 20, 2009.

Dated: March 12, 2009.

Amy G. Williams,

Acting Deputy Director, Defense Procurement and Acquisition Policy (Defense Acquisition Regulations System).

Dated: March 11, 2009.

Rodney P. Lantier,

Acting Senior Procurement Executive & Acting Deputy Chief Acquisition Officer, Office of the Chief Acquisition Officer, U.S. General Services Administration.

Dated: March 11, 2009.

William P. McNally,

Assistant Administrator for Procurement, National Aeronautics and Space Administration.

[FR Doc. E9–5874 Filed 3–18–09; 8:45 am]

BILLING CODE 6820–EP–S

DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

48 CFR Parts 1, 4, 17, 19, and 52

[FAC 2005–31; FAR Case 2006–032; Item I; Docket 2007–0002; Sequence 11]

RIN 9000–AK78

Federal Acquisition Regulation; FAR Case 2006–032, Small Business Size Rerepresentation

AGENCIES: Department of Defense (DoD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

ACTION: Final rule.

SUMMARY: The Civilian Agency Acquisition Council and the Defense Acquisition Regulations Council (Councils) have agreed on a final rule amending the Federal Acquisition Regulation (FAR) to implement the Small Business Administration's (SBA) final rule published on November 15, 2006 (71 FR 66434) entitled, Small Business Size Regulations; Size for Purposes of Governmentwide Acquisition Contracts, Multiple Award Schedule Contracts and Other Long-Term Contracts; 8(a) Business Development/Small Disadvantaged Business; Business Status Determinations. The purpose of the SBA rule is to improve the accuracy of small business size status reporting over the life of certain contracts.

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

Applicability date: This rule applies to solicitations issued and contracts awarded on or after April 20, 2009. All long-term contracts as defined in this rule, awarded to small business concerns prior to June 30, 2007, that have not yet been modified to include FAR 52.219–28, must be modified to include FAR 52.219–28 within 90 days after the effective date of this final rule.

FOR FURTHER INFORMATION CONTACT: Ms. Rhonda Cundiff, Procurement Analyst, at (202) 501–0044 for clarification of content. For information pertaining to status or publication schedules, contact the FAR Secretariat at (202) 501–4755. Please cite FAC 2005–31, FAR case 2006–032.

SUPPLEMENTARY INFORMATION:

A. Background

DoD, GSA, and NASA published an interim rule in the **Federal Register** at 72 FR 36852 on July 5, 2007, to implement the Small Business Administration's (SBA) final rule published on November 15, 2006 (71 FR 66434) entitled, Small Business Size Regulations; Size for Purposes of Governmentwide Acquisition Contracts, Multiple Award Schedule Contracts and Other Long-Term Contracts; 8(a) Business Development/Small Disadvantaged Business; Business Status Determinations.

Four commenters submitted comments on the interim rule. The comments recommend substantive changes to the rule, request clarification, and recommend editorial changes to the language for clarity and consistency. A discussion of these comments and the changes made to the rule as a result of them is provided below:

Comment: One commenter states that the interim rule is ineffective at preventing ongoing misrepresentation and miscoding on individual contracts because it does not impose a time limit on when existing contracts have to be modified in order to incorporate the small business rerepresentation requirements. This time period could easily be several years, until the time that the base period runs out and the agency must face the choice to exercise options. The commenter recommends that the rule be modified to impose a reasonable period of 30–90 days requiring all contracts to be modified for inclusion of the rerepresentation requirements, and further provide that these requirements will be included by

operation of law regardless of whether the contracts were modified.

Response: The interim rule was effective on June 30, 2007. The Councils' expectation was that the process of modifying long-term contracts awarded to small businesses prior to June 30, 2007, to include the FAR clause at 52.219–28, Post-Award Small Business Program Rerepresentation, would begin immediately and would be completed within a reasonable period of time. It was also expected that other contracts awarded prior to June 30, 2007, to small businesses, would be modified to include the clause at the time an option is exercised. To make the Councils' expectation more clear, the preamble to this **Federal Register** notice states that all long-term contracts awarded to small businesses prior to June 30, 2007, that have not yet been modified to include FAR 52.219–28, must be modified within 90 days after the effective date of this final rule.

The Councils do not concur with the recommendation to add language to the final rule stating that the rerepresentation requirements will be included by operation of law regardless of whether the contracts were modified. This is a matter to be determined by the courts and not addressed by the Councils.

Comment: One commenter states that the interim rule does not make it clear that companies that have been acquired by large businesses must recertify their small business status (or lack thereof) within 30 days as well as in connection with individual task orders.

Response: The Councils believe the interim rule is clear and changes are not necessary. Contractors are required to complete rerepresentation of their size status at the prime contract level in accordance with FAR 19.301–2 and 52.219–28 within 30 days after execution of a novation agreement, or within 30 days after a merger or acquisition that does not require a novation agreement. Further, as set forth at FAR 19.301–2(d) of the final rule, after a contractor rerepresents it is other than small, and the contracting officer modifies the contract to reflect the rerepresentation, the agency no longer includes the value of options exercised, modifications issued, orders issued, or purchases made under blanket purchase agreements on that contract in its small business prime contracting goal achievements.

Comment: One commenter recommends that the interim rule be modified to clearly require certification by merged or acquired firms for purposes of bidding on task orders.

Response: The Councils do not concur. The purpose of the rule is to improve the accuracy of size status reporting over the life of certain contracts. Under this FAR rule, a rerepresentation at the contract level that the contractor is no longer small, results in the task orders being reported as awarded to a concern that is not small. FAR clause 52.219–28 requires that contractors rerepresent size status by updating their representations and certifications at the prime contract level in the Online Representations and Certifications Application (ORCA). The contractor must notify the contracting office that it has made the required rerepresentation. In accordance with FAR 19.301–2(d) of the final rule, after a contractor rerepresents it is other than small, and the contracting officer modifies the contract to reflect the rerepresentation, the agency no longer includes the value of options exercised, modifications issued, orders issued, or purchases made under blanket purchase agreements on that contract in its small business prime contracting goal achievements.

The Councils do not agree that rerepresentation for purposes of competing for task orders should be required. This FAR rule at paragraph 19.301–2(e), and the SBA regulation that it implements, state that a change in size status does not change the terms and conditions of the contract.

Comment: One commenter states the purpose of the interim rule is to improve the accuracy of size status representations in the Central Contractor Registration (CCR) and the Online Representations and Certifications Applications (ORCA) databases. The rule does not do this because it does not require contractors to recertify their status in these databases unless and until directed to by individual contracting officers. The integrity of these databases and future competitions is then at the mercy of individual contracting officers and their agencies who may have a vested interest in doing business with a large business under a contract vehicle with a small business.

Response: As stated in the interim rule, the primary purpose of this rule is to improve the accuracy of size status reporting over the life of certain contracts. This is done by revising the size status in the reporting database, Federal Procurement Data System (FPDS). Size status is revised in FPDS for actions under a particular contract from the point when the contracting officer modifies the contract to reflect the rerepresentation, forward. Although the rule does improve the accuracy of CCR and ORCA by keeping the information more current for future competitions, that is not its primary purpose. Further, the accuracy of the data in these Government-wide databases is not dependent on the actions of an individual contracting officer.

The FAR already requires contractors to update the information in CCR at least annually to ensure that it is current, accurate and complete. This rule adds a requirement for contractors to additionally update the information in CCR and ORCA when any of the events requiring rerepresentation occur. This means that the contractor may now be updating the information more often than annually. Neither the annual nor the rerepresentation update is dependent on an individual contracting officer directing it.

When a contractor is submitting a bid or proposal in response to a solicitation, the contractor is required by a FAR provision in the solicitation to verify that the representations and certifications in ORCA, including those related to the size standard applicable to the solicitation, have been updated within the last 12 months, are current, accurate, and complete. Therefore, there is already a requirement in the FAR for representations to be accurate, complete and current for future competitions. This rule adds a requirement for ORCA also to be updated when any of the events requiring rerepresentation occur. These requirements are in standard FAR provisions and clauses and are not dependent on individual contracting officer direction.

Comment: One commenter states that the interim rule does not utilize the authorities in SBA regulations, 13 CFR 121.1001, which give SBA Government Contracting Area Directors and the Head of the SBA Office of Government Contracting in Washington, DC the authority to initiate size determinations for the purpose of cleaning up government-wide databases. The commenter recommends that the interim rule be modified to provide for notice and dual reporting to the SBA Area Directors and/or the Office of Government Contracting on any recertification requests.

Response: The Councils have not adopted this recommendation since the SBA final rule published on November 15, 2006 did not amend 13 CFR 121.1001(b)(9). The rerepresentation rule does not affect SBA's authority to initiate a formal size determination for purposes of validating firms listed in the Central Contractor Registration.

Comment: One commenter states that the interim rule is ineffective at

applying the anti-misrepresentation provisions of the Small Business Act. The Small Business Act contains procedures for debarring companies that misrepresent their size status. Recommend contracting officers refer companies representing themselves as small businesses to the SBA to determine size status and possible misrepresentation. Additionally, the interim rule should permit referral to agency suspension and debarment officials.

Response: The Councils do not concur. The FAR already addresses the remedies for misrepresentation of size status. FAR 19.301–1(b) states, "The contracting officer shall accept an offeror's representation in a specific bid or proposal that it is a small business unless (1) another offeror or interested party challenges the concern's small business representation, or (2) the contracting officer has a reason to question the representation." The interim rule provided at FAR 19.302(c)(1) that a protest concerning a specific rerepresentation shall be referred to the SBA. Nothing in this FAR rule precludes agencies from taking actions that are otherwise justified and permitted under the FAR.

Comment: One commenter states that the purpose of the interim rule is to promote consistency with the SBA Recertification Regulations. However, these regulations are in conflict. Federal agencies will follow the FAR only without any additional guidance. The commenter recommends that the interim rule be modified to specifically direct Contracting Officers to follow the SBA Recertification Regulations.

Response: The Councils do not agree. The stated purpose of the interim rule is to improve the accuracy of small business size status reporting, at the prime contract level, over the life of certain contracts. Contracting officers under the Executive Branch are required to follow the FAR. In cases where there are inconsistencies between Title 13 (SBA regulations) and Title 48 (FAR) of the Code of Federal Regulations, contracting officers follow the FAR.

Comment: One commenter states that the interim rule fails to utilize existing authorities concerning non-responsibility, fraud and misrepresentation in Government contracting. The interim rule does not address penalties when there is a small business size and status misrepresentation. As a result, the interim rule sends a message that misconduct in small business programs is acceptable.

Response: The Councils do not agree that the interim rule sends a message that misconduct in small business programs is acceptable. The same penalties that are currently available when a misrepresentation has occurred for initial award of a contract apply when a firm rerepresents its size status. The contractor is required to provide its rerepresentation in the Online Representations and Certifications Application (ORCA). ORCA alerts the contractor that it may be subject to penalties if information submitted in ORCA is not "current, accurate and complete." As part of the signatory process in ORCA, the contractor is notified that, "By submitting the representations and certifications in ORCA, you are attesting to the accuracy of the information and may be subject to penalties for misrepresentations."

Comment: One commenter recommends amending the last sentence of FAR 19.301–2, paragraph (a), to read: "or as authorized under another appropriate authority."

Response: The Councils do not concur. The Councils believe that the language, as written, is sufficient and the recommended change could be read as changing the meaning. The intent is that whatever authority is used the period of performance will not be extended by more than six months.

Comment: One commenter stated that FPDS-NG needs to allow an effective date for a change to be entered, regardless of the modification date.

Response: FAR 19.301–2(d) has been revised to state that agencies should issue a modification to the contract capturing the rerepresentation and report it to FPDS within 30 days after notification of the rerepresentation. The modification date is the effective date for changing status in FPDS.

Comment: One commenter stated that the requirements are unclear for existing contracts. This commenter asked, under the rule, is a contracting officer required to modify a contract awarded to a small business that is other than long-term if the contract does not include an option to exercise?

Response: No. There are two instances when the contracting officer is required to modify contracts awarded to small business concerns prior to June 30, 2007, to include the FAR clause at 52.219–28: 1) when the contract is a long-term contract; and 2) when the contract is not a long-term contract but the contract is being modified to exercise any option as defined in FAR 2.101. If a contract that is not a long-term contract does not include any options that have not yet been exercised, then the contract would not be modified.

Comment: One commenter asked with regard to FAR 19.301–2(b)(1) and (2): Do the words "within 30 days after execution of a novation agreement" and "within 30 days of a merger or acquisition" assume that FAR clause 52.219–28 is already in the contract? The language here can be interpreted two different ways. One scenario is that the small business must rerepresent upon three different sets of circumstances, (1) after execution of a novation agreement, (2) after merger or acquisition, or (3) after the FAR clause 52.219–28 is added to the contract. In this scenario, if the clause is not already in the contract, how would a small business rerepresent after execution of a novation agreement or a merger/acquisition? The second scenario assumes that the clause is already in the contract and upon execution of a novation agreement or after a merger/acquisition, the small business rerepresents itself.

Response: This rule addresses two circumstances with the same end result: 1) contracts awarded on or after June 30, 2007, where the clause is in the contract at time of award; and 2) contracts awarded prior to June 30, 2007, where the clause is incorporated into the contract through a contract modification. In the first circumstance, the contractor must rerepresent its size status within 30 days after an acquisition or merger, or within 30 days after execution of a novation agreement. In the second circumstance, the contractor must rerepresent its size status within 30 days of the contract being modified to incorporate FAR clause 52.219–28, if a novation agreement was executed, or a merger or acquisition occurred, prior to inclusion of the clause in the contract. In either case, the clause would be in the contract before the contractor is required to rerepresent its size status.

Comment: One commenter states that the rule appears to be focused on (1) size classification issues; (2) statistical reporting; and (3) unrestricted single-award contract scenarios. The commenter asked, how does a contracting officer treat a former small business acquired by a large business on a small business set-aside multiple-award indefinite-delivery indefinite-quantity contract?

Response: The purpose of the rule is to improve the accuracy of small business size status reporting, at the prime contract level, over the life of certain contracts. As set forth at FAR 19.301–2(e), a change in size status does not change the terms and conditions of the contract. How a contracting officer treats a concern that has rerepresented

that it is no longer a small business will depend on the terms and conditions of the contract and will be case specific.

Comment: One commenter recommends changing "the conditions" to "any of the conditions" at FAR 4.1201(b)(2), 19.202–5(c), and 19.301–3(a).

Response: The Councils concur that revising FAR 4.1201(b)(2) to read "any of the conditions" would be more clear and have made this change to the rule. However, the Councils do not agree that a change at FAR 19.202–5(c) or 19.301–3(a) is necessary because clause 52.219–28, which is referenced at 19.202–5(c) and 19.301(b), already states "upon the occurrence of *any* [emphasis added] of the following." FAR 19.301–3(a) refers to 19.301(b).

Comment: One commenter recommends changing "consider" to "take into account" in FAR 17.207(e)(2).

Response: Non-Concur. The term "consider" is used and understood throughout the FAR. Making the recommended change would not add clarity or improve understanding.

Comment: One commenter recommends changing "small business" to "small business concern" at FAR 19.202–5(c)(2), 19.301–2(b), and 19.301–3(b).

Response: Concur, for consistency within the FAR. The rule has been revised accordingly.

Comment: One commenter recommends amending FAR 19.202–5 to include the following to be consistent with 52.219–28(b), (f), and (g): "Require a contractor that does not have representations and certifications in ORCA, or that does not have a representation in ORCA for the North American Industry Classification System code applicable to the contract, to complete and submit the representation required by paragraph (g) of clause 52.219–28, or. . ."

Response: The Councils do not concur. FAR 19.202–5(c) contains the requirement to rerepresent. The various methods for rerepresenting are contained in FAR clause 52.219–28. It is not necessary nor would it add clarity to restate the methods for rerepresenting since they are contained in FAR clause 52.219–28 to which 19.202–5(c) refers.

Comment: One commenter recommends amending FAR clause 52.219–28, paragraph (a) "Definitions", "Small Business Concern," to be consistent with the definition in section 19.001. The commenter recommends the following language, which appears to have been omitted from FAR clause 52.219–28, be appended to paragraph (a): "Such a concern is 'not dominant in its field of operation' when it does not exercise a controlling or major influence on a national basis in a kind of business activity in which a number of business concerns are primarily engaged. In determining whether dominance exists, consideration shall be given to all appropriate factors, including volume of business, number of employees, financial resources, competitive status or position, ownership or control of materials, processes, patents, license agreements, facilities, sales territory, and nature of business activity."

Response: The Councils have included the recommended language in FAR 52.219–28(a) for consistency. The definition which was in FAR 19.001 is now in 2.101.

Comment: One commenter recommends amending FAR 52.219–28(2)(ii)(sic) to change the language from, "Within 60 to 120 days prior to the exercise date specified in the contract for any option thereafter," to "Within 60 to 120 days prior to the date specified in the contract for exercising any option thereafter."

Response: The Councils have revised the language at FAR 52.219–28(b)(3)(ii) as recommended for overall ease of understanding.

Comment: One commenter recommends amending FAR 52.219–28(e) to read as follows: "to ensure that they reflect the Contractor's current status."

Response: The Councils have adopted the recommended change to FAR 52.219–28(e) for overall ease of understanding.

In addition to the changes made in the final rule in response to public comments, the Councils made additional changes to make the rule more clear.

In FAR paragraph 19.202–5(c), "and the conditions in paragraph (b) of the clause are met" was changed to "and the conditions in the clause for rerepresenting are met." The reason for the change is that paragraph 19.202–5(c)(2) refers to paragraph (f) of the clause which was not specifically covered in the introductory language in FAR 19.202–5(c), which only referred to paragraph (b) of the clause. By stating the conditions in the clause for rerepresenting are met, both paragraphs (b) and (f) are clearly covered.

FAR paragraph 19.301–2(d) was replaced with, "After a contractor rerepresents it is other than small in accordance with 52.219–28, the agency may no longer include the value of options exercised, modifications issued, orders issued, or purchases made under blanket purchase agreements on that contract in its small business prime contracting goal achievements. Agencies must issue a modification to the contract capturing the rerepresentation and report it to FPDS within 30 days after notification of the rerepresentation."

This change was made to make it clear that the rerepresentation impacts all funding obligations under the contract, not just options exercised and orders issued. The Councils believe that this was implicit since the purpose of the rule is to improve the accuracy of size status reporting, which would cover all funds that are reported. However, the Councils have now made the language more clear by making it more explicit. A thirty-day timeframe has been added for making the change in FPDS. The Councils believe that it was understood that the change to FPDS would be done expeditiously, this thirty-day timeframe makes that more clear.

FAR paragraph 52.219–28(e) has been revised to read in part, "The contractor shall notify the contracting office in writing within the time frames specified in paragraph (b) of this clause."

The Councils believe that it was implicit in the former language that the contractor must notify the Government within the time frames established for rerepresentation. However, this change ensures that it is clear. The phrase "by e-mail or otherwise" was deleted as unnecessary since "in writing" covers all forms of written submissions including e-mails.

This is a significant regulatory action and, therefore, was subject to review under Executive Order 12866, Regulatory Planning and Review, dated September 30, 1993. The rule is not a major rule under 5 U.S.C. 804.

B. Regulatory Flexibility Act

The Regulatory Flexibility Act, 5 U.S.C. 601, *et seq.*, applies to this final rule. The Councils prepared a Final Regulatory Flexibility Analysis (FRFA), and it is summarized as follows:

These changes may have a significant economic impact on a substantial number of small entities within the meaning of the Regulatory Flexibility Act, 5 U.S.C. 601, *et seq.* The purpose of the SBA's final rule, which this FAR rule implements, is to enable the Government to report more accurate small business prime contracting statistics. The rule provides for more accurate statistics through rerepresentations on contracts and using the size status in effect at the time of the rerepresentation.

Improving the accuracy of the statistics may benefit small businesses. The premise of the SBA rule is that if agencies can no longer take credit toward their small business goals for funds obligated to contracts where, over the course of the contract, the contractor has become other than small, agencies will need to make up the shortfall in meeting their

goals by seeking new procurement opportunities with the present universe of small businesses.

In the preamble to its rule, SBA estimated that potentially 2,300 concerns could be initially impacted by the requirement to rerepresent on long-term contracts, and 250 concerns may be impacted annually, thereafter. In addition, it is estimated that 300 concerns may be affected annually by the requirement to rerepresent size status as a result of novations, acquisitions, or mergers.

This rule will not impose any additional recordkeeping requirements on small businesses because they are already required to review and update their size status data, at a minimum, on an annual basis.

Interested parties may obtain a copy of the FRFA from the FAR Secretariat. The FAR Secretariat has submitted a copy of the FRFA to the Chief Counsel for Advocacy of the Small Business Administration.

C. Paperwork Reduction Act

The Paperwork Reduction Act (Pub. L. 104–13) applies because the final rule contains information collection requirements. The FAR clause at 52.219–28, Post-Award Small Business Program Rerepresentation requires the contractor to rerepresent size status and then notify the contracting office in writing that the data have been validated or updated and provide the date of the validation or update. Public comments were solicited for the information collection at the interim rule stage (72 FR 36852). No comments were received. Accordingly, the FAR Secretariat will forward a request for approval of a new information collection requirement concerning 9000–0163 to the Office of Management and Budget under 44 U.S.C. Chapter 35. Public comments concerning this request will be invited through a subsequent **Federal Register** notice.

List of Subjects in 48 CFR Parts 1, 4, 19, and 52

Government procurement.

Dated: March 13, 2009.

Al Matera,

Director, Office of Acquisition Policy.

■ Accordingly, the interim rule published in the **Federal Register** at 72 FR 36852, July 5, 2007, is adopted as a final rule with the following changes:

■ 1. The authority citation for 48 CFR parts 1, 4, 19, and 52 continues to read as follows:

Authority: 40 U.S.C. 121(c); 10 U.S.C. chapter 137; and 42 U.S.C. 2473(c).

PART 1—FEDERAL ACQUISITION REGULATIONS SYSTEM

1.106 [Amended]

■ 2. Amend section 1.106 by adding, in numerical sequence, FAR segment "52.219–28" and its corresponding OMB Control Number "9000–0163".

PART 4—ADMINISTRATIVE MATTERS

4.1201 [Amended]

■ 3. Amend section 4.1201 by removing from paragraph (b)(2) "When the" and adding "When any of the" in its place.

PART 19—SMALL BUSINESS PROGRAMS

■ 4. Amend section 19.202–5 by revising the introductory text of paragraph (c); and removing from paragraphs (c)(1) and (c)(2) "business" and adding "business concern" in its place.

19.202–5 Data collection and reporting requirements.

* * * * *

(c) When the contract includes the clause at 52.219–28, Post Award Small Business Program Rerepresentation, and the conditions in the clause for rerepresenting are met—

* * * * *

■ 5. Amend section 19.301–2 by revising the section heading as set forth below; by removing from the introductory text of paragraph (b) "business" and adding "business concern" in its place; and by revising paragraph (d) to read as follows:

19.301–2 Rerepresentation by a contractor that represented itself as a small business concern.

* * * * *

(d) After a contractor rerepresents it is other than small in accordance with 52.219–28, the agency may no longer include the value of options exercised, modifications issued, orders issued, or purchases made under blanket purchase agreements on that contract in its small business prime contracting goal achievements. Agencies should issue a modification to the contract capturing the rerepresentation and report it to FPDS within 30 days after notification of the rerepresentation.

* * * * *

■ 6. Amend section 19.301–3 by revising the section heading as set forth below; and by removing from paragraph (b) "business" and adding "business concern" in its place. The revised text reads as follows:

19.301–3 Rerepresentation by a contractor that represented itself as other than a small business concern.

* * * * *

PART 52—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

■ 7. Amend section 52.212–5 by revising the date of the clause and paragraph (b)(16) to read as follows:

52.212–5 Contract Terms and Conditions Required to Implement Statutes or Executive Orders—Commercial Items.

* * * * *

CONTRACT TERMS AND CONDITIONS REQUIRED TO IMPLEMENT STATUTES OR EXECUTIVE ORDERS—COMMERCIAL ITEMS (MAR 2009)

* * * * *

(b) * * *

(16) 52.219–28, Post Award Small Business Program Rerepresentation (MAR 2009) (15 U.S.C. 632(a)(2)).

* * * * *

(End of Clause)

■ 8. Amend section 52.219–28 by revising the date of the clause; by adding in paragraph (a), in the definition "Small business concern" two new sentences to the end of the paragraph; and by revising paragraphs (b)(3)(ii) and (e) to read as follows:

52.219–28 Post-Award Small Business Program Rerepresentation.

* * * * *

POST-AWARD SMALL BUSINESS PROGRAM REREPRESENTATION (MAR 2009)

(a) *Definitions.* * * *

Small business concern * * * Such a concern is "not dominant in its field of operation" when it does not exercise a controlling or major influence on a national basis in a kind of business activity in which a number of business concerns are primarily engaged. In determining whether dominance exists, consideration shall be given to all appropriate factors, including volume of business, number of employees, financial resources, competitive status or position, ownership or control of materials, processes, patents, license agreements, facilities, sales territory, and nature of business activity.

(b) * * *

(3) * * *

(ii) Within 60 to 120 days prior to the date specified in the contract for exercising any option thereafter.

* * * * *

(e) Except as provided in paragraph (g) of this clause, the Contractor shall make the rerepresentation required by paragraph (b) of this clause by validating or updating all its representations in the Online Representations and Certifications Application and its data in the Central Contractor Registration, as necessary, to ensure that they reflect the Contractor's current status. The Contractor shall notify the contracting office in writing within the timeframes specified in paragraph (b) of this

clause that the data have been validated or updated, and provide the date of the validation or update.

* * * * *

(End of clause)

[FR Doc. E9–5871 Filed 3–18–09; 8:45 am]

BILLING CODE 6820–EP–S

DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

48 CFR Part 15

[FAC 2005–31; FAR Case 2008–012; Item II; Docket 2008–0001, Sequence 10]

RIN 9000–AL12

Federal Acquisition Regulation; FAR Case 2008–012, Clarification of Submission of Cost or Pricing Data on Non-Commercial Modifications of Commercial Items

AGENCIES: Department of Defense (DoD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

ACTION: Interim rule with request for comments.

SUMMARY: The Civilian Agency Acquisition Council and the Defense Acquisition Regulations Council (Councils) have agreed on an interim rule amending the Federal Acquisition Regulation (FAR) to implement Section 814 of the National Defense Authorization Act for Fiscal Year 2008. Section 814 required the harmonization of the thresholds for cost or pricing data. Specifically, Section 814 required alignment of the threshold for cost or pricing data on non-commercial modifications of commercial items with the Truth In Negotiation Act (TINA) threshold for cost and pricing data.

DATES: *Effective Date*: March 19, 2009.

Comment Date: Interested parties should submit written comments to the FAR Secretariat on or before May 18, 2009 to be considered in the formulation of a final rule.

ADDRESSES: Submit comments identified by FAC 2005–31, FAR case 2008–012, by any of the following methods:

- *Regulations.gov: http://www.regulations.gov.*

Submit comments via the Federal eRulemaking portal by inputting "FAR Case 2008–012" under the heading "Comment or Submission". Select the link "Send a Comment or Submission" that corresponds with FAR Case 2008–012. Follow the instructions provided to complete the "Public Comment and Submission Form". Please include your name, company name (if any), and "FAR Case 2008–012" on your attached document.

- *Fax:* 202–501–4067.
- *Mail:* General Services Administration, Regulatory Secretariat (VPR), 1800 F Street, NW, Room 4041, ATTN: Hada Flowers, Washington, DC 20405.

Instructions: Please submit comments only and cite FAC 2005–31, FAR case 2008–012, in all correspondence related to this case. All comments received will be posted without change to *http://www.regulations.gov*, including any personal and/or business confidential information provided.

FOR FURTHER INFORMATION CONTACT: Mr. Edward N. Chambers, Procurement Analyst, at (202) 501–3221 for clarification of content. Please cite FAC 2005–31, FAR case 2008–012. For information pertaining to status or publication schedules, contact the FAR Secretariat at (202) 501–4755.

SUPPLEMENTARY INFORMATION:

A. Background

The National Defense Authorization Act (NDAA) for Fiscal Year 2008, Section 814, implemented two areas of clarification with regards to the submission of cost or pricing data on non-commercial modifications of commercial items. The first area dealt with clarifying at what point during the life of the contract that the cost or pricing data threshold should be applied. Section 814 of the NDAA for FY 2008 clarified this point by inserting "(at the time of contract award")" after "total price of the contract" language already contained in this FAR section. The second area dealt with the harmonization of the thresholds for cost or pricing data. Section 814 of the NDAA for FY 2008 deleted the current threshold amount ($500,000) for cost or pricing data relative to non-commercial modifications of commercial items and aligned this threshold with the current Truth In Negotiation Act (TINA) threshold for cost or pricing data of $650,000. Thus, as the TINA threshold for cost or pricing data is adjusted in the future so will the threshold for obtaining cost or pricing data on non-commercial modifications of commercial items. This case will make the necessary changes within the FAR.

This is not a significant regulatory action and, therefore, was not subject to review under Section 6(b) of Executive Order 12866, Regulatory Planning and Review, dated September 30, 1993. This rule is not a major rule under 5 U.S.C. 804.

B. Regulatory Flexibility Act

The interim rule is not expected to have a significant economic impact on a substantial number of small entities within the meaning of the Regulatory Flexibility Act, 5 U.S.C. 601, *et seq.*, since it is harmonizing this FAR section with other parts of the FAR and should actually reduce the administrative burden on contractors by not requiring them to track two separate dollar thresholds for submitting cost or pricing data. It is also increasing this dollar threshold relative to the submittal of cost or pricing data in this situation and thus contractors will experience a reduced administrative burden since they no longer will be required to submit cost or pricing data on this lower threshold amount. Therefore, an Initial Regulatory Flexibility Analysis has not been performed. The Councils will consider comments from small entities concerning the affected FAR Part 15 in accordance with 5 U.S.C. 610. Interested parties must submit such comments separately and should cite 5 U.S.C. 601, *et seq.* (FAC 2005–31, FAR case 2008–012), in correspondence.

C. Paperwork Reduction Act

The Paperwork Reduction Act does not apply because the changes to the FAR do not impose information collection requirements that require the approval of the Office of Management and Budget under 44 U.S.C. Chapter 35, *et seq.*

D. Determination to Issue an Interim Rule

A determination has been made under the authority of the Secretary of Defense (DoD), the Administrator of General Services (GSA), and the Administrator of the National Aeronautics and Space Administration (NASA) that urgent and compelling reasons exist to promulgate this interim rule without prior opportunity for public comment. This action is necessary because this provision of the National Defense Authorization Act for Fiscal Year 2008, Section 814 went into effect upon enactment, on January 28, 2008. However, pursuant to Pub. L. 98–577 and FAR 1.501, the Councils will consider public comments received in response to this interim rule in the formation of the final rule.

List of Subjects in 48 CFR Part 15

Government procurement.

Dated: March 13, 2009.

Al Matera,

Director, Office of Acquisition Policy.

■ Therefore, DoD, GSA, and NASA amend 48 CFR part 15 as set forth below:

PART 15—CONTRACTING BY NEGOTIATION

■ 1. The authority citation for 48 CFR part 15 continues to read as follows:

Authority: 40 U.S.C. 121(c); 10 U.S.C. chapter 137; and 42 U.S.C. 2473(c).

■ 2. Amend section 15.403–1 by revising paragraphs (c)(3)(ii)(B) and (c)(3)(ii)(C) to read as follows:

15.403–1 Prohibition on obtaining cost or pricing data (10 U.S.C. 2306a and 41 U.S.C. 254b).

* * * * *

(c) * * *

(3) * * *

(ii) * * *

(B) For acquisitions funded by DoD, NASA, or Coast Guard, such modifications of a commercial item are exempt from the requirement for submission of cost or pricing data provided the total price of all such modifications under a particular contract action does not exceed the greater of the threshold for obtaining cost and pricing data in 15.403–4 or 5 percent of the total price of the contract at the time of contract award.

(C) For acquisitions funded by DoD, NASA, or Coast Guard such modifications of a commercial item are not exempt from the requirement for submission of cost or pricing data on the basis of the exemption provided for at FAR 15.403–1(c)(3) if the total price of all such modifications under a particular contract action exceeds the greater of the threshold for obtaining cost and pricing data in 15.403–4 or 5 percent of the total price of the contract at the time of contract award.

* * * * *

[FR Doc. E9–5869 Filed 3–18–09; 8:45 am]

BILLING CODE 6820–EP–S

DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

48 CFR Part 22

[FAC 2005–31; FAR Case 2008–014; Item III; Docket 2009-0006; Sequence 1]

RIN 9000–AL17

Federal Acquisition Regulation; FAR Case 2008–014, Amendments to Incorporate New Wage Determinations

AGENCIES: Department of Defense (DoD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

ACTION: Final rule.

SUMMARY: The Civilian Agency Acquisition Council and the Defense Acquisition Regulations Council (Councils) have agreed on a final rule amending the Federal Acquisition Regulation (FAR) to preclude a possible scenario where a contracting officer has to unnecessarily reevaluate proposals already eliminated from a competition.

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

FOR FURTHER INFORMATION CONTACT: For clarification of content, contact Mr. Ernest Woodson, Procurement Analyst, at (202) 501–3775. For information pertaining to status or publication schedules, contact the FAR Secretariat at (202) 501–4755. Please cite FAC 2005–31, FAR case 2008–014.

SUPPLEMENTARY INFORMATION:

A. Background

The Department of Labor (DOL) regulations set forth at 29 CFR 1.6(c)(2) and (3) require that, when contracting by negotiation, the contracting agencies must place modified wage determinations (WDs) into solicitations and contracts if the WDs are received before contract award. FAR 22.404–6(c) establishes that when contracting by negotiation, all written actions modifying WDs received by the contracting agency before contract award, or modifications to general WDs published on the Wage Determination Online (WDOL) before award, shall be incorporated into the solicitation. If an effective WD is received by the contracting officer before award, the contracting officer shall follow the procedures in FAR 22.404–5(c)(3) or (4). FAR 22.404–5(c)(3) covers contracting by negotiation when the closing date has passed; and it requires that a new WD with a changed wage rate must be furnished as an amendment to all prospective offerors that submitted proposals. There is an apparent inconsistency between this and FAR 15.206(c) which requires that amendments issued after closing shall be issued to all offerors that have not been eliminated from the competition.

This final rule amends the Federal Acquisition Regulation to correct the inconsistency at FAR 22.404–5(c)(3) by changing the language to indicate a contracting officer shall amend solicitations to incorporate new wage determinations and furnish the wage rate information to all offerors that have not been eliminated from the competition, if the closing date for receipt of offers has already passed.

This is not a significant regulatory action and, therefore, was not subject to review under Section 6(b) of Executive Order 12866, Regulatory Planning and Review, dated September 30, 1993. This rule is not a major rule under 5 U.S.C. 804.

B. Regulatory Flexibility Act

The Regulatory Flexibility Act does not apply to this rule. This final rule does not constitute a significant FAR revision within the meaning of FAR 1.501 and Public Law 98–577, and publication for public comments is not required. However, the Councils will consider comments from small entities concerning the affected FAR Part 22 in accordance with 5 U.S.C. 610. Interested parties must submit such comments separately and should cite 5 U.S.C. 601, *et seq.* (FAC 2005–31, FAR case 2008–014), in correspondence.

C. Paperwork Reduction Act

The Paperwork Reduction Act does not apply, because the final rule does not impose information collection requirements that require the approval of the Office of Management and Budget under 44 U.S.C. Chapter 35, *et seq.*

List of Subjects in 48 CFR Part 22

Government procurement.

Dated: March 13, 2009.

Al Matera,

Director, Office of Acquisition Policy.

■ Therefore, DoD, GSA, and NASA amend 48 CFR part 22 as set forth below:

PART 22—APPLICATION OF LABOR LAWS TO GOVERNMENT ACQUISITION

■ 1. The authority citation for 48 CFR part 22 continues to read as follows:

Authority: 40 U.S.C. 121(c); 10 U.S.C. chapter 137; and 42 U.S.C. 2473(c).

22.404–5 [Amended]

■ 2. Amend section 22.404–5 in paragraph (c)(3) by removing "submitted proposals" and adding "have not been eliminated from the competition" in its place.

[FR Doc. E9–5873 Filed 3–17–09; 8:45 am]

BILLING CODE 6820–EP–S

DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

48 CFR Parts 25 and 52

[FAC 2005–31; FAR Case 2008–021; Item IV; Docket 2009-0005; Sequence 1]

RIN 9000–AL16

Federal Acquisition Regulation; FAR Case 2008–021, Least Developed Countries that are Designated Countries

AGENCIES: Department of Defense (DoD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

ACTION: Final rule.

SUMMARY: The Civilian Agency Acquisition Council and the Defense Acquisition Regulations Council (Councils) have agreed on a final rule amending the Federal Acquisition Regulation (FAR) to implement a revision by the United States Trade Representative (USTR) to the list of Least Developed Countries that are designated countries under the Trade Agreements Act of 1979.

DATES: *Effective Date*: March 19, 2009.

FOR FURTHER INFORMATION CONTACT: For clarification of content, contact Ms. Meredith Murphy, Procurement Analyst, at (202) 208–6925. For information pertaining to status or publication schedules, contact the FAR Secretariat at (202) 501–4755. Please cite FAC 2005–31, FAR case 2008–021.

SUPPLEMENTARY INFORMATION:

A. Background

The list of Least Developed Countries is derived from a United Nations list of Least Developed Countries. The USTR has revised the list of Least Developed Countries that are designated as eligible countries under the Trade Agreements Act of 1979, as amended, to add Liberia and to remove Cape Verde.

This final rule amends the FAR to revise (a) the definitions of "designated country" and "least developed country" at FAR 25.003 and (b) the definition of "designated country" in the clauses at FAR 52.225–5, Trade Agreements, and 52.225–11, Buy American Act—Construction Materials Under Trade Agreements.

This is not a significant regulatory action and, therefore, was not subject to review under Section 6(b) of Executive Order 12866, Regulatory Planning and Review, dated September 30, 1993. This rule is not a major rule under 5 U.S.C. 804.

B. Regulatory Flexibility Act

The Regulatory Flexibility Act does not apply to this rule. This final rule does not constitute a significant FAR revision within the meaning of FAR 1.501 and Pub. L. 98–577, and publication for public comments is not required. However, the Councils will consider comments from small entities concerning the affected FAR Parts 25 and 52 in accordance with 5 U.S.C. 610. Interested parties must submit such comments separately and should cite 5 U.S.C. 601, *et seq.* (FAC 2005–31, FAR case 2008–021), in correspondence.

C. Paperwork Reduction Act

The Paperwork Reduction Act does not apply because the changes to the FAR do not impose information collection requirements that require the approval of the Office of Management and Budget under 44 U.S.C. Chapter 35, *et seq.*

List of Subjects in 48 CFR Parts 25 and 52

Government procurement.

Dated: March 13, 2009.

Al Matera,

Director, Office of Acquisition Policy.

■ Therefore, DoD, GSA, and NASA amend 48 CFR parts 25 and 52 as set forth below:

■ 1. The authority citation for 48 CFR parts 25 and 52 continues to read as follows:

Authority: 40 U.S.C. 121(c); 10 U.S.C. chapter 137; and 42 U.S.C. 2473(c).

PART 25—FOREIGN ACQUISITION

■ 2. Amend section 25.003 by revising paragraph (3) of the definition "Designated country" and the definition "Least developed country" to read as follows:

25.003 Definitions.

* * * * *

Designated country means any of the following countries:

* * * * *

(3) A least developed country (Afghanistan, Angola, Bangladesh, Benin, Bhutan, Burkina Faso, Burundi, Cambodia, Central African Republic, Chad, Comoros, Democratic Republic of Congo, Djibouti, East Timor, Equatorial Guinea, Eritrea, Ethiopia, Gambia, Guinea, Guinea-Bissau, Haiti, Kiribati, Laos, Lesotho, Liberia, Madagascar, Malawi, Maldives, Mali, Mauritania, Mozambique, Nepal, Niger, Rwanda, Samoa, Sao Tome and Principe, Senegal, Sierra Leone, Solomon Islands, Somalia, Tanzania, Togo, Tuvalu, Uganda, Vanuatu, Yemen, or Zambia); or

* * * * *

Least developed country means any of the following countries: Afghanistan, Angola, Bangladesh, Benin, Bhutan, Burkina Faso, Burundi, Cambodia, Central African Republic, Chad, Comoros, Democratic Republic of Congo, Djibouti, East Timor, Equatorial Guinea, Eritrea, Ethiopia, Gambia, Guinea, Guinea-Bissau, Haiti, Kiribati, Laos, Lesotho, Liberia, Madagascar, Malawi, Maldives, Mali, Mauritania, Mozambique, Nepal, Niger, Rwanda, Samoa, Sao Tome and Principe, Senegal, Sierra Leone, Solomon Islands, Somalia, Tanzania, Togo, Tuvalu, Uganda, Vanuatu, Yemen, or Zambia.

* * * * *

PART 52—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

■ 3. Amend section 52.212–5 by revising the date of the clause and paragraph (b)(31) to read as follows:

52.212–5 Contract Terms and Conditions Required to Implement Statutes or Executive Orders—Commercial Items.

* * * * *

CONTRACT TERMS AND CONDITIONS REQUIRED TO IMPLEMENT STATUTES OR EXECUTIVE ORDERS—COMMERCIAL ITEMS (MAR 2009)

* * * * *

(b) * * *

____ (31) 52.225–5, Trade Agreements (MAR 2009) (19 U.S.C. 2501, *et seq.*, 19 U.S.C. 3301 note).

* * * * *

■ 4. Amend section 52.225-5 by revising the date of the clause and in paragraph (a) in the definition "Designated country", revising paragraph (3) to read as follows:

52.225–5 Trade Agreements.

* * * * *

TRADE AGREEMENTS (MAR 2009)

(a) * * *

Designated Country * * *

(3) A least developed country (Afghanistan, Angola, Bangladesh, Benin, Bhutan, Burkina Faso, Burundi, Cambodia, Central African Republic, Chad, Comoros, Democratic Republic of Congo, Djibouti, East Timor, Equatorial Guinea, Eritrea, Ethiopia, Gambia,

Guinea, Guinea-Bissau, Haiti, Kiribati, Laos, Lesotho, Liberia, Madagascar, Malawi, Maldives, Mali, Mauritania, Mozambique, Nepal, Niger, Rwanda, Samoa, Sao Tome and Principe, Senegal, Sierra Leone, Solomon Islands, Somalia, Tanzania, Togo, Tuvalu, Uganda, Vanuatu, Yemen, or Zambia); or

* * * * *

■ 5. Amend section 52.225-11 by revising the date of the clause and in paragraph (a) in the definition "Designated country", revising paragraph (3) to read as follows:

52.225–11 Buy American Act—Construction Materials Under Trade Agreements.

* * * * *

BUY AMERICAN ACT—CONSTRUCTION MATERIALS UNDER TRADE AGREEMENTS (MAR 2009)

(a) * * *

Designated Country * * *

(3) A least developed country (Afghanistan, Angola, Bangladesh, Benin, Bhutan, Burkina Faso, Burundi, Cambodia, Central African Republic, Chad, Comoros, Democratic Republic of Congo, Djibouti, East Timor, Equatorial Guinea, Eritrea, Ethiopia, Gambia, Guinea, Guinea-Bissau, Haiti, Kiribati, Laos, Lesotho, Liberia, Madagascar, Malawi, Maldives, Mali, Mauritania, Mozambique, Nepal, Niger, Rwanda, Samoa, Sao Tome and Principe, Senegal, Sierra Leone, Solomon Islands, Somalia, Tanzania, Togo, Tuvalu, Uganda, Vanuatu, Yemen, or Zambia); or

* * * * *

[FR Doc. E9–5867 Filed 3–18–09; 8:45 am]

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DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

48 CFR Parts 26, 31, and 52

[FAC 2005–31; FAR Case 2008–017; item V; Docket 2009-0007, Sequence 1]

RIN 9000–AL15

Federal Acquisition Regulation; FAR Case 2008–017, Federal Food Donation Act of 2008

AGENCIES: Department of Defense (DoD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

ACTION: Interim rule with request for comments.

SUMMARY: The Civilian Agency Acquisition Council and the Defense Acquisition Regulations Council (Councils) have agreed on an interim rule amending the Federal Acquisition Regulation (FAR) to implement the Federal Food Donation Act of 2008 (Pub. L. 110–247) which encourages executive agencies and their contractors, in contracts for the provision, service, or sale of food, to the maximum extent practicable and safe, to donate apparently wholesome excess food to nonprofit organizations that provide assistance to food-insecure people in the United States.

DATES: *Effective Date*: March 19, 2009.

Comment Date: Interested parties should submit written comments to the FAR Secretariat on or before May 18, 2009 to be considered in the formulation of a final rule.

ADDRESSES: Submit comments identified by FAC 2005–31, FAR case 2008–017, by any of the following methods:

- *Regulations.gov: http://www.regulations.gov.*Submit comments via the Federal eRulemaking portal by inputting "FAR Case 2008–017" under the heading "Comment or Submission". Select the link "Send a Comment or Submission" that corresponds with FAR Case 2008–017. Follow the instructions provided to complete the "Public Comment and Submission Form". Please include your name, company name (if any), and "FAR Case 2008–017" on your attached document.
- *Fax:* 202–501–4067.
- *Mail:* General Services Administration, Regulatory Secretariat (VPR), 1800 F Street, NW., Room 4041, ATTN: Hada Flowers, Washington, DC 20405.

Instructions: Please submit comments only and cite FAC 2005–31, FAR case 2008–017, in all correspondence related to this case. All comments received will be posted without change to *http://www.regulations.gov*, including any personal and/or business confidential information provided.

FOR FURTHER INFORMATION CONTACT: Michael Jackson, Procurement Analyst, at (202) 208–4949 for clarification of content. For information pertaining to status or publication schedules, contact the FAR Secretariat at (202) 501–4755. Please cite FAR case 2008–017.

SUPPLEMENTARY INFORMATION:

A. Background

The Federal Food Donation Act of 2008 (Pub. L. 110–247) (Act) encourages Federal agencies and their contractors to donate excess food to nonprofit organizations serving the needy. The Act requires Federal contracts above $25,000 for the provision, service, or sale of food in the United States, to include a clause that encourages, but does not require, the donation of excess food to nonprofit organizations. The Act would also extend to the Government and the contractor, when donating food, the same civil or criminal liability protection provided to donors of food under the Bill Emerson Good Samaritan Food Donation Act of 1996.

The interim rule is applicable to contracts above $25,000 (greater than $25,000) for the provision, service, or sale of food in the United States (*i.e.*, food supply or food service). The type of solicitations and contract actions anticipated to be applicable to this law will mostly be for fixed-price commercial services; however, there may be circumstances when a noncommercial and/or cost reimbursement requirement may apply. For example, on an indefinite-delivery, indefinite-quantity (IDIQ) cost reimbursement contract for logistical support to be performed in the United States, there may be a task order needed to provide food service to feed personnel. This FAR change applies to solicitations issued on or after the effective date of this interim rule (see FAR 1.108(d)). Agencies will have to update their automated contract systems to include the clause if the contract calls for the provision, service, or sale of food in the United States. The statute instructed that the FAR be revised to cover the lease or rental of Federal property to a private entity for events at which food is provided in the United States. However, the FAR covers the acquisition of supplies and services (FAR 1.104), but does not cover the outlease of real property. The GSA has jurisdiction over changes to the Federal Management Regulation (FMR) and we anticipate a change in the FMR to address this requirement. The proposed revisions are to the FAR parts 26, 31, and 52. The detailed explanation of the interim rule follows:

1. *Part 26—Other Socioeconomic Programs*: Adds a new Subpart 26.4, Food Donations to Nonprofit Organizations.

a. The Councils anticipate that the majority of solicitation and contract actions that may be applicable to this Act are fixed-price commercial services; therefore, Subpart 26.4 is the most appropriate place to implement this Act. This subpart applies to all contracts greater than $25,000 for the provision, service, or sale of food in the United States. Executive agencies and contractors are encouraged to donate excess, apparently wholesome food to nonprofit organizations that provide assistance to food-insecure people in the United States. Instead of using "above $25,000" as stated in the Act, the rule uses "greater than $25,000" which is used throughout the FAR.

b. The definition section, FAR 26.401, adds four definitions from the Act. These definitions are "apparently wholesome food," "excess food," "food-insecure" and "nonprofit organization". The definition for "apparently wholesome food" was expanded to incorporate the language from section (b)(2) of the Bill Emerson Good Samaritan Food Donation Act.

c. The policy section, FAR 26.402, states that the Government encourages executive agencies and their contractors, to the maximum extent practicable and safe, to donate excess apparently wholesome food to nonprofit organizations that provide assistance to food-insecure people in the United States.

d. The procedures section, FAR 26.403, provides the details regarding encouraging donations by the contractor to nonprofit organizations, costs and liability. For costs, it is stated that the head of the executive agency shall not assume responsibility of the related costs for the donation by the contractor to the nonprofit organization, nor will the Government reimburse any costs incurred by the contractor for donations of Federal excess food and states that these costs are unallowable in accordance with the change to FAR 31.205–1(f)(8). Finally, for liability, the section states how the executive agency and the contractor making donations pursuant to the Act are exempt from the civil and criminal liability to the extent provided under subsection (c) of the Bill Emerson Good Samaritan Food Donation Act (42 U.S.C. 1791).

e. Section FAR 26.404 prescribes that the contracting officer shall insert the clause in solicitations and contracts greater than $25,000 for the provision, service, or sale of food in the United States (*i.e.*, food supply or food service).

2. *Subpart 31.2, Contracts with Commercial Organizations*: New language is added to Subpart 31.2 — Contracts with Commercial Organizations, section 31.205, Selected Costs, and section FAR 31.205–1, Public relations and advertising costs. FAR 31.205–1(e) lists allowable public relations costs in paragraph (3) which includes the costs of participating in community service activities. Since it is possible to have a cost type contract that may include food supplies and/or services and the Act specifically states that the head of the executive agency shall not assume responsibility for the costs and logistics of collecting, transporting, maintaining the safety of, or distributing excess, apparently wholesome food to food-insecure people in the United States under this Act, section 31.205–1(f), for unallowable public relations and advertising costs adds paragraph (8) to state any costs associated with the donation of excess food to nonprofit organizations are unallowable.

3. *Part 52—Solicitation Provisions and Contract clauses*: Two clauses are revised and one new clause is added.

a. FAR 52.212–5, Contract Terms and Conditions Required to Implement Statutes or Executive Orders—Commercial Items, is revised. This clause incorporates by reference only those clauses required to implement provisions of law or executive orders applicable to the acquisition of commercial items. Paragraph (c) allows the contracting officer to indicate which, if any, of the additional clauses are applicable to the specific acquisition. Paragraph (c)(7) adds the clause 52.226–6, Promoting Excess Food Donation to Nonprofit Organizations, if applicable, and the remaining clause is renumbered. Also, in order to incorporate the subcontractor "Flowdown" provision of the clause, paragraph (e) requires the Contractor to flow down specific FAR clauses in a subcontract for commercial items. Paragraph (e)(1)(xii) is revised to add the 52.226–6 clause and the remaining clause is renumbered.

b. FAR 52.213–4, Terms and Conditions—Simplified Acquisitions (Other Than Commercial Items), is revised. The contracting officer may use the clause in simplified acquisitions exceeding the micro-purchase threshold that is for other than commercial items. Paragraph (b)(2) of the clause lists additional clauses that may apply. Paragraph (b)(2)(iii) adds the clause 52.226–6, Promoting Excess Food Donation to Nonprofit Organizations, if applicable, and the remaining clause is renumbered.

c. FAR 52.226–6, Promoting Excess Food Donation to Nonprofit Organizations, is a new clause.

Basic terms and conditions for 52.226–6: This clause fully addresses the terms and conditions as the following: when it is applicable, the contractor is encouraged to donate excess food to nonprofit organizations; the contractor, including subcontractors, shall assume all the related costs and support to donate the food and the contractor will not be reimbursed for any costs incurred or associated with the donation; that any costs incurred are unallowable; and the contractor including any subcontractors shall be exempt from civil and criminal liability to the extent provided under the Bill Emerson Good Samaritan Food Donation Act (42 U.S.C. 1791).

Additional terms and conditions for 52.226–6: There are two additional terms and conditions included in the clause that go beyond the Act. In paragraph (d), Liability, the last sentence is added to state that nothing in this clause shall be construed to supersede State or local health regulations. This language was taken from the Bill Emerson Good Samaritan Act. It makes it clear to the contractor that they must comply with these regulations, too. In paragraph (e), "Flowdown" is added to encourage the subcontractors to participate in the Federal excess food donation program for actions greater than $25,000.

This is not a significant regulatory action and, therefore, was not subject to review under Section 6(b) of Executive Order 12866, Regulatory Planning and Review, dated September 30, 1993. This rule is not a major rule under 5 U.S.C. 804.

B. Regulatory Flexibility Act

The interim rule is not expected to have a significant economic impact on a substantial number of small entities within the meaning of the Regulatory Flexibility Act, 5 U.S.C. 601, *et seq.*, because this rule is not mandatory for contractors, including small businesses. Therefore, an Initial Regulatory Flexibility Analysis has not been performed. The Councils will consider comments from small entities concerning the affected FAR Parts 26, 31, and 52 in accordance with 5 U.S.C. 610. Interested parties must submit such comments separately and should cite 5 U.S.C 601, *et seq.* (FAC 2005–31, FAR case 2008–017), in all correspondence.

C. Paperwork Reduction Act

The Paperwork Reduction Act does not apply because the changes to the FAR do not impose information collection requirements that require the approval of the Office of Management and Budget under 44 U.S.C. Chapter 35, *et seq.*

D. Determination to Issue an Interim Rule

A determination has been made under the authority of the Secretary of Defense (DoD), the Administrator of General Services (GSA), and the Administrator of the National Aeronautics and Space Administration (NASA) that urgent and compelling reasons exist to promulgate this interim rule without prior opportunity for public comment. This action is necessary because the provision of the Federal Food Donation Act of 2008 was enacted on June 20, 2008. The Act requires that the FAR be revised to implement this Act no later

than 180 days after the date of enactment. The Councils believe that the interim rule in the FAR will provide the Contracting Officer the relevant regulatory guidance needed when addressing requirements outlined in this rule. This interim rule is applicable to all solicitations and contracts greater than $25,000 for the provision, service, or sale of food in the United States issued on or after the effective date of the rule. However, pursuant to Pub. L. 98–577 and FAR 1.501, the Councils will consider public comments received in response to this interim rule in the formation of the final rule.

List of Subjects in 48 CFR Parts 26, 31, and 52

Government procurement.

Dated: March 13, 2009.

Al Matera,

Director, Office of Acquisition Policy.

■ Therefore, DoD, GSA, and NASA amend 48 CFR parts 26, 31, and 52 as set forth below:

■ 1. The authority citation for 48 CFR parts 26, 31, and 52 continues to read as follows:

Authority: 40 U.S.C. 121(c); 10 U.S.C. chapter 137; and 42 U.S.C. 2473(c).

PART 26—OTHER SOCIOECONOMIC PROGRAMS

■ 2. Add Subpart 26.4 to read as follows:

Subpart 26.4—Food Donations to Nonprofit Organizations

Sec.

26.400 Scope of subpart.
26.401 Definitions.
26.402 Policy.
26.403 Procedures.
26.404 Contract clause.

26.400 Scope of subpart.

This section implements the Federal Food Donation Act of 2008 (Pub. L. 110–247).

26.401 Definitions.

As used in this subpart—

Apparently wholesome food means food that meets all quality and labeling standards imposed by Federal, State, and local laws and regulations even though the food may not be readily marketable due to appearance, age, freshness, grade, size, surplus, or other conditions, in accordance with (b)(2)of the Bill Emerson Good Samaritan Food Donation Act (42 U.S.C. 1791(b)).

Excess food means food that—

(1) Is not required to meet the needs of the executive agencies; and

(2) Would otherwise be discarded.

Food-insecure means inconsistent access to sufficient, safe, and nutritious food.

Nonprofit organization means any organization that is—

(1) Described in section 501(c) of the Internal Revenue Code of 1986; and

(2) Exempt from tax under section 501(a) of that Code.

26.402 Policy.

The Government encourages executive agencies and their contractors, to the maximum extent practicable and safe, to donate excess apparently wholesome food to nonprofit organizations that provide assistance to food-insecure people in the United States.

26.403 Procedures.

(a) In accordance with the Federal Food Donation Act of 2008 (Pub. L. 110–247) an executive agency shall comply with the following:

(1) *Encourage donations.* In the applicable contracts stated at section 26.404, encourage contractors, to the maximum extent practicable and safe, to donate apparently wholesome excess food to nonprofit organizations that provide assistance to food-insecure people in the United States.

(2) *Costs.* (i) In any case in which a contractor enters into a contract with an executive agency under which apparently wholesome food is donated to food-insecure people in the United States, the head of the executive agency shall not assume responsibility for the costs and logistics of collecting, transporting, maintaining the safety of, or distributing excess, apparently wholesome food to food-insecure people in the United States under this Act.

(ii) The Government will not reimburse any costs incurred by the contractor against this contract or any other contract for the donation of Federal excess foods. Any costs incurred for Federal excess food donations are not considered allowable public relations costs in accordance with 31.205–1(f)(8).

(3) *Liability.* An executive agency (including an executive agency that enters into a contract with a contractor) and any contractor making donations pursuant to this Act shall be exempt from civil and criminal liability to the extent provided under the Bill Emerson Good Samaritan Food Donation Act (42 U.S.C. 1791).

26.404 Contract clause.

Insert the clause at 52.226–6, Promoting Excess Food Donation to Nonprofit Organizations, in solicitations and contracts greater than $25,000 for the provision, service, or sale of food in the United States.

PART 31—CONTRACT COST PRINCIPLES AND PROCEDURES

■ 3. Amend section 31.205–1 by revising paragraph (e)(3); and adding paragraph (f)(8) to read as follows:

31.205–1 Public Relations and advertising costs.

(e) * * *

(3) Costs of participation in community service activities (*e.g.*, blood bank drives, charity drives, savings bond drives, disaster assistance, etc.) (But see paragraph (f)(8) of this section.)

* * * * *

(f) * * *

(8) Costs associated with the donation of excess food to nonprofit organizations in accordance with the Federal Food Donation Act of 2008 (Pub. L. 110–247)(see FAR subpart 26.4).

PART 52—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

■ 4. Amend section 52.212–5 by—

■ a. Revising the date of the clause;

■ b. Redesignating paragraph (c)(7) as paragraph (c)(8); and adding a new paragraph (c)(7); and

■ c. Redesignating paragraph (e)(1)(xii) as paragraph (e)(1)(xiii) and adding a new paragraph (e)(1)(xii).

The revised and added text reads as follows:

52.212–5 Contract Terms and Conditions Required to Implement Statutes or Executive Orders—Commercial Items.

* * * * *

CONTRACT TERMS AND CONDITIONS REQUIRED TO IMPLEMENT STATUTES OR EXECUTIVE ORDERS—COMMERCIAL ITEMS (MAR 2009)

* * * * *

(c) * * *

(7) 52.226–6, Promoting Excess Food Donation to Nonprofit Organizations. (MAR 2009) (Pub. L. 110–247).

* * * * *

(e)(1) * * *

(xii) 52.226–6, Promoting Excess Food Donation to Nonprofit Organizations. (MAR 2009) (Pub. L. 110–247). Flow down required in accordance with paragraph (e) of FAR clause 52.226–6.

* * * * *

■ 5. Amend section 52.213–4 by—

■ a. Revising the date of the clause; and

■ b. Redesignating paragraphs (b)(2)(iii) and (b)(2)(iv) as paragraphs (b)(2)(iv) and (b)(2)(v), respectively; and adding a new paragraph (b)(2)(iii).

The revised and added text reads as follows:

52.213–4 Terms and Conditions—Simplified Acquisitions (Other Than Commercial Items).

* * * * *

TERMS AND CONDITIONS—SIMPLIFIED ACQUISITIONS (OTHER THAN COMMERCIAL ITEMS) (MAR 2009)

* * * * *

(b) * * *

(2) * * *

(iii) 52.226–6, Promoting Excess Food Donation to Nonprofit Organizations. (MAR 2009) (Pub. L. 110–247) (Applies to contracts greater than $25,000 that provide for the provision, the service, or the sale of food in the United States.)

* * * * *

■ 6. Add section 52.226–6 to read as follows:

52.226–6 Promoting Excess Food Donation to Nonprofit Organizations.

As prescribed in 26.404, insert the following clause:

PROMOTING EXCESS FOOD DONATION TO NONPROFIT ORGANIZATIONS(MAR 2009)

(a) *Definitions.* As used in this clause—

Apparently wholesome food means food that meets all quality and labeling standards imposed by Federal, State, and local laws and regulations even though the food may not be readily marketable due to appearance, age, freshness, grade, size, surplus, or other conditions.

Excess food means food that—

(1) Is not required to meet the needs of the executive agencies; and

(2) Would otherwise be discarded.

Food-insecure means inconsistent access to sufficient, safe, and nutritious food.

Nonprofit organization means any organization that is—

(1) Described in section 501(c) of the Internal Revenue Code of 1986; and

(2) Exempt from tax under section 501(a) of that Code.

(b) In accordance with the Federal Food Donation Act of 2008 (Pub. L. 110–247), the Contractor is encouraged, to the maximum extent practicable and safe, to donate excess, apparently wholesome food to nonprofit organizations that provide assistance to food-insecure people in the United States.

(c) *Costs.* (1) The Contractor, including any subcontractors, shall assume the responsibility for all the costs and the logistical support to collect, transport, maintain the safety of, or distribute the excess, apparently wholesome food to the nonprofit organization(s) that provides assistance to food-insecure people.

(2) The Contractor will not be reimbursed for any costs incurred or associated with the donation of excess foods. Any costs incurred for excess food donations are unallowable.

(d) *Liability.* The Government and the Contractor, including any subcontractors, shall be exempt from civil and criminal liability to the extent provided under the Bill Emerson Good Samaritan Food Donation Act (42 U.S.C. 1791). Nothing in this clause shall be construed to supersede State or local health regulations (subsection (f) of 42 U.S.C. 1791).

(e) *Flowdown.* The Contractor shall insert this clause in all contracts, task orders, delivery orders, purchase orders, and other similar instruments greater than $25,000 with its subcontractors or suppliers, at any tier, who will perform, under this contract, the provision, service, or sale of food in the United States.

(End of clause)

[FR Doc. E9–5861 Filed 3–18–09; 8:45 am]

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DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

48 CFR Parts 3, 47, and 52

[FAC 2005–31; Item VI; Docket FAR–2009–0003; Sequence 2]

Federal Acquisition Regulation; Technical Amendments

AGENCIES: Department of Defense (DoD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

ACTION: Final rule.

SUMMARY: This document makes amendments to the Federal Acquisition Regulation in order to make editorial changes.

DATES: *Effective Date*: March 19, 2009.

FOR FURTHER INFORMATION CONTACT: The Regulatory Secretariat, Room 4041, GS Building, Washington, DC, 20405, (202) 501–4755, for information pertaining to status or publication schedules. Please cite FAC 2005–31, Technical Amendments.

List of Subjects in 48 CFR Parts 3, 47, and 52

Government procurement.

Dated: March 13, 2009.

Al Matera,

Director, Office of Acquisition Policy.

■ Therefore, DoD, GSA, and NASA amends 48 CFR parts 3, 47, and 52 as set forth below:

■ 1. The authority citation for 48 CFR parts 3, 47, and 52 continues to read as follows:

Authority: 40 U.S.C. 121(c); 10 U.S.C. chapter 137; and 42 U.S.C. 2473(c).

PART 3—IMPROPER BUSINESS PRACTICES AND PERSONAL CONFLICTS OF INTEREST

■ 2. Revise section 3.503–2 to read as follows:

3.503–2 Contract clause.

The contracting officer shall insert the clause at 52.203–6, Restrictions on Subcontractor Sales to the Government, in solicitations and contracts exceeding the simplified acquisition threshold. For the acquisition of commercial items, the contracting officer shall use the clause with its Alternate I.

PART 47—TRANSPORTATION

47.103–1 [Amended]

■ 3. Amend section 47.103–1 by removing from paragraph (c) "ATTN: FBA, 1800 F Street, NW., Washington, DC 20405" and adding "Transportation Audit Division (QMCA), Crystal Plaza 4, Room 300, 2200 Crystal Drive, Arlington, VA 22202." in its place.

PART 52—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

■ 4. Amend section 52.225–11 by revising the date in Alternate I; and revising paragraph (b)(1) of Alternate I to read as follows:

52.225–11 Buy American Act—Construction Materials under Trade Agreements.

* * * * *

Alternate I (MAR 2009). * * *

* * * * *

(b) *Construction materials.* (1) This clause implements the Buy American Act (41 U.S.C. 10a - 10d) by providing a preference for domestic construction material. In addition, the Contracting Officer has determined that the WTO GPA and all the Free Trade Agreements except NAFTA and the Bahrain FTA apply to this acquisition. In accordance with 41 U.S.C. 431, the component test of the Buy American Act is waived for construction material that is a COTS item (See FAR 12.505(a)(2)). Therefore, the Buy American Act restrictions are waived for designated country construction materials other than Bahrainian or Mexican construction materials.

* * * * *

[FR Doc. E9–5857 Filed 3–18–09; 8:45 am]

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DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

48 CFR Chapter 1

[Docket FAR 2009–0002, Sequence 2]

Federal Acquisition Regulation; Federal Acquisition Circular 2005–31; Small Entity Compliance Guide

AGENCIES: Department of Defense (DoD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

ACTION: Small Entity Compliance Guide.

SUMMARY: This document is issued under the joint authority of the Secretary of Defense, the Administrator of General Services and the Administrator of the National Aeronautics and Space Administration. This *Small Entity Compliance Guide* has been prepared in accordance with Section 212 of the Small Business Regulatory Enforcement Fairness Act of 1996. It consists of a summary of rules appearing in Federal Acquisition Circular (FAC) 2005–31 which amend the FAR. An asterisk (*) next to a rule indicates that a regulatory flexibility analysis has been prepared. Interested parties may obtain further information regarding these rules by referring to FAC 2005–31, which precedes this document. These documents are also available via the Internet at *http://www.regulations.gov.*

FOR FURTHER INFORMATION CONTACT: Ms. Hada Flowers, Regulatory Secretariat, (202) 208–7282. For clarification of content, contact the analyst whose name appears in the table below.

LIST OF RULES IN FAC 2005–31

Item	Subject	FAR case	Analyst
*I	Small Business Size Rerepresentation	2006–032	Cundiff
II	Clarification of Submission of Cost or Pricing Data on Non-Commercial Modifications of Commercial Items (Interim).	2008–012	Chambers
III	Amendments to Incorporate New Wage Determinations	2008–014	Woodson
IV	Least Developed Countries that are Designated Countries	2008–021	Murphy
V	Federal Food Donation Act of 2008 (Interim)	2008–017	Jackson
VI	Technical Amendments		

SUPPLEMENTARY INFORMATION: Summaries for each FAR rule follow. For the actual revisions and/or amendments to these FAR cases, refer to the specific item number and subject set forth in the documents following these item summaries.

FAC 2005–31 amends the FAR as specified below:

Item I—Small Business Size Rerepresentation (FAR Case 2006–032)

This rule amends the Federal Acquisition Regulation (FAR) to adopt as final, with changes, an interim FAR rule published in the **Federal Register** at 72 FR 36852, July 5, 2007, amending the FAR to implement the Small Business Administration's (SBA) final rule published on November 15, 2006 (71 FR 66434), entitled Small Business Size Regulations; Size for Purposes of Governmentwide Acquisition Contracts, Multiple Award Schedule Contracts and Other Long-Term Contracts; 8(a) Business Development/Small Disadvantaged Business; Business Status Determinations. The purpose of the SBA rule and this FAR rule is to improve the accuracy of small business size status reporting, at the prime contract level, over the life of certain contracts (long-term contracts, novations, acquisitions, and mergers). Contractors are required to rerepresent their size status prior to the end of the fifth year of a contract that is more than five years in duration (long-term contract); prior to exercising any option thereafter; following execution of a novation agreement on any contract; or following a merger or acquisition, regardless of whether there is a novation agreement. A change in the size status does not change the terms and conditions of the contract, but the agency may no longer include the value of options exercised or orders issued against the contract in its small business prime contracting goal achievements.

Item II—Clarification of Submission of Cost or Pricing Data on Non-Commercial Modifications of Commercial Items (FAR Case 2008–012) (Interim)

The Civilian Agency Acquisition Council and the Defense Acquisition Regulations Council (Councils) are issuing an interim final rule amending the Federal Acquisition Regulation (FAR) to harmonize the thresholds for cost or pricing data on non-commercial modifications of commercial items to reflect the Truth In Negotiation Act (TINA) threshold for cost and pricing data.

The Councils are hereby implementing a requirement of the National Defense Authorization Act (NDAA) for FY 2008. Specifically, Section 814 of the Act requires the harmonization of the threshold for cost or pricing data on non-commercial modifications of commercial items with the TINA threshold for cost and pricing data. By linking the threshold for cost or pricing data on non-commercial modifications of commercial items with the TINA threshold at FAR 15.403–4, whenever the TINA threshold is adjusted the threshold for cost or pricing data on non-commercial modifications of commercial items will be automatically adjusted as well.

Item III—Amendments to Incorporate New Wage Determinations(FAR Case 2008–014)

The final rule amends the Federal Acquisition (FAR) to correct an inconsistency between FAR 15.206(c) and 22.404–5(c)(3), by revising the language at 22.404–5(c). This change requires the contracting officer to amend solicitations to incorporate new Davis Bacon wage determinations (WD) and furnish the wage rate information only to all offerors that have not been eliminated from the competition, if the closing date for receipt of offers has already passed. The revision is necessary to ensure consistency with FAR 15.206(c), and eliminate a possible scenario where incorporation of an updated WD into the solicitation process, could cause an unnecessary and counterproductive reevaluation of proposals already eliminated from competition. This change is consistent with the intent of the Department of Labor regulations, ensuring that the most current WD is placed in the contract at the time of award for

compliance at the start of contract performance.

Item IV—Least Developed Countries that are Designated Countries (FAR Case 2008–021)

This final rule amends the Federal Acquisition Regulation (FAR) to revise the definition of designated country, adding Liberia and removing Cape Verde. Least Developed Countries form a subset of designated countries. The list of Least Developed Countries is derived from a United Nations list of Least Developed Countries. The United States Trade Representative has updated the list of Least Developed Countries that are treated as designated countries. In acquisitions that are covered by the World Trade Organization Government Procurement Agreement, contracting officers must acquire only U.S.-made or designated country end products, or U.S. or designated-country services, unless offers of such end products or services are not received or are insufficient to fulfill the requirement (FAR 25.403(c)).

Item V—Federal Food Donation Act of 2008 (Pub. L. 110–247) (FAR Case 2008–017) (Interim)

This interim rule amends the Federal Acquisition Regulation (FAR) Parts 26, 31, and 52 to encourage executive agencies and their contractors to donate apparently wholesome excess food to nonprofit organizations that provide assistance to food-insecure people in the United States. This change implements the Federal Food Donation Act of 2008 (Pub. L. 110–247) which encourages executive agencies and their contractors, in contracts for the provision, service, or sale of food to encourage the contractors, to the maximum extent practicable and safe, to donate apparently wholesome excess food to nonprofit organizations that provide assistance to food-insecure people in the United States. The rule is effective for all solicitations and contracts greater than $25,000 for the provision, service, or sale of food in the United States issued on or after the effective date of the rule.

Item VI—Technical Amendments

Editorial changes are made at FAR 3.503–2, 47.103–1, and 52.225–11.

Dated: March 13, 2009.

Al Matera,

Director, Office of Acquisition Policy.

[FR Doc. E9–5993 Filed 3–18–09; 8:45 am]

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3 CFR

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111th Congress

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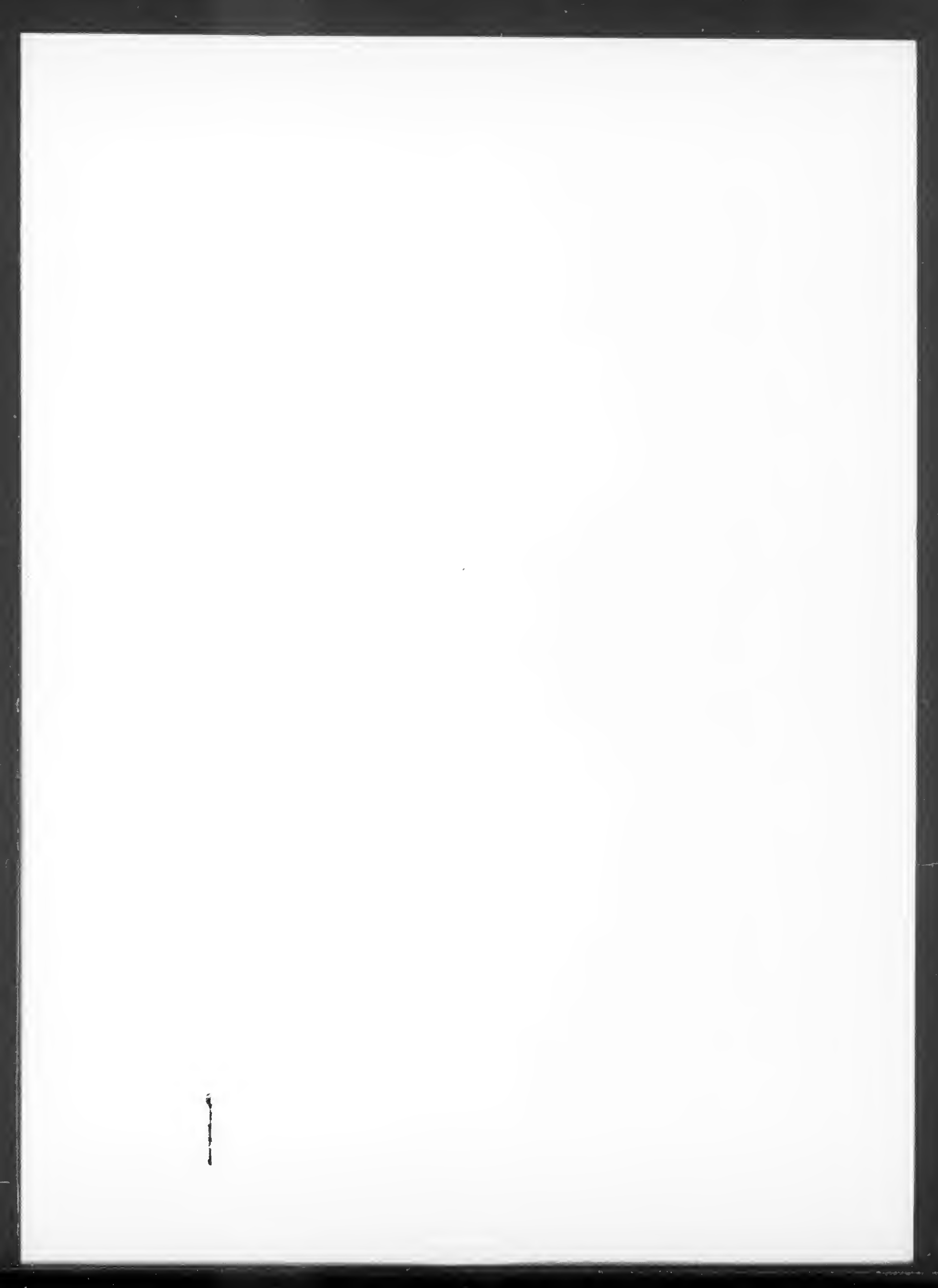

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