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FOR: Any person who uses the Federal Register and Code of Federal Regulations.

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

1. The regulatory process, with a focus on the Federal Register system and the public's role in the development of regulations.
2. The relationship between the Federal Register and Code of Federal Regulations.
3. The important elements of typical Federal Register documents.
4. An introduction to the finding aids of the FR/CFR system.

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

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

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

RESERVATIONS: (202) 741-6008



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

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

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

21 CFR Part 1308

[Docket No. DEA-325F]

Schedules of Controlled Substances: Placement of Lacosamide into Schedule V

AGENCY: Drug Enforcement Administration (DEA), Department of Justice.

ACTION: Final rule.

SUMMARY: With the issuance of this final rule, the Deputy Administrator of the DEA places the substance lacosamide [(R)-2-acetoamido-N-benzyl-3-methoxypropionamide] and any material, compound, mixture, or preparation which contains any quantity of lacosamide into schedule V of the Controlled Substances Act (CSA). As a result of this rule, the regulatory controls and criminal sanctions of schedule V will be applicable to the manufacture, distribution, dispensing, importation and exportation of lacosamide.

DATES: *Effective Date:* This rule is effective June 22, 2009.

FOR FURTHER INFORMATION CONTACT: Christine A. Sannerud, PhD, Chief, Drug and Chemical Evaluation Section, Office of Diversion Control, Drug Enforcement Administration, 8701 Morrisette Drive, Springfield, VA 22152, (202) 307-7183.

SUPPLEMENTARY INFORMATION:

Background

On October 28, 2008, the Food and Drug Administration (FDA) approved lacosamide [(R)-2-acetoamido-N-benzyl-3-methoxypropionamide] for marketing under the trade name Vimpat® for use as an adjunctive therapy in treatment of partial-onset seizures in patients with epilepsies ages 17 years and older.

On December 2, 2008, the Assistant Secretary for Health of the Department of Health and Human Services (DHHS) sent the Administrator of the DEA a scientific and medical evaluation and a letter recommending that lacosamide be placed into schedule V of the CSA. Enclosed with the December 2, 2008, letter was a document prepared by the FDA entitled "Basis for the Recommendation for Control of Lacosamide in Schedule V of the Controlled Substances Act (CSA)." The document contained a review of the factors which the CSA requires the Secretary to consider (21 U.S.C. 811(b)).

Based on the recommendation of the Assistant Secretary for Health and an independent review of the available data by the DEA, the Deputy Administrator of the DEA, in a March 10, 2009, Notice of Proposed Rulemaking (74 FR 10205) proposed placement of lacosamide into schedule V of the CSA. The proposed rule provided an opportunity for all interested persons to submit their comments, objections, or requests for hearing to be received by the DEA on or before April 9, 2009.

Comments Received

DEA received one comment within the comment period in response to the Notice of Proposed Rulemaking. The commenter stated that lack of information and inappropriate comparisons to other drugs precluded the scheduling of lacosamide and suggested that scheduling be postponed for 24 months to collect data.

DEA does not agree. The studies used to assess abuse potential of lacosamide are widely held as the standard methods of evaluation. Behavioral effects of lacosamide in animals and humans were found to be similar to, but transient relative to, those of the schedule IV drugs alprazolam and phenobarbital. Preclinical studies indicated that lacosamide is self-administered at rates higher than saline and partially mimics discriminative stimulus effects to the schedule IV substances alprazolam and phenobarbital. In clinical trials, lacosamide produced subjective responses similar to alprazolam but these effects did not last as long as alprazolam. After careful consideration of positive indicators from preclinical and clinical studies, DEA finds

lacosamide has abuse potential supporting placement in schedule V under the CSA. The DHHS recommended control in schedule V of the CSA and the DEA concurs.

The commenter also submitted a request for a hearing. DEA regulations provide that "[a]ny interested person" may request a hearing on a proposed scheduling action. 21 CFR 1308.44(a). DEA regulations define "interested person" as "any person adversely affected or aggrieved by any rule or proposed rule issuable pursuant to [21 U.S.C. 811]." 21 CFR 1300.01(b)(19). The regulations further require that any person requesting a hearing must state "with particularity" his interest in the proceeding. 21 CFR 1316.47(a). The commenter failed to provide sufficient information to demonstrate that he meets the definition of "interested person" as set forth in the regulations, therefore DEA is denying his hearing request.

DEA also received many comments after the comment period closed. These late comments were not considered by DEA.

Scheduling of Lacosamide

Based on the scientific and medical evaluation and the recommendation of the Assistant Secretary for Health, received in accordance with section 201(b) of the Act (21 U.S.C. 811(b)), and the independent review of the available data by the DEA, the Deputy Administrator of the DEA, pursuant to sections 201(a) and 201(b) of the Act (21 U.S.C. 811(a) and 811(b)), finds that:

- (1) Lacosamide has a low potential for abuse relative to the drugs or other substances in schedule IV;
- (2) Lacosamide has a currently accepted medical use in treatment in the United States; and
- (3) Abuse of lacosamide may lead to limited physical dependence or psychological dependence relative to the drugs or other substances in schedule IV.

Based on these findings, the Deputy Administrator of the DEA concludes that lacosamide and any material, compound, mixture, or preparation which contains any quantity of lacosamide, warrant control in schedule V of the CSA.

Requirements for Handling Lacosamide

Registration. Any person who manufactures, distributes, dispenses,

imports, exports, engages in research or conducts instructional activities with lacosamide, or who desires to manufacture, distribute, dispense, import, export, engage in instructional activities or conduct research with lacosamide, must be registered to conduct such activities in accordance with Part 1301 of Title 21 of the Code of Federal Regulations (CFR). Any person who is currently engaged in any of the above activities and is not registered with DEA must submit an application for registration on or before June 22, 2009 and may continue their activities until the DEA has approved or denied the application.

Security. Lacosamide is subject to schedule III–V security requirements and must be manufactured, distributed, and stored in accordance with §§ 1301.71, 1301.72(b), (c), and (d), 1301.73, 1301.74, 1301.75(b) and (c), 1301.76, and 1301.77 of Title 21 of the CFR on and after June 22, 2009.

Labeling and Packaging. All labels and labeling for commercial containers of lacosamide which are distributed on or after June 22, 2009 must comply with requirements of §§ 1302.03–1302.07 of Title 21 of the Code of Federal Regulations.

Inventory. Every registrant required to keep records and who possesses any quantity of lacosamide must keep an inventory of all stocks of lacosamide on hand pursuant to §§ 1304.03, 1304.04 and 1304.11 of Title 21 of the CFR on or after June 22, 2009. Every registrant who desires registration in schedule V for lacosamide must conduct an inventory of all stocks of the substance on hand at the time of registration.

Records. All registrants must keep records pursuant to §§ 1304.03, 1304.04, 1304.21, 1304.22, and 1304.23 of Title 21 of the Code of Federal Regulations on or after June 22, 2009.

Prescriptions. All prescriptions for lacosamide pharmaceutical products must be issued pursuant to 21 CFR 1306.03–1306.06 and 1306.21, 1306.23–1306.27 on or after June 22, 2009.

Importation and Exportation. All importation and exportation of lacosamide must be in compliance with part 1312 of Title 21 of the CFR on or after June 22, 2009.

Criminal Liability. Any activity with lacosamide not authorized by, or in violation of, the CSA or the Controlled Substances Import and Export Act occurring on or after June 22, 2009 shall be unlawful.

Regulatory Certifications

Executive Order 12866

In accordance with the provisions of the CSA (21 U.S.C. 811(a)), this action

is a formal rulemaking “on the record after opportunity for a hearing.” Such proceedings are conducted pursuant to the provisions of 5 U.S.C. 556 and 557 and, as such, are exempt from review by the Office of Management and Budget pursuant to Executive Order 12866, § 3(d)(1).

Regulatory Flexibility Act

The Deputy Administrator, in accordance with the Regulatory Flexibility Act (5 U.S.C. 601–612), has reviewed this final rule and by approving it certifies that it will not have a significant economic impact on a substantial number of small entities. Lacosamide pharmaceutical products will be prescription drugs used for the treatment of partial-onset seizures. Handlers of lacosamide often handle other controlled substances used in the treatment of central nervous system disorders which are already subject to the regulatory requirements of the CSA.

Executive Order 12988

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

Executive Order 13132

This rulemaking does not preempt or modify any provision of State law; nor does it impose enforcement responsibilities on any state; nor does it diminish the power of any state to enforce its own laws. Accordingly, this rulemaking does not have federalism implications warranting the application of Executive Order 13132.

Unfunded Mandates Reform Act of 1995

This rule will not result in the expenditure by state, local and tribal governments, in the aggregate, or by the private sector, of \$120,000,000 or more (adjusted for inflation) in any one year, and will not significantly or uniquely affect small governments. Therefore, no actions were deemed necessary under provisions of the Unfunded Mandates Reform Act of 1995.

Congressional Review Act

This rule is not a major rule as defined by § 804 of the Small Business Regulatory Enforcement Fairness Act of 1996 (Congressional Review Act). This rule will not result in an annual effect on the economy of \$100,000,000 or more; a major increase in costs or prices; or significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based companies to compete with foreign

based companies in domestic and export markets.

List of Subjects in 21 CFR Part 1308

Administrative practice and procedure, Drug traffic control, Narcotics, Prescription drugs.

■ Under the authority vested in the Attorney General by section 201(a) of the CSA (21 U.S.C. 811(a)), and delegated to the Administrator of DEA by Department of Justice regulations (28 CFR 0.100), and redelegated to the Deputy Administrator pursuant to Title 28, Part 0, Appendix to Subpart R, Section 12, the Deputy Administrator hereby amends 21 CFR part 1308 as follows:

PART 1308—SCHEDULES OF CONTROLLED SUBSTANCES

■ 1. The authority citation for 21 CFR part 1308 continues to read as follows:

Authority: 21 U.S.C. 811, 812, 871(b) unless otherwise noted.

■ 2. Section 1308.15 is amended by revising paragraph (e)(1) and adding a new paragraph (e)(2) to read as follows:

§ 1308.15 Schedule V.

* * * * *

(e) * * *

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Dated: May 12, 2009.

Michele M. Leonhart,

Deputy Administrator.

[FR Doc. E9–11927 Filed 5–20–09; 8:45 am]

BILLING CODE 4410–09–P

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

21 CFR Part 1308

[Docket No. DEA–319F]

Schedules of Controlled Substances: Placement of Tapentadol Into Schedule II

AGENCY: Drug Enforcement Administration, Department of Justice.

ACTION: Final rule.

SUMMARY: With the issuance of this final rule, the Deputy Administrator of the Drug Enforcement Administration (DEA) places the substance tapentadol, including its isomers, esters, ethers, salts and salts of isomers, esters and ethers whenever the existence of such isomers, esters, ethers, and salts is possible, into schedule II of the

Controlled Substances Act (CSA). As a result of this rule, the regulatory controls and criminal sanctions of schedule II will be applicable to the manufacture, distribution, dispensing, importation, and exportation of tapentadol and products containing tapentadol.

DATES: *Effective Date:* June 22, 2009.

FOR FURTHER INFORMATION CONTACT:

Christine A. Sannerud, PhD, Chief, Drug and Chemical Evaluation Section, Office of Diversion Control, Drug Enforcement Administration, 8701 Morrisette Drive, Springfield, Virginia 22152, *Telephone:* (202) 307-7183.

SUPPLEMENTARY INFORMATION:

Background

On November 20, 2008, the Food and Drug Administration (FDA) approved tapentadol for marketing in the United States as a prescription drug product for the treatment of moderate-to-severe acute pain. Tapentadol is a new molecular entity with centrally-acting analgesic properties.

Tapentadol has dual modes of action, namely mu (μ) opioid receptor agonistic action and inhibition of reuptake of norepinephrine at the norepinephrine transporter. The chemical name of its monohydrochloride salt form is 3-[(1R,2R)-3-(dimethylamino)-1-ethyl-2-methylpropyl]phenol hydrochloride. Tapentadol shares substantial pharmacological effects and abuse potential with other schedule II opioid analgesics, e.g., morphine, oxycodone, and hydromorphone.

Since tapentadol is a new molecular entity, there has been no evidence of diversion, abuse, or law enforcement encounters involving the drug.

On November 13, 2008, the Assistant Secretary for Health, Department of Health and Human Services (DHHS), sent the Deputy Administrator of DEA a scientific and medical evaluation and a letter recommending that tapentadol be placed into schedule II of the CSA. Enclosed with the November 13, 2008, letter was a document prepared by the Food and Drug Administration (FDA) entitled, "Basis for the Recommendation for Control of Tapentadol in Schedule II of the Controlled Substances Act." The document contained a review of the factors which the CSA requires the Secretary to consider (21 U.S.C. 811(b)).

After a review of the available data, including the scientific and medical evaluation and the scheduling recommendation from DHHS, the Deputy Administrator of the DEA published a Notice of Proposed Rulemaking entitled "Schedules of Controlled Substances: Placement of

Tapentadol into Schedule II" on February 17, 2009 (74 FR 7386), which proposed placement of tapentadol into schedule II of the CSA. The proposed rule provided an opportunity for all interested persons to submit their written comments on or before March 19, 2009.

Comments Received

The DEA received three comments in response to the Notice of Proposed Rulemaking. One comment was from a consulting firm, one comment was from a concerned citizen, and the last comment was from a company which does research and development on pharmaceutical drugs.

The first commenter recommended that the DEA expedite the issuance and effective date of the Final Rule placing tapentadol in schedule II. The commenter stated that tapentadol will provide a safe and effective substitute for other schedule II analgesics and that the conditions of public health necessitate and justify this request. In response, DEA believes that providing 30 days for this rule to become effective is both expeditious and sufficient to allow handlers to apply for registration with DEA and to comply with the regulatory requirements for handling schedule II controlled substances.

A second commenter stated that since tapentadol induces effects similar to oxycodone and morphine, both schedule II substances, then it should be placed in schedule II of the Controlled Substances Act based on tapentadol's abuse potential. Thus, the commenter agreed with DHHS' recommendation and the action proposed by DEA. No response from DEA is necessary to this comment because it is consistent with the DEA's final action.

The third commenter had four questions/comments regarding the implementation of this Final Rule. Each question/comment is addressed below.

The commenter requested that DEA registrants be allowed enough time to make the changes needed to carry out handling tapentadol as a schedule II substance, as dictated in 21 CFR 1301.51, 1301.71, and 1304.04. In response to this comment, the effective date of the Final Rule placing tapentadol in schedule II of the Controlled Substances Act will be thirty (30) days from the date of publication of the Final Rule, thus allowing ample time for those that wish to handle tapentadol to meet DEA regulatory requirements for handling schedule II substances. It has been DEA's experience that this is sufficient time to meet the regulatory requirements provided below.

The commenter asked if quantities of tapentadol held by a DEA registrant would have to be reported once the scheduling of tapentadol as a schedule II substance was finalized. In response, the reporting and recordkeeping requirements for handling schedule II substances can be found in 21 CFR part 1304. Specifically, 21 CFR 1304.11(b) states that "Every person required to keep records shall take an inventory of all stocks of controlled substances on hand on the date he/she first engages in the manufacture, distribution, or dispensing of controlled substances * * *" In order for a manufacturer to handle a schedule II substance, a manufacturing or procurement quota has to be requested in accordance with the requirements of 21 U.S.C. 826(c) and 21 CFR part 1303. The manufacturer's inventory of the substance is used, in part, to determine the manufacturer's quota.

The commenter asked about the process for adding the CSA drug code for tapentadol to their registration. In response, the regulatory process required to obtain a DEA registration is outlined generally in 21 CFR 1301.11 through 1301.19, and the process required to modify an existing DEA registration is outlined in 21 CFR 1301.51. Information relating to registration may be found on the Internet, <http://www.DEAdiversion.usdoj.gov>, or by contacting DEA's Registration Call Center, toll free at 1-800-882-9539.

Finally, the commenter inquired about the process for establishing an NDC number for tapentadol with the Automation of Reports and Consolidated Orders System (ARCOS). National Drug Code (NDC) numbers are assigned by the Food and Drug Administration (FDA) in conjunction with registration and drug listing requirements of the Federal Food, Drug, and Cosmetic Act. Accordingly, a person manufacturing a product containing tapentadol must obtain an NDC number from FDA in accordance with 21 CFR 207.35. Once the drug code for tapentadol is added to an existing manufacturer's registration or a new registration is issued to an applicant, then that DEA-registered manufacturer must provide the DEA's ARCOS Unit with its established NDC number for their product containing tapentadol. Once that information is obtained, it can be used to report ARCOS reportable transactions pursuant to 21 CFR 1304.33.

Scheduling of Tapentadol

Based on the recommendation of the Assistant Secretary for Health, received

in accordance with § 201(b) of the Act (21 U.S.C. 811(b)), and the independent review of the available data by DEA, and after a review of the comments received in response to the Notice of Proposed Rulemaking, the Deputy Administrator of DEA, pursuant to §§ 201(a) and 201(b) of the Act (21 U.S.C. 811(a) and 811(b)), finds that:

(1) Tapentadol has a high potential for abuse;

(2) Tapentadol has a currently accepted medical use in treatment in the United States; and

(3) Abuse of tapentadol may lead to severe psychological or physical dependence.

Based on these findings, the Deputy Administrator of DEA concludes that tapentadol, including its isomers, esters, ethers, salts and salts of isomers, esters and ethers whenever the existence of such isomers, esters, ethers, and salts is possible, warrants control in schedule II of the CSA (21 U.S.C. 812(b)(2)).

Requirements for Handling Tapentadol

Registration. Any person who manufactures, distributes, dispenses, imports, exports, engages in research or conducts instructional activities with tapentadol, or who desires to manufacture, distribute, dispense, import, export, engage in instructional activities or conduct research with tapentadol, must be registered to conduct such activities in accordance with part 1301 of Title 21 of the Code of Federal Regulations. Any person who is currently engaged in any of the above activities and is not registered with DEA must submit an application for registration on or before June 22, 2009 and may continue their activities until DEA has approved or denied that application.

Security. Tapentadol is subject to schedule II security requirements and must be manufactured, distributed, and stored in accordance with §§ 1301.71, 1301.72(a), (c), and (d), 1301.73, 1301.74, 1301.75(b) and (c), 1301.76 and 1301.77 of Title 21 of the Code of Federal Regulations on or after June 22, 2009.

Labeling and Packaging. All labels and labeling for commercial containers of tapentadol must comply with requirements of §§ 1302.03 through 1302.07 of Title 21 of the Code of Federal Regulations on or after June 22, 2009.

Quotas. Quotas for tapentadol must be established pursuant to part 1303 of Title 21 of the Code of Federal Regulations.

Inventory. Every registrant required to keep records and who possesses any quantity of tapentadol must keep an

inventory of all stocks of tapentadol on hand pursuant to §§ 1304.03, 1304.04 and 1304.11 of Title 21 of the Code of Federal Regulations on or after June 22, 2009. Every registrant who desires registration in schedule II for tapentadol must conduct an inventory of all stocks of the substance on hand at the time of registration.

Records. All registrants must keep records pursuant to §§ 1304.03, 1304.04, 1304.21, 1304.22, and 1304.23 of Title 21 of the Code of Federal Regulations on or after June 22, 2009.

Reports. All registrants required to submit reports to the Automation of Reports and Consolidated Order System (ARCOS) in accordance with § 1304.33 of Title 21 of the Code of Federal Regulations must do so for tapentadol.

Orders for Tapentadol. All registrants involved in the distribution of tapentadol must comply with the order form requirements of part 1305 of Title 21 of the Code of Federal Regulations on or after June 22, 2009.

Prescriptions. All prescriptions for tapentadol or prescriptions for products containing tapentadol must be issued pursuant to §§ 1306.03 through 1306.06 and 1306.11 through 1306.15 of Title 21 of the Code of Federal Regulations on and after June 22, 2009.

Importation and Exportation. All importation and exportation of tapentadol must be in compliance with part 1312 of Title 21 of the Code of Federal Regulations on or after June 22, 2009.

Criminal Liability. Any activity with tapentadol not authorized by, or in violation of, the CSA or the Controlled Substances Import and Export Act shall be unlawful on or after June 22, 2009.

Regulatory Certifications

Executive Order 12866

In accordance with the provisions of the CSA (21 U.S.C. 811(a)), this action is a formal rulemaking "on the record after opportunity for a hearing." Such proceedings are conducted pursuant to the provisions of 5 U.S.C. 556 and 557 and, as such, are exempt from review by the Office of Management and Budget pursuant to Executive Order 12866, section 3(d)(1).

Regulatory Flexibility Act

The Deputy Administrator, in accordance with the Regulatory Flexibility Act (5 U.S.C. 601–612), has reviewed this final rule and by approving it certifies that it will not have a significant economic impact on a substantial number of small entities. Tapentadol products will be prescription drugs used for the

treatment of moderate-to-severe acute pain. Handlers of tapentadol also handle other controlled substances used to treat pain which are already subject to the regulatory requirements of the CSA.

Executive Order 12988

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

Executive Order 13132

This rulemaking does not preempt or modify any provision of State law; nor does it impose enforcement responsibilities on any State; nor does it diminish the power of any State to enforce its own laws. Accordingly, this rulemaking does not have federalism implications warranting the application of Executive Order 13132.

Unfunded Mandates Reform Act of 1995

This rule will not result in the expenditure by State, local and Tribal governments, in the aggregate, or by the private sector, of \$120,000,000 or more (adjusted for inflation) in any one year, and will not significantly or uniquely affect small governments. Therefore, no actions were deemed necessary under provisions of the Unfunded Mandates Reform Act of 1995.

Congressional Review Act

This rule is not a major rule as defined by section 804 of the Small Business Regulatory Enforcement Fairness Act of 1996 (Congressional Review Act). This rule will not result in an annual effect on the economy of \$100,000,000 or more; a major increase in costs or prices; or significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based companies to compete with foreign based companies in domestic and export markets.

List of Subjects in 21 CFR Part 1308

Administrative practice and procedure, Drug traffic control, Narcotics, Prescription drugs.

■ Under the authority vested in the Attorney General by section 201(a) of the CSA (21 U.S.C. 811(a)), and delegated to the Administrator of DEA by Department of Justice regulations (28 CFR 0.100), and redelegated to the Deputy Administrator pursuant to Title 28, Part 0, Appendix to Subpart R, Section 12, the Deputy Administrator hereby amends 21 CFR part 1308 as follows:

PART 1308—SCHEDULES OF CONTROLLED SUBSTANCES

■ 1. The authority citation for part 1308 continues to read as follows:

Authority: 21 U.S.C. 811, 812, 871(b), unless otherwise noted.

■ 2. Section 1308.12 is amended in the table by adding a new paragraph (c)(28) to read as follows:

§ 1308.12 Schedule II.

* * * * *

(c) * * *

(28) Tapentadol 9780

* * * * *

Dated: May 15, 2009.

Michele M. Leonhart,*Deputy Administrator.*

[FR Doc. E9-11933 Filed 5-20-09; 8:45 am]

BILLING CODE 4410-09-P

DEPARTMENT OF HOMELAND SECURITY**Coast Guard****33 CFR Part 165**

[Docket No. USCG-2009-0089]

RIN 1625-AA00

Safety Zone; Red Bull Air Race, Detroit River, Detroit, MI**AGENCY:** Coast Guard, DHS.**ACTION:** Temporary final rule.

SUMMARY: The Coast Guard is establishing a temporary safety zone on the Detroit River, Detroit, Michigan. This zone will restrict vessels from portions of the Detroit River during the Red Bull Air Race. This temporary safety zone is necessary to protect spectators and vessels from the hazards associated with air races.

DATES: This rule is effective from 9 a.m. on June 11, 2009 through 6:30 p.m. on June 14, 2009.

ADDRESSES: Comments and material received from the public, as well as documents mentioned in this preamble as being available in the docket, are part of docket USCG-2009-0089 and are available online by going to <http://www.regulations.gov>, selecting the Advanced Docket Search option on the right side of the screen, inserting USCG-2009-0089 in the Docket ID box, pressing Enter, and then clicking on the item in the Docket ID column. This material is also available for inspection or copying at the Docket Management Facility (M-30), U.S. Department of Transportation, West Building Ground

Floor, Room W12-140, 1200 New Jersey Avenue, SE., Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: If you have questions on this rule, call or e-mail CDR Joseph Snowden, Prevention Department, Sector Detroit, Coast Guard; telephone (313) 568-9580, e-mail Joseph.H.Snowden@uscg.mil. If you have questions on viewing the docket, call Renee V. Wright, Program Manager, Docket Operations, telephone 202-366-9826.

SUPPLEMENTARY INFORMATION:**Regulatory Information**

On April 16, 2009, we published a notice of proposed rulemaking (NPRM) entitled Safety Zone; Red Bull Air Race, Detroit River, Detroit, MI in the **Federal Register** (74 FR 17627). We received one comment on the proposed rule. No public meeting was requested, and none was held.

Under 5 U.S.C. 553(d)(3), the Coast Guard finds that good cause exists for making this rule effective less than 30 days after publication in the **Federal Register**. Delaying this rule would be contrary to the public interest of ensuring, to the extent practicable, the safety and security of the spectators and participants during this event and immediate action is necessary to prevent possible injury, loss of life, or property.

Background and Purpose

This temporary safety zone is necessary to ensure, to the extent practicable, the safety of vessels and spectators from hazards associated with an air race. The Captain of the Port Detroit has determined air races in close proximity to watercraft and infrastructure pose significant risk to public safety and property. The likely combination of large numbers of recreation vessels, possible alcohol use, airplanes traveling at high speeds and performing aerial acrobatics, and large numbers of spectators in close proximity to the water could easily result in serious injuries or fatalities. Establishing a safety zone around the location of the race course will help ensure the safety of persons and property at these events and help minimize the associated risks.

Discussion of Comments and Changes

We received one letter, containing several comments on this rulemaking. First, the commenter stated that closure of the Detroit River for these air races violates the Boundary Waters Treaty of 1909. The Coast Guard disagrees that the Coast Guard's action or the action by

Canada violates this treaty. The Boundary Waters Treaty does guarantee that "navigation of all navigable boundary waters" shall be "free and open" to "inhabitants * * * ships, vessels, and boats" of both the United States and Canada, "subject, however, to any laws and regulations of either country." Both the United States and Canada have determined, pursuant to each country's laws and regulations, that brief closures of the Detroit River are reasonably necessary to protect spectators and vessels from hazards associated with these air races. Moreover, under fundamental principles of international law, only the States that are a party to an international agreement are generally entitled to allege a breach of the terms of the agreement by the other. For this event, Canada has also agreed that a closure of a small portion of the river for a short period of time is a reasonable and necessary measure.

Second, the commenter stated that the proposed rule constituted a "public taking" in contravention of the Fifth Amendment to the United States Constitution; in that vessel owners will experience delays that will result in lost profits. This commenter did not put forward any specific company or vessel that would be so affected. The Coast Guard disagrees with this comment. In general, a "taking" occurs when a governmental entity uses its powers to permanently deprive a person or entity of property. The Captain of the Port has considered the needs of port stakeholders and the maritime community and has determined that this safety zone is necessary to protect the public and maintain safety of navigation. Further, the rule is only temporary in nature, not permanent, and in the event that this temporary safety zone affects shipping, commercial vessels may request permission from the Captain of the Port Detroit to transit through the safety zone. Moreover, the safety zone will only be enforced for a short period of time on the enforcement dates. Lastly, the Coast Guard believes vessel owners have had sufficient advance notice of this safety zone, such that they should be able to work vessel schedules around the enforcement periods of the proposed safety zone to minimize or avoid lost profits.

Third, the commenter stated that the race sponsor must be required to agree in advance to reasonably compensate vessel owners for losses incurred by delays and post a bond sufficient to cover anticipated vessel losses. Otherwise, this commenter stated, there is no incentive for race organizers to work collaboratively with vessel

operators. The commenter also stated that if a vessel delayed by the proposed safety zone missed the closing of the Sault Ste. Marie locks at the end of the navigation season in January 2010, then that vessel owner should be compensated for any lost cargo transportation opportunities by the race sponsors.

This comment is outside the scope of this rulemaking and the Coast Guard disagrees with this comment. The Coast Guard is authorized by Congress to provide for safe navigation and vessel safety in U.S. waters and to ensure the safety of all waterway users. As such, in this rule, the Coast Guard is balancing all competing needs by enforcing the safety zone during the air race, but also providing ample notification to vessel owners so that they may plan according and thereby reduce or avoid lost profits. The Coast Guard does not believe that a compensation agreement is necessary in order for the race sponsors to work collaboratively with vessel owners. Compensation for vessel delays based on the existence of a safety zone is not required under the law. Likewise, the Coast Guard has no authority to order the race sponsors to post bond or agree to any sort of compensation scheme.

Regulatory Analyses

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

Regulatory Planning and Review

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

We expect the economic impact of this rule to be so minimal that a full Regulatory Evaluation is unnecessary.

This determination is based on the minimal time that vessels will be restricted from the zone; the location of the zone, which is an area where the Coast Guard expects insignificant adverse impact to mariners from the zone's activation; and the ability of commercial vessels to request permission from the Captain of the Port Detroit to transit through the safety zone.

Small Entities

Under the Regulatory Flexibility Act (5 U.S.C. 601–612), we have considered

whether this rule would have a significant economic impact on a substantial number of small entities. The term “small entities” comprises small businesses, not-for-profit organizations that are independently owned and operated and are not dominant in their fields, and governmental jurisdictions with populations of less than 50,000.

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

This rule will affect the following entities, some of which may be small entities: the owners or operators of vessels intending to transit or anchor in the safety zone located in the Detroit River between 9 a.m. and 6:30 p.m. on June 11, through June 14, 2009.

This safety zone will not have a significant economic impact on a substantial number of small entities for the following reasons. This rule will be in effect for short period of time each day it is enforced. Additionally, small entities such as passenger vessels, have been informed of this event since its planning stages, and have had ample time to make alternate arrangements with regards to mooring positions and business operations during the hours this safety zone will be in place. Furthermore, local sailing and yacht clubs will be notified prior to the event by Coast Guard Station Belle Isle with information on what to expect during the event with the intention of minimizing interruptions in their normal business practices. In the event that this temporary safety zone affects shipping, commercial vessels may request permission from the Captain of the Port Detroit to transit through the safety zone. The Coast Guard will give notice to the public via a Broadcast Notice to Mariners that the regulation is in effect. Additionally, the COTP will suspend enforcement of the safety zone if the event for which the zone is established ends earlier than the expected time.

Assistance for Small Entities

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

Small businesses may send comments on the actions of Federal employees who enforce, or otherwise determine compliance with, Federal regulations to the Small Business and Agriculture Regulatory Enforcement Ombudsman

and the Regional Small Business Regulatory Fairness Boards. The Ombudsman evaluates these actions annually and rates each agency's responsiveness to small business. If you wish to comment on actions by employees of the Coast Guard, call 1–888–REG–FAIR (1–888–734–3247). The Coast Guard will not retaliate against small entities that question or complain about this rule or any policy or action of the Coast Guard. We did not receive any comments for this section.

Collection of Information

This rule calls for no new collection of information under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520). We did not receive any comments for this section.

Federalism

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

Unfunded Mandates Reform Act

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

Taking of Private Property

This rule will not effect a taking of private property or otherwise have taking implications under Executive Order 12630, Governmental Actions and Interference with Constitutionally Protected Property Rights. We did not receive any comments for this section.

Civil Justice Reform

This rule meets applicable standards in sections 3(a) and 3(b)(2) of Executive Order 12988, Civil Justice Reform, to minimize litigation, eliminate ambiguity, and reduce burden. We did not receive any comments for this section.

Protection of Children

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

Indian Tribal Governments

The Coast Guard recognizes the treaty rights of Native American Tribes. Moreover, the Coast Guard is committed to working with Tribal Governments to implement local policies and to mitigate Tribal concerns. We have determined that this rule and fishing rights protection need not be incompatible. We have also determined that this rule does not have Tribal implications under Executive Order 13175, Consultation and Coordination with Indian Tribal Governments, because it does not have a substantial direct effect on one or more Indian Tribes, on the relationship between the Federal Government and Indian Tribes, or on the distribution of power and responsibilities between the Federal Government and Indian Tribes. Nevertheless, Indian Tribes that have questions concerning the provisions of this rule or options for compliance are encouraged to contact the point of contact listed under **FOR FURTHER INFORMATION CONTACT**. We did not receive any comments for this section.

Energy Effects

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

We did not receive any comments for this section.

Technical Standards

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

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

This rule does not use technical standards. Therefore, we did not consider the use of voluntary consensus standards. We did not receive any comments for this section.

Environment

We have analyzed this rule under Department of Homeland Security Management Directive 023-01 and Commandant Instruction M16475.ID, which guide the Coast Guard in complying with the National Environmental Policy Act of 1969 (NEPA) (42 U.S.C. 4321-4370f), and have concluded this action is one of a category of actions which do not individually or cumulatively have a significant effect on the human environment. This rule is categorically excluded, under figure 2-1, paragraph (34)(g), of the Instruction. This event establishes a safety zone, therefore paragraph (34)(g) of the Instruction applies.

An environmental analysis checklist and a categorical exclusion determination are available in the docket where indicated under **ADDRESSES**.

List of Subjects in 33 CFR Part 165

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

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

PART 165—REGULATED NAVIGATION AREAS AND LIMITED ACCESS AREAS

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

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

■ 2. Section 165.T09-0089 is added to read as follows:

§ 165.T09-0089 Safety Zone; Red Bull Air Race, Detroit River, Detroit, MI.

(a) *Location*. The following area is a temporary safety zone: all U.S. waters of the Detroit River, Detroit, MI, bound by

a line extending from a point on land southwest of Joe Louis Arena at position 42°19.4' N; 083°3.3' W, northeast along the Detroit shoreline to a point on land at position 42°20.0' N; 083°1.2' W, southeast to the international boarder with Canada at position 42°19.8' N; 083°1.0' W, southwest along the international border to position 42°19.2' N; 083°3.3' W, and northwest to the point of origin at position 42°19.4' N; 083°3.3' W. (DATUM: NAD 83).

(b) *Enforcement Period*. The safety zone will be enforced daily from 9 a.m. to 6:30 p.m. on June 11, 2009 through June 14, 2009.

(c) *Regulations*. (1) In accordance with the general regulations in § 165.23 of this part, entry into, transiting, or anchoring within this safety zone is prohibited unless authorized by the Captain of the Port Detroit, or his designated on-scene representative.

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

(3) The "on-scene representative" of the Captain of the Port is any Coast Guard commissioned, warrant, or petty officer who has been designated by the Captain of the Port to act on his behalf. The on-scene representative of the Captain of the Port will be aboard either a Coast Guard or Coast Guard Auxiliary vessel. The Captain of the Port or his designated on scene representative may be contacted via VHF Channel 16.

(4) Vessel operators desiring to enter or operate within the safety zone shall contact the Captain of the Port Detroit or his on-scene representative to obtain permission to do so.

(5) Vessel operators given permission to enter or operate in the safety zone must comply with all directions given to them by the Captain of the Port or his on-scene representative.

Dated: May 6, 2009.

F.M. Midgett,

Captain, U.S. Coast Guard, Captain of the Port Detroit.

[FR Doc. E9-11835 Filed 5-20-09; 8:45 am]

BILLING CODE 4910-15-P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 165

[Docket No. USCG-2009-0343]

RIN 1625-AA00

Safety Zone; ESL Air and Water Show, Lake Ontario, Ontario Beach Park, Rochester, NY

AGENCY: Coast Guard, DHS.

ACTION: Temporary final rule.

SUMMARY: The Coast Guard is establishing a safety zone for an air and water show in the Captain of the Port Buffalo zone. This rule is intended to restrict vessels from areas of water during events that pose a hazard to public safety. The safety zone established by this rule is necessary to protect spectators, participants, and vessels from the hazards associated with an air and water show.

DATES: This rule is effective from 10 a.m. May 28, 2009 through 4:30 p.m. May 31, 2009.

ADDRESSES: Documents indicated in this preamble as being available in the docket are part of docket USCG-2009-0343 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 Coast Guard Sector Buffalo, 1 Fuhrmann Blvd., Buffalo, NY, 14203 between 8 a.m. and 4 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: If you have questions on this temporary rule, call Lieutenant Brian Sadler, Prevention Department, U.S. Coast Guard Sector Buffalo, at (716) 843-9385. If you have questions on viewing the docket, call Renee V. Wright, Program Manager, Docket Operations, telephone 202-366-9826.

SUPPLEMENTARY INFORMATION:

Regulatory Information

The Coast Guard is issuing this temporary final rule without prior notice and opportunity to comment pursuant to authority under section 4(a) of the Administrative Procedure Act (APA) (5 U.S.C. 553(b)). This provision authorizes an agency to issue a rule without prior notice and opportunity to

comment when the agency for good cause finds that those procedures are “impracticable, unnecessary, or contrary to the public interest.” Under 5 U.S.C. 553(b)(B), the Coast Guard finds that good cause exists for not publishing a notice of proposed rulemaking (NPRM) with respect to this rule because immediate action is necessary to ensure the safety of vessels, spectators, participants, and others in the vicinity of the marine event on the dates and times this rule will be in effect and delay would be contrary to the public interest.

Under 5 U.S.C. 553(d)(3), the Coast Guard finds that good cause exists for making this rule effective less than 30 days after publication in the **Federal Register** because delaying the effective date would be contrary to the public interest, since immediate action is needed to ensure the public’s safety.

Background and Purpose

Temporary safety zones are necessary to ensure the safety of vessels and spectators from the hazards associated with air and water shows. Based on accidents that have occurred in other Captain of the Port zones, the Captain of the Port Buffalo has determined air and water shows pose significant risks to public safety and property. The likely combination of large numbers of recreational vessels, congested waterways, and alcohol use could easily result in serious injuries or fatalities.

Discussion of Rule

The rule and associated safety zones are necessary to ensure the safety of vessels and people during events in the Captain of the Port Buffalo area of responsibility that may pose a hazard to the public. The safety zone is described in subparagraph (1) of this regulation. The safety zone will be enforced only immediately before and during the event which poses a hazard to the public and only upon notice by the Captain of the Port. The Captain of the Port Buffalo will cause notice of enforcement of the safety zone established by this section to be made by all appropriate means to the affected segments of the public including publication in the **Federal Register**, in accordance with 33 CFR 165.7(a). Such means of notification may also include, but are not limited to Broadcast Notice to Mariners or Local Notice to Mariners. The Captain of the Port will issue a Broadcast Notice to Mariners notifying the public when enforcement of the safety zone established by this section is suspended.

Regulatory Analyses

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

Regulatory Planning and Review

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

We expect the economic impact of this rule to be so minimal that a full Regulatory Evaluation is unnecessary.

The Coast Guard’s use of this safety zone will be periodic in nature, of short duration, and designed to minimize the impact on navigable waters. This safety zone will only be enforced immediately before and during the time the event occurs. Furthermore, this safety zone has been designed to allow vessels to transit unrestricted to portions of the waterway not affected by the safety zone. The Coast Guard expects insignificant adverse impact to mariners from the activation of this safety zone.

Small Entities

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

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

This rule would affect the following entities, some of which might be small entities: The owners or operators of vessels intending to transit or anchor in the area designated as the safety zone in subparagraph (1) during the date and time the safety zone is being enforced. This safety zone would not have a significant economic impact on a substantial number of small entities for the following reasons. The safety zone in this rule would be in effect for short periods of time and only once per year. The safety zone has been designed to allow traffic to pass safely around the zone whenever possible and vessels will

be allowed to pass through the zone with the permission of the Captain of the Port.

Assistance for Small Entities

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Pub. L. 104–121), we want to assist small entities in understanding this rule so that they can better evaluate its effects on them and participate in the rulemaking. If the rule would affect your small business, organization, or governmental jurisdiction and you have questions concerning its provisions or options for compliance, please contact LT Brian Sadler, Prevention Department, Coast Guard Sector Buffalo, Buffalo, NY at (716) 843–9385.

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

Collection of Information

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

Federalism

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

Unfunded Mandates Reform Act

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

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

Taking of Private Property

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

Civil Justice Reform

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

Protection of Children

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

Indian Tribal Governments

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

Energy Effects

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

Technical Standards

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

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

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

Environment

We have analyzed this rule under Department of Homeland Security Management Directive 023–01 and Commandant Instruction M16475.ID, which guide the Coast Guard in complying with the National Environmental Policy Act of 1969 (NEPA) (42 U.S.C. 4321–4370f), and have concluded this action is one of a category of actions which do not individually or cumulatively have a significant effect on the human environment. This rule is categorically excluded, under figure 2–1, paragraph (34)(g), of the Instruction. This rule involves the establishment of a safety zone and, therefore, paragraph (34)(g) of the Instruction applies. An environmental analysis checklist and a categorical exclusion determination are available in the docket where indicated under **ADDRESSES**.

List of Subjects in 33 CFR Part 165

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

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

PART 165—REGULATED NAVIGATION AREAS AND LIMITED ACCESS AREAS

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

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

■ 2. Add a new temporary § 165.T09–0343 to read as follows:

§ 165.T09–0343 Safety Zone; ESL Air and Water Show, Lake Ontario, Ontario Beach Park, Rochester, NY.

(a) *Location.* The following area is a temporary safety zone: All waters at the head of the Genesee River and Lake Ontario surrounding Ontario Beach Park

located at 43°16'18.202" N., 077°36'38.919" W., 43°15'53.209" N., 077°37'00.698" W., 43°15'46.366" N., 077°35'30.524" W., 43°15'21.376" N., 077°35'52.307" W. All Geographic coordinates are North American Datum of 1983 (NAD 83).

(b) *Effective Period.* This regulation is effective from 10 a.m., May 28, 2009 through 4:30 p.m., May 31, 2009. This zone will be enforced from 10 a.m. to 4:30 p.m. May 28, 2009 through May 31, 2009.

(c) *Regulations.*

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

(2) All persons and vessels must comply with the instructions of the Coast Guard Captain of the Port or the designated on scene patrol personnel. Coast Guard patrol personnel include commissioned, warrant, and petty officers of the U.S. Coast Guard. Upon being hailed by a U.S. Coast Guard vessel via siren, radio, flashing light, or other means, the operator shall proceed as directed.

(3) Commercial vessels may request permission from the Captain of the Port Buffalo to transit the safety zone. Approval will be made on a case-by-case basis. Requests must be made in advance and approved by the Captain of the Port before transits will be authorized. The Captain of the Port may be contacted via U.S. Coast Guard Sector Buffalo on Channel 16, VHF-FM.

Dated: May 1, 2009.

R.S. Burchell,

Captain, U.S. Coast Guard, Captain of the Port Buffalo.

[FR Doc. E9-11836 Filed 5-20-09; 8:45 am]

BILLING CODE 4910-15-P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Administration for Children and Families

45 CFR Parts 302, 303 and 307

RIN 0970-AC01

State Parent Locator Service; Safeguarding Child Support Information

AGENCY: Office of Child Support Enforcement (OCSE), Administration for Children and Families (ACF), Department of Health and Human Services.

ACTION: Delay of effective date.

SUMMARY: In accordance with the memorandum of January 20, 2009, from the Assistant to the President and Chief

of Staff, entitled "Regulatory Review," this action delays until December 30, 2010, the effective date of the final rule entitled "State Parent Locator Service; Safeguarding Child Support Information," published in the **Federal Register** on September 26, 2008 (73 FR 56422). The delay in effective date is necessary to give Department officials the opportunity for further review of the issues of law and policy raised by this rule.

DATES: The effective date of the rule amending 45 CFR parts 302, 303, and 307 published in the September 26, 2008 **Federal Register** (73 FR 56442), which was delayed on March 20, 2009 (74 FR 11879), is further delayed until December 30, 2010.

FOR FURTHER INFORMATION CONTACT: Yvette Riddick, Office of Child Support Enforcement, Division of Policy, (202) 401-4885.

SUPPLEMENTARY INFORMATION:

I. Background

On September 26, 2008, a final rule following notice and comment period entitled "State Parent Locator Service; Safeguarding Child Support Information" was published in the **Federal Register** [73 FR 56422] to address requirements for State Parent Locator Service responses to authorized location requests, State IV-D program safeguarding of confidential information, authorized disclosures of this information, and restrictions on the use of confidential data and information for child support purposes with exceptions for certain disclosures permitted by statute. The effective date given for the final rule was March 23, 2009.

In accordance with the memorandum of January 20, 2009, from the Assistant to the President and Chief of Staff entitled "Regulatory Review" [74 FR 4435], on March 3, 2009, we published a notice in the **Federal Register** [74 FR 9171], seeking public comment on a contemplated delay of 60 days in the effective date of the rule entitled "State Parent Locator Service; Safeguarding Child Support Information." In response to comment, the Department issued a subsequent notice on March 20, 2009 [74 FR 11879] delaying the effective date of the September 26, 2008 rule by 60 days until May 22, 2009, in order to permit officials of the new Administration an opportunity to review and approve the policies in the regulation.

However, subsequent to publication of the March 20, 2009 notice, we determined that additional time would be needed for Department officials to

complete their review of the rule and to assess fully the comments received in response to the March 3, 2009 notice. As a result, on April 15, 2009, a notice was published in the **Federal Register** [74 FR 17445] indicating that the Department was contemplating a further delay in the effective date of the "State Parent Locator; Safeguarding Child Support Information" final rule to December 30, 2010. As discussed below, the April 15, 2009 notice generated three comments, all of which supported the December 30, 2010 effective date.

II. Provision of This Action

This action further delays the effective date of the September 26, 2008 final rule. The effective date of the final rule which would have been May 22, 2009, is now December 30, 2010. The delay in the effective date is necessary to give Department officials the opportunity for further review of the issues of law and policy raised by the rule.

III. Comments Received in Response to the April 15, 2009 Notice

We received three comments in response to the April 15, 2009 notice with comment period on the contemplated delay in the effective date of the "State Parent Locator Service; Safeguarding Child Support Information" final rule. Although the April 15, 2009 notice invited comments on the contemplated extension of the effective date of the regulation to December 30, 2010, it also generated comments recommending changes to substantive areas of the final rule. All commenters supported the delayed effective date and as a result, we are delaying the effective date of the rule to December 30, 2010 to allow sufficient time for Department officials to review issues of law and policy raised by the rule.

A summary of the comments received follows:

Comments: All three commenters supported the contemplated delay in the effective date. Two of the commenters also provided comments that are substantive in nature. One commenter was concerned about the provisions of the rule that authorize disclosure of State child support data to private child support collection agencies (PCAs), companies that do not operate under a contract with the State or county child support program, but instead contract directly with custodial parents. The same commenter also recommended that the Department review the child welfare provision of the rule to ensure that it fully complies with the Fostering Connections to Success and Increasing

Adoptions Act signed into law on October 7, 2008 after the publication of the final rule September 26, 2008. For example, the new law raises a set of questions about whether data maintained through the Federal Parent Locator Service and the State Parent Locator Service are available to assist State child welfare agencies in carrying out their responsibilities to locate adult relatives of children removed from parental custody in order to identify potential placements.

The other substantive comment raised similar concerns regarding PCAs. In particular, the commenter was concerned with the PCAs being an "agent of the child" for the purpose of locate requests under section 453 of the Social Security Act. The commenter believes that the PCA in child support matters represents the parent, not the child, thus is not "the agent of the child" and is not authorized to receive any Federal Parent Locator Service information from the IV-D agency. The commenter also suggested that similar to the access provided to title IV Social Security Act programs, human service programs serving the same family as the child support program should have clear and unambiguous access to Federal information. For example, the commenter encouraged the Office of Child Support Enforcement to provide the Supplemental Nutrition Assistance Program access to child support information to determine income eligibility.

Response: The Department believes that the comments received on the notice published in the **Federal Register** on April 15, 2009 [74 FR 17445] soliciting comments on the delay in the effective date of the rule support the delay in the effective date until December 30, 2010. While the substantive comments on the policies contained in the rule were not solicited, the delay will provide time for Department officials to assess those comments as well as review all issues of law and policy raised by the rule. (Catalog of Federal Domestic Assistance Program No. 93.563, Child Support Enforcement)

Dated: May 18, 2009.

Kathleen Sebelius,

Secretary.

[FR Doc. E9-11936 Filed 5-20-09; 8:45 am]

BILLING CODE P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 90

[WP Docket No. 07-100; FCC 09-29]

Private Land Mobile Radio Services

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: This document addresses revisions to the Commission's rules and policies regarding private land mobile radio (PLMR) services and particularly public safety operations. In the *Report and Order* portion of this document, the Commission accords primary status to 4.9 GHz band permanent fixed stations that are used to deliver broadband service; harmonizes output power measurement procedures for 4.9 GHz technology with procedures for similar devices that are regulated by part 15 of the Commission's rules; and clarifies that cross-band repeaters are permitted for all public safety systems. The Commission makes these changes to reduce uncertainty in the rules and harmonize the rules. The intended effect for public safety licensees is to allow additional flexibility, create opportunities for public safety users to benefit from speedier deployment of new technologies in the 4.9 GHz band, and lead to expanded use of 4.9 GHz broadband networks. The intended effect for manufacturers is to allow technologies similar to those covered by part 15 to be used in the 4.9 GHz band, resulting in speedier deployment of new technologies in this band. The intended effect of the cross-banding rule change is to enhance communications among public safety agencies operating in various frequency bands.

DATES: Effective June 22, 2009.

ADDRESSES: See **SUPPLEMENTARY INFORMATION** for locations where the public may inspect, copy, or purchase hardcopies of the *Report and Order and Further Notice of Proposed Rulemaking*.

FOR FURTHER INFORMATION CONTACT:

Thomas Eng, Policy Division, Public Safety and Homeland Bureau, Federal Communications Commission, Washington, DC 20554, at (202) 418-0019, TTY (202) 418-7233, via e-mail at Thomas.Eng@fcc.gov, or via U.S. Mail at Federal Communications Commission, Public Safety and Homeland Security Bureau, 445 12th Street, SW., Washington, DC 20554.

SUPPLEMENTARY INFORMATION: This is a summary of the *Report and Order* portion of the Commission's *Report and*

Order and Further Notice of Proposed Rulemaking in WP Docket No. 07-100, adopted on April 7, 2009 and released on April 9, 2009. The complete text of this document is available for inspection and copying during normal business hours in the FCC Reference Information Center, Portals II, 445 12th Street, SW., Room CY-A257, Washington, DC 20554. This document may also be purchased from the Commission's duplicating contractor, Best Copy and Printing, Inc., in person at 445 12th Street, SW., Room CY-B402, Washington, DC 20554, via telephone at (202) 488-5300, via facsimile at (202) 488-5563, or via e-mail at FCC@BCPIWEB.com. Alternative formats (computer diskette, large print, audio cassette, and Braille) are available to persons with disabilities or by sending an e-mail to FCC504@fcc.gov or calling the Consumer and Governmental Affairs Bureau at (202) 418-0530, TTY (202) 418-0432. This document is also available on the Commission's Web site at <http://www.fcc.gov>.

The major decisions in the *Report and Order* are as follows:

- Amends § 90.1207 of the Commission's rules, which governs licensing of the 4.9 GHz band, to grant primary status to stand-alone permanent fixed links that are used to deliver broadband service and permanent fixed links that connect 4.9 GHz base and mobile stations that are used to deliver broadband services, as well as other public safety networks using spectrum designated for broadband use.

- Amends § 90.1215 of the Commission's rules to require the same output power measurement procedures for 4.9 GHz technology as those required for devices that use digital modulation techniques and are regulated by part 15 of the Commission's rules.

- Continues to permit paging operations on Very High Frequency (VHF) public safety frequencies.

- Modifies the existing language in § 90.243(b)(1) to clarify that cross-band repeaters are permitted for all public safety systems.

- Declines to amend § 90.20 to authorize privately-run metropolitan transit systems to use frequencies in the Public Safety Pool.

4.9 GHz Band

In the earlier *Notice of Proposed Rulemaking* (NPRM), 72 FR 35190, June 27, 2007, in this proceeding, the Commission sought comment on two proposals by M/A-COM to modify the Commission's rules regarding the 4.9 GHz band. First, M/A-COM asks the Commission for an amendment to § 90.1207(c) that would "clarify that

point-to-point and point-to-multipoint fixed links in the 4.9 GHz public safety networks are co-primary with mobile links” and “grant primary status to fixed links connecting public safety networks with each other using the 4940–4990 MHz band.” Second, M/A-COM proposes to add a new § 90.1215(d) thereby updating this section “consistent with changes the Commission * * * made to § 15.407(a) of its rules” (*i.e.*, reflecting the same revised measurement procedures adopted by the Commission for devices that use digital modulation techniques regulated by part 15).

Primary Status to Certain Fixed Links.

§ 90.1207 currently provides 4.9 GHz licensees with authority to “operate base and mobile units (including portable and handheld units) and operate temporary (1 year or less) fixed stations,” but not to “operate permanent fixed point-to-point stations.” Further, § 90.2107 provides that “[l]icensees choosing to operate [permanent fixed point-to-point stations] must license them individually on a site-by-site basis” and “will be authorized only on a secondary, non-interference basis to base, mobile and temporary fixed operations.” In its petition seeking clarifications regarding the 4.9 GHz band rules, M/A-COM states that “the Commission did not define * * * [the] allocation status of hot spots or temporary fixed links, *i.e.*, whether such hot spots and links have primary or secondary status, and the Commission’s part 90 rules do not address the allocation status of such links.” Therefore, M/A-COM states that the “present part 90 rules create regulatory uncertainty—as they are vague or potentially inconsistent with the *4.9 GHz Third Report and Order*, 68 FR 38635, June 30, 2003—and could discourage public safety users and first responders from deploying * * * broadband networks.” M/A-COM states that “public safety users and first responders will need integrated networks with scalable network architectures that allow for dynamic routing of traffic over both fixed and mobile links,” and thus proposes that the Commission amend its part 90 rules to “grant primary status to point-to-point and point-to-multipoint fixed links that are part of a 4.9 GHz public safety network.” M/A-COM adds that “the Commission should continue to grant secondary status to traditional, stand-alone point-to-point links for purposes such as backhaul.”

The Commission sought comment on “M/A-COM’s proposal to expressly afford primary status to certain permanent fixed links,” while also

asking if, “given the limited amount of spectrum in the 4.9 GHz band, permitting fixed operations on a primary basis may result in severely limiting the spectral availability and reliability of both permanent and ad hoc mobile networks.” The Commission asked whether “adoption of M/A-COM’s proposal would compromise the ability of public safety agencies to utilize the band for temporary ‘incident scene’ operations, a use that received overwhelming support in the record of WT Docket No. 00–32.” Finally, the Commission asked if the M/A-COM proposal would “provide more flexible use of this band,” and whether “such flexibility would come at the expense of maintaining adequate spectrum for mission-critical public safety mobile operations.”

Most commenters, including several public safety organizations, indicate that the Commission should clarify its rules to afford primary status to fixed point-to-point and point-to-multipoint links operating as part of an integrated 4.9 GHz public safety broadband network. The American Association of State Highway and Transportation Officials (AASHTO), the Land Mobile Communications Council (LMCC), and the National Public Safety Telecommunications Council generally support primary status for 4.9 GHz permanent fixed links that deliver broadband service.

We find that it is in the public interest to clarify whether certain fixed links in the 4.9 GHz band are primary or secondary in order to facilitate public safety broadband use of the band and to minimize confusion in the marketplace. In this regard, we modify our rules to accord primary status to fixed links that connect 4.9 GHz base and mobile stations that are used to deliver broadband service, as well as other public safety networks using spectrum designated for broadband use. We also accord primary status to stand-alone permanent fixed 4.9 GHz links that are used to deliver broadband service, such as a fixed video surveillance link used to monitor a high-risk target or environment. In contrast, fixed 4.9 GHz links that only connect narrowband base stations operating in public safety bands not designated for broadband (*i.e.*, public safety UHF, VHF, narrowband 700 MHz, and 800 MHz) to other networks, or serve to backhaul narrowband traffic originating from narrowband base stations, will remain secondary. We limit primary status to fixed links in this manner to preserve and ensure the use of the 4.9 GHz public safety band in serving broadband needs. We believe that proper frequency

coordination among public safety agencies in a given location will ensure that different services and technologies can operate unimpeded without causing interference. We want to make certain that public safety can reliably establish broadband networks (*e.g.*, permanent or temporary hot-spot networks) to transmit broadband data without concern of interference. Consistent with existing rules, permanent fixed point-to-point and to point-to-multipoint links accorded primary status must use directional antennas with gains over 9 dBi up to 26 dBi. Permanent fixed links used for traditional backhaul that only carry narrowband traffic remain secondary and must be licensed separately, as specified in § 90.1207(d).

We find that this rule change is consistent with the Commission’s vision for the 4.9 GHz band and is supported by public safety commenters. The Commission endeavored to provide 4.9 GHz band public safety licensees with the maximum operational flexibility practicable consistent with its vision for the 4.9 GHz band. We believe that providing primary status for fixed links as described above will provide additional flexibility for public safety and thereby lead to expanded use of 4.9 GHz broadband networks. Finally, we find that the rule change addresses concerns about the uncertainty that secondary status may introduce in 4.9 GHz broadband networks utilizing fixed point-to-point or point-to-multipoint links. In sum, we find that this rule change serves the public interest by encouraging public safety users to more fully utilize the 4.9 GHz band in support of broadband communications.

Next, we address licensing issues for primary permanent fixed stations. The record in this proceeding contains support for licensing all permanent fixed stations on an individual, site-by-site basis. This would ensure that adequate data is readily available to facilitate interference protection and resolution. Accordingly, we shall license permanent fixed stations, both designated as primary or secondary, on an individual, site-by-site basis. However, as we explain in the *Further Notice of Proposed Rulemaking* (published elsewhere in this issue) portion of this document, we have concerns about ensuring interference protection among primary permanent fixed stations, and we tentatively conclude therein that a more formal licensee-to-licensure coordination process may be necessary for such stations. Accordingly, until the Commission resolves a potential new coordination requirement, applicants seeking primary status for 4.9 GHz

permanent fixed stations must ensure that they meet the minimum requirements of § 90.1209(b).

Further, we believe it prudent to distinguish between primary permanent fixed stations and secondary stations in our licensing database. The Commission has established station class codes in the past to distinguish between licensees that are subject to different regulatory requirements on the same set of frequencies. Similarly, in this instance, establishing a new class code for primary permanent fixed stations will assist interested stakeholders as well as the Commission's licensing staff to distinguish between primary and secondary permanent fixed stations. Accordingly, we delegate to the Chief, Public Safety and Homeland Security Bureau, authority to issue a public notice announcing the establishment of a new 4.9 GHz primary permanent fixed station class code. The public notice also will provide licensees holding permanent fixed stations with instructions for modifying their authorizations to reflect the new station class code.

Measurement Procedures. In the NPRM, the Commission also proposed, as suggested by M/A-COM, to amend § 90.1215 to reflect the same measurement procedures adopted by the Commission for devices that use digital modulation techniques and are regulated by part 15 of the rules. Specifically, in 2004, the Commission modified part 15 to permit the determination of a device's output power by using average power measurements in addition to the existing peak output power measurement method. M/A-COM proposed replacing the term "peak transmit power" with "maximum conducted output power," and adding a peak excursion ratio limit. These changes would make the measurement procedures in §§ 90.1215 and 15.407(a) virtually identical.

We agree with the majority of commenters who believe that the proposed measurement procedures should be adopted to harmonize the measurement procedures for similar unlicensed devices that use digital modulation techniques and operate in nearby frequency bands under part 15. Given that manufacturers are considering technologies similar to those covered by part 15 for use in the 4.9 GHz band, and because parallel treatment will speed deployment of new technologies in this band for the benefit of public safety users, we conclude that measurement procedures under the part 15 rules and the 4.9 GHz rules should be consistent.

Miscellaneous 4940–4990 MHz Band Technical Matter. Motorola believes that the NPRM contains a typographical error in the proposed revision to the text of § 90.1215(a). Specifically, Motorola observes that the text of the proposed change to § 90.1215(a) referred to a peak power spectral density limit of 20 dBm per megahertz, rather than 21 dBm per megahertz, which had been the existing requirement. Motorola urges the Commission to retain the existing 21 dBm per megahertz limit in order to maximize coverage and robustness of public safety transmissions. The Commission did not intend to propose a change to the 21 dBm per megahertz limit, as evidenced by a lack of related discussion in the NPRM text. Accordingly, we clarify that we are retaining the existing 21 dBm per megahertz limit.

Miscellaneous Proposals

Part 90 Paging on Public Safety VHF Frequencies. VHF public safety frequencies (150–174 MHz) are used primarily for two-way voice communications (e.g., mobile dispatch). The Commission's rules, however, also allow for paging operations on these frequencies. As the Commission observed in the NPRM, experience has shown that paging and two-way voice operations can generally co-exist on the same channel in the same area without interference, provided the paging transmissions are infrequent (low traffic volume) and the paging licensee monitors the channels before transmitting. Experience also has shown that the potential for paging to interfere with voice operations tends to increase as the amount of paging traffic increases.

The Commission previously expressed concern about the potential incompatibility between high-volume paging operations and public safety two-way voice communications operating on VHF frequencies. To address the possibility of interference in these situations, the Commission sought comment on whether paging operations conducted pursuant to § 90.22 on VHF public safety frequencies should be restricted, especially on those frequencies reserved under the rules for mutual aid/interoperability communications.

The majority of commenters expressed support for continuing to permit paging operations on all VHF public safety frequencies. They assert that restrictions on paging operations on VHF public safety frequencies would result in a significant, negative impact on the ability of public safety agencies to provide mission-critical notifications.

Other commenters note that search and rescue operations have experienced similar intolerable interference from hospital paging operations, or support an elimination of paging on certain shared or mutual aid frequencies that are monitored by public safety and medical personnel.

We take seriously the potential for interference that may result from paging operations to two-way public safety voice communications. However, the record demonstrates substantial reliance by fire and EMS departments on the use of paging on VHF frequencies. The Commission did not receive any specific reports in the comments that hospital paging systems' disruption of two-way voice communications is a continuing problem. Accordingly, based on the record before us, we cannot conclude that paging operations conducted on VHF frequencies pursuant to § 90.22, including on specific mutual aid channels, represent an interference risk to VHF public safety frequencies at this time.

In reaching this decision, we note that many of the concerns raised by commenters appear to concern paging operations permitted under § 90.20(d)(10), which was not the subject of the Commission's inquiry in the NPRM. In other words, the Commission did not intend to propose limiting operations conducted by public safety licensees for one-way paging to ambulance and rescue squad personnel. Regardless, we take no action to restrict paging operations in the VHF bands, whether conducted pursuant to § 90.22 or § 90.20(d)(10). The record shows paging transmissions to be a proven and cost-effective way to recall first responders when emergency incidents occur. We also find persuasive comments from the public safety community that prohibiting or otherwise restricting paging operations on VHF public safety frequencies would have a disruptive impact on a number of local communities that currently rely heavily on existing VHF paging operations as integral to their public safety operations. We are particularly concerned with the potential disruptive effects that paging restrictions would have on limiting the availability of emergency communications or hampering the ability of public safety entities to provide services in a timely manner to the public.

Rather than impose restrictions on paging at this time, we find that applications for future paging operations should continue to be licensed on a case-by-case basis in tandem with the frequency coordination process. In the absence of a more

significant likelihood of harmful interference involving paging and two-way operations, we are not inclined to amend our rules where we believe the existing mechanisms provide adequate safeguards. We also encourage users of VHF public safety frequencies, including the mutual aid/interoperability channels, to develop and rely on frequency sharing and priority access protocols to facilitate local and regional emergency coordination efforts.

While we decline to place new restrictions on paging operations on VHF public safety frequencies, including mutual aid/interoperability channels, we remain mindful of the potential for paging transmissions to cause harmful interference to voice operations. Accordingly, should specific instances of paging interference to two-way voice operations arise on the VHF public safety frequencies, including the mutual aid/interoperability channels, we retain our discretion to revisit this issue in the future and to take appropriate action as warranted.

Cross-Banding. Section 90.243(b)(1) states that “in the Public Safety Pool, medical services systems in the 150–160 MHz band are permitted to be cross-banded for mobile and central stations operations with mobile relay stations authorized to operate in the 450–470 MHz band.” Because one could interpret this rule to mean that only medical services systems are permitted to use cross-band repeaters, the NPRM sought comment on a proposal to modify the rule to state specifically that cross-band repeaters are permitted for all public safety systems.

All commenters who addressed this issue agree that § 90.243(b)(1) should be amended to clarify that cross-band repeaters are permitted for all public safety systems. Because the purpose of the rule is not limited to medical services systems but rather applies to all eligible users of the Public Safety Pool, we amend the rule accordingly. In this respect, we ensure that all users of public safety systems may confidently employ cross-band repeaters and thus enhance communications among public safety agencies operating in various frequency bands.

Transit Systems and Toll Roads. Under the current rules, only state and local governmental entities are eligible to hold authorizations in the Public Safety Pool. Thus, to the extent metropolitan transit systems and toll roads are publicly-operated services, they are eligible to hold authorizations in the Public Safety Pool. However, the Commission noted in the NPRM that not all metropolitan transit systems and toll

roads are publicly-owned. Some are privately-owned, and operate under contracts or similar arrangements with governmental entities. Because non-governmental entities are ineligible to hold authorizations for Public Safety Pool frequencies, the NPRM sought comment on whether § 90.20 should be amended to authorize privately-run metropolitan transit systems and toll road systems to hold authorizations to use frequencies in the Public Safety Pool.

The majority of commenters on this issue state that private operators of transit systems and toll roads should not be eligible to hold licenses to operate on public safety frequencies. For example, according to AASHTO, while private operators of transit systems and toll roads should be able to use public safety frequencies licensed to governmental entities via contractual agreement, public safety frequencies must remain within the control of public entity licensees. LMCC points out that the Commission’s rules already allow a licensee to designate an agent or third-party contractor of the licensee as the control operator of its station, provided that the licensee retains ultimate control over the use of the spectrum. On the other hand, the U.S. Department of Transportation observes that, given the “role played and services offered by private sector operators of public transit systems are indistinguishable from their traditional public sector counterparts * * * the public or private sector origin of the operator of the affected infrastructure is immaterial.”

In view of the record before us, we are not persuaded to amend § 90.20 to permit privately-run metropolitan transit systems to be authorized on frequencies in the Public Safety Pool. Such an amendment to our rules would undermine the rationale of the Commission in restricting eligibility to hold a license in the Public Safety Pool in the first place. A chief reason for establishing such eligibility in the first instance was to assure that those public safety entities specifically charged with the protection of the life and property of the general public have access to spectrum.

The Commission’s other reasons for establishing its eligibility requirements in the Public Safety Pool were to promote interoperability between all entities involved in ensuring the safety of life by allowing them to communicate with one another, and remain consistent with other Commission definitions of public safety radio services. The Commission indicated that restricting Public Safety Pool eligibility in this manner was not only consistent with

the Commission’s definition of public safety services in other contexts, but also with the Public Safety Wireless Advisory Committee’s definition of public safety, reflected in its Final Report.

Because state and local public agencies share similar responsibilities when it comes to safety of life and protection of property, it is critical that, especially during times of emergencies, the deployment and use of Public Safety Pool frequencies remain within the control of these public safety agencies. Control is best assured when such licenses are held by public safety eligibles only. The current rule ensures that the continuity and expertise underlying the coordination and expansion of public safety communications systems appropriately remain with a region’s state and local agencies. Consistent with the view of the majority of commenters on this issue, we find that the current rule ensures that a local or State governmental entity exercises responsibility and accountability for the use of the Public Safety Pool spectrum, even if the contract with the private entity either expires or terminates, or if the private entity itself ceases to exist by way of bankruptcy, merger, or other organizational change. We therefore decline to amend our rules with respect to Public Safety Pool eligibility. Because we decline to amend § 90.20, we need not address the outstanding issues raised in the NPRM on this issue regarding the administrative criteria to be used in the event we decided to amend the rule.

Procedural Matters

Final Regulatory Flexibility Act Analysis

As required by the Regulatory Flexibility Act (RFA), the Commission has prepared a Final Regulatory Flexibility Analysis of the possible impact of the rule changes contained in the *Report and Order* portion of this *Report and Order and Further Notice of Proposed Rulemaking* on small entities. The Final Regulatory Flexibility Act analysis is set forth in Appendix D of the *Report and Order and Further Notice of Proposed Rulemaking*. The Commission’s Consumer Information Bureau, Reference Information Center, will send a copy of this *Report and Order and Further Notice of Proposed Rulemaking*, including the Final Regulatory Flexibility Act Analysis, to the Chief Counsel for Advocacy of the Small Business Administration.

Final Paperwork Reduction Act of 1995 Analysis

This document does not contain new or modified information collection(s) subject to the Paperwork Reduction Act of 1995 (PRA), Public Law 104-13. In addition, therefore, this document does not contain any new or modified "information collection burden for small business concerns with fewer than 25 employees," pursuant to the Small Business Paperwork Relief Act of 2002, Public Law 107-198, see 44 U.S.C. 3506(c)(4).

Congressional Review Act Analysis

The Commission will send a copy of this Report and Order and Further Notice of Proposed Rulemaking in a report to be sent to Congress and the Government Accountability Office pursuant to the Congressional Review Act, see 5 U.S.C. 801(a)(1)(A).

Ordering Clauses

Accordingly, It is ordered, pursuant to sections 4(i), 303(r), and 403 of the Communications Act of 1934, 47 U.S.C. 154(i), 303(r), and 403, that this Report and Order and Further Notice of Proposed Rulemaking is hereby adopted.

It is further ordered that part 90 of the Commission's rules is amended as set forth in Appendix B of the Report and Order, and that these rules shall be effective June 22, 2009.

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

List of Subjects in 47 CFR Part 90

Communications equipment, Radio. Federal Communications Commission. Marlene H. Dortch, Secretary.

Final Rules

For the reasons discussed in the preamble, the Federal Communications Commission amends 47 CFR part 90 as follows:

PART 90—PRIVATE LAND MOBILE RADIO SERVICES

1. The authority citation for part 90 continues to read as follows:

Sections 4(i), 11, 303(g), 303(r) and 332(c)(7) of the Communications Act of 1934, as amended, 47 U.S.C. 154(i), 161, 303(g), 303(r) and 332(c)(7).

2. Section 90.243 is amended by revising paragraph (b)(1) to read as follows:

§ 90.243 Mobile relay stations.

* * * * *

(b) * * *

(1) In the Public Safety Pool, systems operating on any of the public safety frequencies listed in § 90.20(c) are permitted to be cross-banded for mobile stations operations with mobile relay stations where such stations are authorized.

* * * * *

3. Section 90.1207 is amended by revising paragraph (d) to read as follows:

§ 90.1207 Licensing.

* * * * *

(d) Permanent fixed point-to-point and point-to-multipoint stations in the 4940-4990 MHz band must be licensed individually on a site-by-site basis. Such fixed stations that connect 4940-4990 MHz band base and mobile stations that are used to deliver broadband service, as well as other public safety networks using spectrum designated for broadband use, are accorded primary status. Primary status is also accorded to stand-alone permanent fixed 4940-4990 MHz band links that are used to deliver broadband service. Primary permanent fixed point-to-point and point-to-multipoint stations must use directional antennas with gains greater than 9 dBi up to 26 dBi. Permanent fixed point-to-point stations that do not meet the criteria for primary status will be authorized only on a secondary, non-interference basis to base, mobile, temporary fixed, and primary permanent fixed operations.

4. Section 90.1215 is amended by revising paragraphs (a), (b) and (c) and adding paragraph (e) to read as follows:

§ 90.1215 Power limits.

* * * * *

(a)(1) The maximum conducted output power should not exceed:

Table with 3 columns: Channel bandwidth (MHz), Low power maximum conducted output power (dBm), High power maximum conducted output power (dBm). Rows include 1, 5, 10, 15, 20 MHz bandwidths.

(2) High power devices are also limited to a peak power spectral density of 21 dBm per one MHz. High power

devices using channel bandwidths other than those listed above are permitted; however, they are limited to peak power spectral density of 21 dBm/MHz. If transmitting antennas of directional gain greater than 9 dBi are used, both the maximum conducted output power and the peak power spectral density should be reduced by the amount in decibels that the directional gain of the antenna exceeds 9 dBi. However, high power point-to-point and point-to-multipoint operations (both fixed and temporary-fixed rapid deployment) may employ transmitting antennas with directional gain up to 26 dBi without any corresponding reduction in the maximum conducted output power or spectral density. Corresponding reduction in the maximum conducted output power and peak power spectral density should be the amount in decibels that the directional gain of the antenna exceeds 26 dBi.

(b) Low power devices are also limited to a peak power spectral density of 8 dBm per one MHz. Low power devices using channel bandwidths other than those listed above are permitted; however, they are limited to a peak power spectral density of 8 dBm/MHz. If transmitting antennas of directional gain greater than 9 dBi are used, both the maximum conducted output power and the peak power spectral density should be reduced by the amount in decibels that the directional gain of the antenna exceeds 9 dBi.

(c) The maximum conducted output power is measured as a conducted emission over any interval of continuous transmission calibrated in terms of an RMS-equivalent voltage. If the device cannot be connected directly, alternative techniques acceptable to the Commission may be used. The measurement results shall be properly adjusted for any instrument limitations, such as detector response times, limited resolution bandwidth capability when compared to the emission bandwidth, sensitivity, etc., so as to obtain a true maximum conducted output power measurement conforming to the definitions in this paragraph for the emission in question.

* * * * *

(e) The ratio of the peak excursion of the modulation envelope (measured using a peak hold function) to the maximum conducted output power shall not exceed 13 dB across any 1 MHz bandwidth or the emission bandwidth whichever is less.

Proposed Rules

Federal Register

Vol. 74, No. 97

Thursday, May 21, 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 ENERGY

10 CFR Part 440

[Docket No. EEWAP0515]

RIN 1904-AB-97

Weatherization Assistance Program for Low-Income Persons

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

ACTION: Notice of proposed rulemaking, request for comment.

SUMMARY: The U.S. Department of Energy (DOE) is proposing to amend the eligibility provisions applicable to multi-unit buildings under the Weatherization Assistance Program for Low-Income Persons. As proposed, if a multi-unit building is under an assisted or public housing program and is identified by the U.S. Department of Housing and Urban Development (HUD), and included on a list published by DOE, that building would meet certain income eligibility requirements, and the procedural requirements to protect against rent increases and undue enhancement of the weatherized building would be satisfied, under the Weatherization Assistance Program without the need for further evaluation or verification. If a multi-unit building includes units that participate in the Low Income Housing Tax Credit Program, identified by HUD, and included on a list published by DOE, that building would meet the income eligibility requirements of the Weatherization Assistance Program without the need for further evaluation or verification. DOE believes that the proposed rule would reduce the procedural burdens on evaluating applications from buildings that are part of HUD assisted and public housing programs, and the Federal low-income housing tax credit programs.

DATES: Public comments on this proposed rule will be accepted until June 22, 2009.

ADDRESSES: You may submit comments identified by the RIN number specified in the heading of this notice of proposed rulemaking (NPR), by any of the following methods:

- *Federal eRulemaking Portal:* <http://www.regulations.gov>. Follow the instructions for submitting comments.

- *E-mail:* WXHUDNOPR@ee.doe.gov. Include the RIN number in the subject line of the message.

- *Postal Mail:* Gil Sperling, U.S. Department of Energy, Weatherization Assistance Program, Mailstop EE-2K, 1000 Independence Avenue, SW., Washington, DC 20585-0121.

- *Hand Delivery/Courier:* Gil Sperling, U.S. Department of Energy, Weatherization Assistance Program, Room 6050, 1000 Independence Avenue, SW., Washington, DC 20585-0121.

Instructions: All submissions must include the agency name and docket number or Regulatory Information Number (RIN) for this rulemaking.

FOR FURTHER INFORMATION CONTACT: Gil Sperling, U.S. Department of Energy, Office of Energy Efficiency and Renewable Energy, Weatherization Assistance Program, EE-2K, Room 6070, 1000 Independence Avenue, SW., Washington, DC 20585-0121, (202) 586-1510, *e-mail:* Gil.Sperling@ee.doe.gov, or Chris Calamita, U.S. Department of Energy, Office of the General Counsel, Forrestal Building, GC-72, 1000 Independence Avenue, SW., Washington, DC 20585, (202) 586-9507, *e-mail:* Christopher.Calamita@hq.doe.gov.

SUPPLEMENTARY INFORMATION:

- I. Introduction
- II. Eligibility Requirements for Multi-unit Buildings
- III. HUD Public and Assisted Housing Programs
- IV. Low Income Housing Tax Credit Program
- V. Eligibility of Multi-Unit Buildings Identified by HUD
- VI. Regulatory Analysis
- VII. Approval of the Office of the Secretary

I. Introduction

Sections 411-418 of the Energy Conservation and Production Act (Act) established the Weatherization Assistance Program for Low-Income Persons (Weatherization Assistance Program). (42 U.S.C. 6861 *et seq.*) The Weatherization Assistance Program reduces energy costs for low-income persons, families, and households by

increasing the energy efficiency of their homes, while promoting their health and safety. DOE works in partnership with State- and local-level agencies to implement the Weatherization Assistance Program. DOE's Project Management Center awards grants to State-level agencies, which then contract with subgrantees (e.g., local agencies). The subgrantees then provide weatherization services to eligible low-income families.

In establishing the Weatherization Assistance Program, Congress found that "a fast, cost-effective, and environmentally sound way to prevent future energy shortages in the United States while reducing the Nation's dependence on imported energy supplies is to encourage and facilitate, through major programs, the implementation of energy conservation and renewable-resource energy measures with respect to dwelling units." (42 U.S.C. 6861(a)(1)) Congress also recognized that many dwellings owned or occupied by low-income persons are energy inefficient and that low-income persons can least afford to make the modifications necessary to improve the energy efficiency of such dwellings. (42 U.S.C. 6861(a)(2)(A) and (B)) Additionally, Congress directed that States, through Community Action Agencies and units of general purpose local government, should be encouraged, with Federal financial and technical assistance, to develop and support coordinated weatherization programs designed to alleviate the adverse effects of energy costs on low-income persons, to supplement other Federal programs serving such low-income persons, and to increase energy efficiency. (42 U.S.C. 6861(a)(4))

Congress, therefore, stated that the purpose of the Weatherization Assistance Program is to develop and implement an assistance program to increase the energy efficiency of dwellings owned or occupied by low-income persons, reduce their total residential energy expenditures, and improve their health and safety, especially low-income persons who are particularly vulnerable such as the elderly, the handicapped, and children. (42 U.S.C. 6861(b))

The Weatherization Assistance Program statute recognizes that single-family dwelling units are potentially high energy consuming dwelling units,

and grantees should consider appropriate prioritization for such units. (42 U.S.C. 6864(b)(2)) The statute also recognizes that in some instances, weatherization efforts under the program may be appropriate for buildings in which there are multiple rental units. (42 U.S.C. 6863(b)(5))

II. Eligibility Requirements for Multi-Unit Buildings

In establishing the Weatherization Assistance Program, Congress recognized that additional considerations are necessary when evaluating the eligibility of multi-unit buildings, as opposed to single family dwellings. In any case in which a person requesting weatherization assistance from a subgrantee for a dwelling that consists of a rental unit or rental units, the State, in implementing its weatherization program, must ensure that—

- The benefits of weatherization assistance in connection with such rental units, including units where the tenants pay for their energy through their rent, will accrue primarily to the low-income tenants residing in such units;
- For a reasonable period of time after weatherization work has been completed on a dwelling containing a unit occupied by an eligible household, the tenants in that unit (including households paying for their energy through their rent) will not be subjected to rent increases unless those increases are demonstrably related to matters other than the weatherization work performed;
- The enforcement of the rent increase provision is provided through procedures established by the State by which tenants may file complaints and owners, in response to such complaints, shall demonstrate that the rent increase concerned is related to matters other than the weatherization work performed; and
- No undue or excessive enhancement will occur to the value of such dwelling units. (42 U.S.C. 6863(b)(5))

DOE provided additional direction regarding the eligibility of multi-unit buildings in the Weatherization Assistance Program regulations. Under the DOE regulations a subgrantee may weatherize a building containing rental dwelling units using financial assistance for dwelling units eligible for weatherization assistance, where:

- The subgrantee has obtained the written permission of the owner or his agent;
- Not less than 66 percent (50 percent for duplexes and four-unit buildings,

and certain eligible types of large multi-family buildings) of the dwelling units in the building:

- Are eligible dwelling units, or
- Will become eligible dwelling units within 180 days under a Federal, State, or local government program for rehabilitating the building or making similar improvements to the building; and
- The grantee has established procedures for dwellings which consist of a rental unit or rental units to ensure that:
 - The benefits of weatherization assistance in connection with such rental units, including units where the tenants pay for their energy through their rent, will accrue primarily to the low-income tenants residing in such units;
 - For a reasonable period of time after weatherization work has been completed on a dwelling containing a unit occupied by an eligible household, the tenants in that unit (including households paying for their energy through their rent) will not be subjected to rent increases unless those increases are demonstrably related to matters other than the weatherization work performed;
 - The enforcement of the rent increase provision is provided through procedures established by the State by which tenants may file complaints, and owners, in response to such complaints, shall demonstrate that the rent increase concerned is related to matters other than the weatherization work performed; and
 - No undue or excessive enhancement shall occur to the value of the dwelling units.

10 CFR 440.22(b). An eligible dwelling unit is one that is occupied by a family unit (1) whose income is at or below 200 percent of the poverty level, (2) which contains a member who has received cash assistance payments under certain Social Security programs, or applicable State or local laws at any time during the 12-month period preceding the determination of eligibility under the Weatherization Assistance Program, or (3) if the State elects, is eligible for assistance under the Low-Income Home Energy Assistance Act, provided that such basis is at least 200 percent of the poverty level. 10 CFR 440.22(a); *See also*, 42 U.S.C. 6862(7).

DOE recognizes that determining the eligibility of multi-unit buildings may present difficulties to subgrantees in evaluating the income eligibility of tenants meeting the 200 percent of poverty requirement, and that this difficulty can be overcome where HUD

already has procedures in place for determining such income eligibility. In particular, it may be difficult for a subgrantee to verify the income of the families dwelling in each unit, and that in any event, such income verification likely would be duplicative of income certifications that are already on file with HUD. For some multi-unit buildings, the eligibility requirements could mean that a subgrantee must confirm the income of a hundred families or more for a single building. In addition to the income verification required by the subgrantee, weatherization of a multi-unit building requires that the applicable grantee has established procedures for ensuring that the benefits of the weatherization work accrue primarily to the low-income tenants, the rent will not increase for a reasonable period of time, and no undue or excessive enhancement occurs to the value of the dwelling units.

III. HUD Public and Assisted Housing Programs

HUD's Qualified Assisted Housing¹ programs generally serve the population for which the Weatherization Assistance Program was established to serve. This assisted and public housing portfolio includes properties that are privately owned, but receive some form of HUD assistance subject to affordability and income requirements. Income targets for HUD programs are set in relationship to a percentage of area median income—generally, 30 to 80 percent of area median income. A review of data from HUD programs indicates that a large majority of residents in HUD assisted and public housing would meet the income eligibility requirements of the Weatherization Assistance Program. HUD data show that nationally close to 100 percent of residents in these properties meet the 200 percent income requirement, far exceeding the 66% threshold required under DOE's regulation. 10 CFR 440.22(b)(2).

Moreover, the income verification process applicable to the HUD programs is rigorous. Under these HUD programs, HUD assisted housing owners or public

¹ For the purposes of this proposed rule, "Qualified Assisted Housing" includes public housing projects, and assisted housing projects that receive project-based Section 8 assistance, under the U.S. Housing Act of 1937, as amended (42 U.S.C. 1437 *et seq.*) (except projects also benefitting from assistance under Section 221(d)(3) and (d)(5), and 236 of the National Housing Act (12 U.S.C. 17151(d)(3) and (d)(5), and 12 U.S.C. 1715z-1, respectively)), Supportive Housing for the Elderly projects receiving HUD assistance under section 202 of the Housing Act of 1959 (12 U.S.C. 17012), or Supportive Housing for Persons with Disabilities under section 811 of the Cranston-Gonzales National Affordable Housing Act, as amended (42 U.S.C. 8013).

housing authorities must determine each participating family's income before the family is permitted to move into the assisted housing, and at least annually thereafter. HUD developed and has implemented a sophisticated system of third-party income verifications, originally designated as the Upfront Income Verification (UIV) system, now known as the Enterprise Income Verification (EIV) system. The EIV system, a central repository and source for income and benefit data, is securely accessible over the internet, for use by public housing authorities and owners or their agents to improve the accuracy of rent and income determinations. HUD monitors compliance with tenant eligibility requirements on an annual basis through management and occupancy reviews in addition to the submission of tenant data to HUD payment systems. Tenant eligibility certifications are required in order for subsidy payments to be authorized. A building owner must verify each family's income, assets, expenses, and deductions three times: (1) Prior to move-in, (2) as part of the annual recertification process, and (3) as a result of changes in income allowances, or family characteristics reported between annual re-certifications.

IV. Low Income Housing Tax Credit Program

The Low Income Housing Tax Credit (LIHTC) Program was created by the Tax Reform Act of 1986 (Pub. L. 99-514), as an alternate method of funding housing for low- and moderate-income households, and has been in operation since 1987. The LIHTC Program is an indirect Federal subsidy used to finance the development of affordable rental housing for low-income households. To be eligible for consideration under the LIHTC Program, a proposed project must:

- Be a residential rental property.
- Commit to one of two possible low-income occupancy threshold requirements.
- Restrict rents, including utility charges, in low-income units.
- Operate under the rent and income restrictions for 30 years or longer, pursuant to written agreements with the agency issuing the tax credits.

Property owners participating in the LIHTC Program are directed to utilize the same income verification process set forth in HUD Handbook 4350.3 REV1, IRS Code Section 42, and IRS Handbook 8823 (Chapter 5), and incorrect eligibility determinations may adversely affect the utilization of the tax credits.

After the initial determination of eligibility, owners, or their agents, are

required to recertify each low-income household at least annually, within 120 days of the anniversary date of the occupancy. The allocating agency, typically a state housing finance agency, is responsible for monitoring compliance with the provisions during the affordability period and must report the results of monitoring to the Internal Revenue Service. The allocating agency is required to perform an on-site inspection and a review of 20 percent of tenant files at least every three years. The LIHTC Program requires a minimum affordability period of 30 years (i.e., a 15-year compliance period and subsequent 15-year extended use period).

V. Eligibility of Multi-Unit Buildings Identified by HUD

As indicated previously in this notice, the requirement to demonstrate the income eligibility of each family living in a multi-unit building can create a procedural burden for subgrantees when evaluating a request for assistance under the Weatherization Assistance Program. Demonstration of the income eligibility of at least 66 percent of the units of a multi-unit building (50 percent for duplexes and four unit buildings) helps ensure that the benefits of weatherizing a multi-unit building are realized by low-income tenants, but the necessary income verification may hinder an eligibility determination for such buildings.

In an evaluation of its data, including data generated through the LIHTC Program, HUD has identified buildings that participate in the Qualified Assisted Housing and LIHTC Programs that, upon preliminary review by DOE, would meet the income eligibility requirements for multi-unit buildings under the Weatherization Assistance Program, i.e., at least 66 percent of the dwelling units are occupied by family units whose income is at or below 200 percent of the poverty level. 10 CFR 440.22(b)(2). Moreover, DOE has determined preliminarily that the procedural requirements under the Weatherization Assistance Program to protect against rent increases and undue enhancement of the weatherized building would be satisfied for buildings that are in the Qualified Assisted Housing programs identified by HUD.

A. Income Eligibility of Multi-Family Buildings

As discussed previously, the income of the families occupying units in buildings under the Qualified Assisted Housing and LIHTC Programs is subject to HUD's rigorous verification

processes, discussed previously. Given the nature of the data collected by HUD and the income verification procedures employed under these housing programs, DOE proposes that buildings identified by HUD as having not less than 66 percent (50 percent for duplexes and four-unit buildings) of dwelling units occupied by family units whose income is at or below 200 percent of the poverty level would meet the minimum income eligibility requirements for multi-unit buildings under the Weatherization Assistance Program.

DOE requests comments on its proposal that income data collected by HUD under the Qualified Assisted Housing and LIHTC programs would be sufficient for the purpose of demonstrating the income requirements of multi-unit buildings under the Weatherization Assistance Program.

B. Limitations on Rent Increases

Under the Weatherization Assistance Program, a grantee must establish procedures that ensure that for a reasonable period of time after weatherization work has been completed on a dwelling containing a unit occupied by a low-income tenant, the tenant in that unit will not be subjected to rent increases unless those increases are demonstrated to be related to matters other than the weatherization work performed. 10 CFR 440.22(b)(3)(ii). The enforcement of this provision is provided through procedures established by the State by which tenants may file complaints, and owners in response to such complaints must demonstrate that the rent increase concerned is related to matters other than the weatherization. 10 CFR 440.22(b)(3)(iii).

Under the Qualified Assisted Housing programs, tenant rents are capped at thirty percent (30 percent) of their income, so tenants would not be subject to rent increases as a result of the weatherization or otherwise. Although the LIHTC Program provides for rent control, it is DOE's understanding that the program does not have comparable uniform restrictions as under the Qualified Assisted Housing programs.

DOE proposes that the restrictions on rent for units in buildings participating in the Qualified Assisted Housing Programs would provide the assurance required under the Weatherization Assistance Program that for a reasonable period of time after weatherization work is completed on a dwelling occupied by a low-income family unit, rent will not increase.

DOE requests comments on whether the Qualified Assisted Housing Program sufficiently protects low-income tenants

from rent increases so as to satisfy the requirement that grantees under the Weatherization Assistance Program establish procedures to protect low-income tenants against rent increases resulting from the weatherization. Additionally, DOE requests comments on its understanding that the LIHTC Program does not offer sufficiently uniform protections regarding rent increases so as to permit DOE to determine that buildings under the LIHTC Program would meet the rent control requirement of the Weatherization Assistance Program.

C. No Undue or Excess Enhancement

Weatherization of a building containing rental units requires that the applicable grantee ensure that no undue or excessive enhancement would occur to the value of the dwelling unit. 10 CFR 440.22(b)(3)(iv). The expenditures allowed under the Weatherization Assistance Program help focus enhancements on those that provide weatherization benefits. For example, repairs to a dwelling unit must be necessary to make the installation of weatherization materials effective. 10 CFR 440.18(b)(9). Moreover, for buildings that are in the Qualified Assisted Housing Programs, HUD controls the capital improvements that may be made. DOE proposes that the existing limits on permissible work under the Weatherization Assistance Program and the HUD control of improvements under the Qualified Assisted Housing programs would provide the necessary assurances that no undue or excessive enhancement will occur as a result of the weatherization of the buildings identified by HUD.

DOE requests comment on whether HUD control of improvements to buildings under the Qualified Assisted Housing programs would ensure that no undue or excessive enhancement would occur as a result of weatherization. DOE also requests information on whether similar controls may be present under the LIHTC Program to a degree sufficient to allow DOE to make a similar finding for the LIHTC Program.

D. Eligibility of Buildings in the HUD Programs

Based on the preceding discussion, DOE tentatively has determined that buildings subject to the Qualified Assisted Housing programs and that are identified by HUD would meet the income eligibility, rent control, and no undue or excessive enhancement requirements of the Weatherization Assistance Program for determining eligibility of multi-unit buildings. DOE

has also tentatively determined that buildings subject to the LIHTC Program and that are identified by HUD would meet the income eligibility requirement of the Weatherization Assistance Program for determining eligibility of multi-unit buildings. If today's proposed rule were made final, DOE would post annually a list of such buildings provided by HUD. The list would be available on the Weatherization Program Web site, <http://www.eere.energy.gov/wip>, and would be included in future funding opportunity announcements and program guidance. In evaluating the eligibility of a multi-unit building, inclusion on the most recent published list of Qualified Assisted Housing program buildings would demonstrate that a building meets the income, rent control, and no undue or excessive enhancement requirements established at 10 CFR 440.22(b)(2) and (3)(ii) and (iv). Inclusion on the most recent published list of LIHTC Program buildings would demonstrate that a building meets the income requirement established at 10 CFR 440.22(b)(2).

Today's proposed rule is intended to reduce the review and verification that a subgrantee must undertake when evaluating the eligibility of the identified buildings. DOE does not intend that today's proposal would make buildings eligible under the Weatherization Assistance Program that previously were not eligible. The purpose of today's proposed rule is to reduce the burden on States and subgrantees when evaluating applicability requirements for which HUD has already collected and verified the necessary data. In the event that a subgrantee is presented with a request for weatherization assistance of a multi-unit building, the subgrantee, under the proposed rule, would be able to reference the DOE published list of buildings identified by HUD. If the building which is the subject of a request were on the most recent list, the subgrantee would not need to undertake an independent verification of the income of the building tenants. In the case of buildings on the Qualified Assisted Housing Program list, the procedures required by the relevant grantee to ensure protection from rent increases, and ensure that no undue or excessive enhancement shall occur, would be met.

DOE recognizes that if made final, today's proposal would not address the requirement that, for multi-unit buildings, a grantee must ensure that the benefits of weatherizing a building that consists of rental units, including rental units where the tenant pays for energy through rent, accrue primarily to the

low-income tenants. (42 U.S.C. 6863(b)(5)(A); 10 CFR 440.22(b)(3)(i)) Given the variability with how utility savings could be realized by tenants in the Qualified Assisted Housing and LIHTC Programs, a request for weatherization of a multi-unit building on the list provided by HUD would need to demonstrate that the benefits of the weatherization work accrue primarily to the low-income tenants.

Generally, compliance with the requirement for the benefits of weatherization to accrue to the low-income tenants can be demonstrated by reduced utilities costs for the tenant that result from the weatherization work. Under the Qualified Assisted Housing programs and the LIHTC Program tenants may not directly pay for all or part of their utility bills. In instances in which tenants of a building do not directly pay utility costs and have capped rents, the property owner needs to demonstrate that benefits accrue primarily to the tenant of the weatherized units other than the benefit of reduced utility bills.

DOE requests comment on how to ensure compliance with the requirement that benefits of weatherization accrue primarily to low-income tenants, including information on procedures that may be used by States and subgrantees to determine that the accrual provision is satisfied in the context of buildings in the Qualified Assisted Housing programs and LIHTC Program.

Additionally, today's proposed rule would not alleviate the need for a subgrantee to obtain the written permission of the owner or the owner's agent or confirm that a dwelling unit is not designated for acquisition or clearance by Federal, State, or local program within 12 months from the date of the weatherization. 10 CFR 440.22(b)(1) and 440.18(e)(1), respectively. The proposed rule would not eliminate the ability of States to require financial participation from building owners (10 CFR 440.22(d)), or other requirements of DOE's rules. Moreover, the proposed rule would not impact the prioritization that States and subgrantees rely on in evaluating requests for weatherization work.

Despite the remaining issues that would still need to be addressed when weatherizing a multi-unit building, if finalized, DOE believes that today's proposal would be an important step in facilitating the weatherization of buildings that participate in the Qualified Assisted Housing and LIHTC Programs.

VI. Regulatory Analysis

A. Review Under Executive Order 12866

Today's proposed rule has been determined to be an economically significant regulatory action under section 3(f)(1) of Executive Order 12866, "Regulatory Planning and Review," 58 FR 51735 (October 4, 1993).

Accordingly, this action was subject to review under that Executive Order by the Office of Information and Regulatory Affairs of the Office of Management and Budget (OMB).

The American Recovery and Reinvestment Act of 2009 (Pub. L. 111-5; Recovery Act) provided \$5 billion for the Weatherization Assistance Program. Funding for grants under the Weatherization Assistance Program at a level greater than \$100 million makes this rulemaking economically significant under the Executive Order.

The weatherization grants provided under this program constitute transfer payments. In this case, the payments are from the Government to grantees (e.g., States, units of general purpose of local government, and community action agencies), and the payments do not represent a change in the total resources available to society. The grants do generate impacts such as weatherization benefits, however, which are discussed qualitatively in this proposed rule.² See OMB Circular A-4, at 14, 38 and 46. If today's proposal is finalized prior to expenditure of the Recovery Act funds by grantees and subgrantees under the Weatherization Assistance Program, today's proposal could impact the process used by grantees and subgrantees to evaluate applications from multi-unit buildings that are part of HUD's Qualified Assisted Housing and LIHTC Programs for the purpose of distributing funds provided under the Recovery Act. Such changes in the process for application evaluation have the potential to cause a change in the distribution of Recovery Act funding, which may constitute a transfer between different non-Federal entities. Such impacts would also be a consideration when categorizing this rulemaking under EO 12866.

² It is important to note that rules that transfer Federal dollars often have opportunity costs or benefits in addition to the budgetary dollars spent because they can affect incentives, and thus lead to changes in the way people behave (e.g., in their investment decisions). For example, OMB Circular A-94 suggests that transfers that result from increased taxes may be associated with a marginal excess burden (deadweight loss) of 25 cents per dollar of Federal revenue collected (p. 12).

B. Review Under the Regulatory Flexibility Act

The Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) requires the preparation of an initial regulatory flexibility analysis for any rule that by law must be proposed for public comment, unless the agency certifies that the rule, if promulgated, will not have a significant economic impact on a substantial number of small entities. As required by Executive Order 13272, "Proper Consideration of Small Entities in Agency Rulemaking," (67 FR 53461; August 16, 2002), DOE published procedures and policies on February 19, 2003, to ensure that the potential impacts of its rules on small entities are properly considered during the rulemaking process (68 FR 7990). DOE has made its procedures and policies available on the Office of General Counsel's Web site: <http://www.gc.doe.gov>. If finalized, today's action would revise the eligibility requirements that apply to the administration of the Weatherization Assistance Program grants by grantees and subgrantees. Because the matter of today's action relates to grants, it is not subject to the notice and comment provisions of the Administrative Procedure Act. 5 U.S.C. 553(a)(2). Therefore, the analytical requirements of the Regulatory Flexibility Act do not apply. Although DOE is requesting comment, today's proposed rule on the eligibility of multi-unit buildings under the Weatherization Assistance Program is not subject to any legal requirement to publish a general notice of proposed rulemaking.

C. Review Under the National Environmental Policy Act of 1969

DOE has determined that, if finalized, today's action is covered under the Categorical Exclusion found in DOE's National Environmental Policy Act regulations at paragraph A.6. of Appendix A to subpart D, 10 CFR part 1021. That Categorical Exclusion applies to rulemakings that are strictly procedural, such as rulemaking establishing the administration of grants. Today's proposal would amend the eligibility provisions for multi-unit buildings under the Weatherization Assistance Program. The regulations would not have direct environmental impacts. Accordingly, DOE has not prepared an environmental assessment or an environmental impact statement.

D. Review Under Executive Order 13132, "Federalism"

Executive Order 13132, 64 FR 43255 (August 4, 1999), imposes certain

requirements on agencies formulating and implementing policies or regulations that pre-empt State law or that have federalism implications. Agencies are required to examine the constitutional and statutory authority supporting any action that would limit the policymaking discretion of the States and carefully assess the necessity for such actions. DOE has examined today's proposed rule and has determined that if finalized, it would not pre-empt State law and would not have a substantial direct effect on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. No further action is required by Executive Order 13132.

E. Review Under Executive Order 12988

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

DOE has completed the required review and determined that, to the extent permitted by law, today's action meets the relevant standards of Executive Order 12988.

F. Review Under the Unfunded Mandates Reform Act of 1995

The Unfunded Mandates Reform Act of 1995 (Pub. L. 104-4) generally

requires Federal agencies to examine closely the impacts of regulatory actions on State, local, and tribal governments. Subsection 101(5) of Title I of that law defines a Federal intergovernmental mandate to include any regulation that would impose upon State, local, or tribal governments an enforceable duty, except a condition of Federal assistance or a duty arising from participating in a voluntary Federal program. Title II of that law requires each Federal agency to assess the effects of Federal regulatory actions on State, local, and tribal governments, in the aggregate, or to the private sector, other than to the extent such actions merely incorporate requirements specifically set forth in a statute. Section 202 of that title requires a Federal agency to perform a detailed assessment of the anticipated costs and benefits of any rule that includes a Federal mandate which may result in costs to State, local, or tribal governments, or to the private sector, of \$100 million or more. Section 204 of that title requires each agency that proposes a rule containing a significant Federal intergovernmental mandate to develop an effective process for obtaining meaningful and timely input from elected officers of State, local, and tribal governments.

If made final, today's proposed rule would not impose a Federal mandate on State, local or tribal governments, and it would not result in the expenditure by State, local, and tribal governments in the aggregate, or by the private sector, of \$100 million or more in any one year. Accordingly, no assessment or analysis is required under the Unfunded Mandates Reform Act of 1995.

G. Review Under the Treasury and General Government Appropriations Act of 1999

Section 654 of the Treasury and General Government Appropriations Act of 1999 (Pub. L. 105-277) requires Federal agencies to issue a Family Policymaking Assessment for any rule that may affect family well-being. If made final, today's proposed rule would not have any impact on the autonomy or integrity of the family as an institution. Accordingly, DOE has concluded that it is not necessary to prepare a Family Policymaking Assessment.

H. Review Under the Treasury and General Government Appropriations Act of 2001

Section 515 of the Treasury and General Government Appropriations Act, 2001 (44 U.S.C. 3516, note) provides for agencies to review most disseminations of information to the

public under guidelines established by each agency pursuant to general guidelines issued by OMB. OMB's guidelines were published at 67 FR 8452 (February 22, 2002), and DOE's guidelines were published at 67 FR 62446 (October 7, 2002). DOE has reviewed today's rule under the OMB and DOE guidelines and has concluded that it is consistent with applicable policies in those guidelines.

I. Review Under Executive Order 13211

Executive Order 13211, "Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use," 66 FR 28355 (May 22, 2001), requires Federal agencies to prepare and submit to the OMB a Statement of Energy Effects for any proposed significant energy action. A "significant energy action" is defined as any action by an agency that promulgated or is expected to lead to promulgation of a final rule, and that: (1) Is a significant regulatory action under Executive Order 12866, or any successor order; and (2) is likely to have a significant adverse effect on the supply, distribution, or use of energy, or (3) is designated by the Administrator of the Office of Information and Regulatory Affairs (OIRA) as a significant energy action. For any proposed significant energy action, the agency must give a detailed statement of any adverse effects on energy supply, distribution, or use, should the proposal be implemented, and of reasonable alternatives to the action and their expected benefits on energy supply, distribution, and use.

Today's regulatory action, if finalized, would not have a significant adverse effect on the supply, distribution, or use of energy and is therefore not a significant energy action. Accordingly, DOE has not prepared a Statement of Energy Effects.

J. Review Under Executive Order 13175

Executive Order 13175, "Consultation and Coordination with Indian Tribal Governments" (65 FR 67249; November 9, 2000), requires DOE to develop an accountable process to ensure "meaningful and timely input by tribal officials in the development of regulatory policies that have tribal implications." "Policies that have tribal implications" refers to regulations that have "substantial direct effects 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." Today's regulatory action is not a policy that has "tribal implications" under Executive

Order 13175. Today's regulatory action amends the eligibility provisions applicable to multi-unit buildings under the Weatherization Assistance Program. DOE has reviewed today's action under Executive Order 13175 and has determined that it is consistent with applicable policies of that Executive Order.

VI. Approval of the Office of the Secretary

The Secretary of Energy has approved publication of today's notice of proposed rulemaking.

List of Subjects in 10 CFR Part 440

Administrative practice and procedure, Aged, Energy conservation, Grant programs—energy, Grant programs—housing and community development, Housing standards, Indians, Individuals with disabilities, Reporting and recordkeeping requirements, Weatherization.

Issued in Washington, DC, on May 15, 2009.

Steven G. Chalk,

Principal Deputy Assistant Secretary, Energy Efficiency and Renewable Energy.

For the reasons set forth in the preamble, DOE proposes to amend part 440 of chapter II of title 10, Code of Federal Regulations to read as follows:

PART 440—WEATHERIZATION ASSISTANCE PROGRAM FOR LOW-INCOME PERSONS

1. The authority citation for part 440 continues to read as follows:

Authority: 42 U.S.C. 6861 *et seq.*; 42 U.S.C. 7101 *et seq.*

§ 440.22 Eligible dwelling units.

2. Section 440.22 is amended by adding paragraph (b)(4) to read as follows:

* * * * *

(b) * * *

(4)(i) A building containing rental dwelling units meets the requirements of paragraph (b)(2) and paragraphs (b)(3)(ii) and (b)(3)(iv), of this section if it is included on the most recent list posted by DOE of Qualified Assisted Housing and Public Housing buildings identified by the U.S. Department of Housing and Urban Development as meeting those requirements.

(ii) A building containing rental dwelling units meets the requirement of paragraph (b)(2) of this section if it is included on the most recent list posted by DOE of Low Income Housing Tax Credit buildings identified by the U.S. Department of Housing and Urban

Development as meeting that requirement.

* * * * *

[FR Doc. E9-11890 Filed 5-20-09; 8:45 am]

BILLING CODE 6450-01-P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

18 CFR Chapter I

[Docket No. PL09-4-000]

Smart Grid Policy; Notice Requesting Supplemental Comments

Issued May 19, 2009.

AGENCY: Federal Energy Regulatory Commission.

ACTION: Request for supplemental comments.

SUMMARY: On March 19, 2009, the Federal Energy Regulatory Commission (Commission) issued a Proposed Policy Statement and Action Plan (Proposed Policy Statement) that, among other things, proposed an interim rate policy to encourage the development of smart grid systems. In this notice, the Commission seeks supplemental comments regarding rate recovery for certain smart grid investments.

DATES: Comments are due May 28, 2009.

FOR FURTHER INFORMATION CONTACT:

Ray Palmer (Technical Information), Office of Energy Policy and Innovation, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, (202) 502-6569.

Elizabeth Arnold (Legal Information), Office of the General Counsel, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, (202) 502-8818.

SUPPLEMENTARY INFORMATION:

1. On March 19, 2009, the Federal Energy Regulatory Commission (Commission) issued a Proposed Policy Statement and Action Plan (Proposed Policy Statement) that, among other things, proposed an interim rate policy to encourage the development of Smart Grid systems.¹ Subsequent to the Commission's issuance of the Proposed Policy Statement, the U.S. Department of Energy (Department) announced two Smart Grid funding opportunities to be

¹ *Smart Grid Policy*, 126 FERC ¶ 61,253 (2009). As the Proposed Policy Statement described, Smart Grid advancements will apply digital technologies to the electric transmission system and enable real-time coordination of information from various resources to bring new efficiencies to the grid. *Id.* P. 1.

offered by the Department that may supply up to 50 percent of the funding for certain Smart Grid projects. In addition, the Department plans to require applicants to identify the source of non-Department funds, along with some evidence as to the certainty of these funds. Given that applicants for these programs might include jurisdictional public utilities that seek rate recovery through FERC-jurisdictional rates for the non-Department portion of funds for transmission-related projects, the Commission seeks supplemental comments on this matter.

I. Background

2. In the Energy Independence and Security Act of 2007 (EISA),² Congress enacted a number of provisions related to Smart Grid. Section 1301 of the EISA states that it is the policy of the United States to support the modernization of the Nation's electricity transmission and distribution system to maintain a reliable and secure electricity infrastructure that can meet future demand growth and to achieve each of several goals and characteristics, which together characterize a Smart Grid.³ EISA authorizes the Department to carry out two separate funding programs for Smart Grid projects: (1) Providing up to 50 percent of the cost of certain demonstration projects, as described in section 1304;⁴ and (2) providing federal matching funds for Smart Grid investment costs, as described in section 1306.⁵ EISA also directed the development of a framework of protocols and standards to achieve interoperability of Smart Grid devices and systems, which was described in detail in the Proposed Policy Statement, and in which the Commission plays a role.⁶

3. In the Proposed Policy Statement, the Commission proposed an interim rate policy for Smart Grid investments, intended to encourage investment in technologies that advance efficiency, security, reliability and interoperability. Specifically, the Commission proposed to accept single-issue rate filings submitted by public utilities under section 205 of the Federal Power Act⁷ to recover the costs of Smart Grid

² Public Law No. 110-140, 121 Stat. 1492 (2007).

³ EISA sec. 1301, to be codified at 15 U.S.C. 17381.

⁴ To be codified at 42 U.S.C. 17384, as amended by the American Recovery and Reinvestment Act of 2009, Public Law No. 111-5, Title IV, Subpart A (ARRA).

⁵ To be codified at 42 U.S.C. 17386, as amended by the ARRA.

⁶ See Proposed Policy Statement, 126 FERC ¶ 61,253 at P 7-8.

⁷ 16 U.S.C. 824d.

projects involving jurisdictional facilities, provided that certain showings are made.⁸ The Commission specifically noted that, "[w]e would also consider applying these rate treatments to the portion of a smart grid pilot or demonstration project's cost that is not already paid for by Department of Energy funds, such as those authorized by EISA sections 1304 and 1306."⁹

4. Subsequent to the Commission's issuance of the Proposed Policy Statement, the Department released two documents relative to forthcoming solicitations for applications for Smart Grid funding; one of these solicitations was authorized by EISA section 1304, and one authorized by EISA section 1306.¹⁰

5. In the Notice of Intent, electric utilities are specifically identified as a category of eligible bidders. While the Notice of Intent does not specifically require that an applying electric utility get approval from a regulatory commission for non-Federal funds, the document could be read as indicating a preference for such approval.¹¹

6. The Draft Funding Opportunity Announcement does not explicitly address regulatory approvals, but does instruct applicants to submit a funding plan that identifies all sources of project funds, and directs applicants to include a commitment letter from third parties providing a specific minimum dollar amount of cost sharing.¹² For public utilities that plan to match the Federal funds with charges to ratepayers, it is possible that public utilities may seek to obtain an order addressing rate recovery from this Commission for charges subject to this Commission's jurisdiction.

II. Request for Comments

7. Given the requirements for potential applications by public utilities

⁸ Proposed Policy Statement, 126 FERC ¶ 61,253 at P 46. The Commission also discussed other rate treatments. *Id.* P 51-52.

⁹ *Id.* P 52 (footnote omitted).

¹⁰ For the section 1304 program, the Department's National Energy Technology Laboratory issued a Draft Funding Opportunity Announcement numbered DE-FOA-0000036 on April 16, 2009 (Draft Funding Opportunity Announcement). For the section 1306 program, the Department's Office of Energy Delivery and Electric Reliability issued a Notice of Intent to Issue a Funding Opportunity Announcement numbered DE-FOA-0000058A on April 16, 2009 (Notice of Intent).

¹¹ The Notice of Intent states that the evaluation of proposals will include " * * * the likelihood that the proposed work can be accomplished * * * with additional merit given to applications that * * * [o]ffer the greatest extent of institutional and organizational commitment with consideration given to: * * * [r]equired approvals from regulatory organizations." Notice of Intent at 12-13.

¹² Draft Funding Opportunity Announcement at 32-33.

to the two Department programs referenced above, the Commission seeks comments on how it should address requests for rate recovery that may be necessary for public utilities to qualify for awards under these programs. We also seek comment on whether some form of conditional approval could be useful to public utility applicants with respect to jurisdictional Smart Grid facilities. The Commission invites comments on whether the Commission, consistent with its obligations to ensure just and reasonable rates under the Federal Power Act (FPA), should adopt processes for public utilities that may apply for funding for jurisdictional Smart Grid facilities through the Department's Smart Grid funding opportunities.

III. Document Availability

8. In addition to publishing the full text of this document in the **Federal Register**, the Commission provides all interested persons an opportunity to view and/or print the contents of this document via the Internet through FERC's Home Page (<http://www.ferc.gov>) and in FERC's Public Reference Room during normal business hours (8:30 a.m. to 5 p.m. Eastern time) at 888 First Street, NE., Room 2A, Washington, DC 20426.

9. From FERC's Home Page on the Internet, this information is available on eLibrary. The full text of this document is available on eLibrary in PDF and Microsoft Word format for viewing, printing, and/or downloading. To access this document in eLibrary, type the docket number excluding the last three digits of this document in the docket number field.

10. User assistance is available for eLibrary and the FERC's Web site during normal business hours from FERC Online Support at 202-502-6652 (toll free at 1-866-208-3676) or e-mail at ferconlinesupport@ferc.gov, or the Public Reference Room at (202) 502-8371, TTY (202) 502-8659. E-mail the Public Reference Room at public.referenceroom@ferc.gov.

By the Commission.

Kimberly D. Bose,

Secretary.

[FR Doc. E9-12029 Filed 5-20-09; 8:45 am]

BILLING CODE 6717-01-P

DEPARTMENT OF LABOR

Office of Labor-Management Standards

29 CFR Parts 403 and 408

RIN 1215-AB62

Labor Organization Annual Reports

AGENCY: Office of Labor-Management Standards, Employment Standards Administration, Department of Labor.

ACTION: Proposed rule; extension of comment period.

SUMMARY: This document extends the period for comments on the proposed rule published on April 21, 2009 (74 FR 18172). The proposed rule would rescind the regulations published on January 21, 2009 (74 FR 3677), which made several revisions to the current Form LM-2, which is used by the largest labor organizations to file their annual financial reports under the Labor-Management Reporting and Disclosure Act of 1959, as amended, and established a procedure by which the Secretary of Labor may revoke, under certain circumstances, a particular labor organization's authorization to file a simplified annual report, Form LM-3. The comment period, which was to expire on May 21, 2009, is extended to June 22, 2009.

DATES: Comments on the proposed rule published on April 21, 2009 (74 FR 18172) must be received on or before June 22, 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 should be sent 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: In the **Federal Register** of April 21, 2009 (74 FR 18172), the Department published a notice of proposed rulemaking that would rescind the regulations published on January 21, 2009 (74 FR 3678). Interested persons were invited to submit comments on or before May 21, 2009, 30 days after the publication of the notice.

Public commenters have requested an extension of time to submit comments. The Department has decided to extend the comment period until June 22, 2009. An extension of this duration is appropriate because it will afford parties additional time to submit comments on the proposal without unduly delaying final action on the proposal. In the rulemaking that led to promulgation of the January 21 regulations, the Department provided an initial 45 day comment period (73 FR 27346) that was later extended 15 additional days after requests for an extension (73 FR 34913). The extension of the comment period for the April 21 notice of proposed rulemaking to June 22 adds 32 days to the initial 30 day comment period.

The proposed rule to rescind the regulations published on January 21, 2009 is available on the Web site maintained by OLMS at <http://www.olms.dol.gov>. Anyone who is unable to access this information on the Internet can obtain the information by contacting the Employment Standards Administration at 200 Constitution Avenue, NW., Room N-5609, Washington, DC 20210, at olms-public@dol.gov or at (202) 693-0123 (this is not a toll-free number). Individuals with hearing impairments may call 1-800-877-8339 (TTY/TDD).

Signed at Washington, DC, this 15th day of May 2009.

Shelby Hallmark,

Acting Assistant Secretary for Employment Standards.

Andrew Auerbach,

Deputy Director, Office of Labor-Management Standards.

[FR Doc. E9-11813 Filed 5-20-09; 8:45 am]

BILLING CODE 4510-CP-P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA-R04-OAR-2006-0649-200749; FRL-8909-1]

Approval and Promulgation of Implementation Plans Georgia: Revisions to State Implementation Plan

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: EPA is proposing to approve revisions to the Georgia State Implementation Plan (SIP), submitted by the Georgia Environmental Protection Division (GA EPD) in three submittals dated October 31, 2006, March 5, 2007, and August 22, 2007. The submittals include modifications to Georgia's Rules for Air Quality Control, Chapter 391-3-1. The October 31, 2006, revision includes changes to "Permit Exemption for Combustion Equipment." The March 5, 2007, revisions include changes to "NO_x (Nitrogen Oxides) Emissions from Electric Utility Steam Generating Units," and "Emission Statements." Finally, the August 22, 2007, submittal contains revisions to "Volatile Organic Compound," "Provisions," and "Stationary Engines." EPA is not acting on the August 22, 2007, revisions to rule 391-3-1-.03(6) "Exemptions, Combustion Equipment" in this action. EPA is also not acting on the August 22, 2007, revisions to rule 391-3-1-.03(9), as it is not part of the federally-approved SIP. These submittals included revisions to Georgia's Prevention of Signification Deterioration and Nonattainment New Source Review programs, which EPA addressed in a separate action (73 FR 51606). This action is being taken pursuant to section 110 of the Clean Air Act (CAA).

DATES: Written comments must be received on or before June 22, 2009.

ADDRESSES: Submit your comments, identified by Docket ID No. "EPA-R04-

OAR-2006-0649," by one of the following methods:

1. *http://www.regulations.gov:* Follow the on-line instructions for submitting comments.

2. *E-mail:* benjamin.lynora@epa.gov.

3. *Fax:* 404-562-9019.

4. *Mail:* "EPA-R04-OAR-2006-0649," Regulatory Development Section, Air Planning Branch, Air, Pesticides and Toxics Management Division, U.S. Environmental Protection Agency, Region 4, 61 Forsyth Street, SW., Atlanta, Georgia 30303-8960.

5. *Hand Delivery or Courier:* Ms. Lynora Benjamin, Chief, Regulatory Development Section, Air Planning Branch, Air, Pesticides and Toxics Management Division, 12th floor, U.S. Environmental Protection Agency, Region 4, 61 Forsyth Street, SW., Atlanta, Georgia 30303-8960. Such deliveries are only accepted during the Regional Office's normal hours of operation. The Regional Office's official hours of business are Monday through Friday, 8:30 to 4:30, excluding federal holidays.

Instructions: Direct your comments to Docket ID No. "EPA-R04-OAR-2006-0649." EPA's policy is that all comments received will be included in the public docket without change and may be made available online at <http://www.regulations.gov>, including any personal information provided, unless the comment includes information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Do not submit through <http://www.regulations.gov> or e-mail, information that you consider to be CBI or otherwise protected. The <http://www.regulations.gov> Web site is an "anonymous access" system, which means EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an e-mail comment directly to EPA without going through <http://www.regulations.gov>, your e-mail address will be automatically captured and included as part of the comment that is placed in the public docket and made available on the Internet. If you submit an electronic comment, EPA recommends that you include your name and other contact information in the body of your comment and with any disk or CD-ROM you submit. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses. For additional information

about EPA's public docket visit the EPA Docket Center homepage at <http://www.epa.gov/epahome/dockets.htm>.

Docket: All documents in the electronic docket are listed in the <http://www.regulations.gov> index. Although listed in the index, some information is not publicly available, i.e., CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available either electronically in <http://www.regulations.gov> or in hard copy at the Regulatory Development Section, Air Planning Branch, Air, Pesticides and Toxics Management Division, U.S. Environmental Protection Agency, Region 4, 61 Forsyth Street, SW., Atlanta, Georgia 30303-8960. EPA requests that if at all possible, you contact the person listed in the **FOR FURTHER INFORMATION CONTACT** section to schedule your inspection. The Regional Office's official hours of business are Monday through Friday, 8:30 to 4:30, excluding federal holidays.

FOR FURTHER INFORMATION CONTACT: Ms. Stacy Harder, Regulatory Development Section, Air Planning Branch, Air, Pesticides and Toxics Management Division, U.S. Environmental Protection Agency, Region 4, 61 Forsyth Street, SW., Atlanta, Georgia 30303-8960. The telephone number is (404) 562-9042. Ms. Harder can also be reached via electronic mail at harder.stacy@epa.gov.

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SUPPLEMENTARY INFORMATION:

I. EPA's Action

On October 31, 2006, March 5, 2007, and August 22, 2007, GA EPD submitted proposed SIP revisions to EPA for review and approval into the Georgia SIP. The rules became state effective on April 19, 2006, March 12, 2007, and July 25, 2007, respectively. The revisions include changes made by the State of Georgia to Chapter 391-3-1. Specifically, the October 31, 2006, revision includes changes to Rule 391-3-1-.03(6)(b) "Permit Exemption for Combustion Equipment." The March 5, 2007, revisions include changes to Rules 391-3-1-.02(2)(jjj) "NO_x Emissions from Electric Utility Steam Generating Units," and 391-3-1-.02(6)(a)4 "Emission Statements." Finally, the August 22, 2007, submittal contains revisions to Rules 391-3-1-.01(III)

“Volatile Organic Compound,” 391–3–1–.02 “Provisions,” and 391–3–1–.03(6)(b)11 “Stationary Engines.” EPA is now proposing to approve these revisions. The revisions summarized below are approvable pursuant to section 110 of the CAA.

EPA is not acting on the August 22, 2007, revisions to rule 391–3–1–.03(6) “Exemptions, Combustion Equipment” in this action. Additionally, EPA is not acting on the August 22, 2007, revisions to rule 391–3–1–.03(9), as it is not part of the federally-approved SIP.

II. Analysis of Georgia’s Submittals

October 31, 2006, Submittal

Rule 391–3–1–.03(6)(b), “Permit Exemption for Combustion Equipment”

This revision adds two new subparagraphs, (b)14 and 15, for the purpose of exempting temporary boilers and electric generators that are used to replace a facility’s boilers or generators during periods of repair or maintenance, from the requirement to obtain a permit. Fuel-burning equipment that remains at a location for more than 180 consecutive days is no longer considered to be a temporary boiler. Temporary fuel-burning equipment that replaces temporary equipment at a location to perform the same function will be included in calculating the total consecutive time period. This revision provides language stating the exemption is permissible “provided the actual and potential emissions of the temporary sources do not exceed that of the main source.” This rule revision is meant to streamline the permitting process for certain operators, and no longer requires stationary sources that install temporary boilers and electric generators to obtain a permit for the temporary equipment operated during periods of maintenance or repair.

March 5, 2007, Submittal

Rule 391–3–1–.02(2)(jjj), “NO_x Emissions from Electric Utility Steam Generating Units”

The revision amends NO_x emission limits in subparagraphs (jjj)4.,5.,6.,7., and 8., for coal-fired electric utility steam generating units with a maximum heat input greater than 250 Million British thermal units per hour (MMBtu/hr). The limit is based on a 30-day rolling average (averaged over all existing units) and was effective at the beginning of the 2007 ozone season, which runs from May 1st through September 30th in Georgia. Consistent with the existing regulation, unit-specific NO_x limits are to be established in a permit. This limit is also included

as part of the Macon, Georgia, 8-hour ozone maintenance plan (72 FR 53432).

Subparagraph 4 specifies that the previous NO_x emissions limit of 0.20 lb/MMBtu was effective through September 30, 2006. Subparagraph 5, which was effective May 1, 2007, lowers the existing 7-plant emission limit to 0.18 lb/MMBtu, to account for lower NO_x emissions from Plant Scherer. The requirements of subparagraphs 4 and 5 apply to all sources located in Bartow, Cherokee, Clayton, Cobb, Coweta, DeKalb, Douglas, Fayette, Floyd, Forsyth, Fulton, Gwinnett, Heard, Henry, Monroe, Paulding, Putnam, and Rockdale Counties.

Subparagraph 6 establishes an ozone season NO_x emission limit of 0.17 lb/MMBtu for Georgia Power’s Plant Scherer, located in Monroe County. The requirements in subparagraph 6 apply to sources located in Monroe County. These revisions also establish an ozone season NO_x emissions limit for Georgia Power’s Plant Scherer, which is located in the Macon area, and also contributes to ozone levels in the Atlanta nonattainment area.

Rule 391–3–1–.02(6)(a)4, “Emission Statements”

The revision amends subparagraph (a)4 to revise the emission statement requirements to be consistent with the Federal regulations for 8-hour ozone nonattainment areas. The Emission Statement deadline is changed from July 31st to June 15th of each calendar year. Additionally, applicability of the requirements is expanded to include the counties of Barrow, Bartow, Carroll, Hall, Newton, Spalding and Walton, which are parts of the Atlanta 8-hour ozone nonattainment area. The basis of this rule is to require submission of NO_x and volatile organic compounds (VOC) emissions inventories for sources located in the Atlanta ozone nonattainment area. The purpose of the revision is to make the rule consistent with current federal regulations for 8-hour ozone nonattainment areas.

August 22, 2007, Submittal

Rule 391–3–1–.01(III), “Volatile Organic Compound”

The revision submitted by GA EPD adds one compound to the list of those excluded from the definition of VOC, on the basis that the compound makes a negligible contribution to ozone formation. Tropospheric ozone, commonly known as smog, occurs when VOCs and NO_x react in the atmosphere. Because of the harmful health effects of ozone, EPA limits the amount of VOCs and NO_x that can be released into the

atmosphere. VOCs are those compounds of carbon (excluding carbon monoxide, carbon dioxide, carbonic acid, metallic carbides, or carbonates, and ammonium carbonate) which form ozone through atmospheric photochemical reactions. Compounds of carbon (or organic compounds) have different levels of reactivity; they do not react at the same speed, or do not form ozone to the same extent.

It has been EPA’s policy that compounds of carbon with a negligible level of reactivity need not be regulated to reduce ozone (42 FR 35314, July 8, 1977). EPA determines whether a given carbon compound has “negligible” reactivity by comparing the compound’s reactivity to the reactivity of ethane. EPA lists these compounds in its regulations at 40 CFR 51.100(s), and excludes them from the definition of VOC. The chemicals on this list are often called “negligibly reactive.” EPA may periodically revise the list of negligibly reactive compounds to add compounds to or delete them from the list. GA EPD’s revision modified the definition of VOC to exclude: 1,1,1,2,2,3,4,5,5,5-decafluoro-3-methoxy-4-trifluoromethylpentane.

This revision updates the definition of VOC, to comply with the Federal list of compounds designated as having negligible photochemical reactivity.

Rule 391–3–1–.02, “Provisions”

GA EPD is revising paragraph (12) “Clean Air Interstate Rule NO_x Annual Trading Program,” by deleting inadvertent references and inserting the correct references in subparagraphs (f)3(iii), (g)1(i) and (g)1(ii). The rule is being revised to correct cross-references. Subparagraph (f)3(iii) inadvertently references the wrong subparagraphs for determining the control period for baseline heat input for NO_x allocations. Revisions to subparagraph (f)3(iii) updates the reference to subparagraph (f)2(i) and (ii), and (f)2.(iii) with references to subparagraphs (f)3.(i) and (ii), and (f)3.(i) through (f)3.(ii), respectively. Subparagraphs (g)1.(i) and (ii) are amended to be consistent with the changes to subparagraph (f)3.(iii) above, as well as to add a wording change to clarify the control period. Specifically, the reference in subparagraph (g)1.(i) currently stated as “(f)2. through (f)3.,” is updated to correctly read “(f)1.(i).” The current reference in (g)1.(ii) to subparagraph (f)2. through (f)3. is also revised to “(f)1.(ii).” Additionally, the words “that is four years” are added to describe the control period in subparagraph (g)1.(ii).

Rule 391–3–1–.03(6)(b)11, “Stationary Engines”

The revision corrects an inadvertent error in subparagraphs (iii) and (iv) to read “hours-per-year,” rather than “hours-per-hour.”

III. Proposed Action

EPA is proposing to approve the aforementioned revisions, specifically, Chapters 391–3–1–.03(6)(b), 391–3–1–.02(2)(jji), 391–3–1–.02(6)(a)4, 391–3–1–.01(III), 391–3–1–.02, and 391–3–1–.03(6)(b)11, into the Georgia SIP. These revisions were submitted by GA EPD on October 31, 2006, March 5, 2007, and August 22, 2007.

IV. Statutory and Executive Order Reviews

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

- Is not a “significant regulatory action” subject to review by the Office of Management and Budget under Executive Order 12866 (58 FR 51735, October 4, 1993);
- Does not impose an information collection burden under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*);
- Is certified as not having a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*);
- Does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4);
- Does not have Federalism implications as specified in Executive Order 13132 (64 FR 43255, August 10, 1999);
- Is not an economically significant regulatory action based on health or safety risks subject to Executive Order 13045 (62 FR 19885, April 23, 1997);
- Is not a significant regulatory action subject to Executive Order 13211 (66 FR 28355, May 22, 2001);
- Is not subject to requirements of Section 12(d) of the National Technology Transfer and Advancement

Act of 1995 (15 U.S.C. 272 note) because application of those requirements would be inconsistent with the CAA; and

- Does not provide EPA with the discretionary authority to address, as appropriate, disproportionate human health or environmental effects, using practicable and legally permissible methods, under Executive Order 12898 (59 FR 7629, February 16, 1994).

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

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Carbon monoxide, Incorporated by reference, Intergovernmental relations, Nitrogen dioxide, Ozone, Particulate matter, Reporting and recordkeeping requirements, Volatile organic compounds.

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

Dated: May 11, 2009.

Beverly H. Banister,

Acting Regional Administrator, Region 4.

[FR Doc. E9–11909 Filed 5–20–09; 8:45 am]

BILLING CODE 6560–50–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

42 CFR Part 84

[Docket Number NIOSH–005]

RIN 0920–AA10

Approval Tests and Standards for Closed-Circuit Escape Respirators

AGENCY: Centers for Disease Control and Prevention, HHS.

ACTION: Notice of proposed rulemaking; reopening of comment period.

SUMMARY: The Department of Health and Human Services (DHHS) is reopening the comment period until June 19, 2009 concerning the proposed rule for Approval Tests and Standards for Closed-Circuit Escape Respirators that was published in the **Federal Register** on Wednesday, December 10, 2008 (73 FR 75027). The previous comment period closed on April 10, 2009.

DATES: All written comments on the proposed rule must be received on or before June 5, 2009.

ADDRESSES: You may submit comments, identified by RIN: 0920–AA10, by any of the following methods:

- *Federal eRulemaking Portal:* <http://www.regulations.gov>. Follow the instructions for submitting comments.

- *E-mail:* niocindocket@cdc.gov. Include “RIN: 0920–AA10” and “42 CFR pt. 84” in the subject line of the message.

- *Mail:* NIOSH Docket Office, Docket #005, Robert A. Taft Laboratories, MS–C34, 4676 Columbia Parkway, Cincinnati, OH 45226.

Instructions: All submissions received must include the agency name and docket number or Regulatory Information Number (RIN) for this rulemaking, RIN: 0920–AA10. All comments received will be posted without change to <http://www.cdc.gov/niosh/docket>, including any personal information provided.

Docket: For access to the docket to read background documents or comments received, go to <http://www.cdc.gov/niosh/docket>.

FOR FURTHER INFORMATION CONTACT:

Jonathan V. Szalajda, NIOSH, National Personal Protective Technology Laboratory (NPPTL), Post Office Box 18070, 626 Cochran Mill Road, Pittsburgh, Pennsylvania 15236, telephone (412) 386–5200, facsimile (412) 386–4089, e-mail zfx1@cdc.gov.

SUPPLEMENTARY INFORMATION:

The Department of Health and Human Services published a proposed rule on the Approval Tests and Standards for Closed-Circuit Escape Respirators on December 10, 2008 and asked for comments on or before February 9, 2009 (73 FR 75027). On March 4, 2009 the Department published a document announcing two public meetings and reopening the comment period for this proposed rule until April 10, 2009 (74 FR 9380). The Department held the two public meetings on March 16, 2009 and March 23, 2009. Commenters at the meeting requested additional time to review data and provide additional comment regarding the proposal. After reviewing the record, the Department has concluded that reopening the comment period until June 12, 2009 is reasonable.

Dated: May 15, 2009.

Ashley Files Flory,

Acting Executive Secretary to the Department.

[FR Doc. E9–11938 Filed 5–20–09; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES**42 CFR Part 84**

[Docket Number NIOSH-109]

RIN 0920-AA04

Quality Assurance Requirements for Respirators**AGENCY:** Centers for Disease Control and Prevention, HHS.**ACTION:** Notice of proposed rulemaking; reopening of comment period.

SUMMARY: The Department of Health and Human Services (DHHS) is reopening the comment period until October 9, 2009 for the Notice of Proposed Rulemaking on Quality Assurance Requirements for Respirators that was published in the **Federal Register** on Wednesday, December 10, 2008 (73 FR 75045). The comment period previously closed on April 10, 2009.

DATES: All written comments on the proposed rule must be received on or before October 9, 2009.

ADDRESSES: You may submit comments, identified by RIN: 0920-AA04, by any of the following methods:

- *Federal eRulemaking Portal:* <http://www.regulations.gov>. Follow the instructions for submitting comments.

- *E-mail:* niocindocket@cdc.gov. Include "RIN: 0920-AA04" and "42 CFR pt. 84" in the subject line of the message.

- *Mail:* NIOSH Docket Office, Docket #109, Robert A. Taft Laboratories, MS-C34, 4676 Columbia Parkway, Cincinnati, OH 45226.

Instructions: All submissions received must include the agency name and docket number or Regulatory Information Number (RIN) for this rulemaking, RIN: 0920-AA04. All comments received will be posted without change to <http://www.cdc.gov/niosh/docket>, including any personal information provided.

Docket: For access to the docket to read background documents or comments received, go to <http://www.cdc.gov/niosh/docket>.

FOR FURTHER INFORMATION CONTACT: Jonathan V. Szalajda, NIOSH, National Personal Protective Technology Laboratory (NPPTL), Post Office Box 18070, 626 Cochran Mill Road, Pittsburgh, Pennsylvania 15236, telephone (412) 386-5200, facsimile (412) 386-4089, e-mail zfx1@cdc.gov.

SUPPLEMENTARY INFORMATION: The Department of Health and Human Services published a proposed rule on the Quality Assurance Requirements for

Respirators on December 10, 2008 and requested comments on this proposed rule on or before February 9, 2009 (73 FR 75045). On March 4, 2009, the Department announced two public meetings and reopened the comment period for the proposed rule until April 10, 2009 (74 FR 9381). The Department held the two public meetings on March 23, 2009 and March 30, 2009. A commenter requested that the Department extend the public comment period, noting that the costs associated with the proposed QA requirements related to inspections, audits, documentation, complaint management, and document control administration are significant. The Department believes that the request to re-open the comment period is reasonable. Therefore, we are reopening the comment period for this proposal until October 9, 2009.

Dated: May 15, 2009.

Ashley Files Flory,

Acting Executive Secretary to the Department.

[FR Doc. E9-11947 Filed 5-20-09; 8:45 am]

BILLING CODE 4163-18-P

FEDERAL COMMUNICATIONS COMMISSION**47 CFR Part 64**

[CG Docket 03-123; FCC 09-39]

Telecommunications Relay Services and Speech-to-Speech Services for Individuals with Hearing and Speech Disabilities**AGENCY:** Federal Communications Commission.**ACTION:** Proposed rule.

SUMMARY: In this document, the Commission seeks comment on whether it should adopt new Video Relay Service (VRS) reimbursement rates that reflect the cost data in the fund administrator's recent filing with the FCC, rather than continuing the current rates.

DATES: Comments are due June 4, 2009. Reply comments are due on or before June 11, 2009.

ADDRESSES: Interested parties may submit comments identified by CG Docket No. 03-123, by any of the following methods:

- *Federal eRulemaking Portal:* <http://www.regulations.gov>. Follow the instructions for submitting electronic filings.

- *Federal Communications Commission's Web Site:* <http://www.fcc.gov/cgb/ecfs>. Follow the instructions for submitting electronic filings. In completing the transmittal

screen, filers should include their full name, U.S. Postal Service mailing address, and CG Docket No. 03-123. Parties may also submit an electronic comment by Internet e-mail. To get filing instructions, filers should send an e-mail to ecfs@fcc.gov, and include the following words in the body of the message, "get form <your e-mail address>." A sample form and directions will be sent in response.

- *Paper Filers:* Parties who choose to file by paper must file an original and four copies of each filing. Filings can be sent by hand or messenger delivery, by commercial overnight courier, or by first-class or overnight U.S. Postal Service mail (although the Commission continues to experience delays in receiving U.S. Postal Service mail). All filings must be addressed to the Commission's Secretary, Office of the Secretary, Federal Communications Commission.

- The Commission's contractor will receive hand-delivered or messenger-delivered paper filings for the Commission's Secretary at 236 Massachusetts Avenue, NE., Suite 110, Washington, DC 20002. The filing hours at this location are 8 a.m. to 7 p.m. All hand deliveries must be held together with rubber bands or fasteners. Any envelopes must be disposed of before entering the building.

- Commercial mail sent by overnight mail (other than U.S. Postal Service Express Mail and Priority Mail) must be sent to 9300 East Hampton Drive, Capitol Heights, MD 20743.

- U.S. Postal Service first-class, Express, and Priority mail should be addressed to 445 12th Street, SW., Washington, DC 20554.

To request materials in accessible formats for people with disabilities (braille, large print, electronic files, audio format), send an e-mail to fcc504@fcc.gov or call the Consumer and Governmental Affairs Bureau at (202) 418-0530 (voice), (202) 418-0432 (TTY). FCC 09-39 can also be downloaded in Word or Portable Document Format (PDF) at: <http://www.fcc.gov/cgb/dro/trs.html>.

FOR FURTHER INFORMATION CONTACT: Thomas Chandler, Consumer and Governmental Affairs Bureau, Disability Rights Office, at (202) 418-1475 (voice), (202) 418-0597 (TTY), or e-mail: Thomas.Chandler@fcc.gov.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's *Telecommunications Relay Services and Speech-to-Speech Services for Individuals with Hearing and Speech Disabilities*, Notice of Proposed Rulemaking, document FCC 09-39,

adopted May 12, 2009 and released May 14, 2009 (*NPRM*), in CG Docket No. 03–123, seeking comment on whether the Commission should adjust VRS rates for the 2009–2010 Fund year. The full text of FCC 09–39 and subsequently filed documents in this matter are available for public inspection and copying during regular business hours at the FCC Reference Information Center, Portals II, 445 12th Street, SW., Room CY–A257, Washington, DC 20554. They may also be purchased from the Commission’s duplicating contractor at Portals II, 445 12th Street, SW., Room CY–B402, Washington, DC 20554; the contractor’s Web site, <http://www.bcpiweb.com>; or by calling (800) 378–3160. FCC 09–39 and subsequently filed documents in this matter may also be found by searching ECFS at <http://www.fcc.gov/cgb/ecfs> (insert CG Docket No. 03–123 into the Proceeding block).

To request materials in accessible formats for people with disabilities (braille, large print, electronic files, audio format), send an e-mail to fcc504@fcc.gov or call the Consumer and Governmental Affairs Bureau at (202) 418–0530 (voice), (202) 418–0432 (TTY). FCC 09–39 can also be downloaded in Word or Portable Document Format (PDF) at: <http://www.fcc.gov/cgb/dro/trs.html>.

Initial Paperwork Reduction Act of 1995 Analysis

The *NPRM* does not contain proposed information collection requirements subject to the Paperwork Reduction Act of 1995, Public Law 104–13. In addition, therefore, it does not contain any proposed information collection burden “for small business concerns with fewer than 25 employees,” pursuant to the Small Business Paperwork Relief Act of 2002, Public Law 107–198, *see* 44 U.S.C. 3506(c)(4).

Synopsis

In the *NPRM*, the Commission seeks comment on whether it should recalculate the VRS rates established in *Telecommunications Relay Services and Speech-to-Speech Services for Individuals with Hearing and Speech Disabilities*, Report and Order and Declaratory Ruling, CG Docket No. 03–123, FCC 07–186, published at 73 FR 44170, July 30, 2008 (*2007 TRS Rate Methodology Order*) for the 2009–2010 Fund year based on recent data reflecting the actual costs of providing this service. The funding requirement for all forms of TRS has grown from approximately \$64 million for the 2002–2003 Fund year (the first year VRS was widely offered) to a proposed \$890,992,075 for the 2009–2010 Fund

year, and VRS continues to represent an increasingly large percentage of the total Fund size (for 2009–2010, 123,844,666 projected minutes of use, with payments totaling approximately \$779,873,811, or 87 percent of the total Fund). The *NPRM* notes that the VRS rates adopted in 2007 may not accurately reflect the providers’ reasonable actual costs of providing service in compliance with FCC rules. Current data show that VRS providers’ average actual costs per minute were \$4.5568 in 2006, \$3.9950 in 2007, and \$4.1393 in 2008.

The Commission, therefore, seeks comment on whether, for the 2009–2010 Fund year, it should adopt new VRS rates that correlate to providers’ cost data, rather than continuing to base rates on the *2007 TRS Rate Methodology Order*.

Initial Regulatory Flexibility Act

The Regulatory Flexibility Act of 1980, as amended (RFA), requires that an initial regulatory flexibility analysis be prepared for notice-and-comment rulemaking proceedings, unless the agency certifies that “the rule will not, if promulgated, have a significant economic impact on a substantial number of small entities.” The RFA generally defines the term “small entity” as having the same meaning as the terms “small business,” “small organization,” and “small governmental jurisdiction.” In addition, the term “small business” has the same meaning as the term “small business concern” under the Small Business Act. A “small business concern” is one that: (1) Is independently owned and operated; (2) is not dominant in its field of operation; and (3) satisfies any additional criteria established by the Small Business Administration (SBA). The *NPRM* seeks comment on a proposal for recalculating the VRS rates for the 2009–2010 Fund year based on recent data reflecting the actual costs of providing this service. The Commission notes that the funding requirement has grown from approximately \$64 million for the 2002–2003 Fund year to a proposed \$890,992,075 for the 2009–2010 Fund year, and that VRS continues to represent an increasingly large percentage of the total Fund size (for 2009–2010, 123,844,666 projected minutes of use, with payments totaling approximately \$779,873,811, or 87 percent). The Commission also notes that the Fund administrator has indicated that VRS providers’ average actual cost per minute was \$4.5568 in 2006, \$3.9950 in 2007, and \$4.1393 in 2008. The Commission now has the benefit of experience with two VRS rate cycles since the adoption of the *2007*

TRS Rate Methodology Order, and the VRS rates adopted in that order may not accurately reflect the providers’ reasonable actual costs of providing service in compliance with our rules. The Commission therefore seeks comment on whether to adopt new VRS rates that reflect providers’ cost data, rather than continue to base rates on the *2007 TRS Rate Methodology Order* that may result in the overpayment of providers contrary to section 225 and our rules. The Commission believes this action is consistent with its duty to protect the integrity of the Fund and American consumers who pay into the Fund, and with the statutory mandate to ensure that TRS is offered “in the most efficient manner” to persons with hearing and speech disabilities, 47 U.S.C. 225(b)(1); *see also Teleocator Network of America v. FCC*, 691 F.2d 525, 550 n. 191 (DC Cir. 1982) (“The Commission has an ongoing obligation to monitor its regulatory programs and make adjustments in light of actual experience. * * * This duty to finetune its regulatory approach as more information becomes available is necessarily the price of leeway the courts accord the Commission to pursue plans and policies bottomed on informed prediction.”).

Ordering Clauses

Pursuant to Sections 1, 4(i) and (o), 225, 303(r), 403, 624(g), and 706 of the Communications Act of 1934, as amended, 47 U.S.C. 151, 154(i) and (o), 225, 303(r), 403, 554(g), and 606, the *Notice of Proposed Rulemaking is adopted*.

The Commission’s Consumer and Governmental Affairs Bureau, Reference Information Center, SHALL SEND a copy of the *Notice of Proposed Rulemaking*, including the Initial Regulatory Flexibility Analysis, to the Chief Counsel for Advocacy of the Small Business Administration.

Federal Communications Commission.

Marlene H. Dortch,

Secretary.

[FR Doc. E9–11934 Filed 5–20–09; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 90

[WP Docket No. 07–100; FCC 09–29]

Private Land Mobile Radio Services

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: This document proposes revisions to the Commission's rules and policies regarding public safety operations in the private land mobile radio services. In the *Further Notice of Proposed Rulemaking* portion of this document the Commission proposes to reinstate an exemption for 4.9 GHz band applications from coordination via a certified frequency coordinator. Notwithstanding this proposal, the Commission also proposes a licensee-to-licensee coordination requirement for primary permanent fixed stations operating in the 4.9 GHz band. The remaining proposals consist of corrections and clarifications of frequency tables. The Commission makes first proposal because the Commission tentatively concludes that the exemption was deleted by inadvertent omission. The Commission makes the second proposal because it is concerned that the existing coordination rules may not protect primary permanent fixed stations from interference. The Commission proposes the frequency table corrections to fix various errors. The intended effects are to relieve 4.9 GHz band applicants from the cost of certified frequency coordination; ensure sufficient interference protection of 4.9 GHz band permanent fixed primary stations; and eliminate uncertainty regarding the licensing of particular public safety frequencies.

DATES: Comments are due July 20, 2009. Reply comments are due August 19, 2009.

ADDRESSES: You may submit comments, identified by WP Docket No. 07–100, by any of the following methods:

- *Federal eRulemaking Portal:* <http://www.regulations.gov>. Follow the instructions for submitting comments.
- *Federal Communications Commission's Web Site:* <http://www.fcc.gov/cgb/ecfs/>. Follow the instructions for submitting comments.
- *People with Disabilities:* Contact the FCC to request reasonable accommodations (accessible format documents, sign language interpreters, CART, etc.) by e-mail: FCC504@fcc.gov or phone: 202–418–0530 or TTY: 202–418–0432.

For detailed instructions for submitting comments and additional information on the rulemaking process, see the **SUPPLEMENTARY INFORMATION** section of this document.

FOR FURTHER INFORMATION CONTACT: Thomas Eng, Policy Division, Public Safety and Homeland Security, Federal Communications Commission, Washington, DC 20554, at (202) 418–0019, TTY (202) 418–7233, via e-mail at

Thomas.Eng@fcc.gov, or via U.S. Mail at Federal Communications Commission, Public Safety and Homeland Security Bureau, 445 12th Street, SW., Washington, DC 20554.

SUPPLEMENTARY INFORMATION: This is a summary of the *Further Notice of Proposed Rulemaking* portion of the Commission's *Report and Order and Further Notice of Proposed Rulemaking* in WP Docket No. 07–100, adopted on April 7, 2009, and released on April 9, 2009. The complete text of this document is available for inspection and copying during normal business hours in the FCC Reference Information Center, Portals II, 445 12th Street, SW., Room CY–A257, Washington, DC 20554. This document may also be purchased from the Commission's duplicating contractor, Best Copy and Printing, Inc., in person at 445 12th Street, SW., Room CY–B402, Washington, DC 20554, via telephone at (202) 488–5300, via facsimile at (202) 488–5563, or via e-mail at FCC@BCPIWEB.com. Alternative formats (computer diskette, large print, audio cassette, and Braille) are available to persons with disabilities or by sending an e-mail to FCC504@fcc.gov or calling the Consumer and Governmental Affairs Bureau at (202) 418–0530, TTY (202) 418–0432. This document is also available on the Commission's Web site at <http://www.fcc.gov>.

The major proposals in the *Further Notice of Proposed Rulemaking* are as follows:

- Reinstating into § 90.175 an exemption for 4.9 GHz band applications from coordination via a certified frequency coordinator.
- Imposing a more formal licensee-to-licensee coordination requirement on primary fixed links in the 4.9 GHz band.
- Correcting and clarifying the 4.9 GHz band plan:
 - Amend § 90.1213 by correcting the channel number 14 bandwidth from five megahertz to one megahertz.
 - Amend the table in § 90.1213 to list all the center frequencies that should be used for every possible channel aggregation permitted in the rules.
 - Make three corrections to § 90.20 of the Commission's rules relating to the Public Safety Pool Frequency Table and associated limitations:
 - Amend the § 90.20(d)(66)(i) table of frequency pairs by correcting the mobile-only frequency for Channel MED–4 from 463.075 MHz to 468.075 MHz.
 - Amend § 90.20(c)(3) by replacing limitation 38 with limitation 10 on nine frequencies.
 - Amend § 90.20(c)(3) by replacing the text in the limitation column "O='xl'>72" with the numeral "72."

4.9 GHz General Exemption From Certified Frequency Coordination

We take this opportunity to address an apparent inadvertent omission of a Commission rule that provided an exemption to 4.9 GHz band applicants from certified frequency coordination. By this *Further Notice of Proposed Rulemaking*, we seek comment on reinstating the omitted language into the Commission's part 90 rules. When the Commission originally crafted the 4.9 GHz rules, it did not require frequency coordinators to certify applications because "all frequencies will be shared among licensees, and adjacent and co-located licensees are required to cooperate and coordinate in use of the spectrum." Accordingly, the Commission codified a frequency coordination exemption for applications for frequencies in the 4940–4990 MHz band (4.9 GHz exemption). The 4.9 GHz exemption appeared in the **Federal Register** entry for the *4.9 GHz Third Report and Order*, 68 FR 38635, June 30, 2003, as well as the 2003 and 2004 editions of the Commission's rules on § 90.175(j). However, in 2005 and subsequent editions of the Code of Federal Regulations, the exemption for 4.9 GHz applications was omitted.

The omission of the 4.9 GHz exemption appears to have occurred inadvertently as a result of a rulemaking in 2004. On February 10, 2004, the Commission released a *5.9 GHz Report and Order*, 69 FR 46438, August 3, 2004, to revise, inter alia, § 90.175(j) "by adding a new subparagraph (17)" to exempt from frequency coordination "applications for DSRCS [Dedicated Short-Range Communications Service] licensees (as well as registrations for Roadside Units) in the 5850–5925 GHz band" (DSRCS exemption). However, the 2003 Code of Federal Regulations, which was in effect at the time the *5.9 GHz Report and Order* was released, already contained seventeen exemptions in § 90.175(j). Because the *5.9 GHz Report and Order* stated that it was adding a new subparagraph, we tentatively conclude that the Commission did not intend to delete the 4.9 GHz exemption, then listed as § 90.175(j)(17). We base this tentative conclusion on the lack of any corresponding discussion in the *5.9 GHz Report and Order* relating to such a deletion, or any evidence of such an intention in subsequent proceedings. On July 1, 2004, as the result of an unrelated rulemaking, § 90.175 was further revised by removing subparagraph (j)(13) and redesignating subparagraphs (j)(14) through (17) as (j)(13) through (16). On August 3, 2004,

the **Federal Register** entry for the *5.9 GHz Report and Order* was published, 69 FR 46438, August 3, 2004, which overwrote the existing 4.9 GHz exemption in § 90.175(j)(16) with the DSRCS exemption rather than adding a new subparagraph as intended in the *5.9 GHz Report and Order*. Subsequently, the omission of the 4.9 GHz exemption was perpetuated through other rulemakings, such as the Commission's Biennial Regulatory Review in 2005. Because there is no evidence that the Commission intended to impose a requirement for certified frequency coordination on applicants in the 4.9 GHz band, we believe that the subparagraph numbering in the *5.9 GHz Report and Order* and the subsequent overwriting of the 4.9 GHz exemption were ministerial errors that contributed to the omission.

We find that reinstating the 4.9 GHz exemption would relieve applicants from burdens and fees associated with obtaining certified frequency coordination and would satisfy the Commission's original intent to encourage licensees to cooperate and coordinate with each other in use of the spectrum. In this regard, we tentatively conclude that correcting the error would serve the public interest. However, the omission has been in effect for a substantial period of time, and some entities may be operating under the assumption that formal coordination from a certified frequency coordinator is required for 4.9 GHz applications. We tentatively conclude that correcting the error by restoring the 4.9 GHz exemption would eliminate such uncertainty. Therefore, we seek comment on our tentative conclusion to amend § 90.175(j) to restore the exemption for applications for frequencies in the 4940–4990 MHz band from certified frequency coordination requirements. Notwithstanding this tentative conclusion, we propose a separate, more formal licensee-to-licensee coordination requirement for applications seeking authorization for primary permanent fixed stations, as discussed below.

Coordination for 4.9 GHz Primary Permanent Fixed Stations

As discussed in the *Report and Order*, we accord primary status to certain permanent fixed point-to-point and point-to-multipoint stations. We are also licensing all permanent fixed point-to-point and point-to-multipoint stations on an individual, site-by-site basis. As we seek to make clear in the previous proposal, 4.9 GHz licensees are not subject to a formal frequency coordination requirement via certified

frequency coordinators. Section 90.1209(b) addresses coordination matters by requiring that “[a]ll licensees shall cooperate in the selection and use of channels in order to reduce interference and make the most effective use of the authorized facilities.” We are concerned that the current rule language in § 90.1209(b) may not ensure that applicants for primary permanent fixed stations offer sufficient protection to other primary permanent fixed stations and other co-primary users. Without a specific coordination procedure in place, interference issues may arise between co-primary permanent fixed stations or other co-primary users of the band. We thus believe that additional measures are required to minimize the potential for interference.

Section 101.103(d) presently establishes a prior coordination process that we believe would also serve the application process for primary fixed 4.9 GHz stations. Section 101.103(d) provides that proposed frequency usage of fixed microwave stations must be prior coordinated with existing licensees, permittees, and applicants in the area. The coordination involves two separate elements: notification and response. To be acceptable for filing, all applications and major technical amendments must certify that coordination, including response, has been completed. The notification must specify the names of the licensees, permittees, and applicants with which coordination was accomplished. The notification must include relevant technical details of the proposal. Once notification is provided, affected parties have thirty days to respond. Accordingly, we propose to modify § 90.1209(b) to require applicants for primary fixed stations providing point-to-point and point-to-multipoint communications to successfully complete the prior coordination procedures of § 101.103(d). We seek comment on this proposal. Additionally, we invite commenters to suggest any alternative measures that would serve the purpose of our proposal.

4.9 GHz Band Plan Correction and Clarification

We seek comment on correcting an apparent error in the 4.9 GHz band plan and clarifying which center frequencies may be licensed when aggregating multiple channels into larger bandwidths. The band plan is governed by § 90.1213 of the Commission's rules. First, we identify an error in the bandwidth designated to channel number 14. In the *4.9 GHz Third Report and Order*, the Commission decided

that “the frequency utilization plan will consist of ten one-megahertz channels and eight five-megahertz channels * * *.” However, in the rule, “[c]hannel numbers 1 through 5 and 15 through 18 are 1 MHz channels and channels [sic] numbers 6 through 14 are 5 MHz channels,” which results in nine one-megahertz channels and nine five-megahertz channels. Accordingly, there is a discrepancy between the Commission's decision and the rule concerning the number of channels designated for each bandwidth.

Channel number 14 is designated as a five-megahertz bandwidth channel in the rules. However, the band edges of its upper neighbors, channel numbers 15 and 16 (each one megahertz wide) are only 0.5 and 1.5 megahertz away, respectively, and the band edge of its lower neighbor, channel number 13 (five megahertz wide) is only 0.5 megahertz away. Therefore, the five megahertz bandwidth of channel number 14 overlaps the bandwidth of channel numbers 13, 15 and 16. Since none of the other channels in the 4.9 GHz band have overlapping bandwidth, we tentatively conclude that the channel plan contains an error in the bandwidth of channel number 14. We propose to correct the channel number 14 bandwidth from five megahertz to one megahertz. We note that this correction would eliminate bandwidth overlap with adjacent channels, improve spectrum efficiency, restore symmetry to the band plan, and result in ten one-megahertz channels and eight five-megahertz channels, consistent with the Commission's intent in the *4.9 GHz Third Report and Order*. Also, we propose to grandfather existing licensees to minimize the effect of this rule change on existing operations. We seek comment on this proposed correction.

Finally, the Commission's Universal Licensing System accepts 4.9 GHz channel requests based on the center frequency. The Commission has been receiving applications for aggregated channels on improper center frequencies, which results in inefficient spectrum usage. For example, if a user seeks to aggregate two five-megahertz channels into a ten-megahertz bandwidth, the user might improperly request a frequency centered on one of the existing five-megahertz channels rather than centered in the middle of the desired ten-megahertz channel. The user takes up bandwidth over three or more channels rather than just the two channels that are needed. To resolve this problem, we propose to amend the table in § 90.1213 to list the center frequencies that should be requested for

every possible channel aggregation permitted in the rules. We believe that clarifying the band plan in this manner would improve spectrum efficiency and eliminate confusion over how to license aggregated channels. Also, we propose to grandfather existing licensees to minimize the effect of this clarification on existing operations. We seek comment on this proposal.

Public Safety Pool Corrections

We seek comment on making three “clean-up” amendments to § 90.20 relating to the Public Safety Pool Frequency Table and its associated limitations. The following proposed amendments would rectify three errors that Commission staff has discovered in this rule section since the release of the earlier *Notice of Proposed Rulemaking*, 72 FR 35190, June 27, 2007, in this proceeding. Although these errors may appear ministerial in nature, they have been in effect for a substantial period of time, and thus, we seek comment on the corrections.

First, in the § 90.20(d)(66)(i) table of frequency pairs, we note that Channel MED-4 has a mobile-only frequency of 463.075 MHz, unlike the other listed channels, which have mobile-only frequencies in the 468 MHz range. We tentatively conclude that 463.075 MHz was a typographical error, and we seek comment on a proposal to correct the mobile-only frequency for Channel MED-4 to 468.075 MHz. The lower half of the MED-4 pair, frequency 463.075 MHz in the base and mobile column, would remain unchanged.

Second, nine frequencies in the Public Safety Pool Frequency Table contain limitation 38; however, § 90.20(d)(38) only contains the text, “[Reserved].” We propose to replace limitation 38 with limitation 10 on those frequencies. In 2005, the Commission issued an order that, *inter alia*, replaced limitation 38 with limitation 10 in the Public Safety Pool Frequency Table because the two limitations were identical. A portion of the final rule appendix reads: “Section 90.20 is further amended by replacing limitation 38 with 10 in the Public Safety Pool Frequency Table of Section 90.20(c)(3) (Frequencies.) for frequencies 155.325, 155.3325, 155.355, 155.3625, 155.385, 155.3925, 155.4, 155.4075, 462.9375, 462.95625, 462.9625, 462.96875, 462.975, 462.98125, 462.9875, 462.99375, 467.95, 467.95625, 467.9625, 467.96875, 467.975, 467.98125, 467.9875 and 467.99375 * * *.” However, the list erroneously included frequency 462.9375 MHz, which does not have limitation 38, and excluded frequency

462.95 MHz, which has limitation 38. Also, the rule implementation was never completed for the listed frequencies in the 467 MHz range. Therefore, we seek comment on a proposal to complete the rule implementation of the *2005 Biennial Review Report and Order*, 70 FR 61049, October 20, 2005, and amend § 90.20(c)(3) by replacing limitation 38 with limitation 10 on the nine frequencies 462.95, 467.95, 467.95625, 467.9625, 467.96875, 467.975, 467.98125, 467.9875 and 467.99375 MHz.

Third, the frequency band 1427–1432 MHz in the Public Safety Pool Frequency Table contains an apparent error in the limitation column. The limitation reads, “O=’xl’>72.” We seek comment on a proposal to amend § 90.20(c)(3) by replacing the text in the limitation column “O=’xl’>72” with the numeral “72.” This correction would clarify that limitation 72 applies to this band. Limitation 72 reads, “[t]his frequency band is available to stations in this service subject to the provisions of § 90.259,” and § 90.259 contains provisions for the 1427–1432 MHz band.

Procedural Matters

Initial Paperwork Reduction Act Analysis

This document does not contain new or modified proposed information collection(s) subject to the Paperwork Reduction Act of 1995 (PRA), Public Law 104–13. In addition, therefore, it does not contain any new or modified proposed information collection burden “for small business concerns with fewer than 25 employees,” pursuant to the Small Business Paperwork Relief Act of 2002, Public Law 107–198, *see* 44 U.S.C. 3506(c)(4).

Comment and Reply Comment Filing Instructions

Pursuant to §§ 1.415 and 1.419 of the Commission’s rules, 47 CFR 1.415, 1.419, interested parties may file comments and reply comments on or before the dates indicated above. Comments may be filed using: (1) The Commission’s Electronic Comment Filing System (ECFS), (2) the Federal Government’s eRulemaking Portal, or (3) by filing paper copies. See *Electronic Filing of Documents in Rulemaking Proceedings*, 63 FR 24121, May 1, 1998.

- *Electronic Filers:* Comments may be filed electronically using the Internet by accessing the ECFS: <http://www.fcc.gov/cgb/ecfs/> or the Federal eRulemaking Portal: <http://www.regulations.gov>. Filers should follow the instructions

provided on the Web site for submitting comments.

- For ECFS filers, if multiple docket or rulemaking numbers appear in the caption of this proceeding, filers must transmit one electronic copy of the comments for each docket or rulemaking number referenced in the caption. In completing the transmittal screen, filers should include their full name, U.S. Postal Service mailing address, and the applicable docket or rulemaking number. Parties may also submit an electronic comment by Internet e-mail. To get filing instructions, filers should send an e-mail to ecfs@fcc.gov, and include the following words in the body of the message “get form.” A sample form and directions will be sent in response.

- *Paper Filers:* Parties who choose to file by paper must file an original and four copies of each filing. If more than one docket or rulemaking number appears in the caption of this proceeding, filers must submit two additional copies for each additional docket or rulemaking number.

Filings can be sent by hand or messenger delivery, by commercial courier, or by first-class or overnight U.S. Postal Service mail (although we continue to experience delays in receiving U.S. Postal Service mail). All filings must be addressed to the Commission’s Secretary, Federal Communications Commission.

- The Commission’s contractor will receive hand-delivered or messenger-delivered paper filings for the Commission’s Secretary at 236 Massachusetts Avenue, NE., Suite 110, Washington, DC 20002. The filing hours at this location are 8 a.m. to 7 p.m. All hand deliveries must be held together with rubber bands or fasteners. Any envelopes must be disposed of *before* entering the building.

- Commercial overnight mail (other than U.S. Postal Service Express Mail and Priority Mail) must be sent to 9300 East Hampton Drive, Capitol Heights, MD 20743.

- U.S. Postal Service first-class, Express, and Priority mail must be addressed to 445 12th Street, SW., Washington, DC 20554.

People with Disabilities: To request materials in alternative formats for people with disabilities (braille, large print, electronic files, audio format), send an e-mail to fcc504@fcc.gov or call the Consumer and Government Affairs Bureau at (202) 418–0530 (voice), (202) 418–0432 (tty).

Interested parties may view documents filed in this proceeding on the Commission’s Electronic Comment Filing System (ECFS) using the

following steps: (1) Access ECFS at <http://www.fcc.gov/cgb/ecfs>. (2) In the introductory screen, click on "Search for Filed Comments." (3) In the "Proceeding" box, enter the *numerals* in the docket number. (4) Click on the box marked "Retrieve Document List." A link to each document is provided in the document list. Filings and comments are also available for public inspection and copying during regular business hours at the FCC Reference Information Center, 445 12th Street, SW., Room CY-A257, Washington, DC 20554. Filings and comments also may be purchased from the Commission's duplicating contractor, Best Copy and Printing, Inc., Portals II, 445 12th Street, SW., Room CY-B402, Washington, DC 20554, telephone 1-800-378-3160, or via e-mail to fcc@bcpweb.com. This *Report and Order and Further Notice of Proposed Rulemaking* also may be downloaded from the Commission's Web site at <http://www.fcc.gov/>.

Ex Parte Presentations

This is a permit-but-disclose notice and comment rulemaking proceeding. Ex parte presentations are permitted, except during the Sunshine Agenda period, provided they are disclosed as provided in the Commission's rules. See generally 47 CFR 1.1202, 1.1203, 1.1206(a).

Initial Regulatory Flexibility Act Analysis

As required by the Regulatory Flexibility Act, the Commission has

prepared a Initial Regulatory Flexibility Analysis (IRFA) of the possible impact of the proposed rule changes contained in this *Further Notice of Proposed Rulemaking* on small entities. The IRFA is set forth in Appendix D of the *Report and Order and Further Notice of Proposed Rulemaking*. Written public comments are requested on the IRFA. These comments must be filed in accordance with the same filing deadlines as comments filed in response to the *Further Notice of Proposed Rulemaking* and must have a separate and distinct heading designating them as responses to the IRFA. The Commission's Consumer Information Bureau, Reference Information Center, will send a copy of this *Report and Order and Further Notice of Proposed Rulemaking*, including the IRFA, to the Chief Counsel for Advocacy of the Small Business Administration.

Ordering Clauses

Accordingly, it is ordered, pursuant to sections 4(i), 303(r), and 403 of the Communications Act of 1934, 47 U.S.C. 154(i), 303(r), and 403, that this *Report and Order and Further Notice of Proposed Rulemaking* is hereby adopted.

It is further ordered that the Commission's Consumer Information Bureau, Reference Information Center, shall send a copy of this *Report and Order and Further Notice of Proposed Rulemaking*, including the Initial Regulatory Flexibility Analysis, to the

Chief Counsel for Advocacy of the U.S. Small Business Administration.

List of Subjects in 47 CFR Part 90

Communications equipment, Radio.
Federal Communications Commission.
Marlene H. Dortch,
Secretary.

Proposed Rules

For the reasons discussed in the preamble, the Federal Communications Commission proposes to amend 47 CFR part 90 as follows:

PART 90—PRIVATE LAND MOBILE RADIO SERVICES

1. The authority citation for part 90 continues to read as follows:

Sections 4(i), 11, 303(g), 303(r) and 332(c)(7) of the Communications Act of 1934, as amended, 47 U.S.C. 154(i), 161, 303(g), 303(r) and 332(c)(7).

2. Section 90.20 is amended by revising the Frequency or band entries 462.950, 467.950, 467.95625, 467.9625, 467.96875, 467.975, 467.98125, 467.9875, 467.99375 and 1,427 to 1,432 in the Public Safety Pool Frequency Table of paragraph (c)(3) and the Frequencies base and mobile entry 463.075 in the table of paragraph (d)(66)(i) to read as follows:

§ 90.20 Public Safety Pool.

* * * * *
(c) * * *
(3) * * *

PUBLIC SAFETY POOL FREQUENCY TABLE

Frequency or band	Class of station(s)	Limitations	Coordinator
* * * * *	Megahertz	*	*
462.950 .....	.....do	10, 65	PM
467.950 .....	.....do	10, 65	PM
467.95625 .....	.....do	10, 44, 65	PM
467.9625 .....	.....do	10, 27, 65	PM
467.96875 .....	.....do	10, 44, 65	PM
467.975 .....	.....do	10, 65	PM
467.98125 .....	.....do	10, 44, 65	PM
467.9875 .....	.....do	10, 27, 65	PM
467.99375 .....	.....do	10, 44, 65	PM
1,427 to 1,432	Base, mobile or operational fixed	72.	*

* * * * *

(d) * * *

(66) * * *

(i) * * *

Frequencies base and mobile (megahertz)	Mobile only (MHz)	Channel name
* * * * *	* * * * *	* * * * *
463.075	468.075	MED-4
* * * * *	* * * * *	* * * * *

* * * * *
 3. Section 90.175 is amended by adding paragraph (j)(19) to read as follows:

§ 90.175 Frequency coordinator requirements.

* * * * *
 (j) * * * * *
 (19) Applications for frequencies in the 4940–4990 MHz band, except for primary, permanent fixed point-to-point and point-to-multipoint stations, which shall be subject to the requirements of §§ 90.1209(b) and 101.103(d) of this chapter.

4. Section 90.1209 is amended by revising paragraph (b) to read as follows:

§ 90.1209 Policies governing the use of the 4940–4990 MHz band.

* * * * *
 (b) All licensees shall cooperate in the selection and use of channels in order to reduce interference and make the most effective use of the authorized facilities. Licensees of stations suffering or causing harmful interference are expected to cooperate and resolve this problem by mutually satisfactory arrangements. If licensees are unable to do so, the Commission may impose

restrictions including specifying the transmitter power, antenna height, or area or hours of operation of the stations concerned. Further, the Commission may prohibit the use of any 4.9 GHz channel under a system license at a given geographical location when, in the judgment of the Commission, its use in that location is not in the public interest. Applicants for primary, permanent fixed point-to-point and point-to-multipoint stations as defined in § 90.1207 shall be subject to the requirements of § 101.103(d) of this chapter.

* * * * *
 5. Section 90.1213 is revised to read as follows:

§ 90.1213 Band plan.

(a) The following channel center frequencies are permitted to be aggregated for channel bandwidths of 5, 10, 15 or 20 MHz as described in paragraph (b) of this section. Channel numbers 1 through 5 and 14 through 18 are 1 MHz bandwidth channels, and channel numbers 6 through 13 are 5 MHz bandwidth channels.

Center frequency (MHz)	Bandwidth (MHz)	Channel Nos.
4940.5	1	1
4941.5	1	2
4942.5	1	3
4943.5	1	4
4944.5	1	5
4947.5	5	6
4952.5	5	7
4957.5	5	8
4962.5	5	9
4967.5	5	10
4972.5	5	11
4977.5	5	12
4982.5	5	13
4985.5	1	14
4986.5	1	15
4987.5	1	16
4988.5	1	17
4989.5	1	18

(b) The following tables list center frequencies to be licensed for aggregated channels only. A license may contain any combination of bandwidths from aggregated channels provided that the bandwidths do not overlap. The bandwidth edges (lower and upper frequencies) are provided to aid in planning.

(1) 5 MHz bandwidth aggregation:

Center frequency (MHz)	Channel Nos. employed	Lower frequency (MHz)	Upper frequency (MHz)
4942.5	1 to 5 ¹	4940	4945
4947.5	6	4945	4950
4952.5	7	4050	4955
4957.5	8	4955	4960
4962.5	9	4960	4965
4967.5	10	4965	4970
4972.5	11	4970	4975
4977.5	12	2975	4980
4982.5	13	4980	4985
4987.5	14 to 18 ¹	4985	4990

¹ These channels should only be used if all other channels are blocked.

(2) 10 MHz bandwidth aggregation:

Center frequency (MHz)	Channel Nos. employed	Lower frequency (MHz)	Upper frequency (MHz)
4945	1 to 6 ¹	4940	4950
4950	6 & 7	4945	4955
4955	7 & 8	4950	4960
4960	8 & 9	4955	4965
4965	9 & 10	4960	4970
4970	10 & 11	4965	4975

Center frequency (MHz)	Channel Nos. employed	Lower frequency (MHz)	Upper frequency (MHz)
4975	11 & 12	4970	4980
4980	12 & 13	4975	4985
4985	13 to 18 ¹	4980	4990

¹ These channels should only be used if all other channels are blocked.

(3) 15 MHz bandwidth aggregation:

Center frequency (MHz)	Channel Nos. employed	Lower frequency (MHz)	Upper frequency (MHz)
4947.5	1 to 7 ¹	4940	4955
4952.5	6 to 8	4945	4960
4957.5	7 to 9	4950	4965
4962.5	8 to 10	4955	4970
4967.5	9 to 11	4960	4975
4972.5	10 to 12	4965	4980
4977.5	11 to 13	4970	4985
4982.5	12 to 18 ¹	4975	4990

¹ These channels should only be used if all other channels are blocked.

(4) 20 MHz bandwidth aggregation:

Center frequency (MHz)	Channel Nos. employed	Lower frequency (MHz)	Upper frequency (MHz)
4950	1 to 8 ¹	4940	4960
4955	6 to 9	4945	4965
4960	7 to 10	4950	4970
4965	8 to 11	4955	4975
4970	9 to 12	4960	4980
4975	10 to 13	4965	4985
4980	11 to 18 ¹	4970	4990

¹ These channels should only be used if all other channels are blocked.

[FR Doc. E9-11907 Filed 5-20-09; 8:45 am]

BILLING CODE 6712-01-P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 223

[Docket No. 070910507-81216-02]

RIN 0648-AV94

Endangered and Threatened Wildlife and Plants: Proposed Rulemaking to Establish Take Prohibitions for the Threatened Southern Distinct Population Segment of North American Green Sturgeon

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

ACTION: Proposed rule; request for comments; notice of availability of a draft environmental assessment.

SUMMARY: Under section 4(d) of the Endangered Species Act (ESA), the Secretary of Commerce (Secretary) is required to adopt such regulations as he deems necessary and advisable for the conservation of species listed as threatened. This proposed ESA 4(d) rule represents the regulations that we, the National Marine Fisheries Service (NMFS), believe necessary and advisable to conserve the threatened Southern Distinct Population Segment of North American green sturgeon (*Acipenser medirostris*; hereafter Southern DPS). We propose to apply the prohibitions listed under ESA sections 9(a)(1)(A) through 9(a)(1)(G) for the Southern DPS, and we highlight specific categories of activities that are likely to result in take of Southern DPS fish. We do not find it necessary and advisable to apply the take prohibitions to certain categories of activities that contribute to conserving the Southern DPS. We also propose a variety of methods by which take of the Southern DPS may be authorized.

We announce the availability of a draft environmental assessment (EA) that analyzes the environmental impacts of promulgating these proposed 4(d) regulations for the Southern DPS. Finally, we solicit comments regarding the draft EA and this proposed rule.

DATES: Comments regarding the proposed rule and supporting documents may be sent to the appropriate address or fax number (see **ADDRESSES**), no later than 5 p.m. Pacific Standard Time on July 20, 2009. A public hearing will be held promptly if any person so requests by July 6, 2009. Notice of the location and time of any such hearing will be published in the **Federal Register** not less than 15 days before the hearing is held.

ADDRESSES: You may submit comments, identified by RIN 0648-AV94, by any one of the following methods:

- Electronic Submissions: Submit all electronic public comments via the Federal eRulemaking Portal <http://www.regulations.gov>.
- Facsimile (fax): 562-980-4027, Attn: Melissa Neuman.

• Mail: Submit written comments to Chief, Protected Resources Division, Attn: Melissa Neuman, Southwest Region, National Marine Fisheries Service, 501 West Ocean Blvd., Suite 4200, Long Beach, CA 90802-4213.

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.

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

A list of reference materials regarding this proposed rule can be obtained via the Internet at <http://www.swr.nmfs.noaa.gov> or by submitting a request to the Assistant Regional Administrator, Protected Resources Division, Southwest Region, NMFS, 501 West Ocean Blvd., Suite 4200, Long Beach, CA 90802-4213.

FOR FURTHER INFORMATION CONTACT: Melissa Neuman, NMFS, Southwest Region (562) 980-4115 or Lisa Manning, NMFS, Office of Protected Resources (301) 713-1401.

SUPPLEMENTARY INFORMATION:

Background

We determined that the Southern DPS is at risk of extinction in the foreseeable future throughout all or a significant portion of its range and listed the species as threatened under the ESA on April 7, 2006 (71 FR 17757). At that time we summarized the process for considering the application of ESA section 9 prohibitions to the threatened Southern DPS. In the case of threatened species, ESA section 4(d) states that the Secretary shall decide whether, and to what extent, to extend the section 9(a) prohibitions, including those regarding take, to the species, and authorizes us to issue regulations we consider necessary and advisable for the conservation of the species. Such regulations may include any or all of the prohibitions that automatically apply to endangered species. Those prohibitions, in part, make it illegal for any person subject to the jurisdiction of the United States to take the listed species. The term “take” means to harass, harm, pursue, hunt, shoot, wound, kill, trap, capture, or collect, or attempt to engage in any such

conduct. (16 U.S.C. 1532(19)). The term “harm” is defined as any act which kills or injures fish or wildlife. Such an act may include significant habitat modification or degradation that results in death or injury of wildlife by significantly impairing essential behavioral patterns, including breeding, spawning, rearing, migrating, feeding, or sheltering. (50 CFR 222.102).

Whether take prohibitions or other protective regulations are necessary or advisable is in large part dependent on the biological status of the species and potential impacts of various activities on the species. Green sturgeon have persisted for millions of years through cycles of naturally occurring perturbations that have likely presented short- and long-term challenges to the species’ survival. We conclude that the threatened Southern DPS of North American green sturgeon is currently at risk of extinction primarily because of human-induced “takes” involving elimination of freshwater spawning habitat, degradation of freshwater and estuarine habitat quality, water diversions, fishing, and other causes. Therefore, we conclude that extending the take prohibitions to the Southern DPS is necessary and advisable.

When the final rule to list the Southern DPS was published on April 7, 2006, we solicited the public for information that would inform the ESA section 4(d) rulemaking. Specifically, we requested information regarding: (1) green sturgeon spawning habitat within the range of the Southern DPS that was present in the past, but may have been lost over time; (2) biological or other relevant data concerning any threats to the Southern DPS; (3) current or planned activities within the range of the Southern DPS and their possible impact on the Southern DPS; (4) efforts being made to protect the Southern DPS; (5) necessary prohibitions on take to promote the conservation of the Southern DPS; (6) quantitative evaluations describing the quality and extent of freshwater and marine habitats (occupied currently or occupied in the past, but no longer occupied) for juvenile and adult Southern DPS fish; (7) activities that could be affected by an ESA section 4(d) rule; and (8) the economic costs and benefits of additional requirements of management measures likely to result from protective regulations. No substantive additional comments, beyond those that had been received during prior solicitations for information, were received.

Public scoping workshops held on May 31 and June 1, 2006, helped advance our understanding of the threats that are likely to result in the

take of Southern DPS fish. In cases where evidence of direct take due to a particular activity was lacking, activities that have caused take in species that use similar habitats (i.e., migratory, spawning, and rearing), consume similar prey types, have similar morphologies and/or physiologies, and/or share other life history requirements (e.g., white sturgeon (*Acipenser transmontanus*) and chinook salmon (*Oncorhynchus tshawytscha*)) were identified and considered for their effects on Southern DPS fish. More detailed justification regarding the use of take information for surrogate species (i.e. one that shares a similar life history or habitat requirement) to infer the take potential of an activity on the Southern DPS fish is provided in previous **Federal Register** notices (70 FR 17386, April 6, 2005; 71 FR 17757, April 7, 2006).

We conclude that the threatened Southern DPS of North American green sturgeon is at risk of extinction primarily because its populations have been reduced by human “take,” through activities that include, but are not limited to: (1) commercial and recreational fisheries activities that directly target or incidentally catch Southern DPS fish; (2) tribal fisheries activities that directly target or incidentally catch Southern DPS fish; (3) poaching; (4) collecting or handling Southern DPS fish for activities such as research, monitoring, and emergency rescues; (5) habitat-altering activities that result in the elimination, obstruction or delay of passage of adult Southern DPS fish to and from spawning areas, or otherwise result in the inability of adult Southern DPS fish to migrate to and from spawning areas; (6) habitat-altering activities that result in the destruction, modification or curtailment of spawning or rearing habitat for egg, larval or juvenile stages; (7) habitat altering activities that result in the elimination, obstruction or delay of downstream passage of larval or juvenile stages of Southern DPS fish; (8) entrainment and impingement of any life stage of Southern DPS fish during the operation of water diversions, dredging or power generating projects; (9) application of pesticides adjacent to or within waterways that contain any life stage of Southern DPS fish at levels that adversely affect the biological requirements of the Southern DPS; (10) discharge or dumping of toxic chemicals or other pollutants into waters or areas that contain Southern DPS fish; and (11) introducing or releasing non-native species likely to alter the Southern DPS’

habitat or to compete with the Southern DPS for space or food.

Spatial Context for Proposed 4(d) Rule Application

As described in a **Federal Register** notice (68 FR 4433) published on January 23, 2003, we determined that based on genetic and behavioral information, North American green sturgeon is comprised of at least two DPSs that qualify as species under the ESA: (1) a northern DPS consisting of populations originating from coastal watersheds northward of and including the Eel River ("Northern DPS"); and (2) a southern DPS consisting of populations originating from coastal watersheds south of the Eel River ("Southern DPS") and the Central Valley of California. These geographic boundaries were largely defined by genetic evidence indicating that, among samples from rivers where green sturgeon are known to spawn (i.e. the Rogue, Klamath, and Sacramento rivers), the Rogue and Klamath River fish were more similar to one another than to the Sacramento River fish (Israel *et al.*, 2004). Although the Southern DPS boundaries are defined by the species' genetic structure and its likely strong homing capabilities and spawning site fidelity, the spatial extent of the ESA listing and proposed take prohibitions for the Southern DPS is not confined to areas south of the Eel River. Southern DPS subadults and adults tagged in San Pablo Bay, a northern extension of San Francisco Bay, have been tracked in estuarine and marine waters far north of the Eel River (Lindley *et al.*, 2008), and preliminary genetic mixed stock analyses indicate that a proportion of green sturgeon in many estuaries north of the Eel River DPS boundary are of Southern DPS origin (J. Israel, UC Davis, 2006, unpublished data).

Tracking data, genetic mixed stock analysis, and direct observation indicate that Southern DPS fish occur in freshwater rivers and coastal estuaries and bays along the west coast of North America, including, but not limited to: San Pablo Bay, CA; Suisun Bay, CA; San Francisco Bay, CA (Radtke, 1966; CDFG, 2002; Kelly *et al.*, 2006; J. McLain, USFWS, 2006, unpublished data; Department of Water Resources Bay Delta and Tributaries data base, 2005, <http://bdat.ca.gov/index.html>); the Sacramento-San Joaquin Delta in the Central Valley California (Radtke, 1966; CDFG, 2002; Wang, 2006); Sacramento River, CA (USFWS, 1992; Adams *et al.*, 2002; Gaines and Martin, 2002; Israel *et al.*, 2004; Heublein *et al.*, in press); lower Feather River, CA (Adams *et al.*, 2006; A. Seeholtz, CDWR, 2008,

unpublished data; FERC, 2008, unpublished data); lower Yuba River, CA (Adams *et al.*, 2002; CDFG, 2002; G. Reedy, South Yuba River Citizens League, 2006, unpublished data); Humboldt Bay, CA (Moyle *et al.*, 1992; B. Pinnix, USFWS, 2008, unpublished data; S. Lindley, NMFS, 2008, unpublished data); Coos Bay, OR (Lindley and Moser, 2006); Winchester Bay, OR (Lindley and Moser, 2006; J. Israel, UC Davis, 2006, unpublished data); Yaquina Bay, OR (Emmett *et al.*, 1991; ODFW, 2002; D. M. Nelson, 2008, Letter to Steve Stone; J. Hightower, USGS, 2006, unpublished data); lower Columbia River and estuary, OR and WA (Israel *et al.*, 2004; Lindley and Moser, 2006; WDFW, 2006, unpublished data; ODFW, 2006, unpublished data); Willapa Bay, WA (Lindley and Moser, 2006; J. Israel and B. May, UC Davis, 2006, unpublished data; WDFW, unpublished data; ODFW, unpublished data); Grays Harbor, WA (Lindley and Moser, 2006; J. Israel and B. May, UC Davis, 2006, unpublished data); and Puget Sound, WA (Lindley and Moser, 2006). Southern DPS fish also occur in coastal waters within 110 meters depth from Monterey Bay, CA, to Yakutat Bay, AK (Lindley and Moser, 2006; Lindley *et al.*, 2008), including the Strait of Juan de Fuca, WA.

Green sturgeon have also been observed or collected in the following coastal rivers, estuaries, and marine waters; however, in many of these cases, individuals were not identified to the DPS level: Elkhorn Slough, CA (Moyle *et al.*, 1992; Yoklavich *et al.*, 2002; S. Lindley, NMFS, 2008, unpublished data; C. Raifsnider and J. Steinbeck, Tenera Environmental, 2006, personal communication); Tomales Bay, CA (Moyle *et al.*, 1992; J. McLain, USFWS, 2006, unpublished data); Noyo Harbor, CA (Moyle *et al.*, 1992; D. Catania, California Academy of Sciences, 2006, personal communication); Eel River, CA (Moyle *et al.*, 1992; Adams *et al.*, 2006); Klamath/Trinity River, CA (Nakamoto *et al.*, 1995; VanEenaam *et al.*, 2001; Adams *et al.*, 2002; Adams *et al.*, 2006; VanEenaam *et al.*, 2006; Benson *et al.*, 2007); Rogue River, OR (Rien *et al.*, 2001; Adams *et al.*, 2002; Erickson *et al.*, 2002; Adams *et al.*, 2006; Erickson and Hightower, 2007; Erickson and Webb, 2007; Webb and Erickson, 2007); Siuslaw River, OR (Emmett *et al.*, 1991; S. Lindley and M. Moser, NMFS, 2008, unpublished data); Alsea River, OR (Emmett *et al.*, 1991; D. M. Nelson, 2008, Letter to Steve Stone); Tillamook Bay, OR (Emmett *et al.*, 1991; ODFW, 1997; ODFW, 2002; D. M. Nelson, 2008, Letter to Steve Stone); coastal waters

within 110 m depth from the California/Mexico border to Monterey Bay, CA (Roedel, 1941; Norris, 1957; R. Rasmussen, NMFS, 2006, unpublished data); and coastal waters northwest of Yakutat Bay, AK, including portions of the Gulf of Alaska, and the Bering Sea (J. Ferdinand and D. Stevenson, NMFS, 2006, unpublished data).

Evaluation of Activities

While this proposal applies the take prohibitions to any activity that takes the Southern DPS, we wanted to determine which activities would most likely impede efforts necessary to conserve and recover the Southern DPS. To do this, we considered the following questions: (1) For which activities do we have evidence of take of Southern DPS fish; (2) for those activities where evidence of Southern DPS take does not exist, is there evidence of take of surrogate species that share similar biological requirements with Southern DPS fish; (3) are protective/conservation measures underway to reduce or minimize take imposed by some activities; and (4) are there additional protective/conservation measures that, if taken, would reduce take to low enough levels such that particular activities could proceed without appreciably reducing the likelihood of survival and recovery of the Southern DPS?

Commercial and Recreational Fisheries Activities

Take of Southern DPS fish occurs during commercial and recreational fishing activities throughout the range of North American green sturgeon. However, quantifying fishery-related take reliably and assessing its effects is challenging because: (1) Northern and Southern DPS fish are morphologically indistinguishable from one another and when green sturgeon have been taken, they have rarely been identified to the DPS level; (2) until recently some fisheries did not report green sturgeon take, and (3) in cases where data on take of green sturgeon is available, methods for estimating the total annual take by a fishery are still being developed. The two DPSs co-inhabit some coastal areas and bays in Northern California, Oregon, and Washington, and the proportion of Southern DPS fish contributing to overall populations in these areas may be high (e.g., 80 percent in the Columbia River; J. Israel, UC Davis, 2008, unpublished data). Thus, while we know that fisheries-related take is occurring, we are uncertain how this take is apportioned between the two DPSs, different locales, and different types of fisheries.

Green sturgeon are taken as bycatch in white sturgeon fisheries, salmon gillnet fisheries, coastal groundfish trawl fisheries, and coastal California halibut set net fisheries (Adams *et al.*, 2006; R. Rasmussen, NMFS, 2006, unpublished data; J. Ferdinand *et al.*, NMFS, 2006, unpublished data). These fisheries have taken large numbers of green sturgeon historically and have been cited as factors in the decline of the species (70 FR 17386, April 6, 2005; 71 FR 17757, April 7, 2006). For example, from 1985 to 1993, the harvest of green sturgeon in commercial fisheries in the Columbia River and in Washington ranged from 3,000 to over 7,500 fish per year. Sport fishing harvest during the same period ranged from less than 100 to over 500 fish, with the majority harvested from the Columbia River. Since 1993, commercial and sport harvest of green sturgeon has declined in the Columbia River and Washington fisheries to about 150 fish harvested in 2003 (Adams *et al.* 2006).

State recreational and commercial fishing regulations have been revised in response to evidence of recent sturgeon declines and to the listing of the Southern DPS. In California, the California Fish and Game Commission approved revised regulations, effective March 1, 2007, to prohibit retention of green sturgeon, alter the slot (size) limit (142 cm) and bag limit (one individual daily; 3 individuals annually) for white sturgeon, and require implementation of a sturgeon report card system. The Washington Fish and Wildlife Commission adopted a permanent rule to prohibit retention of green sturgeon in recreational fisheries statewide effective May 1, 2007. In addition, the Washington Department of Fish and Wildlife and Oregon Department of Fish and Wildlife voted to prohibit the retention of green sturgeon in Columbia River recreational fisheries from Bonneville Dam to the mouth of the river, effective January 1, 2007. For commercial fisheries, the retention of green sturgeon has been prohibited in the Columbia River by emergency rule since July 2006 and statewide in Washington by permanent rule since January 26, 2007. The State of California has prohibited commercial fishing for sturgeon since 1917. While these emergency and permanent rules offer Southern DPS fish protection, it is unclear whether the state closures will remain in effect over the long-term and ultimately what overall effect the closures will have on the Southern DPS.

Commercial groundfish trawl fisheries occurring in coastal waters along the West coast of North America take green sturgeon. Fish are primarily caught as

bycatch off the coast of California. Over a 6-year period, from 2001–2007, 450 green sturgeon were reported as bycatch in trawls off the California coast. Almost all green sturgeon caught in this fishery are released alive (J. Majewski, NMFS, 2006, unpublished data), but the long-term fate of these individuals remains unknown. A program for monitoring green sturgeon take was established with the NMFS Observer Program in January 2007. Additional measures that may be implemented to protect green sturgeon and the Southern DPS include zero retention of green sturgeon in all fisheries, minimizing incidental catch, monitoring of incidental catch, increased enforcement, fisheries closures in areas important to the species, and outreach and education on proper catch and release methods and green sturgeon conservation issues.

Tribal Fisheries

Green sturgeon are taken as bycatch in tribal salmon and sturgeon fisheries conducted by the Quinault Tribe in coastal Washington waters. Tribal harvest of green sturgeon occurs in Grays Harbor and at the mouth of tributaries, primarily the Chehalis and Humptulips rivers. The number of green sturgeon taken annually from 1985 to 2003 ranged from less than 10 to almost 200 fish (Adams *et al.*, 2006). In 2006, the Quinault Tribe implemented zero retention of green sturgeon for the Grays Harbor fishery (J. Schumacker, Quinault Indian Tribe, 2006, personal communication). A large proportion of green sturgeon caught in Grays Harbor may be Southern DPS fish, based on hydroacoustic tracking information (Lindley and Moser, 2006) and a genetic study indicating that approximately 50 percent of green sturgeon sampled in Grays Harbor belong to the Southern DPS (J. Israel and B. May, UC Davis, 2006, unpublished data).

Green sturgeon are also taken, though rarely, in tribal commercial and subsistence salmon fisheries occurring in freshwater and coastal marine waters of Washington, including the Strait of Juan de Fuca, Georgia and Rosario straits, and Puget Sound (W. Beattie, NW Indian Fisheries Commission, 2008, personal communication). The Yurok and Hoopa Tribes harvest green sturgeon in the Klamath River in California, but most of the fish are believed to be Northern DPS green sturgeon (J. Israel, UC Davis, 2006, unpublished data). Overall, the take of green sturgeon in tribal fisheries has been low compared to non-tribal fisheries. Measures that may be implemented to conserve the Southern DPS include a commitment by the

Quinault Tribe, and perhaps other Tribes within the occupied range of the Southern DPS, to minimize take and monitor incidental catch of green sturgeon over the long-term.

Poaching

Poaching is a potential threat to the Southern DPS. In recent years, several arrests have been made for illegal harvest of white sturgeon for their meat and roe from the Sacramento River (CDFG, 2003 and 2006), the Sacramento-San Joaquin Delta (CDFG, 2004), and the lower Columbia River (Cohen, 1997). In the lower Columbia River, an estimated 2,000 sturgeon were killed over a 5-year period by poachers to produce caviar (Cohen, 1997). Poaching may be less significant than incidental take associated with white sturgeon sportfishing (Williamson, 2003). However, the tendency for green sturgeon to form aggregations for long periods of time may make them easy targets for poachers (Erickson *et al.*, 2002). Increased public outreach and awareness, increased enforcement, and heavier sentences and fines for poachers may help to protect green sturgeon from the threats of poaching.

Research, Monitoring and Enforcement Activities

Scientific research and monitoring of the Southern DPS contributes valuable information for the management, conservation, and future status reviews of the species. However, collection or handling associated with scientific research and monitoring constitutes take and may result in stress, injuries, or mortality of Southern DPS fish. In recent years, much research and monitoring effort has been placed on: (1) tracking the movements and habitat use of Southern DPS fish by using a variety of non-lethal tagging techniques; and (2) identifying the DPS of origin using non-lethal genetic sampling techniques. These two research and monitoring activities provide information crucial to the development of an effective recovery strategy for the species. The best available information indicates that these procedures, when done according to accepted protocols, result in minimal short-term stress to the fish and do not result in lethal take. Important scientific information (e.g., genetic, pathologic, taxonomic, meristic) is also gathered from already dead individuals, thereby providing valuable data without putting the species at further risk.

Enforcement of the ESA and its implementing regulations is an essential component of protecting and recovering

species once they are listed.

Enforcement of this proposed regulation for the Southern DPS of green sturgeon may involve take. For example, when acting in the course of his or her official duties, a NMFS enforcement agent investigating an alleged ESA take violation may need to collect a Southern DPS fish or samples thereof as evidence of the violation.

Emergency Rescue and Salvage Activities

Emergency fish rescue activities, including aiding sick, injured, or stranded fish, disposing of dead fish, or salvaging dead fish for use in scientific studies, are forms of take. Rescue activities would benefit the Southern DPS in the event of emergency situations that result from natural disasters or national defense or security emergencies (see 50 CFR 402.05). Activities such as the rescue of fish stranded behind a man-made barrier (e.g., weirs, nets, dams) are not considered emergency fish rescue activities and should be subject to NMFS ESA review.

Habitat-altering Activities

Dams and water diversion structures have caused the elimination, obstruction, or delay of passage for green sturgeon and other sturgeon species and may reduce body condition and reproductive success. For example, dams and water diversion structures have been observed to obstruct or disrupt the upstream spawning migrations of shortnose sturgeon in the lower Cape Fear River, NC (Moser and Ross, 1995). White sturgeon have also been found stranded behind the Fremont Weir in the Yolo Bypass, CA (Harrell and Sommer, 2006). Disruptions in migration may cause fish to stop their upstream migration or may delay access to spawning habitats (Moser and Ross, 1995). The inability to reach spawning habitats may cause fish to spawn in habitats of lower quality, resulting in decreased recruitment (Cooke and Leach, 2004). Several dams and water diversion structures exist along the spawning migration route of the Southern DPS and would be expected to have detrimental effects similar to those observed in surrogate species. Fish passage studies at the Red Bluff Diversion Dam (RBDD) in the Sacramento River show that the RBDD blocks the upstream migration of the Southern DPS when the gates are lowered between May 15 and September 15 (Heublein *et al.*, 2006; Brown, 2007). Mitigation measures have been implemented, including the raising of RBDD gates from September 15 to May

15 each year to allow fish passage and the protection and restoration of spawning and rearing habitat along the Sacramento River, bays, and the Sacramento-San Joaquin Delta. However, when the gates are raised, green sturgeon may become disoriented or suffer injuries due to the high velocity of water passing under the gates (M. Tucker, NMFS, 2007, personal communication). Between May 18 and June 10, 2007, carcasses of 10 adult Southern DPS fish (168–226 cm total length) were found at (n=2) or downstream (n=8) of RBDD (E. Campbell, USFWS, 2007, unpublished data). Locations of the retrieved carcasses and necropsy results suggest that the fish suffered mortality due to injuries inflicted by the gates at RBDD. Installation of adequate fish passage facilities, modification of existing passage facilities, or other provisions to specifically aid sturgeon passage at dams and diversions, and application of other mitigation measures, such as salvage operations, would contribute to the protection of the Southern DPS.

The elimination, obstruction, or delay of downstream passage is a concern for larval and juvenile stages of the Southern DPS, as are habitat-altering activities that destroy, modify, or curtail spawning or rearing habitats for egg, larval, or juvenile stages. Specific concerns include, but are not limited to: increased sediment input or runoff into streams; filling in or isolation of stream channels, side channels, and intermittent waters; direct removal or alteration of physical structures; and obstruction of downstream migration.

Increased input or runoff of fine sediments into streams may result from a number of activities including, but not limited to, mining, logging, farming, grazing, and bridge and road construction. Increased erosion and sediment input or runoff into streams caused by land use and other human activities have been found to reduce the survival and successful development of eggs and embryos of salmon and other fish species (Scrivener and Brownlee, 1989; Owen *et al.*, 2005). The effects on green sturgeon eggs and embryos are likely to be similar. Green sturgeon eggs are large and dense and likely sink into rock crevices or attach to hard surfaces (Deng *et al.*, 2002; Kynard *et al.*, 2005). Once hatched, green sturgeon embryos remain near the bottom and use rocks as cover (Kynard *et al.*, 2005). Excess fine sediments can compromise successful development by burying already-deposited eggs, reducing interstitial dissolved oxygen available for eggs (Scrivener and Brownlee, 1989), or filling areas used by embryos for cover.

Thus, Southern DPS eggs or embryos may be taken due to habitat-altering activities that increase input of fine sediments or runoff into spawning or rearing habitat. The effect that increased input of fine sediments or runoff has at the individual, population and species levels will depend on the temporal and spatial extent of habitat change. The only way to determine this is to analyze particular activities on a case-by-case basis.

The filling in or isolation of stream channels, side channels, and intermittent waters may destroy or block access to rearing habitats, or impede or delay downstream migration by trapping larvae and juveniles that have entered these areas. Activities that fill in or isolate waters include, but are not limited to, the installation of tide gates, culverts, and debris- or sediment-trapping road crossing structures. These activities and their effects are a concern for listed salmon and steelhead and may also affect larval and juvenile Southern DPS fish. However, we currently lack the information needed to quantitatively assess these effects. Although relatively large numbers of juveniles have been collected in shallow areas of the Santa Clara shoal in the Sacramento-San Joaquin Delta (Radtke, 1966), the use of stream channels, side channels, and intermittent waters as rearing habitat by green sturgeon larvae and juveniles has not been documented. Information regarding the use of these habitats by early life stages of green sturgeon is needed.

Direct removal or alteration of physical structures essential to the integrity and function of the Southern DPS's spawning or rearing habitat, including rocks, soil, gravel, and vegetation, may adversely affect the growth and survival of larvae and juveniles. Green sturgeon likely use specific substrate types at different life stages, but observations of early life stages of green sturgeon in the field are lacking. Studies suggest that spawning most likely occurs over cobble substrates that provide crevices and cover for eggs (Kynard *et al.*, 2005; Nguyen and Crocker, 2006). However, in a laboratory study of substrate use by post-hatch larval green sturgeon, growth and survival was greatest in flat slate-rock substrates that provided cover and sufficient foraging opportunities (Nguyen and Crocker, 2006). Survival was low in cobble substrates, because larvae became trapped in crevices and died; whereas in sand substrates, the cause of lower survival and growth was attributed to the ingestion of sand particles similar in size to food particles (Nguyen and Crocker, 2006). Juveniles

likely use deep pool habitats with rock structure during the winter (Kynard *et al.*, 2005). Removal or alteration of these physical structures (i.e. cobble for spawning and egg development; flat rock for larval rearing; deep pool habitats with rock structure for juvenile rearing) may reduce spawning or rearing success rates. Information regarding the use of spawning habitats by Southern DPS early life stages and the effects of removing or altering physical components of Southern DPS spawning habitat on recruitment success is needed.

The construction and maintenance of dams and water diversion structures may impede or delay downstream migration and alter habitats important to larval and juvenile stages of the Southern DPS. Dams and water diversions may block downstream migration of larvae and juveniles, unless fish transport or bypass facilities exist. Passage across dams and water diversion structures may also disorient or injure larvae and juveniles and make them more vulnerable to predation, as has been observed for juvenile salmonids at RBDD (Bigelow and Johnson, 1996; Gaines and Martin, 2002). The actual construction of dams and water diversion structures may cause increased erosion and sedimentation and disrupt or alter physical structures in spawning or rearing habitats, with effects as described in the previous paragraphs.

While existing laws require mining, timber harvest, and other resource use plans to address erosion and other adverse impacts on stream habitats, these laws may not be adequate to protect the Southern DPS. Additional measures that would help reduce potential adverse impacts on Southern DPS fish are: (1) protection of riparian habitat by limiting activities that cause erosion, sediment input or runoff into streams, or roadway and other linear development near or across streams; (2) construction of fish protection and passage facilities; and (3) limiting the temporal and/or spatial scopes of habitat alteration activities that occur in and near spawning and rearing locations.

Habitat Restoration

The primary purpose of habitat restoration is to restore natural aquatic or riparian habitat conditions or processes over the long-term. Specifically, we define habitat restoration as the process of reestablishing a self-sustaining habitat that closely resembles natural conditions in terms of structure and function for the Southern DPS. A variety

of habitat-altering activities such as barrier removal or modification to restore natural water flows, river and estuarine bed restoration, natural bank protection, restoration of native vegetation, removal of non-native species, and removal of contaminated sediments have been used to reestablish natural river and estuarine functions over the long-term. Although take of green sturgeon could potentially occur during the course of completing restoration activities, we do not have evidence that these types of activities have taken the Southern DPS or a surrogate species. It is likely that these activities are important to the conservation and recovery of the Southern DPS.

Entrainment and Impingement Risks

The operation of water diversions, power generating projects, and dredging activities pose entrainment and impingement threats to all life stages of the Southern DPS. We define entrainment to mean the incidental trapping of any life stage of fish within waterways or structures that carry water being diverted for anthropogenic use. We define impingement to mean the entrapment of any life stage of fish on the outer part of any structure (e.g., intake structures, screening devices) that separates water traveling a natural course of passage from water that is being diverted for anthropogenic use. Unscreened water diversions number in the hundreds to thousands in the Sacramento River and the Sacramento-San Joaquin Delta (Herren and Kawasaki, 2001). Factors that determine the entrainment risk of fish at diversions include the location and size of fish. A study of fish entrainment at an unscreened diversion in the Sacramento River documented entrainment of fish ranging in size from 9 to 59 mm fork length (FL) in July 2000 and 2001 (Nobriga *et al.*, 2004). Green sturgeon were not among the species documented in the study, but Southern DPS larvae and small juveniles within the size range of 9–59 mm FL occur in the Sacramento River at that time of year and are believed to also be at risk of entrainment at unscreened diversions. Entrainment of juvenile green sturgeon has been documented at the state and Federal fish facilities in the south Sacramento-San Joaquin Delta, where fish are salvaged before they enter the pumps (Adams *et al.*, 2006). Programs to install fish screens at water diversions are being implemented and many major diversions have already been screened. Installation of fish screens, construction of bypass and other fish protection facilities (Bigelow and Johnson, 1996;

Gaines and Martin, 2002), adjustments in the timing of operations, and continuation of fish salvage operations, where applicable, would help minimize and mitigate entrainment of Southern DPS fish at water diversions.

Evidence exists for the impingement of green sturgeon in the operation of coastal power plants using cooling water intake systems. Two juvenile green sturgeon were impinged and died on cooling water intake screens at the now retired Contra Costa Plant Units 1–5 in 1978–1979 and at the Moss Landing Power Plant in 2006 (C. Raifsnider and J. Steinbeck, Tenera Environmental, 2006, personal communication). Current conservation efforts include the installation of screens to reduce entrainment, studies of fish impingement and entrainment at power plants, and laws that require the minimization of fish impingement and entrainment. Other actions that can be taken to reduce impingement and entrainment include altering the time of day when water intake pumps are operated, altering the velocity of water intake, and the use of alternative cooling systems that do not require water intake.

Dredging operations in freshwater rivers, bays, and estuaries where Southern DPS fish occur may pose entrainment risk. Although entrainment of green sturgeon in dredging operations has not been documented, the effects could be significant. Approximately two thousand juvenile white sturgeon were entrained during operation of a large suction dredge in the lower Columbia River (Buell, 1992). Juvenile green sturgeon would be expected to face similar entrainment risks from dredging operations because they are also bottom-oriented and occur in habitats similar to white sturgeon. Long-term management strategies for San Francisco Bay dredging operations have established regional environmental work windows, or periods of time when certain fish species are not likely to be present in a location. Currently, it is believed that Southern DPS juveniles reside in San Francisco, Suisun, and San Pablo bays year-round so environmental work windows will likely not be effective in reducing the risks of dredging operations to the Southern DPS in these locations. However, the use of specific types of dredging equipment with modified designs would reduce the entrainment risk to Southern DPS fish from dredging operations.

Pesticides and Discharge of Pollutants

The application of pesticides adjacent to or within waterways that contain any life stage of the Southern DPS may adversely affect their growth and

reproductive success. Several pesticides have been detected in the Sacramento River Basin at levels that are likely to be harmful to aquatic life (Domagalski *et al.*, 2000). The accumulation of industrial chemicals and pesticides such as polychlorinated biphenyls (PCBs), dichloro-diphenyl-trichloroethanes (DDTs), and chlordanes in white sturgeon gonad, liver, and muscle tissues affects growth and reproductive development and results in lower reproductive success (Fairey *et al.*, 1997; Foster *et al.*, 2001a; Foster *et al.*, 2001b; Kruse and Scarnecchia, 2002; Feist *et al.*, 2005; Greenfield *et al.*, 2005). Green sturgeon are believed to experience similar risks from contaminants, although their exposure may be reduced because a greater proportion of their subadult and adult lives are spent in marine waters (70 FR 17386, April 6, 2005). Pesticides may also indirectly affect green sturgeon through effects on their prey species. For example, green sturgeon are believed to enter Willapa Bay to feed on burrowing ghost shrimp (*Neotrypaea californiensis*), which have declined in abundance due to the deliberate application of carbaryl (Moser and Lindley, 2006).

The discharge or dumping of toxic chemicals or other pollutants into waters and areas where Southern DPS fish occur would be expected to reduce their growth and reproductive success. Pollutants including mercury, selenium, and arsenic have been detected in white sturgeon gonad, liver, and muscle tissues and are believed to affect growth, reproductive development, and reproductive success (Fairey *et al.*, 1997; Davis *et al.*, 2002; Kruse and Scarnecchia, 2002; Greenfield *et al.*, 2005; Webb *et al.*, 2006). Again, the effects on green sturgeon are likely to be similar.

Under the Federal Clean Water Act, acceptable levels for contaminants in waterways have been established by the States and the U.S. Environmental Protection Agency (EPA). Entities must also obtain National Pollutant Discharge Elimination System (NPDES) permits to discharge contaminants. However, NPDES permits are not required for irrigated agriculture and agricultural stormwater runoff. Furthermore, the national standards for use of pesticides and toxic substances may not be conservative enough to adequately protect the Southern DPS as was found for listed salmonids in recent draft and final jeopardy biological opinions issued by NMFS to the EPA (NMFS 1998, NMFS 2000, NMFS 2008). Thus, programs to aid agricultural producers in meeting NMFS-imposed water

quality standards may be required to minimize adverse impacts on the Southern DPS.

Non-native Species Introductions

Non-native species are a continuing problem in freshwater rivers and coastal bays and estuaries and may affect the Southern DPS through trophic interactions. Introduced species, such as striped bass in the Sacramento River and the Sacramento-San Joaquin Delta, may prey on green sturgeon. Non-native species may also replace prey species of green sturgeon and result in greater bioaccumulation of contaminants. For example, *Potamocorbula amurensis*, a non-native bivalve, has become widespread in the San Francisco Bay and the Sacramento-San Joaquin Delta and has replaced other common prey items for white sturgeon. *P. amurensis* is an efficient bioaccumulator of selenium, a reproductive toxin that causes deformities in embryos and reduced hatchability of eggs, and has been linked with increased selenium levels in white sturgeon (Linville *et al.*, 2002). *P. amurensis* has also been identified in the gut contents of at least one green sturgeon (CDFG, 2002). Non-native species may also alter the Southern DPS' habitat or compete with the Southern DPS for space or food. Although existing laws prohibit the release of non-native species into the environment, accidental and intentional introduction of non-native species remains a problem. Eradication programs for non-native species, increased public education and outreach, and increased fines or penalties for the release of non-native species would help to alleviate this problem.

Proposed 4(d) Protective Regulations for the Southern DPS

We propose to apply the prohibitions listed under ESA sections 9(a)(1)(A) through 9(a)(1)(G) for the Southern DPS, including all the ESA section 9(a)(1)(B) and 9(a)(1)(C) prohibitions (the "take prohibitions") except for specific activities described below (see Exceptions, Criteria for Exceptions, and Reporting Requirements). ESA section 9(a)(1)(A) states that it is unlawful to import or export endangered species into or from the United States; ESA section 9(a)(1)(B) states that it is illegal to take endangered species within the United States or the territorial sea of the United States; ESA section 9(a)(1)(C) states that it is illegal to take endangered species upon the high seas; ESA section 9(a)(1)(D) states that it is illegal to possess, sell, deliver, carry, transport, or ship, by any means whatsoever,

endangered species taken in violation of 9(a)(1)(A) and 9(a)(1)(C); ESA section 9(a)(1)(E) states that it is illegal to deliver, receive, carry, transport, or ship in interstate or foreign commerce by any means whatsoever and in the course of a commercial activity, endangered species; ESA section 9(a)(1)(F) states that it is illegal to sell or offer for sale in interstate or foreign commerce, endangered species; and ESA section 9(a)(1)(G) states that it is illegal to violate any regulation pertaining to endangered species or to any threatened species of fish or wildlife listed pursuant to section 4 of the ESA and promulgated by the Secretary pursuant to authority provided by the ESA.

These prohibitions are necessary and advisable for the conservation of the Southern DPS because human "take" via activities including, but not limited to, detrimental habitat alteration, modification, and curtailment; fisheries catch and bycatch; application of pesticides, toxic chemicals, or other pollutants adjacent to or within waterways; entrainment or impingement of eggs or fish during water diversion operations, dredging, or power generation; unnecessary collection or handling; and introduction of non-native species that disrupt trophic pathways, has contributed to the decline of the Southern DPS and is likely to impede its conservation and recovery.

Exceptions, Criteria for Exceptions, and Reporting Requirements

We propose exceptions to the ESA section 9(a)(1)(B) and 9(a)(1)(C) prohibitions (the "take prohibitions") for specific activities. These proposed exceptions encompass specific activities that may be excluded from the take prohibitions for the Southern DPS through the relatively informal coordination process described below. In determining that it is necessary and advisable to not impose take prohibitions on certain activities, we are mindful that new information may require a reevaluation of that conclusion at any time. For any of the exceptions to the take prohibitions described below, we would evaluate on a regular basis the effectiveness of the activities in conserving and protecting the Southern DPS. If the activities are not effective in conserving and protecting the Southern DPS, we would identify ways in which the activities need to be altered or strengthened. For habitat-related exceptions to the take prohibitions, changes may be required if the activities are not achieving desired habitat functionality or the habitat is not supporting population productivity levels needed to conserve the Southern

DPS. If the responsible agency does not make changes to respond adequately to the new information, we would publish notification in the **Federal Register** announcing the intention to impose take prohibitions on those activities. Such an announcement would provide for a comment period of not less than 30 days, after which we would make a final determination whether to extend the ESA section 9(a)(1)(B) and (C) take prohibitions to the activities. We propose that take of the Southern DPS not be prohibited during the course of the following activities:

(1) Federal, state or private-sponsored research or monitoring activities if they adhere to all of the following: (a) the activity must comply with required state reviews or permits; (b) the research or monitoring activity must be directed at the Southern DPS and not be incidental to research or monitoring of another species; (c) take of live mature adults in the lower Feather River from the confluence with the Sacramento River to the Oroville Dam (rkm 116), the lower Yuba River from the confluence with the Feather River to the Daguerre Dam (rkm 19), or Suisun, San Pablo, and San Francisco Bays or the Sacramento-San Joaquin Delta from the Golden Gate Bridge up into the Sacramento River to Keswick Dam (rkm 483) may only occur from July 1 through March 1 so as to substantially increase the likelihood that uninterrupted upstream spawning migrations of adults will occur; (d) take must be non-lethal; (e) take involving the removal of any life stage of the Southern DPS from the wild must not exceed 60 minutes; (f) take must not involve artificial spawning or enhancement activities; (g) a description of the study objectives and justification, a summary of the study design and methodology, estimates of the total non-lethal take of Southern DPS fish anticipated, estimates of incidental take of other ESA listed species anticipated and proof that those takes have been authorized by NMFS or the USFWS, identification of funding sources, and a point of contact must be reported to NMFS at least 60 days prior to the start of the study, or for ongoing studies within 60 days after publication of the final rule; (h) reports that include the total number of Southern DPS and any other ESA listed species taken, information that supports that take was non-lethal, and a summary of the project results must be submitted to NMFS on a schedule to be determined by NMFS staff; (i) research or monitoring that involves action, permitting or funding by a federal agency must still comply with the requirements of ESA section

7(a)(2) in order to ensure that the action will not jeopardize the continued existence of the threatened Southern DPS.

(2) Enforcement activities when an employee of NMFS, acting in the course of his or her official duties, takes the Southern DPS without a permit, if such action is necessary for purposes of enforcing the ESA or its implementing regulations.

(3) Emergency fish rescue and salvage activities that include aiding sick, injured, or stranded fish, disposing of dead fish, or salvaging dead fish for use in scientific studies, if they adhere to all of the following: (a) the activity must comply with required state or other Federal reviews or permits; (b) activities may only be conducted by an employee or designee of NMFS or the U.S. Fish and Wildlife Service (USFWS), any Federal land management agency, or California Department of Fish and Game (CDFG), Oregon Department of Fish and Wildlife (ODFW), Washington Department of Fish and Wildlife (WDFW), or Alaska Department of Fish and Game (ADFG); (c) the emergency rescue may only occur because of situations that result from natural disasters, national defense, or security emergencies (see 50 CFR 402.05); (d) the emergency rescue must benefit the Southern DPS; (e) a report must be submitted to NMFS that includes, at a minimum, the number and status of fish handled and the location of rescue and/or salvage operations within 30 days after conducting the emergency rescue.

(4) Habitat restoration activities, including barrier removal or modification to restore water flows, riverine or estuarine bed restoration, natural bank stabilization, restoration of native vegetation, removal of non-native species, or removal of contaminated sediments, that reestablish self-sustaining habitats for the Southern DPS, if they adhere to all of the following: (a) compliance with required state and Federal reviews and permits; (b) a detailed description of the restoration activity sent to NMFS at least 60 days prior to the start of the restoration project which includes: the geographic area affected; when activities will occur; how they will be conducted; and the severity of direct, indirect, and cumulative impacts of activities on the Southern DPS; identification of funding sources; demonstration that all state and federal regulatory requirements have been met; a description of methods used to ensure that the likelihood of survival or recovery of the listed species is not reduced; a plan for minimizing and mitigating any adverse impacts to Southern DPS spawning or rearing

habitat; an estimate of the amount of incidental take of the listed species that may occur and a description of how that estimate was made; a plan for effective monitoring and adaptive management; a pledge to use best available science and technology when conducting restoration activities; and a point of contact; (c) progress reports that include the total number of Southern DPS taken, information regarding whether the take was lethal or non-lethal, a summary of the status of the project, and any changes in the methods being employed, must be submitted to NMFS on a schedule to be determined by NMFS staff; (d) activities that involve action, permitting or funding by a federal agency must still comply with the requirements of ESA section 7(a)(2) in order to ensure that the action will not jeopardize the continued existence of the threatened Southern DPS.

Exemptions Provided by NMFS-approved ESA 4(d) Programs

We propose exemptions from the take prohibitions for certain activities included within a NMFS-approved 4(d) program. Activities included in a 4(d) program would be excused from the take prohibitions for the Southern DPS through a formal NMFS 4(d) program approval process described below.

ESA 4(d) Program for Commercial and Recreational Fishery Management

Take of green sturgeon in commercial and recreational fisheries activities would be allowed if fisheries activities were conducted under approved Fisheries Management and Evaluation Plans (FMEPs). We expect that, in many cases, fisheries will have acceptably small impacts on the threatened Southern DPS as long as state fishery management programs are specifically tailored to meet certain criteria. NMFS-approved FMEPs must address limiting take of green sturgeon in order to protect the listed entity, the Southern DPS. We consider this necessary because discrimination between the non-listed Northern DPS and listed Southern DPS, via gear specificity, visual indicators, spatial distribution, etc., is not currently possible. In order for NMFS to exempt commercial or recreational fishing activities from the take prohibitions, an FMEP must: (1) prohibit retention of green sturgeon (i.e. zero bag limit); (2) set maximum incidental take levels; (3) include measures to minimize incidental take of green sturgeon (e.g., temporal/spatial restrictions, size, gear); (4) provide a biologically based rationale demonstrating that the incidental take management strategy will not significantly reduce the

likelihood of survival or recovery of the Southern DPS; (5) include effective monitoring and evaluation plans; (6) provide for evaluating monitoring data and making revisions to the FMEP; (7) provide for effective enforcement and education; and (8) report the amount of incidental take and summarize the effectiveness of the FMEP to NMFS on a biannual basis. If we find that an FMEP meets these criteria, we would issue a letter of concurrence to the State that sets forth the terms of the FMEP's implementation and the duties of the parties pursuant to the FMEP.

Section 9(a)(1)(B) and (a)(1)(C) take prohibitions would not apply to ongoing commercial and recreational fisheries activities after publication of the final rule, for up to 120 days, if a letter of intent to develop an FMEP addressing green sturgeon has been received by NMFS within 30 days after the final rule is published in the **Federal Register**. The exemption will be suspended if the letter of intent is rejected without further review of an FMEP. If the letter of intent is received within 30 days of publication of the final 4(d) rule in the **Federal Register**, a final FMEP must be received by NMFS within 120 days from the date of receipt of the letter of intent. Ongoing commercial and recreational fisheries activities may continue until NMFS issues a letter of concurrence (or denial) for final FMEPs.

Once an FMEP has been submitted to NMFS for review, NMFS will: (1) provide a public comment period (≥ 30 days) before approval of new or amended FMEPs; (2) provide a letter of concurrence for approved FMEPs that specifies the implementation and reporting requirements; (3) evaluate FMEPs on a regular basis and identify changes that would improve their effectiveness; and (4) provide a public comment period (≥ 30 days) before withdrawing approval of an FMEP.

ESA 4(d) Program for Tribal Fishery Management

Fishery harvest or other activities conducted by a tribe, tribal member, tribal permittee, tribal employee, or tribal agent in Willapa Bay, WA, Grays Harbor, WA, Coos Bay, OR, Winchester Bay, OR, Humboldt Bay, CA, and any other area where tribal treaty fishing occurs are eligible to obtain take authorization via the same method outlined in the NMFS final rule for authorizing take of threatened salmon and steelhead for actions under tribal resource management plans (July 10, 2000; 65 FR 42481). This method has been modified below for the Southern DPS. We consider current tribal fishing activities to have acceptably small

impacts on the threatened Southern DPS and propose that if the tribes, either singly or jointly, develop tribal resource management plans for the Southern DPS, or incorporate the Southern DPS into existing tribal resource management plans, that current and future tribal activities are not likely to appreciably reduce the likelihood of survival and recovery of the species.

A tribe intending to exercise a tribal right to fish or undertake other resource management actions that may impact the threatened Southern DPS could create a tribal resource management plan (Tribal Plan) that would assure that those actions would not appreciably reduce the likelihood of survival and recovery of the species. The Secretary would stand ready to the maximum extent practicable to provide technical assistance to any tribe that so requests in examining impacts on the listed Southern DPS and in the development of Tribal Plans that meet tribal management responsibilities and needs. In making a determination whether a Tribal Plan will appreciably reduce the likelihood of survival and recovery of the threatened Southern DPS, the Secretary, in consultation with the tribe, would use the best available scientific and commercial data (including careful consideration of any tribal data and analysis) to determine the Tribal Plan's impact on the biological requirements of the species. The Secretary would also assess the effect of the Tribal Plan on survival and recovery in a manner consistent with tribal rights and trust responsibilities. Before making a final determination, the Secretary would seek comment from the public on his pending determination whether or not implementation of a Tribal Plan will appreciably reduce the likelihood of survival and recovery of the listed Southern DPS. The Secretary would publish notification in the **Federal Register** of any determination regarding a Tribal Plan and the basis for that determination.

ESA 4(d) Program for Scientific Research and Monitoring Activities

State-coordinated research activities for scientific research or enhancement purposes that do not fall into the exception category described above (see Exceptions, Criteria for Exceptions, and Reporting Requirements) may receive an exemption from the take prohibitions for the Southern DPS for activities included in a state-sponsored, ESA-compliant, scientific research program between state fishery agencies (i.e., CDFG, ODFW, WDFW, or ADFG) and NMFS, hereafter referred to as a state 4(d) research program. Activities

conducted as part of a state 4(d) research program must meet existing state and federal laws and regulations and would include research and monitoring projects conducted by state employees or by recipients of state fishery agency-issued permits (including Federal and non-Federal entities), that directly or incidentally take Southern DPS green sturgeon. We find that in carrying out their responsibilities to manage state fisheries, state agencies are conducting or sponsoring research vital for improving our understanding of the status and risks facing the Southern DPS and other listed species that occur in overlapping habitat, and provide critical information for assessing the effectiveness of current and future management practices.

State 4(d) research programs have been developed and implemented in California, Oregon, and Washington for listed West coast salmon and steelhead and are consistent with ESA requirements for research-related take of these listed species. The Southern DPS would most likely be incorporated into the existing state 4(d) research programs established for listed salmon and steelhead. Otherwise, the state would be required to prepare a program and submit it to NMFS for approval. NMFS may approve the program or return the program to the state agency for revision.

In general, we conclude that as long as state biologists and cooperating agencies carefully consider the benefits and risks of activities included in a state 4(d) research program, such programs would help streamline the take authorization process for researchers, state agencies, and NMFS by allowing state fishery agencies to maintain primary responsibility for coordination and oversight of research activities. Each year, researchers would be required to submit research applications to the state fishery agency preferably through the NMFS online application website Authorizations and Permits for Protected Species (APPS) at <https://apps.nmfs.noaa.gov>. Research applications must include, at a minimum, the following information: (1) an estimate of the total direct or incidental take of Southern DPS fish that is anticipated; (2) a description of the study design and methodology; (3) a justification for take of Southern DPS fish and the techniques to be employed; and (4) a point of contact. The state agency would have access, via NMFS, to the submitted applications, evaluate and determine which projects are eligible for inclusion under the program, and approve or deny individual project applications. Once the state agency

review is complete, the state agency would be required to provide for NMFS' review and approval a list of project applications approved for possible inclusion in a 4(d) research program for the coming year. After our review of the applications and follow-ups with the researchers to address concerns if necessary, we would analyze effects of the activities on the Southern DPS. Finally, we would complete the ESA section 7 consultation and NEPA documentation and issue an approval letter to the state fishery agency confirming that the research activities covered within the 4(d) research program are exempt from the ESA take prohibitions. A section 10 permit is not issued. Researchers have to comply with the conditions of the 4(d) research program and must submit an annual report, preferably through the NMFS online application website Authorizations and Permits for Protected Species (APPS) at <https://apps.nmfs.noaa.gov>. The annual report must include, for each project: (1) a summary of the number of green sturgeon taken directly or incidentally; and (2) a summary of the results of the project, in order for NMFS to evaluate the effects of the research project on the Southern DPS. We would continue to work with the state fishery agencies to ensure authorized research involving listed Southern DPS fish is both coordinated and conducted in a manner

that does not jeopardize the conservation and recovery of the Southern DPS.

Section 9(a)(1)(B) and 9(a)(1)(C) take prohibitions would not apply to ongoing state-supported scientific research and enhancement activities seeking take authorization of the Southern DPS fish through a state 4(d) program, if the above information is provided to NMFS, preferably through the NMFS online application website Authorizations and Permits for Protected Species (APPS) at <https://apps.nmfs.noaa.gov>, within 120 days after publication of the final 4(d) rule. The take prohibitions would take effect if the state 4(d) program package is rejected as insufficient or is denied. If the state 4(d) research program package is received no later than 120 days after publication of the final 4(d) rule, ongoing state-supported scientific research activities may continue until NMFS issues a written decision of approval or denial.

Take Authorizations Provided By ESA Sections 7 or 10

Federally funded, authorized, or implemented activities that may require take authorization (see Proposed 4(d) Protective Regulations for the Southern DPS), and are not covered under Exceptions, Criteria for Exceptions, and Reporting Requirements or Exemptions Provided by NMFS-approved 4(d) Programs above, will be examined on a

case-by-case basis through interagency consultation as prescribed by ESA section 7. All other activities (i.e., those not federally funded, authorized, or implemented) that may require take authorization, and are not covered under Exceptions, Criteria for Exceptions, and Reporting Requirements or Exemptions Provided by NMFS-approved 4(d) Programs above, will be examined on a case-by-case basis as prescribed by ESA section 10.

Federal, state and private-sponsored research activities for scientific research or enhancement purposes that are not covered under Exceptions, Criteria for Exceptions, and Reporting Requirements or Exemptions Provided by NMFS-approved 4(d) Programs above, may take Southern DPS fish pursuant to the specifications of an ESA section 10 permit. Section 9(a)(1)(B) and (a)(1)(C) take prohibitions would not apply to ongoing research activities if an application for an ESA section 10 (a)(1)(A) permit is received by NMFS no later than 120 days after publication of the final 4(d) rule. The take prohibitions would take effect if the permit application is rejected as insufficient or a permit is denied. If the permit application is received no later than 120 days after publication of the final 4(d) rule, ongoing research activities may continue without take prohibitions until NMFS issues or denies a permit.

TABLE 1. EVALUATION OF ACTIVITIES THAT MAY OCCUR THROUGHOUT THE AREA AFFECTED BY THE PROPOSED PROHIBITIONS FOR SOUTHERN DPS FISH, EGGS OR LARVAE.

Activity	Take	Take of Surrogate Species	Protective/Conservation Measures or Benefits	Take Authorization Necessary	Methods of Take Authorization	
					ESA section 7 or 10	4(d) Program
Fishing						
Commercial	Y		Y	Y	Y	Y
Recreational	Y		Y	Y	Y	Y
Tribal	Y		Y	Y	Y	Y
Poaching	N	Y	N	N/A	N	N
Collection or Handling						
Research/monitoring						
Federal, State or Private-sponsored (compliant with Exceptions)	Y		Y	N		
State-sponsored (outside scope of Exceptions)	Y		Y	Y	Y	Y
Federal or Private-sponsored (outside scope of Exceptions)	Y		Y	Y	Y	N
Emergency Rescue (compliant with Exceptions)	N	Y	Y	N		

TABLE 1. EVALUATION OF ACTIVITIES THAT MAY OCCUR THROUGHOUT THE AREA AFFECTED BY THE PROPOSED PROHIBITIONS FOR SOUTHERN DPS FISH, EGGS OR LARVAE.—Continued

Activity	Take	Take of Surrogate Species	Protective/Conservation Measures or Benefits	Take Authorization Necessary	Methods of Take Authorization	
					ESA section 7 or 10	4(d) Program
Emergency Rescue (outside scope of Exceptions)	N	Y	N	Y	Y	N
Detrimental Habitat-Altering Activities						
Activities that Eliminate, Obstruct, or Delay Passage						
Dam installation, repair, modification, operation	Y		Y	Y	Y	N
Diversion installation, repair, modification, operation	Y		Y	Y	Y	N
Activities that Destroy, Modify, or Curtail Spawning or Rearing Habitat						
Input of fine sediments/runoff	N	Y	Y	Y	Y	N
Dam installation, repair, modification, operation	Y		Y	Y	Y	N
Diversion installation, repair, modification, operation	Y		Y	Y	Y	N
Filling/isolation of channels/intermittent waters	N	N	Y	Y	Y	N
Removal/alteration of physical structure that provides spawning/rearing habitat	N	N	Y	Y	Y	N
Habitat Restoration (compliant with Exceptions)						
Barrier removal/modification to restore flows	N	N	Y	N		
Riverine or estuarine bed restoration	N	N	Y	N		
Natural bank protection	N	N	Y	N		
Restoration of native vegetation	N	N	Y	N		
Removal of non-native species	N	N	Y	N		
Removal of contaminated sediments	N	N	Y	N		
Habitat Restoration (outside scope of Exceptions)	N	N	N	Y	Y	N
Entrainment/Impingement						
Water diversions	Y		Y	Y	Y	N
Power generating projects	Y		Y	Y	Y	N
Dredging	N	Y	Y	Y	Y	N
Pesticide/Pollutant Discharge	N	Y	Y	Y	Y	N
Non-native Species Introductions	N	Y	Y	N/A	N	N

Note: Evidence of take of the Southern DPS during the course of an activity is indicated (yes or no; Y or N); if there is no such evidence, then evidence of take of a surrogate species is indicated (Y or N). Existence of protective/conservation measures to minimize take of Southern DPS fish during the course of the activity or to benefit the Southern DPS is indicated (Y or N). Based on best available information and expert opinion, whether an activity requires take authorization (Y or N) or is illegal according to other laws and therefore cannot be authorized (N/A), and whether methods for allowing take resulting from a particular activity exist through ESA sections 7 or 10 or through a proposed ESA section 4(d) Program (Y or N). This is not an exhaustive list of all activities that occur throughout the area affected by the proposed take prohibitions. Please see *Proposed 4(d) Protective Regulations for the Southern DPS* for the full range of activities for which NMFS is proposing to prohibit take.

Under section 9(b)(1) of the ESA, Southern DPS fish held in captivity or a controlled environment prior to the ESA listing are exempt from the prohibitions of section 9(a)(1)(A) and (a)(1)(G) of the ESA and would therefore also be exempt from the prohibitions of

this proposed regulation, provided that holding and any subsequent holding or use of the fish is not for commercial activity. The burden of proof that Southern DPS fish were taken prior to listing lies with the individual holding the animals. The prohibitions of this

proposed regulation would, however, apply to any progeny of Southern DPS fish taken prior to listing.

Summary

We propose to apply the section 9 take prohibitions to the Southern DPS,

while providing exceptions for some activities (i.e., some types of research/monitoring, enforcement, emergency rescue/salvage, and habitat restoration; see Exceptions, Criteria for Exceptions, and Reporting Requirements) that NMFS finds will not impede, and in most cases will promote, the conservation of the species. However, if the activity is federally funded, authorized or implemented it will still be subject to NMFS review under the ESA jeopardy standard (i.e. ESA section 7(a)(2)). Apart from the subset of activities defined in Exceptions, Criteria for Exceptions, and Reporting Requirements above, if the Southern DPS is anticipated to be taken during the course of an activity, several methods may be pursued to obtain take authorization depending on the specific circumstances of the activity. For federally funded, authorized or implemented activities, the traditional method of seeking take coverage through ESA sections 7 or 10 exists. For activities that are not federally funded, authorized or implemented, take authorization may be obtained through ESA section 10, by establishing a NMFS-approved 4(d) program (i.e., for commercial or recreational fishing activities or state-sponsored research outside the scope of those activities defined in Exceptions, Criteria for Exceptions, and Reporting Requirements) that adequately protects the Southern DPS, or by developing a tribal resource management plan that will not appreciably reduce the likelihood of survival and recovery of the Southern DPS (see Exemptions Provided by NMFS-approved ESA 4(d) Programs). Take of the Southern DPS due to poaching and non-native species introductions is illegal according to existing state and/or federal laws, thus no method of take authorization is being proposed for these activities.

Public Comments Solicited

We invite comments and suggestions from all interested parties regarding the proposed protective regulations for the Southern DPS under section 4(d) of the ESA (see **ADDRESSES**). Data, information, and comments that are accompanied by supporting documentation such as maps, logbooks, bibliographic references, personal notes, and/or reprints of pertinent publications are helpful and appreciated.

Public Hearing

The ESA provides for a public hearing on this proposal, if requested. Requests must be filed by the date specified in the DATES section above. Such requests must be made in writing and addressed

to the Chief, Protected Resources Division, Attn: Melissa Neuman, Southwest Region, National Marine Fisheries Service, 501 West Ocean Blvd., Suite 4200, Long Beach, CA 90802-4213.

Peer Review

In December 2004, the Office of Management and Budget (OMB) issued a Final Information Quality Bulletin for Peer Review (Peer Review Bulletin) establishing minimum peer review standards, a transparent process for public disclosure, and opportunities for public input. The Peer Review Bulletin, implemented under the Information Quality Act (Public Law 106 554), is intended to provide public oversight on the quality of agency information, analyses, and regulatory activities. The text of the Peer Review Bulletin was published in the **Federal Register** on January 14, 2005 (70 FR 2664). The Peer Review Bulletin requires Federal agencies to subject "influential" scientific information to peer review prior to public dissemination. Influential scientific information is defined as "information the agency reasonably can determine will have or does have a clear and substantial impact on important public policies or private sector decisions," and the Peer Review Bulletin provides agencies broad discretion in determining the appropriate process and level of peer review. The Peer Review Bulletin establishes stricter standards for the peer review of "highly influential" scientific assessments, defined as information whose "dissemination could have a potential impact of more than \$500 million in any one year on either the public or private sector or that the dissemination is novel, controversial, or precedent-setting, or has significant interagency interest." We do not consider the scientific information underlying the proposed protective regulations to constitute influential scientific information as defined in the Peer Review Bulletin. The information is not novel; similar information for listed salmonids whose range substantially overlaps with that of the Southern DPS has been used in support of protective regulations that have been in existence for a number of years. Therefore the agency expects the information to be non-controversial and have minimal impacts on important public policies or private sector decisions.

References

A complete list of the references used in this proposed rule is available upon

request (see **ADDRESSES**) or via the internet at <http://www.swr.noaa.gov>.

Classification

Regulatory Flexibility Act

The Regulatory Flexibility Act (RFA) (5 U.S.C. 601B612) was designed to ensure that agencies carefully assess whether aspects of a proposed regulatory scheme (record keeping, safety requirements, etc.) can be tailored to be less burdensome for small businesses while still achieving the agency's statutory responsibilities. When an agency proposes regulations, the Regulatory Flexibility Act (RFA) (5 U.S.C. 601B612) requires the agency to prepare and make available for public comment an initial regulatory flexibility analysis (IRFA) that describes the impact of the proposed rule on small businesses, nonprofit enterprises, local governments, and other small entities, unless the agency is able to certify that the action will not have a significant impact on a substantial number of small entities. This proposed ESA 4(d) rule has specific requirements for regulatory compliance and sets an enforceable performance standard (do not take listed fish) when conducting specific activities unless that activity is within a carefully circumscribed set of activities on which NMFS proposes not to impose the take prohibitions. Hence, the universe of entities reasonably expected to be directly or indirectly impacted by the prohibition is broad.

Based on the language of the proposed 4(d) rule, as well as a review of existing section 7 consultations for the Southern DPS of green sturgeon and co-existing salmon and steelhead species, the IRFA identified the following activities that may be affected by this proposed rule: commercial, recreational and tribal fisheries; dams and water diversions; power production (electric services and gas distribution); crop agriculture and point source pollutants (NPDES-permitted activities); habitat-altering activities; and in-water construction and dredging activities. A great deal of uncertainty exists with regard to how potentially regulated entities will attempt to avoid take of the Southern DPS. This is caused by two factors: relatively little data exist on green sturgeon abundance and behavior, and NMFS has a short history of managing the Southern DPS. In addition, the spatial distribution of the Southern DPS overlaps nearly entirely with habitat for salmon and steelhead species. Several key variables, such as whether current fish passage facilities and fish screens designed to protect salmon species will be considered adequate to provide

passage for the Southern DPS over the long term, remain undetermined at this time. Thus, while baseline protections are expected to be afforded to the Southern DPS on behalf of salmon and steelhead species, the degree to which incremental measures would be required for the Southern DPS has not been determined. As such, the IRFA does not provide estimates of total costs of conservation measures likely to be undertaken for the Southern DPS. Instead, the analysis characterizes potential impacts on affected industries.

In formulating this proposed rule, we considered five alternative approaches, described in more detail in the IRFA. These are: (1) a No Action Alternative where no ESA section 9(a)(1) prohibitions or any other protective regulations are applied to the Southern DPS; (2) a Full Action Alternative where all ESA section 9(a)(1) prohibitions are applied to the Southern DPS; (3) Alternative A where the prohibitions listed under ESA section 9(a)(1)(A) and 9(a)(1)(D) through 9(a)(1)(G) are applied to the Southern DPS and the take prohibitions (ESA section 9(a)(1)(B) and 9(a)(1)(C)) are applied to specific categories of activities that either cause take of Southern DPS fish; (4) Alternative B (Proposed Action) where ESA section 9(a)(1) prohibitions are applied to the Southern DPS as in the Full Action Alternative, but with exceptions and exemptions for activities that NMFS has determined to be adequately protective of the Southern DPS; and (5) Alternative C where the ESA section 9(a)(1) prohibitions are applied as described in Alternative A, but with exceptions from the take prohibitions (ESA section 9(a)(1)(B) and 9(a)(1)(C)) for activities that NMFS has determined to be adequately protective of the Southern DPS.

The comparative analysis of the alternatives is described in more detail in the IRFA. In summary, the Full Action Alternative and Alternative B (Proposed Action) are anticipated to affect the largest number of industries, but the impacts Alternative B will have on those industries is expected to be less severe because certain activities may be allowed to continue (e.g., some habitat restoration, emergency rescue, and research/monitoring activities) under this alternative. Alternatives A and C are anticipated to affect a smaller number of industries than the Full Action Alternative and Alternative B. For reasons similar to those explained above, Alternative C is expected to have a less severe impact on the affected industries than Alternative A. The No Action Alternative will have no effect on industries. We invite comments on

the alternative contained in this proposed rule and on whether there is a preferable alternative (including alternatives not described here) that would meet the statutory requirements of ESA section 4(d). We also solicit information regarding the impact that alternative would have on your economic activity and why the alternative is preferable.

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

The proposed ESA section 4(d) regulations addressed in this rule have been determined to be not significant for the purposes of E.O. 12866. Section 1(b)(12) of E.O. 12866 also requires each agency to write regulations that are easy to understand. We invite your comments (see **ADDRESSES**) on how to make this proposed rule easier to understand, including answers to questions such as the following: (1) Are the requirements in the rule clearly stated? (2) Does the rule contain technical language or jargon that interferes with its clarity? (3) Does the format of the rule (grouping and order of sections, use of headings, paragraphing, etc.) aid or reduce its clarity? (4) Would the rule be easier to understand if it were divided into more (but shorter) sections? (5) Is the description of the rule in the **SUPPLEMENTARY INFORMATION** section of the preamble helpful in understanding the rule? (6) What else could NMFS do to make the rule easier to understand?

E.O. 12988 - Civil Justice Reform

We have determined that this proposed rule does not unduly burden the judicial system and meets the requirements of sections 3(a) and 3(b)(2) of E.O. 12988. We are proposing protective regulations pursuant to provisions in the ESA using an existing approach that improves the clarity of the regulations and minimizes the regulatory burden of managing ESA listings while retaining the necessary and advisable protections to provide for the conservation of threatened species.

E.O. 13175 - Consultation and Coordination With Indian Tribal Governments

E.O. 13175 requires that if NMFS issues a regulation that significantly or uniquely affects the communities of Indian tribal governments and imposes substantial direct compliance costs on those communities, NMFS must consult with those governments, or the Federal Government must provide the funds necessary to pay the direct compliance costs incurred by the tribal governments. This proposed rule may

impose substantial direct compliance costs on the communities of Indian tribal governments within the range of this DPS. Accordingly, the requirements of section 5(b) and (c) of E.O. 13175 may apply to this proposed rule. Thus, we intend to inform potentially affected tribal governments and to solicit their input on the proposed rule and will continue coordination and discussions with interested tribes as NMFS moves toward a final rule.

E.O. 13132 - Federalism

E.O. 13132 requires agencies to take into account any federalism impacts of regulations under development. It includes specific consultation directives for situations where a regulation will preempt state law, or impose substantial direct compliance costs on state and local governments (unless required by statute). Neither of those circumstances is applicable to this proposed rule. In fact, this notice proposes mechanisms by which NMFS, in the form of 4(d) exceptions to take prohibitions, may defer to state and local governments where they provide necessary protections for the Southern DPS.

Paperwork Reduction Act

Notwithstanding any other provision of the law, no person is required to respond to, nor shall any person be subject to a penalty for failure to comply with, a collection of information subject to the requirements of the PRA, unless that collection of information displays a currently valid OMB Control Number.

This proposed rule contains collection-of-information requirements subject to the Paperwork Reduction Act (PRA) and which have been submitted to OMB for review and approval. Public reporting burden per response for this collection of information is estimated to average: (1) 40 hours for development of a Fisheries Management and Evaluation Plan; (2) 20 hours for development of a Tribal Fishery Management Plan; (3) 40 hours for development of a State-sponsored scientific research program; (4) 5 hours to prepare reports on emergency rescue, salvage or disposal of Southern DPS fish; (5) 40 hours to prepare reports on restoration activities; and (6) 40 hours to prepare reports on federal and private-sponsored research and monitoring. These estimates include the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. We invite comments regarding these burden estimates, or any other aspect of this data collection, including suggestions for reducing the burden, to

NMFS (see **ADDRESSES**) and to OMB at the Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, DC. 20503 (Attention: NOAA Desk Officer).

National Environmental Policy Act (NEPA)

Whenever a species is listed as threatened, the ESA requires that we shall issue such regulations as we deem necessary and advisable to provide for its conservation. Accordingly, the promulgation of ESA section 4(d) protective regulations is subject to the requirements of NEPA, and we have prepared a draft Environmental Assessment (EA) analyzing the proposed 4(d) regulations and alternatives. We are seeking comment on the draft EA, which is available on the Federal eRulemaking Portal web site (<http://www.regulations.gov>) or upon request (see **DATES** and **ADDRESSES**, above).

E.O. 13211 - Energy Supply, Distribution, or Use

E.O. 13211 requires agencies to prepare Statements of Energy Effects when undertaking certain actions. According to E.O. 13211, "Asignificant energy action" means any action by an agency that is expected to lead to the promulgation of a final rule or regulation that is a significant regulatory action under E.O. 12866 and is likely to have a significant adverse effect on the supply, distribution, or use of energy. NMFS has determined that the energy effects are unlikely to exceed the energy impact thresholds identified in E.O. 13211 because this proposed rule is not significant under E.O. 12866, and the spatial scope of this proposed rule overlaps with areas where protections for listed salmon are in effect. It is likely that the modifications required for salmon are similar enough to those that would be required for the Southern DPS such that the proposed action is not a significant energy action, and no Statement of Energy Effects is required.

List of Subjects in 50 CFR Part 223

Endangered and threatened species, Exports, Imports, Transportation.

Dated: May 14, 2009.

James W. Balsiger,

Acting Assistant Administrator for Fisheries, National Marine Fisheries Service.

For the reasons set out in the preamble, 50 CFR part 223 is proposed to be amended as follows:

PART 223—THREATENED MARINE AND ANADROMOUS SPECIES

1. The authority citation for part 223 continues to read as follows:

Authority: 16 U.S.C. 1531 1543; subpart B, § 223.201 202 also issued under 16 U.S.C. 1361 *et seq.*; 16 U.S.C. 5503(d) for § 223.206(d)(9).

2. In subpart B of part 223, add § 223.210 to read as follows:

§ 223.210 North American green sturgeon.

(a) *Prohibitions.* The prohibitions of section 9(a)(1)(A) through 9(a)(1)(G) of the ESA (16 U.S.C. 1538) relating to endangered species apply to the threatened Southern Distinct Population Segment (DPS) of North American green sturgeon listed in § 223.102(c)(1).

(b) *Exceptions.* Exceptions to the take prohibitions described in section 9(a)(1)(B) and (C) of the ESA (16 U.S.C. 1538(a)(1)(B) and (C)) applied in paragraph (a) of this section to the threatened Southern DPS listed in § 223.102(c) are described in paragraphs (b)(1) through (b)(3) of this section.

(1) *Scientific research and monitoring exceptions.* The prohibitions of paragraph (a) of this section relating to the threatened Southern DPS listed in § 223.102(c)(1) do not apply to ongoing or future Federal, state, or private-sponsored scientific research or monitoring activities if:

(i) The scientific research or monitoring activity complies with required state reviews or permits.

(ii) The research or monitoring activity is directed at the Southern DPS and is not incidental to research or monitoring of another species.

(iii) Take of live mature adults in the lower Feather River from the confluence with the Sacramento River to the Oroville Dam (rkm 116), the lower Yuba River from the confluence with the Feather River to the Daguerre Dam (rkm 19), or Suisun, San Pablo, and San Francisco Bays or the Sacramento-San Joaquin Delta from the Golden Gate Bridge up into the Sacramento River to Keswick Dam (rkm 483) occurs from July 1 through March 1 so as to substantially increase the likelihood that uninterrupted upstream spawning migrations of adults will occur.

(iv) Take is non-lethal.

(v) Take involving the removal of any life stage of the Southern DPS from the wild does not exceed 60 minutes.

(vi) Take does not involve artificial spawning or enhancement activities.

(vii) A description of the study objectives and justification, a summary of the study design and methodology, estimates of the total non-lethal take of Southern DPS fish anticipated,

estimates of incidental take of other ESA listed species anticipated and proof that those takes have been authorized by NMFS or the USFWS, identification of funding sources, and a point of contact is reported to the NMFS Southwest Regional Office in Long Beach at least 60 days prior to the start of the study, or within 60 days after publication of the final rule for ongoing studies.

(viii) Reports that include the total number of Southern DPS and any other ESA listed species taken, information that supports that take was non-lethal, and a summary of the project results is submitted to the NMFS Southwest Regional Office in Long Beach on a schedule to be determined by NMFS.

(ix) Research or monitoring that involves action, permitting or funding by a Federal agency still complies with the requirements of ESA section 7(a)(2) in order to ensure that the action will not jeopardize the continued existence of the threatened Southern DPS.

(2) *Enforcement exception.* The prohibitions of paragraph (a) of this section relating to the threatened Southern DPS listed in § 223.102(c)(1) do not apply to any employee of NMFS, when the employee, acting in the course of his or her official duties, takes the Southern DPS listed in § 223.102(c)(1) without a permit, if such action is necessary for purposes of enforcing the ESA or its implementing regulations.

(3) *Emergency fish rescue and salvage exceptions.* The prohibitions of paragraph (a) of this section relating to the threatened Southern DPS listed in § 223.102(c)(1) do not apply to emergency fish rescue and salvage activities that include aiding sick, injured, or stranded fish, disposing of dead fish, or salvaging dead fish for use in scientific studies, if:

(i) The activity complies with required state or other Federal reviews or permits.

(ii) The activity is conducted by an employee or designee of NMFS or the U.S. Fish and Wildlife Service (USFWS), any Federal land management agency, or California Department of Fish and Game, Oregon Department of Fish and Wildlife, Washington Department of Fish and Wildlife, or Alaska Department of Fish and Game.

(iii) The activity occurs only because of emergency situations that result from natural disasters, national defense, or security emergencies (see § 402.05 of this title).

(iv) The activity benefits the Southern DPS.

(v) Those carrying out the activity submit a report to the NMFS Southwest Regional Office in Long Beach that includes, at a minimum, the number

and status of fish handled and the location of rescue and/or salvage operations within 30 days after conducting the emergency rescue.

(4) *Habitat restoration exceptions.*

The prohibitions of paragraph (a) of this section relating to the threatened Southern DPS listed in § 223.102(c)(1) do not apply to habitat restoration activities including barrier removal or modification to restore water flows, riverine or estuarine bed restoration, natural bank stabilization, restoration of native vegetation, removal of non-native species, or removal of contaminated sediments, that reestablish self-sustaining habitats for the Southern DPS, if:

(i) The activity complies with required state and Federal reviews and permits.

(ii) Those carrying out the activity submit a detailed description of the restoration activity to the NMFS Southwest Regional Office in Long Beach at least 60 days prior to the start of the restoration project which includes: the geographic area affected; when activities will occur; how they will be conducted; and the severity of direct, indirect, and cumulative impacts of activities on the Southern DPS; identification of funding sources; demonstration that all state and federal regulatory requirements have been met; a description of methods used to ensure that the likelihood of survival or recovery of the listed species is not reduced; a plan for minimizing and mitigating any adverse impacts to Southern DPS spawning or rearing habitat; an estimate of the amount of incidental take of the listed species that may occur and a description of how that estimate was made; a plan for effective monitoring and adaptive management; a pledge to use best available science and technology when conducting restoration activities; and a point of contact.

(iii) Those carrying out the activity submit progress reports that include the total number of Southern DPS taken, information regarding whether the take was lethal or non-lethal, a summary of the status of the project, and any changes in the methods being employed, to the NMFS Southwest Regional Office in Long Beach on a schedule to be determined by NMFS.

(iv) An activity that involves action, permitting or funding by a federal agency complies with the requirements of ESA section 7(a)(2) in order to ensure that the action will not jeopardize the continued existence of the threatened Southern DPS.

(c) *Exemptions via ESA 4(d) program approval.* Exemptions from the take prohibitions described in section

9(a)(1)(B) and (C) of the ESA (16 U.S.C. 1538(a)(1)(B) and (C)) applied in paragraph (a) of this section to the threatened Southern DPS listed in § 223.102(c) are described in paragraphs (c)(1) through (c)(3) of this section.

(1) *Scientific research and monitoring exemptions.* The prohibitions of paragraph (a) of this section relating to the threatened Southern DPS listed in § 223.102(c)(1) do not apply to ongoing or future state-sponsored scientific research or monitoring activities that are part of a NMFS-approved, ESA-compliant state 4(d) research program conducted by, or in coordination with, state fishery management agencies (California Department of Fish and Game, Oregon Department of Fish and Wildlife, Washington Department of Fish and Wildlife, or Alaska Department of Fish and Game), or as part of a monitoring and research program overseen by, or coordinated by, one of these agencies. State 4(d) research programs must meet the following criteria:

(i) Descriptions of the ongoing and future 4(d) research or monitoring activity, as described in paragraph (c)(1)(ii) of this section, must be received by the NMFS Southwest Regional Office in Long Beach within 120 days after publication of the final 4(d) rule. This exception to the section 9 take prohibitions expires if the proposal is rejected as insufficient or is denied.

(ii) Descriptions of ongoing and future state-supported research activities must include the following information and should be submitted to NMFS by the State: an estimate of total direct or incidental take; a description of the study design and methodology; a justification for take and the techniques employed; and a point of contact.

(iii) NMFS will provide written approval of a state 4(d) research program.

(iv) The State agency will provide an annual report to NMFS that, at a minimum, summarizes the number of Southern DPS green sturgeon taken directly or incidentally, and summarizes the results of the project.

(2) *Fisheries exemptions.* The prohibitions of paragraph (a) of this section relating to the threatened Southern DPS listed in § 223.102(c)(1) do not apply to fisheries activities that are conducted in accordance with a NMFS-approved Fishery Management and Evaluation Plan (FMEP). If NMFS finds that an FMEP meets the criteria listed below, a letter of concurrence which sets forth the terms of the FMEP's implementation and the duties of the

parties pursuant to the FMEP, will be issued to the state.

(i) An FMEP must prohibit retention of green sturgeon (i.e. zero bag limit); set maximum incidental take levels, include restrictions to minimize incidental take of the green sturgeon (e.g., temporal/spatial restrictions, size of fish, gear used); provide a biologically based rationale demonstrating that the incidental take management strategy will not significantly reduce the likelihood of survival or recovery; include effective monitoring and evaluation plans; provide for evaluating monitoring data and making revisions to the FMEP; provide for effective enforcement and education; and report the amount of incidental take and summarize the effectiveness of the FMEP to NMFS on a biannual basis.

(ii) The ESA section 9(a)(1)(B) and (a)(1)(C) take prohibitions will not apply to ongoing commercial and recreational fisheries activities after publication of the final rule, for up to 120 days, if a letter of intent to develop an FMEP that is protective of green sturgeon has been received by NMFS within 30 days after the final rule is published in the **Federal Register**. The exemption will expire if the letter of intent is rejected without further review of a FMEP. If the letter of intent is received within 30 days of publication of the final 4(d) rule in the **Federal Register**, a final FMEP must be received by NMFS within 120 days from the date of receipt of the letter of intent. Ongoing commercial and recreational fisheries activities may continue until NMFS issues a letter of concurrence or denial for final FMEPs.

(iii) NMFS' will provide a public comment period (\geq 30 days) before approval of new or amended FMEPs; provide a letter of concurrence for approved FMEPs that specifies the implementation and reporting requirements; evaluate FMEPs on a regular basis and identify changes that would improve their effectiveness; and provide a public comment period (\geq 30 days) before withdrawing approval of an FMEP.

(3) *Tribal exemptions.* The prohibitions of paragraph (a) of this section relating to the threatened Southern DPS listed in § 223.102(c)(1) do not apply to fishery harvest or other activities, undertaken by a tribe, tribal member, tribal permittee, tribal employee, or tribal agent in Willapa Bay, WA, Grays Harbor, WA, Coos Bay, OR, Winchester Bay, OR, Humboldt Bay, CA, and any other area where tribal treaty fishing occurs, if those activities are compliant with a tribal resource management plan (Tribal Plan), provided that the Secretary determines

that implementation of such Tribal Plan will not appreciably reduce the likelihood of survival and recovery of the Southern DPS. In making that determination the Secretary shall use the best available biological data (including any tribal data and analysis) to determine the Tribal Plan's impact on the biological requirements of the species, and will assess the effect of the Tribal Plan on survival and recovery, consistent with legally enforceable tribal rights and with the Secretary's trust responsibilities to tribes.

(i) A Tribal Plan may include, but is not limited to, plans that address fishery harvest, artificial production, research, or water or land management, and may be developed by one tribe or jointly with other tribes. The Secretary will consult on a government-to-government basis with any tribe that so requests and will provide, to the maximum extent practicable, technical assistance in examining impacts on the Southern DPS

as tribes develop Tribal Plans. A Tribal Plan must specify the procedures by which the tribe will enforce its provisions.

(ii) Where there exists a Federal court proceeding with continuing jurisdiction over the subject matter of a Tribal Plan, the plan may be developed and implemented within the ongoing Federal Court proceeding. In such circumstances, compliance with the Tribal Plan's terms shall be determined within that Federal Court proceeding.

(iii) The Secretary shall seek comment from the public on the Secretary's pending determination whether or not implementation of a Tribal Plan will appreciably reduce the likelihood of survival and recovery of the listed Southern DPS.

(iv) The Secretary shall publish notification in the **Federal Register** of any determination regarding a Tribal Plan and the basis for that determination.

(d) *Affirmative defense.* In connection with any action alleging a violation of the prohibitions of paragraph (a) of this section with respect to the threatened Southern DPS of North American green sturgeon listed in § 223.102(c)(1), any person claiming that their take is authorized via methods listed in paragraph (b) of this section shall have a defense where the person can demonstrate that the take authorization is applicable and was in force, and that the person fully complied with the take authorization requirements at the time of the alleged violation. This defense is an affirmative defense that must be raised, pleaded, and proven by the proponent. If proven, this defense will be an absolute defense to liability under section 9(a)(1)(G) of the ESA with respect to the alleged violation.

[FR Doc. E9-11945 Filed 5-20-09; 8:45 am]

BILLING CODE 3510-22-S

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

Submission for OMB Review; Comment Request

May 15, 2009.

The Department of Agriculture has submitted the following information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1995, Public Law 104-13. Comments regarding (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (b) the accuracy of the agency's estimate of burden including the validity of the methodology and assumptions used; (c) ways to enhance the quality, utility and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology should be addressed to: Desk Officer for Agriculture, Office of Information and Regulatory Affairs, Office of Management and Budget (OMB), OIRA_Submission@OMB.EOP.GOV or fax (202) 395-5806 and to Departmental Clearance Office, USDA, OCIO, Mail Stop 7602, Washington, DC 20250-7602. Comments regarding these information collections are best assured of having their full effect if received within 30 days of this notification. Copies of the submission(s) may be obtained by calling (202) 720-8958.

An agency may not conduct or sponsor a collection of information unless the collection of information displays a currently valid OMB control number and the agency informs potential persons who are to respond to the collection of information that such persons are not required to respond to

the collection of information unless it displays a currently valid OMB control number.

Animal and Plant Health Inspection Service

Title: Requirements for Request To Amend 7 CFR Part 319 Import Regulations.

OMB Control Number: 0579-0261.

Summary of Collection: As authorized by the Plant Protection Act (PPA) (7 U.S.C. 7701—*et seq.*), the Secretary of Agriculture may prohibit or restrict the importation, entry, exportation, or movement in interstate commerce of any plant, plant product, biological control organism, noxious weed, means of conveyance, or other article if the Secretary determines that the prohibition or restriction is necessary to prevent a plant pest or noxious weed from being introduced into and disseminated within the United States. The Animal and Plant Health Inspection Service (APHIS) has established regulations governing the submission of requests for changes in its regulations that restrict the importation of plants, plant parts, and products.

Need and Use of the Information: APHIS will collect required information to properly consider requests and helps to ensure that the information required to prepare a risk analysis and/or other analyses that evaluate the risks and other effects associated with a final ruling to change a regulation. This process requires the use of collecting information about the requestor, information about the commodity to be imported, shipping information, a description of pests and diseases associated with the commodity, risk mitigation or management strategies, and additional information as determined by APHIS to complete a pest risk analysis in accordance with international standards.

Description of Respondents: Business or other for-profit.

Number of Respondents: 36.

Frequency of Responses: Reporting: On occasion.

Total Burden Hours: 4,200.

Animal and Plant Health Inspection Service

Title: Importation of Baby Corn and Baby Carrots from Zambia.

OMB Control Number: 0579-0284.

Summary of Collection: Under the Plant Protection Act (PPA) (7 U.S.C.

7701—*et seq.*) the Secretary of Agriculture is authorized to carry out operations or measures to detect, eradicate, suppress, control, prevent, or retard the spread of plant pests new to the United States or not known to be widely distributed throughout the United States. Regulations authorized by the PPA concerning the importation of fruits and vegetables into the United States from certain parts of the world are contained in "Subpart Fruits and Vegetables" (7 CFR 319.56-1 through 319.56-47). Under these regulations, baby corn and baby carrots from Zambia are subject to certain conditions before entering the United States to prevent the introduction of plant pests into the United States.

Need and Use of the Information: The Animal and Plant Health Inspection Service (APHIS) requires that some plants or plant products are accompanied by a phytosanitary inspection certificate that is completed by plant health officials in the originating or transiting country. APHIS uses the information on the certificate to determine the pest condition of the shipment at the time of inspection in the foreign country. This information is used as a guide to the intensity of the inspection APHIS conducts when the shipment arrives.

Without this information, all shipments would need to be inspected very thoroughly, thereby requiring considerably more time.

Description of Respondents: Business or other for-profit; Federal Government.

Number of Respondents: 7.

Frequency of Responses: Reporting: On occasion.

Total Burden Hours: 64.

Ruth Brown,

Departmental Information Collection Clearance Officer.

[FR Doc. E9-11838 Filed 5-20-09; 8:45 am]

BILLING CODE 3410-34-P

DEPARTMENT OF AGRICULTURE

Rural Housing Service

Notice of Funding Availability of Applications for Section 514 Farm Labor Housing Loans and Section 516 Farm Labor Housing Grants for Off-Farm Housing for Fiscal Year (FY) 2009

AGENCY: Rural Housing Service, USDA.

ACTION: Notice.

SUMMARY: This notice announces the timeframe to submit pre-applications for Section 514 Farm Labor Housing (FLH) loans and Section 516 FLH grants for the construction of new off-farm FLH units and related facilities for domestic farm laborers. The intended purpose of these loans and grants is to increase the number of available housing units for domestic farm laborers. This notice describes the method used to distribute funds, the application process, and submission requirements.

DATES: The deadline for receipt of all applications in response to this is 5 p.m., local time to the appropriate Rural Development State Office on July 20, 2009. The application closing deadline is firm as to date and hour. Rural Development will not consider any application that is received after the closing deadline unless date and time is extended by another Notice published in the **Federal Register**. Applicants intending to mail applications must provide sufficient time to permit delivery on or before the closing deadline. Acceptance by a post office or private mailer does not constitute delivery. Facsimile (FAX), and postage due applications will not be accepted.

ADDRESSES: Applicants wishing to apply for assistance must contact the Rural Development State Office serving the State of the proposed off-farm labor housing project in order to receive further information and copies of the application package. Rural Development will date and time stamp incoming applications to evidence timely receipt and, upon request, will provide the applicant with a written acknowledgment of receipt. A listing of Rural Development State Offices, their addresses, telephone numbers, and person to contact are as follows:

Note: Telephone numbers listed are not toll-free.

Alabama State Office, Suite 601, Sterling Centre, 4121 Carmichael Road, Montgomery, AL 36106-3683, (334) 279-3455, TDD (334) 279-3495, James B. Harris.

Alaska State Office, 800 West Evergreen, Suite 201, Palmer, AK 99645-6539, (907) 761-7705, TDD (907) 761-8905, Deborah Davis.

Arizona State Office, Phoenix Courthouse and Federal Building, 230 North First Ave., Suite 206, Phoenix, AZ 85003-1706, (602) 280-8764, TDD (602) 280-8706, Ernie Wetherbee.

Arkansas State Office, 700 W. Capitol Ave., Room 3416, Little Rock, AR 72201-3225, (501) 301-3250, TDD (501) 301-3063, Greg Kemper.

California State Office, 430 G Street, #4169, Davis, CA 95616-4169, (530) 792-5821, TDD (530) 792-5848, Debra Moreton.

Colorado State Office, 655 Parfet Street, Room E100, Lakewood, CO 80215, (720) 544-2923, TDD (800) 659-2656, Mary Summerfield.

Connecticut, Served by Massachusetts State Office.

Delaware and Maryland State Office, 1221 College Park Drive, Suite 200, Dover, DE 19904, (302) 857-3615, TDD (302) 857-3585, Pat Baker.

Florida & Virgin Islands State Office, 4440 N.W. 25th Place, Gainesville, FL 32606-6563, (352) 338-3436, TDD (352) 338-3499, Daryl Cooper.

Georgia State Office, Stephens Federal Building, 355 E. Hancock Avenue, Athens, GA 30601-2768, (706) 546-2164, TDD (706) 546-2034, Wayne Rogers.

Hawaii State Office, (Services all Hawaii, American Samoa Guam, and Western Pacific), Room 311, Federal Building, 154 Waiianuenue Avenue, Hilo, HI 96720, (808) 933-8305, TDD (808) 933-8321, Donald Estes.

Idaho State Office, Suite A1, 9173 West Barnes Dr., Boise, ID 83709, (208) 378-5630, TDD (208) 378-5644, Miriam Haylett.

Illinois State Office, 2118 West Park Court, Suite A, Champaign, IL 61821-2986, (217) 403-6222, TDD (217) 403-6240, Barry L. Ramsey.

Indiana State Office, 5975 Lakeside Boulevard, Indianapolis, IN 46278, (317) 290-3100 (ext. 423), TDD (317) 290-3343, Stephen Dye.

Iowa State Office, 210 Walnut Street, Room 873, Des Moines, IA 50309, (515) 284-4493, TDD (515) 284-4858, Heather Honkomp.

Kansas State Office, 1303 SW First American Place, Suite 100, Topeka, KS 66604-4040, (785) 271-2721, TDD (785) 271-2767, Virginia M. Hammersmith.

Kentucky State Office, 771 Corporate Drive, Suite 200, Lexington, KY 40503, (859) 224-7325, TDD (859) 224-7422, Paul Higgins.

Louisiana State Office, 3727 Government Street, Alexandria, LA 71302, (318) 473-7962, TDD (318) 473-7655, Yvonne R. Emerson.

Maine State Office, 967 Illinois Ave., Suite 4, P.O. Box 405, Bangor, ME 04402-0405, (207) 990-9110, TDD (207) 942-7331, Bob Nadeau.

Maryland, Served by Delaware State Office. Massachusetts, Connecticut & Rhode Island State Office, 451 West Street, Amherst, MA 01002, (413) 253-4333, TDD (413) 253-4590, Arlene Nunes.

Michigan State Office, 3001 Coolidge Road, Suite 200, East Lansing, MI 48823, (517) 324-5192, TDD (517) 337-6795, Julie Putnam.

Minnesota State Office, 375 Jackson Street Building, Suite 410, St. Paul, MN 55101-1853, (651) 602-7812, TDD (651) 602-7830, Nancy Schmidt.

Mississippi State Office, Federal Building, Suite 831, 100 W. Capitol Street, Jackson, MS 39269, (601) 965-4325, TDD (601) 965-5850, Darnella Smith-Murray.

Missouri State Office, 601 Business Loop 70 West, Parkade Center, Suite 235, Columbia,

MO 65203, (573) 876-0990, TDD (573) 876-9480, Colleen James.

Montana State Office, 900 Technolgy Blvd., Suite B, Bozeman, MT 59718, (406) 585-2515, TDD (406) 585-2562, Deborah Chorlton.

Nebraska State Office, Federal Building, Room 152, 100 Centennial Mall N. Lincoln, NE 68508, (402) 437-5734, TDD (402) 437-5093, Linda Anders.

Nevada State Office, 1390 South Curry Street, Carson City, NV 89703-5146, (775) 887-1222 (ext. 25), TDD (775) 885-0633, Angilla Denton.

New Hampshire State Office, Concord Center, Suite 218, Box 317, 10 Ferry Street, Concord, NH 03301-5004, (603) 223-6050, TDD (603) 229-0536, Robert McCarthy.

New Jersey State Office, 5th Floor North, Suite 500, 8000 Midlantic Dr., Mt. Laurel, NJ 08054, (856) 787-7740, TDD (856) 787-7784, George Hyatt, Jr.

New Mexico State Office, 6200 Jefferson St., NE, Room 255, Albuquerque, NM 87109, (505) 761-4944, TDD (505) 761-4938, Susan Ellzey.

New York State Office, The Galleries of Syracuse, 441 S. Salina Street, Suite 357, 5th Floor, Syracuse, NY 13202, (315) 477-6419, TDD (315) 477-6400, Michael Bosak.

North Carolina State Office, 4405 Bland Road, Suite 260, Raleigh, NC 27609, (919) 873-2055, TDD (919) 873-2003, Beverly Casey.

North Dakota State Office, Federal Building, Room 208, 220 East Rosser, P.O. Box 1737, Bismarck, ND 58502, (701) 530-2049, TDD (701) 530-2113, Kathy Lake.

Ohio State Office, Federal Building, Room 507, 200 North High Street, Columbus, OH 43215-2477, (614) 255-2418, TDD (614) 255-2554, Melodie Taylor-Ward.

Oklahoma State Office, 100 USDA, Suite 108, Stillwater, OK 74074-2654, (405) 742-1070, TDD (405) 742-1007, Ivan S. Graves.

Oregon State Office, 1201 NE Lloyd Blvd., Suite 801, Portland, OR 97232, (503) 414-3325, TDD (503) 414-3387, Sherry Gleason.

Pennsylvania State Office, One Credit Union Place, Suite 330, Harrisburg, PA 17110-2996, (717) 237-2281, TDD (717) 237-2261, Martha Eberhart.

Puerto Rico State Office, 654 Munoz Rivera Avenue, IBM Plaza, Suite 601, Hato Rey, PR 00918, (787) 766-5095 (ext. 249), TDD (787) 766-5332, Lourdes Colon.

Rhode Island, Served by Massachusetts State Office.

South Carolina State Office, Strom Thurmond Federal Building, 1835 Assembly Street, Room 1007, Columbia, SC 29201, (803) 253-3432, TDD (803) 765-5697, Larry D. Floyd.

South Dakota State Office, Federal Building, Room 210, 200 Fourth Street, SW., Huron, SD 57350, (605) 352-1132, TDD (605) 352-1147, Roger Hazuka or Pam Reilly.

Tennessee State Office, Suite 300, 3322 West End Avenue, Nashville, TN 37203-1084, (615) 783-1375, TDD (615) 783-1397, Don Harris.

Texas State Office, Federal Building, Suite 102, 101 South Main, Temple, TX 76501, (254) 742-9765, TDD (254) 742-9712, Scooter Brockette.

Utah State Office, Wallace F. Bennett Federal Building, 125 S. State Street, Room 4311, Salt Lake City, UT 84147-0350, (801) 524-4325, TDD (801) 524-3309, Janice Kocher.

Vermont State Office, City Center, 3rd Floor, 89 Main Street, Montpelier, VT 05602, (802) 828-6021, TDD (802) 223-6365, Heidi Setien.

Virgin Islands, Served by Florida State Office.

Virginia State Office, Culpeper Building, Suite 238, 1606 Santa Rosa Road, Richmond, VA 23229, (804) 287-1596, TDD (804) 287-1753, CJ Michels.

Washington State Office, 1835 Black Lake Blvd., Suite B, Olympia, WA 98512, (360) 704-7730, TDD (360) 704-7760, Western Pacific Territories, Served by Hawaii State Office.

West Virginia State Office, Federal Building, 75 High Street, Room 320, Morgantown, WV 26505-7500, (304) 284-4872, TDD (304) 284-4836, David Cain.

Wisconsin State Office, 4949 Kirschling Court, Stevens Point, WI 54481, (715) 345-7676, TDD (715) 345-7614, Jeff Borcharding.

Wyoming State Office, PO Box 11005, Casper, WY 82602, (307) 233-6715, TDD (307) 233-6733, Alan Brooks.

FOR FURTHER INFORMATION CONTACT:

Henry Searcy, Finance and Loan Analyst, Multi-Family Housing Preservation and Direct Loan Division, STOP 0782 (Room 1263-S), USDA Rural Development, 1400 Independence Avenue, SW., Washington, DC 20250-0782, telephone: (202) 720-1753 (this is not a toll free number), or via e-mail: Henry.Searcy@wdc.usda.gov.

SUPPLEMENTARY INFORMATION:

Paperwork Reduction Act

The reporting requirements contained in this notice have been approved by the Office of Management and Budget under Control Number 0575-0189.

Overview Information

Federal Agency Name: Rural Housing Service.

Funding Opportunity Title: Notice of Funds Availability for Section 514 Farm Labor Housing Loans and Section 516 Farm Labor Housing Grants for Off-Farm Housing.

Announcement Type: Initial Notice inviting applications from qualified applicants for FY 2009.

Catalog of Federal Domestic Assistance Numbers (CFDA): 10.405 and 10.427.

DATES: The deadline for receipt of all applications in response to this is 5 p.m., appropriate local time to each Rural Development State Office, on July 20, 2009. The application closing deadline is firm as to date and hour. Rural Development will not consider any application that is received after the closing deadline unless date and time is

extended by another Notice published in the **Federal Register**. Applicants intending to mail applications must provide sufficient time to permit delivery on or before the closing deadline. Acceptance by a post office or private mailer does not constitute delivery. Facsimile (FAX), and postage due applications will not be accepted.

I. Funding Opportunities Description

Housing that is constructed with FLH loans and grants must meet Rural Development's design and construction standards contained in 7 CFR part 1924, subparts A and C. Once constructed, off-farm FLH must be managed in accordance with the program's management regulation, 7 CFR part 3560. Tenant eligibility is limited to persons who meet the definition of a "disabled domestic farm laborer", "domestic farm laborer", or "retired domestic farm laborer," as defined in 7 CFR 3560.11. Farmworkers who are admitted to this country on a temporary basis under the Temporary Agricultural Workers (H-2A Visa) program are not eligible to occupy Section 514/516 off-farm FLH.

In addition, off-farm FLH must be operated on a non-profit basis and tenancy must be open to all qualified domestic farm laborers, regardless at which farm they work. Section 514(f)(3) of the Housing Act of 1949 (42 U.S.C. 1484(f)(3)) amended the definition of domestic farm laborers to include any person regardless of the person's source of employment, who receives a substantial portion of his or her income from the primary production of agricultural or aquacultural commodities in the unprocessed stage, and also includes the person's family.

Operating assistance may be used in lieu of tenant-specific rental assistance (RA) in off-farm labor housing projects that serve migrant farmworkers as defined in 7 CFR 3560.11 that are financed under section 514 or section 516(h) of the Housing Act of 1949 (42 U.S.C. 1486(h)), and otherwise meet the requirements of 7 CFR 3560.574. Owners of eligible projects may choose tenant-specific RA or operating assistance, or a combination of both; however, any tenant or unit assisted with operating assistance may not also receive RA. It is anticipated that operating assistance will not be available for new construction in FY 2009.

II. Award Information

Applications for FY 2009 will only be accepted through the date and time listed in this notice. Since USDA Rural Development has the ability to adjust

loan and grant levels, final loan and grant levels will fluctuate, and are subject to the availability of funding. The funds available for FY 2009 for Off-Farm Labor Housing are: Section 514 \$22,977,147, Section 516 \$8,586,430 and Rental Assistance \$3,400,000.

Individual requests may not exceed \$3 million (total loan and grant). At this time, there is no available operating assistance. Section 516 off-farm FLH grants may not exceed 90 percent of the total development cost (TDC) of the housing as defined in 7 CFR 3560.11. Applications that require leveraged funding must have firm commitments in place for all of the leveraged funding within one year of the Agency issuance of Form AD-622, "Notice of Pre-application Review Action," to the applicant. If leverage funds are in the form of tax credits, the applicant must document a history of receiving tax credits.

III. Eligibility Information

A. Applicant Eligibility

(1) To be eligible to receive a Section 516 grant for off-farm FLH, the applicant must be a broad-based non-profit organization, a community organization which can include a faith-based organization, a non-profit organization of farm workers, a Federally recognized Indian tribe, an agency or political subdivision of a State or local government, or a public agency (such as a housing authority). The applicant must be able to contribute at least one-tenth of the TDC non-Rural Development resources which can include leveraged funds.

(2) To be eligible to receive a Section 514 loan for off-farm FLH, the applicant must be a broad-based non-profit organization, a community organization which can include a faith-based organization, a non-profit organization of farm workers, a Federally recognized Indian tribe, an agency or political subdivision of a State or local government, a public agency (such as a housing authority), or a limited partnership which has a non-profit entity as its general partner, and

(a) Be unable to provide the necessary housing from its own resources; and

(b) Except for State or local public agencies and Indian tribes, be unable to obtain similar credit elsewhere at rates that would allow for rents within the payment ability of eligible residents.

(3) Broad-based non-profit organizations must have a membership that reflects a variety of interests in the area where the housing will be located.

B. Cost Sharing or Matching

Section 516 grants for off-farm FLH may not exceed the lesser of 90 percent of the TDC as provided in 7 CFR 3560.562(c)(1).

C. Other Administrative Requirements

The following requirements apply to loans and grants made in response to this notice:

- (1) 7 CFR part 1901, subpart E, regarding equal opportunity requirements;
- (2) 7 CFR parts 3015, 3016 or 3019 (as applicable), which establishes the uniform administrative requirements for grants and cooperative agreements to State and local governments and to non-profit organizations;
- (3) 7 CFR part 1901, subpart F, regarding historical and archaeological properties;
- (4) 7 CFR part 1940, subpart G, regarding environmental assessments;
- (5) 7 CFR part 3560, subpart L, regarding the loan and grant authorities of the off-farm FLH program;
- (6) 7 CFR part 1924, subpart A, regarding planning and performing construction and other development;
- (7) 7 CFR part 1924, subpart C, regarding the planning and performing of site development work; and
- (8) For construction financed with a Section 516 grant, the provisions of the Davis-Bacon Act (40 U.S.C. Sec. 276(a)-276(a)(5) and implementing regulations published at 29 CFR parts 1, 3, and 5.
- (9) All other requirements contained in 7 CFR part 3560, regarding the Section 514/516 off-farm FLH program.

IV. Application and Submission Information

The application process will be in two phases: The initial pre-application (or proposal) and the submission of a final application. Only those proposals that are selected for funding will be invited to submit final applications. In the event that a proposal is selected for further processing and the applicant declines, the next highest ranked unfunded pre-application may be selected.

All pre-applications for Sections 514 and 516 funds must be filed with the appropriate Rural Development State Office and must meet the requirements of this notice. Incomplete pre-applications will not be reviewed and will be returned to the applicant. No pre-application will be accepted after 5 p.m., local time to the appropriate Rural Development State Office on July 20, 2009 unless date and time is extended by another Notice published in the **Federal Register**.

If a pre-application is accepted for further processing, the applicant must

submit a complete, final application, acceptable to Rural Development prior to the obligation of Rural Development funds. If the pre-application is not accepted for further processing the applicant will be notified of appeal rights under 7 CFR part 11.

Pre-Application Requirements

The pre-application must contain the following:

- (1) A summary page listing the following items. This information should be double-spaced between items and not be in narrative form.
 - (a) Applicant's name.
 - (b) Applicant's Taxpayer Identification Number.
 - (c) Applicant's address.
 - (d) Applicant's telephone number.
 - (e) Name of applicant's contact person, telephone number, and address.
 - (f) Amount of loan and grant requested.

(g) For grants, the applicant's Dun and Bradstreet Data Universal Numbering System (DUNS) number. As required by the Office of Management and Budget (OMB), all grant applicants must provide a DUNS number when applying for Federal grants, on or after October 1, 2003. Organizations can receive a DUNS number at no cost by calling the toll-free number at 1-866-705-5711 or via internet at <http://www.dnb.com/us/>. Additional information concerning this requirement can be obtained on the Grants.gov Web site at <http://www.grants.gov>.

(2) A narrative verifying the applicant's ability to meet the eligibility requirements stated earlier in this notice.

(3) Standard Form 424, "Application for Federal Assistance", can be obtained at <http://www.grants.gov> or from any Rural Development State Office listed in the addresses section.

(4) Current (within 6 months) financial statements with the following paragraph certified by the applicant's designated and legally authorized signer:

I/we certify the above is a true and accurate reflection of our financial condition as of the date stated herein. This statement is given for the purpose of inducing the United States of America to make a loan or to enable the United States of America to make a determination of continued eligibility of the applicant for a loan as requested in the loan application of which this statement is a part.

(5) Check for \$40 from applicants made out to United States Department of Agriculture. This will be used to pay for credit reports obtained by Rural Development.

(6) Evidence that the applicant is unable to obtain credit from other

sources. Letters from credit institutions which normally provide real estate loans in the area should be obtained and these letters should indicate the rates and terms upon which a loan might be provided. (Note: Not required from State or local public agencies or Indian tribes.)

(7) If a FLH grant is desired, a statement concerning the need for a FLH grant. The statement should include preliminary estimates of the rents required with and without a grant.

(8) A statement of the applicant's experience in operating labor housing or other rental housing. If the applicant's experience is limited, additional information should be provided to indicate how the applicant plans to compensate for this limited experience (*i.e.*, obtaining assistance and advice of a management firm, non-profit group, public agency, or other organization which is experienced in rental management and will be available on a continuous basis).

(9) A brief statement explaining the applicant's proposed method of operation and management (*i.e.*, on-site manager, contract for management services, *etc.*). As stated earlier in this notice, the housing must be managed in accordance with the program's management regulation, 7 CFR part 3560 and tenancy is limited to "disabled domestic farm laborers," "domestic farm laborers," "retired domestic farm laborers," as defined in 7 CFR 3560.11.

(10) Applicants must also provide:

(a) A copy of, or an accurate citation to, the special provisions of State law under which they are organized, a copy of the applicant's charter, Articles of Incorporation, and By-laws;

(b) The names, occupations, and addresses of the applicant's members, directors, and officers; and

(c) If a member or subsidiary of another organization, the organization's name, address, and nature of business.

(11) A preliminary market survey or market study to identify the supply and demand for labor housing in the market area. The market area must be clearly identified and may include only the area from which tenants can reasonably be drawn for the proposed project. Documentation must be provided to justify a need within the intended market area for the housing of "domestic farm laborers", as defined in 7 CFR 3560.11. The documentation must take into account disabled and retired farm workers. The preliminary survey should address or include the following items:

(a) The annual income level of farmworker families in the area and the probable income of the farm workers

who are apt to occupy the proposed housing;

(b) A realistic estimate of the number of farm workers who remain in the area where they harvest and the number of farm workers who normally migrate into the area. Information on migratory workers should indicate the average number of months the migrants reside in the area and an indication of what type of family groups are represented by the migrants (*i.e.*, single individuals as opposed to families);

(c) General information concerning the type of labor-intensive crops grown in the area and prospects for continued demand for farm laborers;

(d) The overall occupancy rate for comparable rental units in the area and the rents charged and customary rental practices for these units (*i.e.*, will they rent to large families, do they require annual leases, *etc.*);

(e) The number, condition, adequacy, rental rates and ownership of units currently used or available to farm workers;

(f) A description of the units proposed, including the number, type, size, rental rates, amenities such as carpets and drapes, related facilities such as a laundry room or community room and other facilities providing supportive services in connection with the housing and the needs of the prospective tenants, such as a health clinic or day care facility, estimated development timeline, estimated total development cost, and applicant contribution; and

(g) The applicant must also identify all other sources of funds, including the dollar amount, source, and commitment status. (Note: A Section 516 grant may not exceed 90 percent of the total development cost of the housing.)

(12) A completed Form RD 1940–20, “Request for Environmental Information,” and a description of anticipated environmental issues or concerns. The form can be found at <http://forms.sc.egov.usda.gov/eforms/mainserv/let>.

(13) A prepared HUD Form 935.2A, “Affirmative Fair Housing Marketing Plan (AFHM) Multi-family Housing,” in accordance with 7 CFR 1901.203(c). The form can be found at <http://www.hud.gov/offices/adm/hudclips/forms/files/935-2a.pdf>. The plan will reflect that occupancy is open to all qualified “domestic farm laborers,” regardless of which farming operation they work and that they will not discriminate on the basis of race, color, sex, age, disability, marital or familial status or National origin in regard to the occupancy or use of the units.

(14) Evidence of site control, such as an option contract or sales contract. In addition, a map and description of the proposed site, including the availability of water, sewer, and utilities and the proximity to community facilities and services such as shopping, schools, transportation, doctors, dentists, and hospitals.

(15) Preliminary plans and specifications, including plot plans, building layouts, and type of construction and materials. The housing must meet Rural Development’s design and construction standards contained in 7 CFR part 1924, subparts A and C and must also meet all applicable Federal, State, and local accessibility standards.

(16) A supportive services plan, which describes services that will be provided on-site or made available to tenants through cooperative agreements with service providers in the community, such as a health clinic or day care facility. Off-site services must be accessible and affordable to farm workers and their families. Letters of intent from service providers are acceptable documentation at the pre-application stage.

(17) A proposed operating budget utilizing Form RD 3560–7, “Multiple Family Housing Project Budget/Utility Allowance,” can be found at <http://www.rurdev.usda.gov/regs/forms/3560-07.pdf>.

(18) An estimate of development cost utilizing Form RD 1924–13, “Estimate and Certificate of Actual Cost,” can be found at <http://forms.sc.egov.usda.gov/eforms/mainserv/let>.

(19) Form RD 3560–30, “Certification of no Identity of Interest (IOI),” can be found at <http://www.rurdev.usda.gov/regs/forms/3560-30.pdf> and Form RD 3560–31, “Identity of Interest Disclosure/Qualification Certification,” can be found at <http://forms.sc.egov.usda.gov/eforms/mainserv/let>.

(20) Form HUD 2530, “Previous Participation Certification,” can be found at <http://www.hud.gov/offices/adm/hudclips/forms/files/2530.pdf>.

(21) If requesting RA or Operating Assistance, Form RD 3560–25, “Initial Request for Rental Assistance or Operating Assistance,” can be found at <http://forms.sc.egov.usda.gov/eforms/mainserv/let>.

(22) A sources and uses statement which shows all sources of funding included in the proposed project. The terms and schedules of all sources included in the project should be included in the sources and uses statement.

(23) A separate one-page information sheet listing each of the “Pre-

Application Scoring Criteria” contained in this notice, followed by a reference to the page numbers of all relevant material and documentation that is contained in the proposal that supports the criteria.

(24) Applicants are encouraged, but not required, to include a checklist of all of the pre-application requirements and to have their pre-application indexed and tabbed to facilitate the review process;

(25) Evidence of compliance with Executive Order 12372. The applicant must send a copy of Form SF–424 to the applicant’s state clearinghouse for intergovernmental review. If the applicant is located in a state that does not have a clearing house, the applicant is not required to submit the form.

(26) Evidence of compliance with the requirements of the applicable State Housing Preservation Office (SHPO). A letter from the SHPO where the off-farm labor housing project is located, signed by their designee will serve as evidence of compliance.

(27) Form RD 400–4, “Assurance Agreement,” can be found at <http://forms.sc.egov.usda.gov/eforms/mainserv/let>. Applications for revitalization, repair and rehab are to apply through the Multi-Family Housing Revitalization Demonstration Program.

V. Pre-Application Review Information

All applications for Sections 514 and 516 funds must be filed with the appropriate Rural Development State Office and must meet the requirements of this notice. The Rural Development State Office will base its determination of completeness of the application and the eligibility of each applicant on the information provided in the pre-application.

Selection Criteria. Section 514 loan funds and Section 516 grant funds will be distributed to States based on a national competition, as follows:

(1) Rural Development States will accept, review, and score pre-applications in accordance with this notice. The scoring factors are:

(a) The presence and extent of leveraged assistance, including donated land, for the units that will serve program-eligible tenants, calculated as a percentage of the Rural Development TDC. Rural Development TDC excludes non-Rural Development eligible costs such as a developer’s fee. Leveraged assistance includes, but is not limited to, funds for hard construction costs, Section 8 or other non-Rural Development tenant subsidies, and State or Federal funds. A minimum of ten percent leveraged assistance is required

to earn points; however, if the total percentage of leveraged assistance is less than ten percent and the proposal includes donated land, two points will be awarded for the donated land. To count as leveraged funds for purposes of the selection criteria, a commitment of funds must be provided with the pre-application. Points will be awarded in accordance with the following table using rounding to the nearest whole number.

Percentage points	
75% or more leveraged funds	20
60–74% leveraged funds	18
50–59% leveraged funds	16
40–49% leveraged funds	12
30–39% leveraged funds	10
20–29% leveraged funds	8
10–19% leveraged funds	5
0–9% leveraged funds	0

Donated land in proposals with less than ten percent total leveraged assistance: Two points.

(b) Percent of units for seasonal, temporary, migrant housing.

(1) Five points for up to and including 50 percent of the units; and

(2) 10 points for 51 percent or more units used for seasonal, temporary, or migrant housing.

(c) The selection criteria include one optional criterion set by the National Office. For FY 2009, the National Office selection criterion is as follows: (1) Up to 10 points will be awarded based on the presence of and extent to which a tenant services plan exists that clearly outlines services that will be provided to the residents of the proposed project. These services may include, but are not limited to, transportation related services, on-site English as a Second Language (ESL) classes, move-in funds, emergency assistance funds, homeownership counseling, food pantries, after school tutoring, and computer learning centers. (2) Two points will be awarded for each resident service included in the tenant services plan up to a maximum of 10 points. Plans must detail how the services are to be administered, who will administer them, and where they will be administered. All tenant service plans must include letters of intent that clearly state the service that will be provided at the project for the benefit of the residents from any party administering each service, including the applicant.

(2) Rural Development State Offices will conduct the preliminary eligibility review, score the pre-applications, and forward them to the National Office.

(3) The National Office will rank all pre-applications nationwide and

distribute funds to States in rank order, within funding and RA limits. A lottery in accordance with 7 CFR 3560.56(c)(2) will be used for applications with tied point scores when they all cannot be funded. If insufficient funds or RA remain for the next ranked proposal, that applicant will be given a chance to modify their pre-application to bring it within remaining funding levels. This will be repeated for each next ranked eligible proposal until an award can be made or the list is exhausted. Rural Development will notify all applicants on whether their applications have been accepted or rejected.

VI. Award Administration Information

1. Award Notices

Loan applicants must submit their initial applications by the due date specified in this notice. State Offices will review applications and provide a list to the National Office. Once the applications have been scored and ranked by the National Office the National Office, will advise States Offices of the proposals selected for further processing, State Offices will respond to applicants by letter. If the application is not accepted for further processing, the applicant will be notified of appeal rights under 7 CFR part 11.

2. Administrative and National Policy

All Farm Labor Housing loans and grant made pursuant to a contract entered into on or after the effective date of 7 CFR part 3560 are subject to the restrictive-use provisions contained in 7 CFR 3560.72(a)(2).

3. Reporting

Borrowers must maintain separate financial records for the operation and maintenance of the project and the service component. Funds allocated to the operation and maintenance of the project may not be used to supplement the cost of services, nor may service component funds be used to supplement the project operation and maintenance. Detailed financial reports on the service component will not be required unless specifically requested by Rural Development, and then only to the extent necessary for Rural Development and the borrower to discuss the affordability (and competitiveness) of the service component by the tenant.

The project audit, or verification of accounts on Form RD 3560–10, “Borrower Balance Sheet”, together with an accompanying Form RD 3560–7 “Multiple Family Housing Project Budget/Utility Allowance” showing

actuals, must allocate revenue and expense between project operations and the service component.

VII. Agency Contacts

For application information, contact the Rural Development State Office listed in the addresses section of this notice.

VIII. Non-Discrimination Statement

The U.S. Department of Agriculture (USDA) prohibits discrimination in all its programs and activities on the basis of race, color, national origin, age, disability, and where applicable, sex, marital status, familial status, parental status, religion, sexual orientation, genetic information, political beliefs, reprisal, or because all or part of an individual’s income is derived from any public assistance program. (Not all prohibited bases apply to all programs.) Persons with disabilities who require alternative means for communication of program information (Braille, large print, audiotape, etc.) should contact USDA’s Target Center at (202) 720–2600 (voice and TDD). To file a complaint of discrimination, write to USDA, Director, Office of Civil Rights, 1400 Independence Avenue, SW., Washington, DC 20250–9410, or call (800) 795–3272 (voice) or (202) 720–6382 (TDD). USDA is an equal opportunity provider and employer.

Dated: May 13, 2009.

James C. Alsop,

Acting Administrator, Rural Housing Service.
[FR Doc. E9–11833 Filed 5–20–09; 8:45 am]

BILLING CODE P

DEPARTMENT OF COMMERCE

Submission for OMB Review; Comment Request

The Department of Commerce will submit to the Office of Management and Budget (OMB) for clearance the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35).

Agency: National Oceanic and Atmospheric Administration (NOAA).

Title: Marine Recreational Fisheries Statistics Survey.

OMB Control Number: 0648–0052.

Form Number(s): None.

Type of Request: Regular submission.

Burden Hours: 2,175 (new); 46,920 (current plus new).

Number of Respondents: 16,630 (new); 741,305 (current plus new).

Average Hours per Response: Pretest, 30 minutes; fishing effort screening

survey, 4 minutes; saltwater angler fishing diary, 30 minutes.

Needs and Uses: This requested revision will address the National Research Council's (NRC) concerns regarding potential telephone coverage error by testing the effectiveness of mail screening surveys for contacting anglers and collecting recreational fishing data. Like current telephone surveys, mail surveys will target licensed anglers (state license databases), as well as random households within coastal states (United States Post Office (USPS), Delivery Sequence File (DSF)). It is expected that mail survey frames will provide more complete coverage of angling populations than telephone survey frames because anglers are required to provide an address and/or present a valid driver's license when purchasing a saltwater fishing license, and the DSF can provide a complete frame of residential addresses within the United States. The proposed mail survey will run concurrently with ongoing telephone surveys for benchmarking purposes, as well as to allow direct comparisons between the two methodologies.

The NRC also identified potential problems with on-site surveys, which collect catch information at the conclusion of recreational fishing trips. Generally, these surveys are conducted by trained interviewers at publicly accessible fishing sites such as public piers, beaches, marinas and boat ramps. Because the coverage of onsite surveys is limited to public-access sites, estimates of total catch rely on assumptions about the behavior and success of anglers who access the water from private-access sites such as private residences, community beaches, marinas and docks, and private yacht clubs.

To address these additional concerns, respondents to the effort survey/ screener questionnaire will be sent a survey packet for the angler diary survey. Combining the two objectives into a single data collection effort will help minimize respondent burden.

The collection of these data is necessary to fulfill statutory requirements of section 303 of the *Magnuson-Stevens Fishery Conservation and Management Act* (16 U.S.C. 1853 *et seq.*) as amended (MSA) and to comply with *Executive Order 12962* on Recreational Fisheries. Section 303(a) of the MSA specifies data and analyses to be included in Fishery Management Plans (FMP), as well as pertinent data that shall be submitted to the Secretary of Commerce under the plan.

Affected Public: Individuals or households.

Frequency: On occasion.

Respondent's Obligation: Voluntary.

OMB Desk Officer: David Rostker, (202) 395-3897.

Copies of the above information collection proposal can be obtained by calling or writing Diana Hynek, Departmental Paperwork Clearance Officer, (202) 482-0266, Department of Commerce, Room 7845, 14th and Constitution Avenue, NW., Washington, DC 20230 (or via the Internet at dHynek@doc.gov).

Written comments and recommendations for the proposed information collection should be sent within 30 days of publication of this notice to David Rostker, OMB Desk Officer, FAX number (202) 395-7285, or David_Rostker@omb.eop.gov.

Dated: May 18, 2009.

Gwellnar Banks,

Management Analyst, Office of the Chief Information Officer.

[FR Doc. E9-11901 Filed 5-20-09; 8:45 am]

BILLING CODE 3510-22-P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

RIN 0648-XP38

Endangered and Threatened Species; Take of Anadromous Fish

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

ACTION: Application for one scientific research permit modification.

SUMMARY: Notice is hereby given that NMFS has received one scientific research permit application request relating to Pacific salmon. The proposed research is intended to increase knowledge of species listed under the Endangered Species Act (ESA) and to help guide management and conservation efforts. The application may be viewed on the NMFS website at https://apps.nmfs.noaa.gov/preview/preview_open_for_comment.cfm.

DATES: Comments or requests for a public hearing on the applications must be received at the appropriate address or fax number (see **ADDRESSES**) no later than 5 p.m. Pacific standard time on June 22, 2009.

ADDRESSES: Written comments on the applications should be sent to the Protected Resources Division, NMFS, 1201 NE Lloyd Blvd., Suite 1100, Portland, OR 97232-1274. Comments may also be sent via fax to 503-230-

5441 or by e-mail to resapps.nwr@NOAA.gov.

FOR FURTHER INFORMATION CONTACT: Garth Griffin, Portland, OR (ph.: 503-231-2005, Fax: 503-230-5441, e-mail: Garth.Griffin@noaa.gov). Permit application instructions are available from the address above.

SUPPLEMENTARY INFORMATION:

Species Covered in This Notice

The following listed species are covered in this notice:

Chinook salmon (*Oncorhynchus tshawytscha*): threatened Snake River (SR) spring/summer, threatened SR fall.

Steelhead (*O. mykiss*): threatened SR.

Authority

Scientific research permits are issued in accordance with section 10(a)(1)(A) of the ESA (16 U.S.C. 1531 *et seq.*) and regulations governing listed fish and wildlife permits (50 CFR 222-226). NMFS issues permits based on findings that such permits: (1) are applied for in good faith; (2) if granted and exercised, would not operate to the disadvantage of the listed species that are the subject of the permit; and (3) are consistent with the purposes and policy of section 2 of the ESA. The authority to take listed species is subject to conditions set forth in the permits.

Anyone requesting a hearing on an application listed in this notice should set out the specific reasons why a hearing on that application would be appropriate (see **ADDRESSES**). Such hearings are held at the discretion of the Assistant Administrator for Fisheries, NMFS.

Applications Received

Permit 1134 - 5M

The Columbia River Inter-Tribal Fish Commission (CRITFC) is seeking to modify Permit 1134, under which they have been conducting research for more than ten years. The original permit was in place for five years (63 FR 30199) with one amendment (67 FR 43909); it expired on December 31, 2002. The next permit was also in place for five years expiring on December 31, 2007; it was renewed in 2008. The CRITFC is now asking to modify the permit to increase listed species take particularly for SR fall Chinook salmon. The permit would continue covering five study projects that, among them, would annually take adult and juvenile threatened SR fall Chinook salmon; adult and juvenile threatened SR spring/summer Chinook salmon; and adult and juvenile threatened SR steelhead in the Snake River basin. There have been some changes in the research over the last ten

years, nonetheless, the projects proposed are largely continuations of ongoing research. They are: Project 1 – Adult Spring/Summer and Fall Chinook Salmon and Summer Steelhead Ground and Aerial Spawning Ground Surveys; Project 2 – Cryopreservation of Spring/Summer Chinook Salmon and Summer Steelhead Gametes; Project 3 – Adult Chinook Salmon Abundance Monitoring Using Video Weirs, Acoustic Imaging, and PIT tag Detectors in the South Fork Salmon River; Project 4 – Snorkel, Seine, Fyke Net, Minnow Trap, and Electrofishing Surveys and Collection of Juvenile Chinook Salmon and Steelhead; and Project 5 – Juvenile Anadromous Salmonid Emigration Studies Using Rotary Screw Traps. Under these tasks, listed adult and juvenile salmon would be variously (a) observed/harassed during fish population and production monitoring surveys; (b) captured (using seines, trawls, traps, hook-and-line angling equipment, and electrofishing equipment) and anesthetized; (c) sampled for biological information and tissue samples, (d) PIT-tagged or tagged with other identifiers, (e) and released. The CRITFC does not intend to kill any of the fish being captured, but a small percentage may die as a result of the research activities.

The research has many purposes and would benefit listed salmon and steelhead in different ways. However, in general, the studies are part of ongoing efforts to monitor the status of listed species in the Snake River basin and to use those data to inform decisions about land and fisheries management actions and to help prioritize and plan recovery measures for the listed species. Under the proposal, the studies would continue to benefit listed species by generating population abundance estimates, allowing comparisons to be made between naturally reproducing populations and those being supplemented with hatchery fish, and helping preserve listed salmon and steelhead genetic diversity.

This notice is provided pursuant to section 10(c) of the ESA. NMFS will evaluate the application, associated documents, and comments submitted to determine whether the application meets the requirements of section 10(a) of the ESA and Federal regulations. The final permit decision will not be made until after the end of the 30-day comment period. NMFS will publish notice of its final action in the **Federal Register**.

Dated: May 15, 2009.

Angela Somma,

Chief, Endangered Species Division, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. E9-11943 Filed 5-20-09; 8:45 am]

BILLING CODE 3510-22-S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

RIN 0648-XP19

Incidental Taking of Marine Mammals; Taking of Marine Mammals Incidental to the Explosive Removal of Offshore Structures in the Gulf of Mexico

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

ACTION: Notice; issuance of letters of authorization.

SUMMARY: In accordance with the Marine Mammal Protection Act (MMPA) and implementing regulations, notification is hereby given that NMFS has issued one-year Letters of Authorization (LOA) to take marine mammals incidental to the explosive removal of offshore oil and gas structures (EROS) in the Gulf of Mexico.

DATES: These authorizations are effective from May 13, 2009 through May 12, 2010.

ADDRESSES: The applications and LOAs are available for review by writing to P. Michael Payne, Chief, Permits, Conservation, and Education Division, Office of Protected Resources, National Marine Fisheries Service, 1315 East-West Highway, Silver Spring, MD 20910-3235 or by telephoning the contact listed here (see **FOR FURTHER INFORMATION CONTACT**), or online at: <http://www.nmfs.noaa.gov/pr/permits/incidental.htm>. Documents cited in this notice may be viewed, by appointment, during regular business hours, at the aforementioned address.

FOR FURTHER INFORMATION CONTACT: Howard Goldstein or Ken Hollingshead, Office of Protected Resources, NMFS, 301-713-2289.

SUPPLEMENTARY INFORMATION: Section 101(a)(5)(A) of the MMPA (16 U.S.C. 1361 *et seq.*) directs the NMFS to allow, upon request, the incidental, but not intentional, taking of small numbers of marine mammals by United States citizens who engage in a specified activity (other than commercial fishing) within a specified geographical region, if certain findings are made by NMFS

and regulations are issued. Under the MMPA, the term “taking” means to harass, hunt, capture, or kill or to attempt to harass, hunt capture, or kill marine mammals.

Authorization for incidental taking, in the form of annual LOAs, may be granted by NMFS for periods up to five years if NMFS finds, after notification and opportunity for public comment, that the taking will have a negligible impact on the species or stock(s) of marine mammals, and will not have an unmitigable adverse impact on the availability of the species or stock(s) for subsistence uses (where relevant). In addition, NMFS must prescribe regulations that include permissible methods of taking and other means effecting the least practicable adverse impact on the species and its habitat (i.e., mitigation), and on the availability of the species for subsistence uses, paying particular attention to rookeries, mating rounds, and areas of similar significance. The regulations also must include requirements pertaining to the monitoring and reporting of such taking. Regulations governing the taking incidental to EROS were published on June 19, 2008 (73 FR 34889), and remain in effect through July 19, 2013. For detailed information on this action, please refer to that **Federal Register** notice. The species that applicants may take in small numbers during EROS activities are bottlenose dolphins (*Tursiops truncatus*), Atlantic spotted dolphins (*Stenella frontalis*), pantropical spotted dolphins (*Stenella attenuata*), Clymene dolphins (*Stenella clymene*), striped dolphins (*Stenella coeruleoalba*), spinner dolphins (*Stenella longirostris*), rough-toothed dolphins (*Steno bredanensis*), Risso's dolphins (*Grampus griseus*), melon-headed whales (*Peponocephala electra*), pilot whales (*Globicephala macrorhynchus*), and sperm whales (*Physeter macrocephalus*).

Pursuant to these regulations, NMFS has issued LOAs to McMoRan Oil & Gas LLC, Maritech Resources, Inc., and Dynamic Offshore Resources NS, LLC. Issuance of the LOAs are based on a finding made in the preamble to the final rule that the total taking by these activities (with monitoring, mitigation, and reporting measures) will result in no more than a negligible impact on the affected species or stock(s) of marine mammals and will not have an unmitigable adverse impact on subsistence uses. NMFS also finds that the applicant will meet the requirements contained in the implementing regulations and LOA, including monitoring, mitigation, and reporting requirements.

Dated: May 14, 2009.

James H. Lecky,

*Director, Office of Protected Resources,
National Marine Fisheries Service.*

[FR Doc. E9-11942 Filed 5-20-09; 8:45 am]

BILLING CODE 3510-22-S

DEPARTMENT OF COMMERCE

National Telecommunications and Information Administration

Online Safety and Technology Working Group Meeting

AGENCY: National Telecommunications and Information Administration, U.S. Department of Commerce.

ACTION: Notice of Public Meeting.

SUMMARY: This notice announces the first public meeting of the Online Safety and Technology Working Group (OSTWG).

DATES: The meeting will be held on June 4, 2009, from 10:00 a.m. to 1:00 p.m., Eastern Daylight Time.

ADDRESSES: The meeting will be held at the Federal Communications Commission, 445 12th Street SW., Washington, DC 20554.

FOR FURTHER INFORMATION CONTACT: Joe Gattuso at (202) 482-0977 or jgattuso@ntia.doc.gov; and/or visit NTIA's Web site at <http://www.ntia.doc.gov>.

SUPPLEMENTARY INFORMATION:

Background: NTIA established the OSTWG pursuant to Section 214 of the Protecting Children in the 21st Century Act (the Act). The OSTWG is composed of representatives of relevant sectors of the business community, public interest groups, and other appropriate groups and Federal agencies. The members were selected for their expertise and experience in online safety issues, as well as their ability to represent the views of the various industry stakeholders.

According to the Act, the OSTWG is tasked with evaluating industry efforts to promote a safe online environment for children. The Act requires the OSTWG report its findings and recommendations to the Assistant Secretary for Communications and Information and to Congress within one (1) year after its first meeting.

Matters to Be Considered: This will be the first meeting of the OSTWG. The primary purpose of this initial meeting is to organize the OSTWG and establish future agendas and work schedule.

Time and Date: The meeting will be held on June 4, 2009, from 10:00 a.m. to 1:00 p.m. Eastern Daylight Time. The

times and the agenda topics are subject to change. The meeting will be webcast. Please refer to NTIA's web site, <http://www.ntia.doc.gov>, for the most up-to-date meeting agenda and webcast information.

Place: The meeting will be held at the Federal Communications Commission, 445 12th Street SW, Washington, DC 20554. The meeting will be open to the public and press on a first-come, first-served basis. Space is limited. The public meeting is physically accessible to people with disabilities. Individuals requiring special services, such as sign language interpretation or other ancillary aids, are asked to notify Mr. Gattuso, at (202) 482-0977 or jgattuso@ntia.doc.gov, at least five (5) business days before the meeting.

Dated: May 18, 2009.

Kathy D. Smith,

Chief Counsel, National Telecommunications and Information Administration.

[FR Doc. E9-11918 Filed 5-20-09; 8:45 am]

BILLING CODE 3510-60-S

ELECTION ASSISTANCE COMMISSION

Sunshine Act Notice

AGENCY: U.S. Election Assistance Commission.

ACTION: Notice of Public Meeting for EAC Board of Advisors.

DATE AND TIME: Tuesday, June 2, 2009, 8 a.m.–5:30 p.m. and Wednesday, June 3, 2009, 8 a.m.–5 p.m. and Thursday, June 4, 2009, 9 a.m.–12 Noon.

PLACE: Hamilton Crowne Plaza Hotel, Oasis Room at the Sphinx Club, 1315 K Street, Washington, DC 20005, phone number (202) 682-0111.

PURPOSE: The U.S. Election Assistance Commission (EAC) Board of Advisors, as required by the Help America Vote Act of 2002, will meet to receive updates on EAC program activities. The Board will receive updates on comments received regarding the Elections Operation Assessment Project. The Board will receive updates on the proposed next iteration of the Voluntary Voting System Guidelines. The Board will discuss proposed updates and improvements to the 2005 Voluntary Voting System Guidelines. The Board will discuss and consider a committee recommendation on the proposed Draft EAC Report to Congress on Election Day Data Grants Program. The Board will hear committee reports, elect officers and consider other administrative matters.

This Meeting will be open to the public.

PERSON TO CONTACT FOR INFORMATION: Bryan Whitener, *Telephone:* (202) 566-3100.

Gracia M. Hillman,

Vice-Chair, U.S. Election Assistance Commission.

[FR Doc. E9-11987 Filed 5-19-09; 11:15 am]

BILLING CODE 6820-KF-P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RM93-11-000]

Revisions to Oil Pipeline Regulations Pursuant to the Energy Policy Act of 1992; Notice of Annual Change in the Producer Price Index for Finished Goods

May 14, 2009.

The Commission's regulations include a methodology for oil pipelines to change their rates through use of an index system that establishes ceiling levels for such rates. The Commission bases the index system, found at 18 CFR 342.3, on the annual change in the Producer Price Index for Finished Goods (PPI-FG), plus one point three percent (PPI+1.3). The Commission determined in an "Order Establishing Index for Oil Price Change Ceiling Levels" issued March 21, 2006, that PPI+1.3 is the appropriate oil pricing index factor for pipelines to use.¹

The regulations provide that the Commission will publish annually, an index figure reflecting the final change in the PPI-FG, after the Bureau of Labor Statistics publishes the final PPI-FG in May of each calendar year. The annual average PPI-FG index figures were 166.6 for 2007 and 177.1 for 2008.² Thus, the percent change (expressed as a decimal) in the annual average PPI-FG from 2007 to 2008, plus 1.3 percent, is positive 0.076025.³ Oil pipelines must multiply their July 1, 2008, through June 30, 2009, index ceiling levels by

¹ 114 FERC ¶ 61,293 at P 2 (2006).

² Bureau of Labor Statistics (BLS) publishes the final figure in mid-May of each year. This figure is publicly available from the Division of Industrial Prices and Price Indexes of the BLS, at (202) 691-7705, and in print in August in Table 1 of the annual data supplement to the BLS publication *Producer Price Indexes* via the Internet at <http://www.bls.gov/ppi/home.htm>. To obtain the BLS data, scroll down to "PPI Databases" and click on "Top Picks" of the Commodity Data (Producer Price Index—PPI). At the next screen, under the heading "Producer Price Index/Commodity Data," select the first box, "Finished goods—WPUSOP3000," then scroll all the way to the bottom of this screen and click on Retrieve data.

³ $[177.1 - 166.6] / 166.6 = 0.063025 + .013 = 0.076025$.

positive 1.076025⁴ to compute their index ceiling levels for July 1, 2009, through June 30, 2010, in accordance with 18 CFR 342.3(d). For guidance in calculating the ceiling levels for each 12 month period beginning January 1, 1995,⁵ see *Explorer Pipeline Company*, 71 FERC 61,416 at n.6 (1995).

In addition to publishing the full text of this Notice in the **Federal Register**, the Commission provides all interested persons an opportunity to view and/or print this Notice via the Internet through FERC's Home Page (<http://www.ferc.gov>) and in FERC's Public Reference Room during normal business hours (8:30 a.m. to 5 p.m. Eastern time) at 888 First Street, NE., Room 2A, Washington, DC 20426. The full text of this Notice is available on FERC's Home Page at the eLibrary link. To access this document in eLibrary, type the docket number excluding the last three digits of this document in the docket number field and follow other directions on the search page.

User assistance is available for eLibrary and other aspects of FERC's Web site during normal business hours. For assistance, please contact the Commission's Online Support at 1-866-208-3676 (toll free) or 202-502-6652 (e-mail at FERCOnlineSupport@ferc.gov), or the Public Reference Room at (202) 502-8371, TTY (202) 502-8659. E-Mail the Public Reference Room at public.referenceroom@ferc.gov.

Kimberly D. Bose,
Secretary.

[FR Doc. E9-11794 Filed 5-20-09; 8:45 am]

BILLING CODE 6717-01-P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 13464-000]

Hydro Energy Technologies, LLC; Notice of Preliminary Permit Applications Accepted for Filing and Soliciting Comment, Motions To Intervene, and Competing Applications

May 13, 2009.

On May 5, 2009, Hydro Energy Technologies, LLC filed an application, pursuant to section 4(f) of the Federal Power Act, proposing to study the feasibility of the Wills Creek Hydroelectric Project, to be located on

the Wills Creek, in Coshocton County, Ohio.

The proposed Pleasant Hill Hydroelectric Project would be located at: (1) The existing U.S. Army Corps of Engineers 1,950-foot-long, 87-foot-high Wills Creek Dam; and (2) an existing 11,450-acre reservoir having a normal water surface elevation of 742 feet mean sea level.

The proposed project would consist of: (1) A new powerhouse containing a single turbine generating unit with an installed capacity of 1.5 megawatts; (2) a new 100-foot-long, 96-inch-diameter penstock; (3) a new switchyard; (4) a new 1-mile-long, 15-kilovolt transmission line; and (5) appurtenant facilities. The Wills Creek Project would have an estimated average annual generation of 9.2 gigawatt-hours, which would be sold to a local utility.

Applicant Contact: Mr. Anthony J. Marra Jr., President, Hydro Energy Technologies, LLC, 31300 Solon Rd. Suite 12, Solon, OH 44139, (440) 498-1000.

FERC Contact: John Ramer, (202) 502-8969.

Deadline for filing comments, motions to intervene, competing applications (without notices of intent), or notices of intent to file competing applications: 60 days from the issuance of this notice. Comments, motions to intervene, notices of intent, and competing applications may be filed electronically via the Internet. See 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Website under the "e-Filing" link. If unable to be filed electronically, documents may be paper-filed. To paper-file, an original and eight copies should be mailed to: Kimberly D. Bose, Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426. For more information on how to submit these types of filings please go to the Commission's Website located at <http://www.ferc.gov/filing-comments.asp>. More information about this project can be viewed or printed on the "eLibrary" link of Commission's Web site at <http://www.ferc.gov/docs-filing/elibrary.asp>. Enter the docket number (P-13464) in the docket number field to access the document. For assistance, call toll-free 1-866-208-3372.

Kimberly D. Bose,

Secretary.

[FR Doc. E9-11786 Filed 5-19-09; 8:45 am]

BILLING CODE 6717-01-P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 13463-000]

Hydro Energy Technologies, LLC; Notice of Preliminary Permit Applications Accepted for Filing and Soliciting Comment, Motions To Intervene, and Competing Applications

May 13, 2009.

On May 5, 2009, Hydro Energy Technologies, LLC filed an application, pursuant to section 4(f) of the Federal Power Act, proposing to study the feasibility of the Pleasant Hill Hydroelectric Project, to be located on the Clear Fork of Mohican River, in Ashland County, Ohio.

The proposed Pleasant Hill Hydroelectric Project would be located at: (1) The existing U.S. Army Corps of Engineers 775-foot-long, 113-foot-high Pleasant Hill Dam; and (2) an existing 2,600-acre reservoir with a normal water surface elevation of 1,020 feet mean sea level.

The proposed project would consist of: (1) A new powerhouse containing a single turbine generating unit with an installed capacity of 1.5 megawatts; (2) a new 200-foot-long, 60-inch-diameter penstock; (3) a new switchyard; (4) a new 1-mile-long, 25-kilovolt transmission line; and (5) appurtenant facilities. The Pleasant Hill Project would have an estimated average annual generation of 5.4 gigawatt-hours, which would be sold to a local utility.

Applicant Contact: Mr. Anthony J. Marra Jr., President, Hydro Energy Technologies, LLC, 31300 Solon Rd. Suite 12, Solon, OH 44139, (440) 498-1000.

FERC Contact: John Ramer, (202) 502-8969.

Deadline for filing comments, motions to intervene, competing applications (without notices of intent), or notices of intent to file competing applications: 60 days from the issuance of this notice. Comments, motions to intervene, notices of intent, and competing applications may be filed electronically via the Internet. See 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the "e-Filing" link. If unable to be filed electronically, documents may be paper-filed. To paper-file, an original and eight copies should be mailed to: Kimberly D. Bose, Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426. For more information on how to submit these types of filings please go to the Commission's Web site located at <http://www.ferc.gov>

⁴ 1 + 0.076025 = 1.076025.

⁵ For a listing of all prior multipliers issued by the Commission, see the Commission's Web site, <http://www.ferc.gov>. The table of multipliers can be found under the headings "Oil" and "Index."

www.ferc.gov/filing-comments.asp. More information about this project can be viewed or printed on the "eLibrary" link of Commission's Web site at <http://www.ferc.gov/docs-filing/elibrary.asp>. Enter the docket number (P-13463) in the docket number field to access the document. For assistance, call toll-free 1-866-208-3372.

Kimberly D. Bose,

Secretary.

[FR Doc. E9-11792 Filed 5-20-09; 8:45 am]

BILLING CODE 6717-01-P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 13338-000]

FFP Kansas 1 LLC d/b/a FFP Lock & Dam No. 9; Notice of Preliminary Permit Application Accepted for Filing and Soliciting Comment, Motions To Intervene, and Competing Applications

May 14, 2009.

On November 24, 2008, FFP Kansas 1 LLC d/b/a FFP Lock & Dam No. 9 filed an application, pursuant to section 4(f) of the Federal Power Act, proposing to study the feasibility of the Mississippi River Lock and Dam No. 9 Water Power Project (Lock & Dam 9 Project), to be located at River Mile 647.9 on the Mississippi River in Allamakee County, Iowa, and Crawford, Wisconsin, and near the town of Lynxville, WI. Also, the reservoir runs through a portion of the Upper Mississippi River National Wildlife and Fish Refuge.

The proposed Lock & Dam 9 Project would be integral with: (1) The existing U.S. Army Corps of Engineers Lock & Dam No. 9 comprised of an 811-foot-long gated dam section with 5 roller gates and 8 tainter gates, and a 600 foot-long lock, and; (2) an existing 17-mile-long reservoir extending from River Mile 648 to River Mile 679 at a normal pool elevation of 620.0 feet mean sea level.

The proposed project would consist of: (1) 25 Very Low Head (VHL) generating units and 50 hydrokinetic generating units totaling 13.4 megawatts (MW) installed capacity; (2) a new 69-kilovolt transmission line connected to an existing above ground local distribution system; and (3) appurtenant facilities. The project would have an estimated average annual generation of 68,400 megawatt-hours.

Applicant Contact: Mr. Daniel R. Irvin, Free Flow Power Corporation, 33 Commercial Street, Gloucester, MA 01930, phone (978) 252-7631.

FERC Contact: Patrick Murphy, (202) 502-8755.

Deadline for filing comments, motions to intervene, competing applications (without notices of intent), or notices of intent to file competing applications: 60 days from the issuance of this notice. Comments, motions to intervene, notices of intent, and competing applications may be filed electronically via the Internet. See 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the "e-Filing" link. If unable to be filed electronically, documents may be paper-filed. To paper-file, an original and eight copies should be mailed to: Kimberly D. Bose, Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426. For more information on how to submit these types of filings please go to the Commission's Web site located at <http://www.ferc.gov/filing-comments.asp>. More information about this project can be viewed or printed on the "eLibrary" link of Commission's Web site at <http://www.ferc.gov/docs-filing/elibrary.asp>. Enter the docket number (P-13338) in the docket number field to access the document. For assistance, call toll-free 1-866-208-3372.

Kimberly D. Bose,

Secretary.

[FR Doc. E9-11803 Filed 5-20-09; 8:45 am]

BILLING CODE 6717-01-P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 13337-000]

FFP Project 34, LLC; Notice of Preliminary Permit Application Accepted for Filing and Soliciting Comment, Motions To Intervene, and Competing Applications

May 14, 2009.

On November 24, 2008, FFP Project 34, LLC filed an application, pursuant to section 4(f) of the Federal Power Act, proposing to study the feasibility of the Mississippi River Lock and Dam No. 7 Water Power Project (Lock & Dam 7 Project), to be located at River Mile 702.5 on the Mississippi River in Winona County, Minnesota, and La Crosse, Wisconsin, and near the town of La Crescent, MN. Also, the reservoir runs through a portion of the Upper Mississippi River National Wildlife and Fish Refuge.

The proposed Lock & Dam 7 Project would be integral with: (1) The existing U.S. Army Corps of Engineers Lock &

Dam No. 7 comprised of a 940-foot-long gated dam section with 5 roller gates and 11 tainter gates, a 600 foot-long lock, and a 8,100-foot-long earth dike; and (2) an existing 21-square-mile reservoir at a normal pool elevation of 639.0 feet mean sea level and 79,000 acre-feet of storage.

The proposed project would consist of: (1) 25 Very Low Head (VHL) generating units and 75 hydrokinetic generating units totaling 14.5 megawatts (MW) installed capacity; (2) a new 69-kilovolt transmission line connected to an existing above ground local distribution system; and (3) appurtenant facilities. The project would have an estimated average annual generation of 73,600 megawatt-hours.

Applicant Contact: Mr. Daniel R. Irvin, Free Flow Power Corporation, 33 Commercial Street, Gloucester, MA 01930, phone (978) 252-7631.

FERC Contact: Patrick Murphy, (202) 502-8755.

Deadline for filing comments, motions to intervene, competing applications (without notices of intent), or notices of intent to file competing applications: 60 days from the issuance of this notice. Comments, motions to intervene, notices of intent, and competing applications may be filed electronically via the Internet. See 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the "e-Filing" link. If unable to be filed electronically, documents may be paper-filed. To paper-file, an original and eight copies should be mailed to: Kimberly D. Bose, Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426. For more information on how to submit these types of filings please go to the Commission's Web site located at <http://www.ferc.gov/filing-comments.asp>. More information about this project can be viewed or printed on the "eLibrary" link of Commission's Web site at <http://www.ferc.gov/docs-filing/elibrary.asp>. Enter the docket number (P-13337) in the docket number field to access the document. For assistance, call toll-free 1-866-208-3372.

Kimberly D. Bose,

Secretary.

[FR Doc. E9-11802 Filed 5-20-09; 8:45 am]

BILLING CODE 6717-01-P

DEPARTMENT OF ENERGY**Federal Energy Regulatory Commission**

[Project No. 13336-000]

FFP Project 34, LLC; Notice of Preliminary Permit Application Accepted for Filing and Soliciting Comment, Motions To Intervene, and Competing Applications

May 14, 2009.

On November 24, 2008, FFP Project 34, LLC filed an application, pursuant to section 4(f) of the Federal Power Act, proposing to study the feasibility of the Mississippi River Lock and Dam No. 6 Water Power Project (Lock & Dam 6 Project), to be located at River Mile 714.3 on the Mississippi River in Trempealeau County, Wisconsin and Winona County, Minnesota, and near the town of Trempealeau, WI. Also, the reservoir runs through a portion of the Upper Mississippi River National Wildlife and Fish Refuge.

The proposed Lock & Dam 6 Project would be integral with: (1) The existing U.S. Army Corps of Engineers Lock & Dam No. 6 comprised of an 893-foot-long gated dam section with 5 roller gates and 10 tainter gates, and a 600 foot-long lock; and (2) an existing 14-mile long, 21,817-acre reservoir at a normal pool elevation of 645.5 feet mean sea level and 31,200 acre-feet of storage.

The proposed project would consist of: (1) 30 Very Low Head (VHL) generating units and 70 hydrokinetic generating units totaling 11.0 megawatts (MW) installed capacity; (2) a new 69-kilovolt transmission line connected to an existing above ground local distribution system; and (3) appurtenant facilities. The project would have an estimated average annual generation of 55,900 megawatt-hours.

Applicant Contact: Mr. Daniel R. Irvin, Free Flow Power Corporation, 33 Commercial Street, Gloucester, MA 01930, phone (978) 252-7631.

FERC Contact: Patrick Murphy, (202) 502-8755.

Deadline for filing comments, motions to intervene, competing applications (without notices of intent), or notices of intent to file competing applications: 60 days from the issuance of this notice. Comments, motions to intervene, notices of intent, and competing applications may be filed electronically via the Internet. See 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the "e-Filing" link. If unable to be filed electronically, documents may be paper-filed. To paper-file, an original and eight

copies should be mailed to: Kimberly D. Bose, Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426. For more information on how to submit these types of filings please go to the Commission's Web site located at <http://www.ferc.gov/filing-comments.asp>. More information about this project can be viewed or printed on the "eLibrary" link of Commission's Web site at <http://www.ferc.gov/docs-filing/elibrary.asp>. Enter the docket number (P-13336) in the docket number field to access the document. For assistance, call toll-free 1-866-208-3372.

Kimberly D. Bose,*Secretary.*

[FR Doc. E9-11801 Filed 5-20-09; 8:45 am]

BILLING CODE 6717-01-P

DEPARTMENT OF ENERGY**Federal Energy Regulatory Commission**

[Project No. 13335-000]

FFP Project 31, LLC; Notice of Preliminary Permit Application Accepted for Filing and Soliciting Comment, Motions To Intervene, and Competing Applications

May 14, 2009.

On November 24, 2008, FFP Project 31, LLC filed an application, pursuant to section 4(f) of the Federal Power Act, proposing to study the feasibility of the Mississippi River Lock and Dam No. 4 Water Power Project (Lock & Dam 4 Project), to be located at River Mile 752.8 on the Mississippi River in the City of Alma, Buffalo County, Wisconsin, and Wabasha County, Minnesota.

The proposed Lock & Dam 4 Project would be integral with: (1) The existing U.S. Army Corps of Engineers Lock & Dam No. 4 comprised of a 1,367-foot-long gated dam section with 6 roller gates and 22 tainter gates, and a 600 foot-long lock; and (2) an existing 44.1-mile long reservoir with a normal pool elevation of 667 feet mean sea level and 31,200 acre-feet of storage.

The proposed project would consist of: (1) 24 Very Low Head (VHL) generating units and 70 hydrokinetic generating units with a total installed capacity of 11.4 megawatts (MW); (2) a new 69-kilovolt transmission line connected to an existing above ground local distribution system; and (3) appurtenant facilities. The project would have an estimated average annual generation of 57,900 megawatt-hours.

Applicant Contact: Mr. Daniel R. Irvin, Free Flow Power Corporation, 33 Commercial Street, Gloucester, MA 01930, phone (978) 252-7631.

FERC Contact: Patrick Murphy, (202) 502-8755.

Deadline for filing comments, motions to intervene, competing applications (without notices of intent), or notices of intent to file competing applications: 60 days from the issuance of this notice. Comments, motions to intervene, notices of intent, and competing applications may be filed electronically via the Internet. See 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the "e-Filing" link. If unable to be filed electronically, documents may be paper-filed. To paper-file, an original and eight copies should be mailed to: Kimberly D. Bose, Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426. For more information on how to submit these types of filings please go to the Commission's Web site located at <http://www.ferc.gov/filing-comments.asp>. More information about this project can be viewed or printed on the "eLibrary" link of Commission's Web site at <http://www.ferc.gov/docs-filing/elibrary.asp>. Enter the docket number (P-13335) in the docket number field to access the document. For assistance, call toll-free 1-866-208-3372.

Kimberly D. Bose,*Secretary.*

[FR Doc. E9-11800 Filed 5-20-09; 8:45 am]

BILLING CODE 6717-01-P

DEPARTMENT OF ENERGY**Federal Energy Regulatory Commission**

[Project No. 13334-000]

FFP Project 31, LLC; Notice of Preliminary Permit Application Accepted for Filing and Soliciting Comment, Motions To Intervene, and Competing Applications

May 14, 2009.

On November 24, 2008, FFP Project 31, LLC filed an application, pursuant to section 4(f) of the Federal Power Act, proposing to study the feasibility of the Mississippi River Lock and Dam No. 3 Water Power Project (Lock & Dam 3 Project), to be located at River Mile 796.9 on the Mississippi River in Goodhue County, Minnesota, and Pierce County, Wisconsin, six miles north of Red Wing, Minnesota.

The proposed Lock & Dam 3 Project would be integral with: (1) The existing

U.S. Army Corps of Engineers Lock & Dam No. 3 comprised of a 365-foot-long gated dam section and a 600-foot-long lock; and (2) an existing 8.3-mile long reservoir with a normal pool elevation of 675 feet mean sea level and 31,200 acre-feet of storage.

The proposed project would consist of: (1) 20 Very Low Head (VHL) generating units and 60 hydrokinetic generating units with a total installed capacity of 11.0 megawatts (MW); (2) a new 69-kilovolt transmission line connected to an existing above ground local distribution system; and (3) appurtenant facilities. The project would have an estimated average annual generation of 56,300 megawatt-hours.

Applicant Contact: Mr. Daniel R. Irvin, Free Flow Power Corporation, 33 Commercial Street, Gloucester, MA 01930, phone (978) 252-7631.

FERC Contact: Patrick Murphy, (202) 502-8755.

Deadline for filing comments, motions to intervene, competing applications (without notices of intent), or notices of intent to file competing applications: 60 days from the issuance of this notice. Comments, motions to intervene, notices of intent, and competing applications may be filed electronically via the Internet. See 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the "e-Filing" link. If unable to be filed electronically, documents may be paper-filed. To paper-file, an original and eight copies should be mailed to: Kimberly D. Bose, Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426. For more information on how to submit these types of filings please go to the Commission's Web site located at <http://www.ferc.gov/filing-comments.asp>. More information about this project can be viewed or printed on the "eLibrary" link of Commission's Web site at <http://www.ferc.gov/docs-filing/elibrary.asp>. Enter the docket number (P-13334) in the docket number field to access the document. For assistance, call toll-free 1-866-208-3372.

Kimberly D. Bose,

Secretary.

[FR Doc. E9-11799 Filed 5-20-09; 8:45 am]

BILLING CODE 6717-01-P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP09-237-000]

Transcontinental Gas Pipe Line Company, LLC; Notice of Application

May 14, 2009.

Take notice that on April 30, 2009, Transcontinental Gas Pipe Line Company, LLC (Transco), Post Office Box 1396, Houston, Texas 77251, filed in the above referenced docket an application pursuant to section 7(c) of the NGA and Part 157 of the Commission's regulations, for a certificate of public convenience and authorizing the construction and operation of Delta Lateral Project (Project) in York County, Pennsylvania. The Project consists of the construction of a new 3.42 mile 16-inch delivery lateral extending from Transco's mainline Station 195 to the Delta Power Plant in Peach Bottom Township, Pennsylvania. The Project will provide 208,800 dekatherms per day of firm natural gas transportation service to Conectiv Energy Supply, Inc., owner of the Delta Power Plant, all as more fully set forth in the application which is on file with the Commission and open to public inspection. The filing is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site Web at <http://www.ferc.gov> using the "eLibrary" link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, contact FERC at FERCOnlineSupport@ferc.gov or call toll-free, (866) 208-3676 or TTY, (202) 502-8659.

Any questions regarding the application are to be directed to Marg Camardello, Manager, Tariffs and Certificates, PO Box 1396, Houston, Texas 77251, phone (713) 215-3380. Additionally, Transco has established a toll-free telephone number, (866) 455 9103, and e-mail address, PipelineExpansion@williams.com, so that parties can call with questions about the Project.

There are two ways to become involved in the Commission's review of this project. First, any person wishing to obtain legal status by becoming a party to the proceedings for this project should, on or before the comment date stated below file with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, a motion to intervene in accordance with the requirements of the Commission's Rules of Practice and

Procedure (18 CFR 385.214 or 385.211) and the Regulations under the NGA (18 CFR 157.10). A person obtaining party status will be placed on the service list maintained by the Secretary of the Commission and will receive copies of all documents filed by the applicant and by all other parties. A party must submit 14 copies of filings made in the proceeding with the Commission and must mail a copy to the applicant and to every other party. Only parties to the proceeding can ask for court review of Commission orders in the proceeding.

However, a person does not have to intervene in order to have comments considered. The second way to participate is by filing with the Secretary of the Commission, as soon as possible, an original and two copies of comments in support of or in opposition to this project. The Commission will consider these comments in determining the appropriate action to be taken, but the filing of a comment alone will not serve to make the filer a party to the proceeding. The Commission's rules require that persons filing comments in opposition to the project provide copies of their protests only to the party or parties directly involved in the protest.

Persons who wish to comment only on the environmental review of this project should submit an original and two copies of their comments to the Secretary of the Commission. Environmental commentors will be placed on the Commission's environmental mailing list, will receive copies of the environmental documents, and will be notified of meetings associated with the Commission's environmental review process. Environmental commentors will not be required to serve copies of filed documents on all other parties. However, the non-party commentors will not receive copies of all documents filed by other parties or issued by the Commission (except for the mailing of environmental documents issued by the Commission) and will not have the right to seek court review of the Commission's final order.

The Commission strongly encourages electronic filings of comments, protests and interventions in lieu of paper using the "eFiling" link at <http://www.ferc.gov>. Persons unable to file electronically should submit an original and 14 copies of the protest or intervention to the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

This filing is accessible on-line at <http://www.ferc.gov>, using the "eLibrary" link and is available for review in the Commission's Public

Reference Room in Washington, DC. There is an "eSubscription" link on the Web site that enables subscribers to receive e-mail notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please e-mail FERCOnlineSupport@ferc.gov, or call (866) 208-3676 (toll free). For TTY, call (202) 502-8659.

Comment Date: June 4, 2009.

Kimberly D. Bose,
Secretary.

[FR Doc. E9-11795 Filed 5-20-09; 8:45 am]

BILLING CODE 6717-01-P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP09-191-000]

Tennessee Gas Pipeline Company; Notice of Application

May 14, 2009.

Take notice that on April 28, 2009, Tennessee Gas Pipeline Company (Tennessee), 1001 Louisiana Street, Houston, Texas 77002, filed in Docket No. CP09-191-000, an application pursuant to section 7(b) of the Natural Gas Act (NGA) and Part 157 of the Commission's regulations, requesting authorization to abandon by sale Lines 523M-8900, 523M-9000, 523M-9100, 523M-9200, and 523M-9300, located in Federal waters offshore Louisiana, all as more fully set forth in the application which is on file with the Commission and open to public inspection. This filing may also be viewed on the Commission's Web site at <http://www.ferc.gov> using the "eLibrary" link. Enter the docket number, excluding the last three digits, in the docket number field to access the document. For assistance, call (866) 208-3676 or TTY, (202) 502-8659.

Any questions regarding this application should be directed to Susan T. Halbach, Senior Counsel, Tennessee Gas Pipeline Company, 1001 Louisiana Street, Houston, Texas 77002, or by calling (713) 420-5751 (telephone) or (713) 420-1601 (fax), susan.halbach@elpaso.com, Thomas G. Joyce, Manager, Certificates, Tennessee Gas Pipeline Company, 1001 Louisiana Street, Houston Texas 77002, or by calling (713) 420-3299 (telephone) or (713) 420-1605 (fax), tom.joyce@elpaso.com, or to Kathy Cash, Principal Analyst, Rates and Regulatory Affairs, Tennessee Gas Pipeline Company, 1001 Louisiana Street, Houston, Texas 77002, or by

calling (713) 420-3290 (telephone) or (713) 420-1605 (fax), kathy.cash@elpaso.com.

Pursuant to section 157.9 of the Commission's rules, 18 CFR 157.9, within 90 days of this Notice the Commission staff will either: Complete its environmental assessment (EA) and place it into the Commission's public record (eLibrary) for this proceeding, or issue a Notice of Schedule for Environmental Review. If a Notice of Schedule for Environmental Review is issued, it will indicate, among other milestones, the anticipated date for the Commission staff's issuance of the final environmental impact statement (FEIS) or EA for this proposal. The filing of the EA in the Commission's public record for this proceeding or the issuance of a Notice of Schedule for Environmental Review will serve to notify Federal and State agencies of the timing for the completion of all necessary reviews, and the subsequent need to complete all Federal authorizations within 90 days of the date of issuance of the Commission staff's FEIS or EA.

There are two ways to become involved in the Commission's review of this project. First, any person wishing to obtain legal status by becoming a party to the proceedings for this project should, on or before the comment date stated below, file with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, a motion to intervene in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.214 or 385.211) and the Regulations under the NGA (18 CFR 157.10). A person obtaining party status will be placed on the service list maintained by the Secretary of the Commission and will receive copies of all documents filed by the applicant and by all other parties. A party must submit 14 copies of filings made with the Commission and must mail a copy to the applicant and to every other party in the proceeding. Only parties to the proceeding can ask for court review of Commission orders in the proceeding.

However, a person does not have to intervene in order to have comments considered. The second way to participate is by filing with the Secretary of the Commission, as soon as possible, an original and two copies of comments in support of or in opposition to this project. The Commission will consider these comments in determining the appropriate action to be taken, but the filing of a comment alone will not serve to make the filer a party to the proceeding. The Commission's rules require that persons filing comments in opposition to the project

provide copies of their protests only to the party or parties directly involved in the protest.

Persons who wish to comment only on the environmental review of this project should submit an original and two copies of their comments to the Secretary of the Commission. Environmental commenters will be placed on the Commission's environmental mailing list, will receive copies of the environmental documents, and will be notified of meetings associated with the Commission's environmental review process. Environmental commenters will not be required to serve copies of filed documents on all other parties. However, the non-party commenters will not receive copies of all documents filed by other parties or issued by the Commission (except for the mailing of environmental documents issued by the Commission) and will not have the right to seek court review of the Commission's final order.

Motions to intervene, protests and comments may be filed electronically via the Internet in lieu of paper; *see*, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the "e-Filing" link. The Commission strongly encourages electronic filings.

Comment Date: June 4, 2009.

Kimberly D. Bose,
Secretary.

[FR Doc. E9-11806 Filed 5-20-09; 8:45 am]

BILLING CODE 6717-01-P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. DI09-8-000]

General Power Engineering Associates, Inc.; Notice of Declaration of Intention and Soliciting Comments, Protests, and/or Motions To Intervene

May 13, 2009.

Take notice that the following application has been filed with the Commission and is available for public inspection:

- a. *Application Type:* Declaration of Intention.
- b. *Docket No:* DI09-8-000.
- c. *Date Filed:* April 27, 2009.
- d. *Applicant:* General Power Engineering Associates, Inc.
- e. *Name of Project:* Gulf Stream Hydro Project.
- f. *Location:* The proposed Gulf Stream Hydro Project will be located in the Atlantic Ocean in an area contained by

boundaries beginning southeast of Boca Raton, Florida at 26°18 N by 80°05 W, north to 27°00 N by 80°05 W, east to 27°00 N by 79°35 W, south to 26°18 N by 79°35 W, and west to the starting point 26°18 N by 80°05 W, with a transmission cable connected to a land switchyard located in Palm Beach County, near Lantana, Florida.

g. *Filed Pursuant to:* Section 23(b)(1) of the Federal Power Act, 16 U.S.C. §§ 817(b).

h. *Applicant Contact:* David J. Parker, 6681 33rd Street East, Bldg. C1, Sarasota, FL 34243; *Telephone:* (941) 755-5050; *Fax:* (941) 755-5011; *e-mail:* <http://www.davidp@gpea.com>.

i. *FERC Contact:* Any questions on this notice should be addressed to Henry Ecton, (202) 502-8768, or *E-mail address:* henry.ecton@ferc.gov.

j. *Deadline for filing comments, protests, and/or motions:* June 15, 2009.

All documents (original and eight copies) should be filed with: Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426. Comments, protests, and/or interventions may be filed electronically via the Internet in lieu of paper. Any questions, please contact the Secretary's Office. *See,* 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site at <http://www.ferc.gov> under the "e-Filing link."

Please include the docket number (DI09-8-000) on any comments, protests, and/or motions filed.

k. *Description of Project:* The proposed Gulf Stream Hydro Project will include: (1) Two tethered floating pairs of 1 MW turbine-generators, submerged beyond a depth of 30 meters; (2) a submerged cable to take power and control signals to and from a switchyard near Lantana, Florida; and (3) appurtenant facilities. The proposed project will be connected to an interstate grid. It will occupy Federal lands.

When a Declaration of Intention is filed with the Federal Energy Regulatory Commission, the Federal Power Act requires the Commission to investigate and determine if the interests of interstate or foreign commerce would be affected by the project. The Commission also determines whether or not the project: (1) Would be located on a navigable waterway; (2) would occupy or affect public lands or reservations of the United States; (3) would utilize surplus water or water power from a government dam; or (4) if applicable, has involved or would involve any construction subsequent to 1935 that may have increased or would increase the project's head or generating capacity, or have otherwise significantly

modified the project's pre-1935 design or operation.

l. *Locations of the Application:* Copies of this filing are on file with the Commission and are available for public inspection. This filing may be viewed on the Web at <http://www.ferc.gov> using the "eLibrary" link, select "Docket#" and follow the instructions. For assistance, please contact FERC Online Support at FERCOnlineSupport@ferc.gov or toll-free at (866) 208-3372, or TTY, contact (202) 502-8659.

m. Individuals desiring to be included on the Commission's mailing list should so indicate by writing to the Secretary of the Commission.

n. Comments, Protests, or Motions to Intervene—Anyone may submit comments, a protest, or a motion to intervene in accordance with the requirements of Rules of Practice and Procedure, 18 CFR 385.210, .211, .214. In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but only those who file a motion to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any comments, protests, or motions to intervene must be received on or before the specified comment date for the particular application.

o. Filing and Service of Responsive Documents—Any filings must bear in all capital letters the title "COMMENTS", "PROTESTS", and/or "MOTIONS TO INTERVENE", as applicable, and the Docket Number of the particular application to which the filing refers. A copy of any motion to intervene must also be served upon each representative of the Applicant specified in the particular application.

p. Agency Comments—Federal, State, and local agencies are invited to file comments on the described application. A copy of the application may be obtained by agencies directly from the Applicant. If an agency does not file comments within the time specified for filing comments, it will be presumed to have no comments. One copy of an agency's comments must also be sent to the Applicant's representatives.

Kimberly D. Bose,

Secretary.

[FR Doc. E9-11793 Filed 5-20-09; 8:45 am]

BILLING CODE 6717-01-P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 13339-000]

FFP Detroit 1, LLC d/b/a FFP Lock & Dam No. 10; Notice of Preliminary Permit Application Accepted for Filing and Soliciting Comment, Motions to Intervene, and Competing Applications

May 13, 2009.

On November 24, 2008, FFP Detroit 1, LLC d/b/a FFP Lock & Dam No. 10 filed an application, pursuant to section 4(f) of the Federal Power Act, proposing to study the feasibility of the Mississippi River Lock and Dam No. 10 Water Power Project (Lock & Dam 10 Project), to be located at River Mile 615.1 on the Mississippi River in Clayton County, Iowa, and Grant County, Wisconsin, and near the town of Guttenberg, IA. Also, the reservoir runs through a portion of the Upper Mississippi River National Wildlife and Fish Refuge.

The proposed Lock & Dam 10 Project would be integral with: (1) The existing 5,747-foot-long U.S. Army Corps of Engineers Lock & Dam No. 10 comprised of a 763-foot-long gated dam section with 4 roller gates and 8 tainter gates, and a 600 foot-long lock; and (2) an existing 33-mile-long reservoir extending from River Mile 615 to River Mile 648 at a normal pool elevation of 611.0 feet mean sea level.

The proposed project would consist of: (1) 30 Very Low Head (VHL) generating units and 85 hydrokinetic generating units totaling 15.9 megawatts (MW) installed capacity; (2) a new 69-kilovolt transmission line connected to an existing above ground local distribution system; and (3) appurtenant facilities. The project would have an estimated average annual generation of 81,200 megawatt-hours.

Applicant Contact: Mr. Daniel R. Irvin, Free Flow Power Corporation, 33 Commercial Street, Gloucester, MA 01930, phone (978) 252-7631.

FERC Contact: Patrick Murphy, (202) 502-8755.

Deadline for filing comments, motions to intervene, competing applications (without notices of intent), or notices of intent to file competing applications: 60 days from the issuance of this notice. Comments, motions to intervene, notices of intent, and competing applications may be filed electronically via the Internet. See 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's website under the "e-Filing" link. If unable to be filed electronically, documents may be paper-filed. To paper-file, an original and eight

copies should be mailed to: Kimberly D. Bose, Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426. For more information on how to submit these types of filings please go to the Commission's Web site located at <http://www.ferc.gov/filing-comments.asp>. More information about this project can be viewed or printed on the "eLibrary" link of Commission's Web site at <http://www.ferc.gov/docs-filing/elibrary.asp>. Enter the docket number (P-13339) in the docket number field to access the document. For assistance, call toll-free 1-866-208-3372.

Kimberly D. Bose,
Secretary.

[FR Doc. E9-11791 Filed 5-20-09; 8:45 am]

BILLING CODE 6717-01-P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER09-1098-000]

DownEast Power Company, LLC; Supplemental Notice That Initial Market-Based Rate Filing Includes Request for Blanket Section 204 Authorization

May 13, 2009.

This is a supplemental notice in the above-referenced proceeding of DownEast Power Company, LLC's application for market-based rate authority, with an accompanying rate tariff, noting that such application includes a request for blanket authorization, under 18 CFR part 34, of future issuances of securities and assumptions of liability.

Any person desiring to intervene or to protest should file with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). Anyone filing a motion to intervene or protest must serve a copy of that document on the Applicant.

Notice is hereby given that the deadline for filing protests with regard to the applicant's request for blanket authorization, under 18 CFR part 34, of future issuances of securities and assumptions of liability, is June 2, 2009.

The Commission encourages electronic submission of protests and interventions in lieu of paper, using the FERC Online links at <http://www.ferc.gov>. To facilitate electronic service, persons with Internet access who will eFile a document and/or be

listed as a contact for an intervenor must create and validate an eRegistration account using the eRegistration link. Select the eFiling link to log on and submit the intervention or protests.

Persons unable to file electronically should submit an original and 14 copies of the intervention or protest to the Federal Energy Regulatory Commission, 888 First St., NE., Washington, DC, 20426.

Docket No. ER09-1098-000

The filings in the above-referenced proceeding are accessible in the Commission's eLibrary system by clicking on the appropriate link in the above list. They are also available for review in the Commission's Public Reference Room in Washington, DC. There is an eSubscription link on the Web site that enables subscribers to receive e-mail notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please e-mail FERCOnlineSupport@ferc.gov, or call (866) 208-3676 (toll free). For TTY, call (202) 502-8659.

Kimberly D. Bose,
Secretary.

[FR Doc. E9-11789 Filed 5-20-09; 8:45 am]

BILLING CODE 6717-01-P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. EL09-53-000]

Easton Utilities Commission; Notice of Filing

May 14, 2009.

Take notice that on May 6, 2009, the Easton Utilities Commission (Easton Utilities) filed a petition for declaratory order requesting approval of its revenue requirement for its contribution to Reactive Supply and Voltage Control from Generation or Other Sources Service pursuant to Schedule 2 of the Open Access Transmission Tariff of PJM Interconnection, L.L.C., pursuant to the Rule 205 of the Commission's Rules of Practice and Procedure. Easton Utilities also request waiver of the Commission's filing fee, pursuant to Rule 207 of the Commission's Rules of Practice and Procedure, 18 CFR 385.207.

Any person desiring to intervene or to protest this filing must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). Protests will be considered by the

Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a notice of intervention or motion to intervene, as appropriate. Such notices, motions, or protests must be filed on or before the comment date. On or before the comment date, it is not necessary to serve motions to intervene or protests on persons other than the Applicant.

The Commission encourages electronic submission of protests and interventions in lieu of paper using the "eFiling" link at <http://www.ferc.gov>. Persons unable to file electronically should submit an original and 14 copies of the protest or intervention to the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

This filing is accessible on-line at <http://www.ferc.gov>, using the "eLibrary" link and is available for review in the Commission's Public Reference Room in Washington, DC. There is an "eSubscription" link on the Web site that enables subscribers to receive e-mail notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please e-mail FERCOnlineSupport@ferc.gov, or call (866) 208-3676 (toll free). For TTY, call (202) 502-8659.

Comment Date: 5 p.m. Eastern Time on June 5, 2009.

Kimberly D. Bose,
Secretary.

[FR Doc. E9-11797 Filed 5-20-09; 8:45 am]

BILLING CODE 6717-01-P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. EL09-52-000]

City of Riverside, CA; Notice of Filing

May 14, 2009.

Take notice that on May 6, 2009, the City of Riverside, California (Riverside) filed a petition for declaratory order requesting approval of its revised Base Transmission Revenue Requirement, revised Transmission Revenue Balancing Account Adjustment, revised High Voltage Transmission Revenue Requirement and accompanying mechanism to adjust the cost of its Riverside's Existing Transmission Contracts with Southern California Edison Company, pursuant to Rule 205 of the Commission's Rules and Practice and Procedure, 18 CFR 385.205 and

section 26.1.1 of the California Independent System Operator Corporation Tariff. Riverside also requests for waiver of the sixty-day notice requirement provided for in Commission's regulations at 18 CFR 35.3(a) and waiver of the filing fee, pursuant to Rule 207 of the Commission's Rules of Practice and Procedure, 18 CFR 385.207.

Any person desiring to intervene or to protest this filing must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a notice of intervention or motion to intervene, as appropriate. Such notices, motions, or protests must be filed on or before the comment date. On or before the comment date, it is not necessary to serve motions to intervene or protests on persons other than the Applicant.

The Commission encourages electronic submission of protests and interventions in lieu of paper using the "eFiling" link at <http://www.ferc.gov>. Persons unable to file electronically should submit an original and 14 copies of the protest or intervention to the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

This filing is accessible on-line at <http://www.ferc.gov>, using the "eLibrary" link and is available for review in the Commission's Public Reference Room in Washington, DC. There is an "eSubscription" link on the Web site that enables subscribers to receive e-mail notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please e-mail FERCOnlineSupport@ferc.gov, or call (866) 208-3676 (toll free). For TTY, call (202) 502-8659.

Comment Date: 5 p.m. Eastern Time on June 5, 2009.

Kimberly D. Bose,

Secretary.

[FR Doc. E9-11796 Filed 5-20-09; 8:45 am]

BILLING CODE 6717-01-P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER09-1099-000]

Empire Generating Company; Supplemental Notice That Initial Market-Based Rate Filing Includes Request for Blanket Section 204 Authorization

May 13, 2009.

This is a supplemental notice in the above-referenced proceeding of Empire Generating Company's application for market-based rate authority, with an accompanying rate tariff, noting that such application includes a request for blanket authorization, under 18 CFR Part 34, of future issuances of securities and assumptions of liability.

Any person desiring to intervene or to protest should file with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). Anyone filing a motion to intervene or protest must serve a copy of that document on the Applicant.

Notice is hereby given that the deadline for filing protests with regard to the applicant's request for blanket authorization, under 18 CFR Part 34, of future issuances of securities and assumptions of liability, is June 2, 2009.

The Commission encourages electronic submission of protests and interventions in lieu of paper, using the FERC Online links at <http://www.ferc.gov>. To facilitate electronic service, persons with Internet access who will eFile a document and/or be listed as a contact for an intervenor must create and validate an eRegistration account using the eRegistration link. Select the eFiling link to log on and submit the intervention or protests.

Persons unable to file electronically should submit an original and 14 copies of the intervention or protest to the Federal Energy Regulatory Commission, 888 First St., NE., Washington, DC 20426.

The filings in the above-referenced proceeding are accessible in the Commission's eLibrary system by clicking on the appropriate link in the above list. They are also available for review in the Commission's Public Reference Room in Washington, DC. There is an eSubscription link on the Web site that enables subscribers to receive e-mail notification when a document is added to a subscribed docket(s). For assistance with any

FERC Online service, please e-mail FERCOnlineSupport@ferc.gov or call (866) 208-3676 (toll free). For TTY, call (202) 502-8659.

Kimberly D. Bose,

Secretary.

[FR Doc. E9-11790 Filed 5-20-09; 8:45 am]

BILLING CODE 6717-01-P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. QM09-4-000]

Wolverine Power Supply Cooperative, Inc.; Notice of Filing

May 14, 2009.

Take notice that on May 14, 2009, Wolverine Power Supply Cooperative, Inc. filed a supplement to its May 8, 2009 application in response to Commission's request.

Any person desiring to intervene or to protest this filing must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a notice of intervention or motion to intervene, as appropriate. Such notices, motions, or protests must be filed on or before the comment date. On or before the comment date, it is not necessary to serve motions to intervene or protests on persons other than the Applicant.

The Commission encourages electronic submission of protests and interventions in lieu of paper using the "eFiling" link at <http://www.ferc.gov>. Persons unable to file electronically should submit an original and 14 copies of the protest or intervention to the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

This filing is accessible on-line at <http://www.ferc.gov>, using the "eLibrary" link and is available for review in the Commission's Public Reference Room in Washington, DC. There is an "eSubscription" link on the Web site that enables subscribers to receive e-mail notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please e-mail FERCOnlineSupport@ferc.gov, or call (866) 208-3676 (toll free). For TTY, call (202) 502-8659.

Comment Date: 5 p.m. Eastern Time on June 11, 2009.

Kimberly D. Bose,

Secretary.

[FR Doc. E9-11805 Filed 5-20-09; 8:45 am]

BILLING CODE 6717-01-P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. PR09-6-002]

J-W Pipeline Company; Notice of Compliance Filing

May 14, 2009.

Take notice that on May 6, 2009, J-W Pipeline Company filed an Operating Statement pursuant to section 284.123(e) of the Commission's regulations and to comply with the Commission's letter order issued on April 7, 2009, in Docket Nos. PR09-6-000 and PR09-6-001.

Any person desiring to participate in this proceeding must file a motion to intervene or to protest this filing must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a notice of intervention or motion to intervene, as appropriate. Such notices, motions, or protests must be filed on or before the date as indicated below. Anyone filing an intervention or protest must serve a copy of that document on the Applicant. Anyone filing an intervention or protest on or before the intervention or protest date need not serve motions to intervene or protests on persons other than the Applicant.

The Commission encourages electronic submission of protests and interventions in lieu of paper using the "eFiling" link at <http://www.ferc.gov>. Persons unable to file electronically should submit an original and 14 copies of the protest or intervention to the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

This filing is accessible on-line at <http://www.ferc.gov>, using the "eLibrary" link and is available for review in the Commission's Public Reference Room in Washington, DC. There is an "eSubscription" link on the Web site that enables subscribers to receive e-mail notification when a

document is added to a subscribed docket(s). For assistance with any FERC Online service, please e-mail FERCOnlineSupport@ferc.gov, or call (866) 208-3676 (toll free). For TTY, call (202) 502-8659.

Comment Date: 5 p.m. Eastern Time on Wednesday, May 20, 2009.

Kimberly D. Bose,

Secretary.

[FR Doc. E9-11804 Filed 5-20-09; 8:45 am]

BILLING CODE 6717-01-P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket Nos. ER09-1091-000; ER07-708-000]

Twin Cities Power, L.L.C.; Supplemental Notice That Initial Market-Based Rate Filing Includes Request for Blanket Section 204 Authorization

May 13, 2009.

This is a supplemental notice in the above-referenced proceeding of Twin Cities Power, L.L.C.'s application for market-based rate authority, with an accompanying rate tariff, noting that such application includes a request for blanket authorization, under 18 CFR part 34, of future issuances of securities and assumptions of liability.

Any person desiring to intervene or to protest should file with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). Anyone filing a motion to intervene or protest must serve a copy of that document on the Applicant.

Notice is hereby given that the deadline for filing protests with regard to the applicant's request for blanket authorization, under 18 CFR part 34, of future issuances of securities and assumptions of liability, is June 2, 2009.

The Commission encourages electronic submission of protests and interventions in lieu of paper, using the FERC Online links at <http://www.ferc.gov>. To facilitate electronic service, persons with Internet access who will eFile a document and/or be listed as a contact for an intervenor must create and validate an eRegistration account using the eRegistration link. Select the eFiling link to log on and submit the intervention or protests.

Persons unable to file electronically should submit an original and 14 copies

of the intervention or protest to the Federal Energy Regulatory Commission, 888 First St., NE., Washington, DC 20426.

The filings in the above-referenced proceeding are accessible in the Commission's eLibrary system by clicking on the appropriate link in the above list.

They are also available for review in the Commission's Public Reference Room in Washington, DC. There is an eSubscription link on the Web site that enables subscribers to receive e-mail notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please e-mail FERCOnlineSupport@ferc.gov, or call (866) 208-3676 (toll free). For TTY, call (202) 502-8659.

Kimberly D. Bose,

Secretary.

[FR Doc. E9-11788 Filed 5-20-09; 8:45 am]

BILLING CODE 6717-01-P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket Nos. ER09-1090-000; ER09-728-000]

Twin Cities Energy, LLC; Supplemental Notice That Initial Market-Based Rate Filing Includes Request for Blanket Section 204 Authorization

May 13, 2009.

This is a supplemental notice in the above-referenced proceeding of Twin Cities Energy, LLC's application for market-based rate authority, with an accompanying rate tariff, noting that such application includes a request for blanket authorization, under 18 CFR Part 34, of future issuances of securities and assumptions of liability.

Any person desiring to intervene or to protest should file with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). Anyone filing a motion to intervene or protest must serve a copy of that document on the Applicant.

Notice is hereby given that the deadline for filing protests with regard to the applicant's request for blanket authorization, under 18 CFR Part 34, of future issuances of securities and assumptions of liability, is June 2, 2009.

The Commission encourages electronic submission of protests and interventions in lieu of paper, using the

FERC Online links at <http://www.ferc.gov>. To facilitate electronic service, persons with Internet access who will eFile a document and/or be listed as a contact for an intervenor must create and validate an eRegistration account using the eRegistration link. Select the eFiling link to log on and submit the intervention or protests.

Persons unable to file electronically should submit an original and 14 copies of the intervention or protest to the Federal Energy Regulatory Commission, 888 First St., NE., Washington, DC 20426.

The filings in the above-referenced proceeding are accessible in the Commission's eLibrary system by clicking on the appropriate link in the above list. They are also available for review in the Commission's Public Reference Room in Washington, DC. There is an eSubscription link on the Web site that enables subscribers to receive e-mail notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please e-mail FERCOnlineSupport@ferc.gov or call (866) 208-3676 (toll free). For TTY, call (202) 502-8659.

Kimberly D. Bose,
Secretary.

[FR Doc. E9-11787 Filed 5-20-09; 8:45 am]

BILLING CODE 6717-01-P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket Nos. ER06-615-000; ER07-1257-000; ER08-1178-000; EL08-88-000]

California Independent System Operator Corporation; Notice of FERC Staff Attendance

May 14, 2009.

The Federal Energy Regulatory Commission (Commission) hereby gives notice that on May 15, 2009, members of its staff will attend a California Independent System Operator (CAISO) stakeholder conference call on Exceptional Dispatch. The agenda and other documents for the teleconference are available on the CAISO's Web site, <http://www.caiso.com>.

Sponsored by the CAISO, the teleconference is open to all market participants, and Commission staff's attendance is part of the Commission's ongoing outreach efforts. The teleconference may discuss matters at issue in the above captioned dockets.

For further information, contact Saeed Farrokhpay at saeed.farrokhpay@ferc.gov; (916) 294-0322 or Maury Kruth at maury.kruth@ferc.gov, (916) 294-0275.

Kimberly D. Bose,
Secretary.

[FR Doc. E9-11798 Filed 5-20-09; 8:45 am]

BILLING CODE 6717-01-P

ENVIRONMENTAL PROTECTION AGENCY

[FRL-8908-8]

Approval of Proposed Interpollutant Trading Request; Pennsylvania; Control of Fine Particulate Matter: Notice of Availability

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of Availability.

SUMMARY: This action announces the availability of EPA's approval of a request submitted by the Commonwealth of Pennsylvania to approve the use of sulfur dioxide (SO₂) emission reduction credits to offset increased emissions of fine particulate matter (PM_{2.5}) in the York County PM_{2.5} nonattainment area. EPA is approving this request in accordance with the Clean Air Act (CAA).

FOR FURTHER INFORMATION CONTACT: Gerallyn Duke, Air Permits Branch (3AP11), Air Protection Division, U.S. Environmental Protection Agency, Region III, 1650 Arch Street, Philadelphia, Pennsylvania 19103; telephone number: (215) 814-2084; e-mail address: duke.gerallyn@epa.gov.

SUPPLEMENTARY INFORMATION:

I. How Can I Get Copies of This Document and Other Related Information?

All documents for this action are available either electronically through <http://www.epa.gov/reg3artd/index.htm> 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.

II. Background

Under section 173 of the CAA, all major sources and major modifications at existing major sources within a nonattainment area must obtain emissions reductions to offset any emissions increases resulting from the project in an amount that is at least equal to the emissions increase, and that is consistent with reasonable further

progress toward attainment. A final rule published on May 16, 2008, in the **Federal Register** entitled "Implementation of the New Source Review (NSR) Program for PM_{2.5}" (72 FR 28349) established, among other things, the offset ratios, *i.e.*, the amount of emissions reductions required to offset the emissions increase, for direct emissions of PM_{2.5} as well as its precursors. The rule also allows limited interpollutant (precursor) trading for the purpose of PM_{2.5} offsets based on pollutant-specific trading ratios if such offsets are established as part of the State Implementation Plan (SIP) or if they comply with an interprecursor trading hierarchy and ratio approved by the Administrator. EPA previously conducted a technical assessment to develop preferred interpollutant trading ratios to be used for the purposes of PM_{2.5} offsets. The preferred ratios were published in the preamble to the May 16, 2008 rule and set a 40:1 ratio of SO₂ reductions to offset PM_{2.5} emission increases. The modeling used to derive the preferred ratio is described in a technical memo to the docket for the May 16, 2008 final rule and is included in the docket for this action.

States, such as Pennsylvania, that will need to update their State Implementation Plans (SIPs) to implement NSR for PM_{2.5} in nonattainment areas, must implement a transitional NSR permitting program for PM_{2.5} pursuant to appendix S to 40 CFR part 51. Appendix S at Section IV.G.5 allows the offset requirements for direct PM_{2.5} emissions to be satisfied by reductions of SO₂, a PM_{2.5} precursor, if such offsets are approved by the Administrator.

On January 20, 2009, the Pennsylvania Department of Environmental Protection (PADEP) submitted a request to EPA to allow interpollutant trading for offsets required for the construction and operation of the Conectiv Mid-Merit LLC's proposed natural gas-fired plant in Peach Bottom Township, Pennsylvania. This request was submitted pursuant to Pennsylvania's transitional NSR program under Appendix S for NSR permitting in PM_{2.5} nonattainment areas. The Commonwealth specifically requested approval to use EPA's preferred trading ratio of 40 tons of SO₂ reductions to offset every ton of PM_{2.5} emission increases. The new facility is to be located in the York County nonattainment area for PM_{2.5}.

On February 23, 2009, EPA published in *The York Dispatch* and *York Daily Record* a notice of intent to approve PADEP's Proposed Interpollutant

Trading Request for York County, Pennsylvania. The notices of intent to approve announced EPA's pending approval of the PADEP's request to allow the use of SO₂ emission reduction credits to offset increased emissions of PM_{2.5}, at a ratio of 40 tons SO₂ to one ton of PM_{2.5} emissions, in the York County PM_{2.5} nonattainment area. In these notices, EPA announced that comments would be received for 30 days. No comments were received in response to the notice. EPA approved PADEP's request to allow precursor trading for the purpose of PM_{2.5} offsets on April 14, 2009.

III. Judicial Review

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by July 20, 2009. Filing a petition for reconsideration by the Administrator of this approval 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 action. This action may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2).)

Dated: May 8, 2009.

James W. Newsom,

Acting Regional Administrator, Region III.

[FR Doc. E9-11911 Filed 5-20-09; 8:45 am]

BILLING CODE 6560-50-P

ENVIRONMENTAL PROTECTION AGENCY

[FRL-8908-5]

Notice of Disclosure of Confidential Business Information Obtained Under the Comprehensive Environmental Response, Compensation and Liability Act to EPA Authorized Representative, Utah Department of Environmental Quality

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice; request for comment.

SUMMARY: EPA hereby complies with the requirements of 40 CFR 2.310(h)(3) for notice of disclosure to its authorized representative, the Utah Department of Environmental Quality ("UDEQ"), Superfund confidential business information ("CBI") which has been submitted to EPA Region 8, Office of Ecosystems Protection and Remediation.

DATES: Comments may be submitted until June 22, 2009.

ADDRESSES: Comments should be sent to: Kelcey Land (Mail Code 8ENF-RC), Environmental Protection Agency, Region 8, 1595 Wynkoop Street, Denver, CO 80202-1129.

FOR FURTHER INFORMATION CONTACT: Kelcey Land (Mail Code 8ENF-RC), Environmental Protection Agency, Region 8, 1595 Wynkoop Street, Denver, CO 80202-1129 (303) 312-6393.

Notice of Required Determinations, Provisions, and Opportunity to Comment: The Comprehensive Environmental Response, Compensation, and Liability Act of 1980 ("CERCLA"), as amended, (commonly known as "Superfund") requires the establishment of an administrative record upon which the President shall base the selection of a response action. CERCLA also requires the maintenance of many other records including those relevant to cost recovery. EPA has granted authorized representative status to the State of Utah Department of Environmental Quality. Pursuant to 40 CFR 2.310(h)(3), a state or local governmental agency which has duties or responsibilities under CERCLA, or under regulations which implement CERCLA, may be considered an authorized representative of the United States for purposes of disclosure of CBI and may be furnished such CBI upon the agency's written request, but only if:

(i) The agency has first furnished to the EPA office having custody of the information a written opinion from the agency's chief legal officer or counsel stating that under applicable state or local law the agency has the authority to compel a business which possesses such information to disclose it to the agency, or

(ii) Each affected business is informed of those disclosures under this paragraph (h)(3) which pertain to it, and the agency has shown to the satisfaction of an EPA legal office that the agency's use and disclosure of such information will be governed by state or local law and procedures which will provide adequate protection to the interests of affected businesses.

Pursuant to 40 CFR 2.310(h)(4), at the time any information is released to a state or local government pursuant to paragraph 2.310(h), EPA must notify the state or local government that the information may be entitled to confidential treatment and that any knowing and willful disclosure of the information may subject the state or local government and its employees to penalties in section 104(e)(2)(B) of CERCLA.

EPA has determined that UDEQ has satisfied the requirements of subparagraph 40 CFR 2.310(h)(3)(ii) that the agency demonstrate to the satisfaction of EPA that the agency's use and disclosure of such information will be governed by state or local law and procedures which will provide adequate protection to the interests of affected businesses.

EPA hereby advises affected parties that they are informed of potential disclosures to UDEQ under paragraph 40 CFR 2.310(h)(3), and that they have ten working days to comment pursuant to 40 CFR 2.301(h)(2)(iii), incorporated by reference into 40 CFR 2.310(h)(2).

Comments should be sent to: Environmental Protection Agency, Region 8, Kelcey Land (Mail Code 8ENF-RC), Environmental Protection Agency, Region 8, 1595 Wynkoop Street, Denver, CO 80202-1129.

Dated: May 12, 2009.

Carol Campbell,

Assistant Regional Administrator, Office of Ecosystems Protection and Remediation, EPA, Region 8.

[FR Doc. E9-11922 Filed 5-20-09; 8:45 am]

BILLING CODE 6560-50-P

ENVIRONMENTAL PROTECTION AGENCY

[FRL-8908-9]

Proposed Administrative Settlement Agreement Under Section 122 of the Comprehensive Environmental Response, Compensation, and Liability Act for the Barry Bronze Bearing Company Site, Located in Camden, Camden County, NJ

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of Proposed Administrative Settlement and Opportunity for Public Comment.

SUMMARY: The United States Environmental Protection Agency ("EPA") is proposing to enter into an administrative settlement agreement ("Settlement Agreement") with Barry Bronze Bearing Company, Inc., Paul J. DeCoursey, Jr., and Clifford J. DeCoursey (the "Settling Parties") pursuant to Section 122 of the Comprehensive Environmental Response, Compensation, and Liability Act ("CERCLA"), 42 U.S.C. 9622. The Settlement Agreement provides for Settling Parties' payment of certain response costs incurred at the Barry Bronze Bearing Company Site located within the City of Camden, Camden County, New Jersey ("Site").

In accordance with Section 122(i) of CERCLA, 42 U.S.C. 9622(i), this notice

is being published to inform the public of the proposed Settlement Agreement and of the opportunity to comment. For thirty (30) days following the date of publication of this notice, EPA will receive written comments relating to the proposed Settlement Agreement. EPA will consider all comments received and may modify or withdraw its consent to the settlement if comments received disclose facts or considerations that indicate that the proposed settlement is inappropriate, improper or inadequate. EPA's response to any comments received will be available for public inspection at EPA Region 2, 290 Broadway, 17th floor, New York, New York 10007-1866.

DATES: Comments must be provided by June 22, 2009.

ADDRESSES: Comments should reference the Barry Bronze Bearing Company Site, EPA Docket No. CERCLA-02-2009-2012 and should be sent to the U.S. Environmental Protection Agency, Office of Regional Counsel, New Jersey Superfund Branch, 290 Broadway—17th Floor, New York, NY 10007.

FOR FURTHER INFORMATION CONTACT: Juan M. Fajardo, Assistant Regional Counsel, New Jersey Superfund Branch, Office of Regional Counsel, U.S. Environmental Protection Agency, 17th Floor, 290 Broadway, New York, New York 10007-1866. Telephone: 212-637-3132.

SUPPLEMENTARY INFORMATION: A copy of the proposed administrative settlement, as well as background information relating to the settlement, may be obtained from Juan M. Fajardo, Assistant Regional Counsel, New Jersey Superfund Branch, Office of Regional Counsel, U.S. Environmental Protection Agency, 17th Floor, 290 Broadway, New York, New York 10007-1866. Telephone: 212-637-3132.

Dated: April 21, 2009.

Walter Mugdan,

Director, Emergency and Remedial Response Division.

[FR Doc. E9-11910 Filed 5-20-09; 8:45 am]

BILLING CODE 6560-50-P

ENVIRONMENTAL PROTECTION AGENCY

[EPA-HQ-OAR-2007-0352; FRL-8908-6]

Second Draft Risk and Exposure Assessment Report for Sulfur Dioxide (SO₂)

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of extension of comment period.

SUMMARY: The EPA is announcing an extension of the public comment period for the draft document titled "Risk and Exposure Assessment to Support the Review of the SO₂ Primary National Ambient Air Quality Standards: Second Draft" (74 FR 18573). The EPA is extending the comment period that originally ends on May 20, 2009. The extended comment period will close on June 11, 2009. The EPA is extending the comment period to provide stakeholders and the public with adequate time to conduct appropriate analysis and prepare meaningful comments.

DATES: Comments on the above report must be received on or before June 11, 2009.

ADDRESSES: Submit your comments, identified by Docket ID No. EPA-HQ-OAR-2007-0352, by one of the following methods:

- *http://www.regulations.gov:* Follow the on-line instructions for submitting comments.

- *E-mail:* Comments may be sent by electronic mail (e-mail) to *a-and-r-docket@epa.gov*, Attention Docket ID No. EPA-HQ-OAR-2007-0352.

- *Fax:* Fax your comments to 202-566-9744, Attention Docket ID. No. EPA-HQ-OAR-2007-0352.

- *Mail:* Send your comments to: Air and Radiation Docket and Information Center, Environmental Protection Agency, Mailcode: 2822T, 1200 Pennsylvania Ave., NW., Washington, DC 20460, Attention Docket ID No. EPA-HQ-OAR-2007-0352.

- *Hand Delivery or Courier:* Deliver your comments to: EPA Docket Center, 1301 Constitution Ave., NW., Room 3334, Washington, DC. 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-HQ-OAR-2007-0352. The EPA's policy is that all comments received will be included in the public docket without change and may be made available online at *http://www.regulations.gov*, including any personal information provided, unless the comment includes information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Do not submit information that you consider to be CBI or otherwise protected through *http://www.regulations.gov* or e-mail. The *http://www.regulations.gov* Web site is an "anonymous access" system, which means EPA will not know your identity or contact information unless you provide it in the body of your comment.

If you send an e-mail comment directly to EPA without going through *http://www.regulations.gov*, your e-mail address will be automatically captured and included as part of the comment that is placed in the public docket and made available on the Internet. If you submit an electronic comment, EPA recommends that you include your name and other contact information in the body of your comment and with any disk or CD-ROM you submit. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses. For additional information about EPA's public docket visit the EPA Docket Center homepage at *http://www.epa.gov/epahome/dockets.htm*.

Docket: All documents in the docket are listed in the *http://www.regulations.gov* index.

Although listed in the index, some information is not publicly available, e.g., CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, will be publicly available only in hard copy. Publicly available docket materials are available either electronically in *http://www.regulations.gov* or in hard copy at the Air Docket in the EPA Docket Center, EPA West, Room 3334, 1301 Constitution Ave., NW., Washington, DC. This Docket Facility is open from 8:30 a.m. to 4:30 p.m. Monday through Friday, excluding legal holidays. The Docket telephone number is 202-566-1742; fax 202-566-9744.

FOR FURTHER INFORMATION CONTACT: Dr. Michael Stewart, Office of Air Quality Planning and Standards (Mailcode C504-06), U.S. Environmental Protection Agency, Research Triangle Park, NC 27711; e-mail: *stewart.michael@epa.gov*; telephone: 919-541-7524; fax: 919-541-0237.

General Information

A. What Should I Consider as I Prepare My Comments for EPA?

1. *Submitting CBI.* Do not submit this information to EPA through *http://www.regulations.gov* or e-mail. Clearly mark the part or all of the information that you claim to be CBI. For CBI information in a disk or CD-ROM that you mail to EPA, mark the outside of the disk or CD-ROM as CBI and then identify electronically within the disk or CD-ROM the specific information that is claimed as CBI. In addition to one complete version of the comment that

includes information claimed as CBI, a copy of the comment that does not contain the information claimed as CBI must be submitted for inclusion in the public docket. Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2.

2. *Tips for Preparing Your Comments.* When submitting comments, remember to:

- Identify the rulemaking by docket number and other identifying information (subject heading, **Federal Register** date and page number).
- Follow directions—The agency may ask you to respond to specific questions or organize comments by referencing a Code of Federal Regulations (CFR) part or section number.
- Explain why you agree or disagree; suggest alternatives and substitute language for your requested changes.
- Describe any assumptions and provide any technical information and/or data that you used.
- If you estimate potential costs or burdens, explain how you arrived at your estimate in sufficient detail to allow for it to be reproduced.
- Provide specific examples to illustrate your concerns, and suggest alternatives.
- Explain your views as clearly as possible, avoiding the use of profanity or personal threats.
- Make sure to submit your comments by the comment period deadline identified.

SUPPLEMENTARY INFORMATION: Under section 108(a) of the Clean Air Act (CAA), the Administrator identifies and lists certain pollutants which “cause or contribute to air pollution which may reasonably be anticipated to endanger public health or welfare.” The EPA then issues air quality criteria for listed pollutants, which are commonly referred to as “criteria pollutants.” The air quality criteria are to “accurately reflect the latest scientific knowledge useful in indicating the kind and extent of all identifiable effects on public health or welfare which may be expected from the presence of [a] pollutant in the ambient air, in varying quantities.” Under section 109 of the CAA, EPA establishes National Ambient Air Quality Standards (NAAQS) for each listed pollutant, with the NAAQS based on the air quality criteria. Section 109(d) of the CAA requires periodic review and, if appropriate, revision of existing air quality criteria. The revised air quality criteria reflect advances in scientific knowledge on the effects of the pollutant on public health or welfare. The EPA is also required to

periodically review and revise the NAAQS, if appropriate, based on the revised criteria.

Air quality criteria have been established for the sulfur oxides (SO_x) and NAAQS have been established for sulfur dioxide (SO₂), an indicator for SO_x. Presently, EPA is reviewing the air quality criteria for SO_x and the NAAQS for SO₂. As part of its review of the NAAQS, EPA has prepared an assessment of exposures and characterization of health risks associated with ambient SO₂. Planned approaches to assessing exposures and characterizing risks were described in the document, *Sulfur Dioxide Health Assessment Plan: Scope and Methods for Exposure and Risk Assessment*. This planning document was released for public review and comment in November 2007 and was the subject of a consultation with the Clean Air Scientific Advisory Committee (CASAC) on December 5 and 6, 2007. Comments received from that consultation were considered in developing the “Risk and Exposure Assessment to Support the Review of the SO₂ Primary National Ambient Air Quality Standards: First Draft,” which was released in July 2008.

The second draft of this document was released in March 2009 and conveys the approach taken to assess exposures to ambient SO₂ and to characterize associated health risks, as well as to present the results of those assessments. In addition, this document also contains a staff policy assessment that considers the evidence presented in the final Integrated Science Assessment and the exposure and risk characterization results presented in this second draft document, as they relate to the adequacy of the current SO₂ NAAQS and any potential alternative primary SO₂ standards. This draft document is available online at: http://www.epa.gov/ttn/naaqs/standards/so2/s_so2_cr_rea.html.

Dated: May 14, 2009.

Jenny Noonan Edwards,

Acting Director, Office of Air Quality Planning and Standards.

[FR Doc. E9-11917 Filed 5-20-09; 8:45 am]

BILLING CODE 6560-50-P

FEDERAL COMMUNICATIONS COMMISSION

[CG Docket 03-123; FCC 09-39]

Telecommunications Relay Services and Speech-to-Speech Services for Individuals with Hearing and Speech Disabilities

AGENCY: Federal Communications Commission.

ACTION: Notice.

SUMMARY: In this document, the Commission seeks comment on the National Exchange Carrier Association's (NECA) proposed compensation rates for interstate traditional telecommunications relay service (TRS); interstate Speech-to-Speech (STS) relay service; interstate captioned telephone service (CTS) and interstate and intrastate Internet Protocol (IP) captioned telephone service (IP CTS); interstate and intrastate IP Relay; and interstate and intrastate Video Relay Service (VRS). The Commission also seeks comment on the proposed carrier contribution factor and funding requirement for the Interstate TRS Fund.

DATES: Comments are due June 4, 2009. Reply comments are due on or before June 11, 2009.

ADDRESSES: Interested parties may submit comments identified by CG Docket No. 03-123, by any of the following methods:

- *Federal eRulemaking Portal:* <http://www.regulations.gov>. Follow the instructions for submitting electronic filings.
- *Federal Communications Commission's Web Site:* <http://www.fcc.gov/cgb/ecfs>. Follow the instructions for submitting electronic filings. In completing the transmittal screen, filers should include their full name, U.S. Postal Service mailing address, and CG Docket No. 03-123. Parties may also submit an electronic comment by Internet e-mail. To get filing instructions, filers should send an e-mail to ecfs@fcc.gov, and include the following words in the body of the message, “get form <your e-mail address>.” A sample form and directions will be sent in response.

- *Paper Filers:* Parties who choose to file by paper must file an original and four copies of each filing. Filings can be sent by hand or messenger delivery, by commercial overnight courier, or by first-class or overnight U.S. Postal Service mail (although the Commission continues to experience delays in receiving U.S. Postal Service mail). All filings must be addressed to the Commission's Secretary, Office of the

Secretary, Federal Communications Commission.

- The Commission's contractor will receive hand-delivered or messenger-delivered paper filings for the Commission's Secretary at 236 Massachusetts Avenue, NE., Suite 110, Washington, DC 20002. The filing hours at this location are 8 a.m. to 7 p.m. All hand deliveries must be held together with rubber bands or fasteners. Any envelopes must be disposed of before entering the building.

- Commercial mail sent by overnight mail (other than U.S. Postal Service Express Mail and Priority Mail) must be sent to 9300 East Hampton Drive, Capitol Heights, MD 20743.

- U.S. Postal Service first-class, Express, and Priority mail should be addressed to 445 12th Street, SW., Washington, DC 20554.

To request materials in accessible formats for people with disabilities (Braille, large print, electronic files, audio format), send an e-mail to fcc504@fcc.gov or call the Consumer and Governmental Affairs Bureau at (202) 418-0530 (voice), (202) 418-0432 (TTY). FCC 09-39 can also be downloaded in Word or Portable Document Format (PDF) at: <http://www.fcc.gov/cgb/dro/trs.html>.

FOR FURTHER INFORMATION CONTACT:

Thomas Chandler, Consumer and Governmental Affairs Bureau, Disability Rights Office, at (202) 418-1475 (voice), (202) 418-0597 (TTY), or e-mail: Thomas.Chandler@fcc.gov.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Public Notice FCC 09-39. Pursuant to 47 CFR 1.415 and 1.419 of the Commission's rules, interested parties may file comments and reply comments on or before the dates indicated in the **DATES** section. The full text of FCC 09-39 and subsequently filed documents in this matter are available for public inspection and copying during regular business hours at the FCC Reference Information Center, Portals II, 445 12th Street, SW., Room CY-A257, Washington, DC 20554. They may also be purchased from the Commission's duplicating contractor at Portals II, 445 12th Street, SW., Room CY-B402, Washington, DC 20554; the contractor's Web site, <http://www.bcpweb.com>; or by calling (800) 378-3160. FCC 09-39 and subsequently filed documents in this matter may also be found by searching ECFS at <http://www.fcc.gov/cgb/ecfs> (insert CG Docket No. 03-123 into the Proceeding block).

Synopsis

On May 1, 2009, pursuant to 47 CFR 64.604(c)(5)(iii)(H) of the Commission rules, NECA, the Interstate TRS Fund Administrator, submitted its annual proposed rates and fund size estimate for the Interstate TRS Fund for the period July 1, 2009, through June 30, 2010. NECA proposes the following TRS per-minute compensation rates for the 2009-2010 Fund year: \$1.8311 for interstate traditional TRS; \$2.9621 for interstate Speech-to-Speech (STS); \$1.6778 for interstate captioned telephone service (CTS) and interstate and intrastate Internet Protocol (IP) captioned telephone service (IP CTS); and \$1.2801 for interstate and intrastate IP Relay. For interstate and intrastate VRS, NECA proposes the following tiered rates: \$6.7025 for the first 50,000 monthly minutes, \$6.4352 for monthly minutes between 50,001 and 500,000, and \$6.2372 for minutes above 500,000.

Based on these rates, NECA proposes a funding requirement of \$890,992,075 million and a carrier contribution factor of 0.01137.

The Commission seeks comment on NECA's proposed compensation rates for traditional TRS, STS, CTS and IP CTS, IP Relay, and VRS for the period of July 1, 2009, through June 30, 2010, as well as the proposed funding requirement and carrier contribution factor.

Ordering Clause

Pursuant to Sections 1, 4(i) and (o), 225, 303(r), 403, 624(g), and 706 of the Communications Act of 1934, as amended, 47 U.S.C. 151, 154(i) and (o), 225, 303(r), 403, 554(g), and 606, the *Public Notice is adopted*.

Federal Communications Commission.

Marlene H. Dortch,

Secretary.

[FR Doc. E9-11935 Filed 5-20-09; 8:45 am]

BILLING CODE 6712-01-P

FEDERAL RESERVE SYSTEM

Change in Bank Control Notices; Acquisition of Shares of Bank or Bank Holding Companies

The notificants listed below have applied under the Change in Bank Control Act (12 U.S.C. 1817(j)) and § 225.41 of the Board's Regulation Y (12 CFR 225.41) to acquire a bank or bank holding company. The factors that are considered in acting on the notices are set forth in paragraph 7 of the Act (12 U.S.C. 1817(j)(7)).

The notices are available for immediate inspection at the Federal

Reserve Bank indicated. The notices also will be available for inspection at the office of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank indicated for that notice or to the offices of the Board of Governors. Comments must be received not later than June 5, 2009.

A. Federal Reserve Bank of Kansas City (Todd Offenbacher, Assistant Vice President) 1 Memorial Drive, Kansas City, Missouri 64198-0001:

1. *Relational Investors LLC; Relational Investors Mid Cap Fund I, L.P.; Relational Investors Mid Cap II, L.P.; Relational Group LLC; Relational Holdings LLC; Relational Investors Group LLC; Ralph V. Whitworth; and David H. Batchelder*, all of San Diego, California; to acquire voting shares of Guaranty Bancorp, and thereby indirectly acquire voting shares of Guaranty Bank and Trust Company, both in Denver, Colorado.

Board of Governors of the Federal Reserve System, May 18, 2009.

Robert deV. Frierson,

Deputy Secretary of the Board.

[FR Doc. E9-11906 Filed 5-20-09; 8:45 am]

BILLING CODE 6210-01-S

FEDERAL MARITIME COMMISSION

[Docket No. 09-01]

Mitsui O.S.K. Lines Ltd. v. Global Link Logistics, Inc., Olympus Partners, L.P., Olympus Growth Fund III, L.P., Olympus Executive Fund, L.P., Louis J. Mischianti, David Cardenas, Keith Heffernan, CJR World Enterprises, Inc. and Chad J. Rosenberg; Notice of Filing of Complaint and Assignment

Notice is given that a complaint has been filed with the Federal Maritime Commission ("Commission") by Mitsui O.S.K. Lines Ltd. ("MOL"), hereinafter "Complainant." Complainant asserts that it is a corporation organized and existing pursuant to the laws of Japan and is a vessel-operating common carrier in the U.S. foreign trades. Complainant alleges that Respondent Global Link Logistics, Inc. ("Global Link") is a corporation organized under the laws of Delaware that operates as a licensed non-vessel-operating common carrier; that Respondents Olympus Growth Fund III, L.P. ("OGF") and Olympus Executive Fund, L.P. ("OEF") are Delaware limited partnerships that were owners of Global Link; that Respondent Olympus Partners L.P. ("Olympus Partners") is a Delaware limited partnership that is a private equity firm affiliated with OGF and

OEF; that Respondents Louis J. Mischianti, David Cardenas, and Keith Heffernan, are the partners in Olympus Partners, and were officers and directors of Global Link; that Respondent CJR World Enterprises, Inc. ("CJR"), is a Florida corporation that was an owner of Global Link; and that Respondent Chad Rosenberg is the owner of CJR and was an officer and director of Global Link.

Complainant alleges that Respondents violated the Shipping Act of 1984, as amended ("Shipping Act"), by: (1) Engaging in a deliberate scheme to obtain ocean transportation of property at rates lower than the applicable service contract or tariff rates; and (2) failing to establish, observe and enforce just and reasonable practices relating to or connected with receiving, handling, and delivering property. 46 U.S.C. 41102(a), (c). Complainant also asserts that Respondents violated the Commission's regulations at 46 CFR 515.31(e) which prohibits preparation or filing of false or fraudulent claims or false information relative to an Ocean Transportation Intermediary transaction. Complainant claims that, as a direct result of Respondents' actions, Complainant suffered damages of no less than \$4.5 million.

Specifically, Complainant MOL asserts that it provided transportation to Global Link subject to MOL's tariff rules; including rules related to the diversion of cargo, defined as a change in the original billed destination. Complainant maintains that its tariff rules require shippers to request diversion of cargo in writing and require payment of a diversion charge, as well as the difference in price between the original and new destination. Complainant alleges that Respondent Global Link booked cargo to false inland destinations while intending to deliver the cargo to different inland destinations, and diverted cargo without submitting a request to Complainant or paying Complainant the difference in rate and the applicable diversion changes. Complainant claims that Respondents referred to this practice as "split routing," "mis-booking," and re-routing." This practice, Complainant contends, resulted in lower rates paid to Complainant than the rates applicable to the actual destinations.

Complainant requests that the Commission: (1) Require Respondents to answer the charges in this Complaint; (2) order Respondents to cease and desist from the violations of the Shipping Act; (3) establish and put in force such practices as the Commission determines lawful and reasonable; (3) order Respondents to pay to the

Complainant reparations plus interests, costs and attorney's fees, and any other damages to be determined; and (4) take any other action or provide any other relief as the Commission determines to be proper, fair and just under the circumstances. Complainant also requests that a hearing be held in Washington, DC.

This proceeding has been assigned to the Office of Administrative Law Judges. Hearing in this matter, if any is held, shall commence within the time limitations prescribed in 46 CFR 502.61, and only after consideration has been given by the parties and the presiding officer to the use of alternative forms of dispute resolution. The hearing shall include oral testimony and cross-examination in the discretion of the presiding officer only upon proper showing that there are genuine issues of material fact that cannot be resolved on the basis of sworn statements, affidavits, depositions, or other documents or that the nature of the matter in issue is such that an oral hearing and cross-examination are necessary for the development of an adequate record. Pursuant to the further terms of 46 CFR 502.61, the initial decision of the presiding officer in this proceeding shall be issued by May 14, 2010, and the final decision of the Commission shall be issued by September 13, 2010.

Karen V. Gregory,
Secretary.

[FR Doc. E9-11755 Filed 5-20-09; 8:45 am]

BILLING CODE 6730-01-P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

CBRN Medical Countermeasures Workshop 2009

AGENCY: Department of Health and Human Services, Assistant Secretary for Preparedness and Response.

ACTION: Notice.

SUMMARY: As stipulated by the Federal Advisory Committee Act, the U.S. Department of Health and Human Services is hereby giving notice that the Biomedical Advanced Development Authority (BARDA), Chemical Biological, Radiological & Nuclear (CBRN) Medical Countermeasures and Acquisitions Management Systems (AMS) will be holding a public workshop. The workshop is open to the public.

DATES: The BARDA Divisions of CBRN and AMS will hold a public workshop on June 25 and 26, 2009 from 8:30 a.m.

to 5 p.m. EDT daily. This agenda is subject to change as priorities dictate.

ADDRESSES: Hyatt Regency Bethesda, One Bethesda Metro Center, Bethesda, MD 20814. Phone: 301-657-1234.

FOR FURTHER INFORMATION, CONTACT:
CBRN-Workshop@hhs.gov.

SUPPLEMENTARY INFORMATION: The U.S. Department of Health and Human Services, Office of the Secretary, Office of the Assistant Secretary for Preparedness and Response, Biomedical Advanced Research and Development Authority, Division of Chemical, Biological, Radiological and Nuclear and the Division of Acquisitions Management Systems will host a 2-day Medical Countermeasures Workshop.

The purpose of this two-day event is to engage industry and academic stakeholders in a discussion of how to engage and work with BARDA. Informational sessions include:

- The strategic vision for CBRN MCM development.
- The generation of MCM requirements.
- Responding to a Request for Proposal (RFP) or Broad Agency Announcement (BAA).
- The proposal review process.
- Earned Value Management.
- The FDA Animal Rule.

This Workshop is open to the public. There is no fee to attend; however, seating is limited and registration is required. Online registration is available at <http://www.medicalcountermeasures.gov>.

Stakeholder Registration will be open from April 14-June 1, 2009. Federal Government Employee Registration will be open from June 2-12, 2009.

Availability of Materials: The workshop agenda and other materials will be available on site on the workshop dates.

Dated: May 6, 2009.

RADM William C. Vanderwagen,
Assistant Secretary for Preparedness and Response, U.S. Department of Health and Human Services.

[FR Doc. E9-11948 Filed 5-20-09; 8:45 am]

BILLING CODE P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Submission to OMB, Comment Request; A Process Evaluation of the NIH Director's New Innovator Award (NIA) Program

SUMMARY: Under the provisions of Section 3507(a)(1)(D) of the Paperwork Reduction Act of 1995, the Office of the

Director, 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 February 20, 2009, pages 7908–7909 and allowed 60 days for public comment. No public comments were received. 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 October 1, 1995, unless it displays a currently valid OMB control number.

Proposed Collection: Title: A Process Evaluation of the NIH Director’s New

Innovator Award (NIA) Program. *Type of Information Collection Request:* New collection. *Need and Use of Information Collection:* This study will assess the NIA Program operations and the outputs of the identification, evaluation and selection process. The primary objectives of the study are to: (1) Assess the NIA award selection process; (2) determine if the program was implemented as planned; and (3) determine if the process was conducted in accordance with the overall mission of the NIA program. The findings will provide valuable information concerning: (1) The characteristics of applicants and reviewers; (2) the criteria used to evaluate and select awardees; and (3) aspects of the process that could be revised or improved.

Frequency of Response: Once. *Affected Public:* None. *Type of Respondents:* Applicants, Reviewers. There are no Capital Costs to report. There are no Operating or Maintenance Costs to report. *Estimated Number of Respondents:* 662; *Estimated Number of Responses per Respondent:* 1; *Average Burden Hours per Response:* .28 (15 minutes for applicants and 30 minutes for Extramural Reviewers), and *Estimated Total Annual Burden Hours Requested:* 188.5 and the annualized cost to respondents is estimated at \$12,199.72. Table 1 and Table 2 respectively present data concerning the burden hours and cost burdens for this data collection.

TABLE 1—ANNUALIZED ESTIMATE OF HOUR BURDEN

Type of respondents	Number of respondents	Frequency of response	Average time for response (hr)	Total hour burden *
Applicants	570	1	.25	142.5
Extramural Reviewers	92	1	.50	46
Total	662	1	.28	188.5

* Total Burden = N Respondents * Response Frequency * (minutes to complete/60).

TABLE 2—ANNUALIZED COST TO RESPONDENTS

Type of respondents	Number of respondents	Response frequency	Approx. hourly wage rate	Total respondent cost **
Applicants	570	1	\$64.72	\$9,226.60
Extramural Reviewers	92	1	64.72	2977.12
Total	662	1	64.72	12,199.72

**Total Respondent Cost = Total Hour Burden * Hourly Wage Rate.

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.

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). All comments should be sent via e-mail to *OIRA_submission@omb.eop.gov* or by fax to 202–395–6974. Attention: Desk Office for NIH. To request more information on the project or to obtain a copy of the data collection plans and instruments contact G. Stephane Philogene, PhD, Assistant Director for Policy and Planning, Office of Behavioral and Social Sciences Research, National Institutes of Health, 31 Center Drive, Building 31, Room B2–B37, Bethesda, MD 20892, or call non-toll-free number 301–402–3902 or e-mail your request, including your address, to: *philoges@od.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: May 13, 2009.

G. Stephane Philogene,
*Assistant Director for Policy and Planning,
 Office of Behavioral and Social Sciences
 Research, National Institutes of Health.*
 [FR Doc. E9–11817 Filed 5–20–09; 8:45 am]
BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

[30Day–09–09AK]

Agency Forms Undergoing Paperwork Reduction Act Review

The Centers for Disease Control and Prevention (CDC) publishes a list of information collection requests under review by the Office of Management and

Budget (OMB) in compliance with the Paperwork Reduction Act (44 U.S.C. Chapter 35). To request a copy of these requests, call the CDC Reports Clearance Officer at (404) 639-5960 or send an e-mail to omb@cdc.gov. Send written comments to CDC Desk Officer, Office of Management and Budget, Washington, DC or by fax to (202) 395-6974. Written comments should be received within 30 days of this notice.

Proposed Project

Audience Analysis for Environmental Health Issues—New—National Center for Environmental Health/Agency for Toxic Substances and Disease Registry (NCEH/ATSDR), Centers for Disease Control and Prevention (CDC).

Background and Brief Description

The health effects associated with climate change include injuries and fatalities related to severe weather events and heat waves, infectious diseases related to changes in vector biology, water and food contamination, and respiratory illness due to increased allergen production. Despite these potentially devastating public health consequences, few in the general public

connect climate change with health effects. In general, the majority of Americans associate climate change with nonhuman impacts and environmental problems rather than health effects. They are more likely to be concerned about climate change impacts on plant and animal extinctions rather than on human health. Thus, it is not surprising that few in the general public are well prepared to deal with climate change health effects. The Centers for Disease Control and Prevention (CDC) is interested in developing communication materials to increase the public's awareness and knowledge, and prepare for the potential health effects associated with climate change. To this end, focus groups will be conducted with members of a local California community to understand motivations and factors influencing target audience's decision process. There will also be an emphasis on the health effects, framing devices, and channels that might be most effective for disseminating public health messages and having them motivate the intended audiences. With that in hand it will be possible to identify the most valuable information

and optimal strategies for communicating with target audiences.

Focus groups will be conducted with the residents of Santa Rosa, California. During phase one, three exploratory focus groups will be conducted to develop messaging strategies. Results from the exploratory focus groups will be used in the development of preliminary messaging strategies and draft materials. This material will be tested with the target audience during the second phase of research. The second phase will include three materials testing focus groups to determine which materials and messages are most attractive and compelling in terms of educating the public about health effects and promoting preparedness behaviors. Participants will be recruited via standard focus group recruitment methods. Most will come from an existing database (or list) of potential participants maintained by the focus group facility or recruited through local newspapers. There is no cost to respondents.

The total estimated annual burden hours are 117.

ESTIMATED ANNUALIZED BURDEN HOURS

Respondents	No. of respondents	No. of responses per respondent	Average burden per response (in hours)
Recruitment screener	108	1	5/60
Exploratory Focus Groups	27	1	2
Materials Testing Focus Groups	27	1	2

Dated: May 15, 2009.

Maryam I. Daneshvar,

Acting Reports Clearance Officer, Centers for Disease Control and Prevention.

[FR Doc. E9-11894 Filed 5-20-09; 8:45 am]

BILLING CODE 4163-18-P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

[30Day-09-0134]

Agency Forms Undergoing Paperwork Reduction Act Review

The Centers for Disease Control and Prevention (CDC) publishes a list of information collection requests under review by the Office of Management and Budget (OMB) in compliance with the Paperwork Reduction Act (44 U.S.C. Chapter 35). To request a copy of these requests, call the CDC Reports Clearance

Officer at (404) 639-5960 or send an e-mail to omb@cdc.gov. Send written comments to CDC Desk Officer, Office of Management and Budget, Washington, DC or by fax to (202) 395-6974. Written comments should be received within 30 days of this notice.

Proposed Project

Foreign Quarantine Regulations (42 CFR 71) (OMB Control No. 0920-0134)—Extension—National Center for Preparedness, Detection, and Control of Infectious Diseases (NCPDCID), Centers for Disease Control and Prevention (CDC).

Background and Brief Description

Section 301 of the Public Health Service Act (PHSA) (42 U.S.C. 264) authorizes the Secretary of Health and Human Services (HHS) to make and enforce regulations necessary to prevent the introduction, transmission, or spread of communicable diseases into the United States. Legislation and

existing regulations governing the foreign quarantine activities (42 CFR 71) authorize quarantine officers and other personnel to inspect and undertake necessary control measures with respect to conveyances, persons, and shipments of animals and etiologic agents entering the United States from foreign ports in order to protect the public's health.

Under the foreign quarantine regulations, the master of a ship or captain of an airplane entering the United States from a foreign port is required by public health law to report certain illnesses among passengers (42 CFR 71.21(b)). In addition to the aforementioned list of illnesses which must be reported to CDC, the master of a ship or captain of an airplane must also report (1) Hemorrhagic Fever Syndrome (persistent fever accompanied by abnormal bleeding from any site); or (2) acute respiratory syndrome (severe cough or severe respiratory disease of less than 3 weeks in duration); or (3) acute onset of fever

and severe headache, accompanied by stiff neck or change in level of consciousness. CDC has the authority to collect personal health information to protect the health of the public under the authority of section 301 of the Public Health Service Act (42 U.S.C.).

This information collection request also includes the Passenger Locator Information Form. The Passenger Locator Information Form is used to collect reliable information that assists quarantine officers in locating, in a timely manner, those passengers and crew who are exposed to communicable diseases of public health significance

while traveling on a conveyance. HHS delegates authority to CDC to conduct quarantine control measures. Currently, with the exception of rodent inspections and the cruise ship sanitation program, inspections are performed only on those vessels and aircraft which report illness prior to arrival or when illness is discovered upon arrival. Other inspection agencies assist quarantine officers in public health screening of persons, pets, and other importations of public health significance and make referrals to the Public Health Service when indicated. These practices and procedures assure protection against the

introduction and spread of communicable diseases into the United States with a minimum of recordkeeping and reporting as well as a minimum of interference with trade and travel.

Respondents include airline pilots, ships' captains, importers, and travelers. The nature of the quarantine response dictates which forms are completed by whom. There are no costs to respondents except for their time to complete the forms.

The total annualized burden for this information collection request is 225,761 hours.

ESTIMATE OF ANNUALIZED BURDEN HOURS

Citation	Number of respondents	Number of responses per respondent	Average burden per respondent (in hours)
71.21 Radio Report of death/illness	9,500	1	2/60
71.33(c) Report by persons in isolation or surveillance	11	1	3/60
71.35 Report of death/illness in port	5	1	30/60
Locator Form used in an outbreak of public health significance	2,700,000	1	5/60
Locator Form used for reporting of an ill passenger(s)	800	1	5/60
71.51(b)(3) Admission of cats/dogs; death/illness	5	1	3/60
71.51(d) Dogs/cats: Certification of Confinement, Vaccination	1,200	1	15/60
71.52(d) Turtle Importation Permits	10	1	30/60
71.53(d) Importer Registration—Nonhuman Primates	40	1	10/60
71.53(e) Recordkeeping	30	4	30/60

Dated: May 14, 2009.

Maryam I. Daneshvar,

Acting Reports Clearance Officer, Centers for Disease Control and Prevention.

[FR Doc. E9-11896 Filed 5-20-09; 8:45 am]

BILLING CODE 4163-18-P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

[30Day-09-09AH]

Agency Forms Undergoing Paperwork Reduction Act Review

The Centers for Disease Control and Prevention (CDC) publish a list of information collection requests under review by the Office of Management and Budget (OMB) in compliance with the Paperwork Reduction Act (44 U.S.C. Chapter 35). To request a copy of these requests, call the CDC Reports Clearance Officer at (404) 639-5960 or send an e-mail to omb@cdc.gov. Send written comments to CDC Desk Officer, Office of Management and Budget, Washington, DC or by fax to (202) 395-6974. Written comments should be received within 30 days of this notice.

Proposed Project

Improving the Quality and Delivery of CDC's Heart Disease and Stroke Prevention Programs—New—Division for Heart Disease and Stroke Prevention (DHDSPP), National Center for Chronic Disease Prevention and Health Promotion (NCCDPHP), Centers for Disease Control and Prevention (CDC).

Background and Brief Description

Heart disease and stroke are among the most widespread and costly causes of death and disability in the U.S., but are also among the most preventable health problems. In 2006, CDC created the Division of Heart Disease and Stroke Prevention (DHDSPP) to provide national leadership for efforts to reduce the burden of disease, disability, and death from heart disease and stroke.

Many heart disease and stroke prevention and control activities are conducted through DHDSPP-funded heart disease and stroke prevention programs. The DHDSPP's key partners include State and local health departments, public health organizations, community organizations, nonprofit organizations, and professional organizations. The DHDSPP supports partners by conducting trainings, providing scientific guidance and technical assistance, and producing scientific information and supporting

tools. For example, the DHDSPP provides training to States on how to implement and evaluate their programs and provides guidance on how to best apply evidence-based practices. In addition the DHDSPP translates its scientific studies into informational products, such as on-line reports and trend data.

Over the next three years, DHDSPP plans to conduct a series of information collections based on a reference set of questions that address relevance, quality and impact of DHDSPP services and guidance. A generic clearance is requested in order to provide flexibility in the content and timing of specific information collections. Surveys tailored to specific public health partners, services, or other programmatic initiatives will be developed from the reference set of pre-approved questions. A small number of demographic and descriptive questions may be included in specific surveys to assess the extent to which perceptions and use of DHDSPP services vary across types of respondents. Whenever feasible, information will be collected electronically to reduce burden on respondents. In addition, information may be collected through in-person or telephone interviews or focus groups when Web-based surveys are

impractical or when in-depth responses are required.

The evaluation information will be used to determine whether DHDSP activities and products are reaching the intended audiences, whether they are

deemed to be useful by those audiences, and whether DHDSP efforts improve public health practices. Finally, the generic clearance format will allow the DHDSP to identify new programmatic

opportunities and to respond to partners' concerns.

There are no costs to respondents other than their time. The total estimated annualized burden hours are 491.

ESTIMATED ANNUALIZED BURDEN HOURS

Type of respondent	Data collection mechanism	Number of respondents	Average burden per response (in hours)
State and Local Health Departments	Web-based survey	250	30/60
	Interview	30	1
	Focus group	32	1
Private Sector Partners	Web-based survey	180	30/60
	Interview	90	1
	Focus group	48	1
Academic Institutions	Web-based survey	60	30/60
	Interview	30	1
	Focus group	16	1

Dated: May 14, 2009.

Maryam I. Daneshvar,

Acting Reports Clearance Officer, Centers for Disease Control and Prevention.

[FR Doc. E9-11895 Filed 5-20-09; 8:45 am]

BILLING CODE 4163-18-P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA-2009-N-0043]

Agency Information Collection Activities; Submission for Office of Management and Budget Review; Comment Request; Irradiation in the Production, Processing, and Handling of Food

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing that a proposed collection of information has been submitted to the Office of Management and Budget (OMB) for review and clearance under the Paperwork Reduction Act of 1995.

DATES: Fax written comments on the collection of information by June 22, 2009.

ADDRESSES: To ensure that comments on the information collection are received, OMB recommends that written comments be faxed to the Office of Information and Regulatory Affairs, OMB, Attn: FDA Desk Officer, FAX: 202-395-6974, or e-mailed to oir_submission@omb.eop.gov. All comments should be identified with the OMB control number 0910-0186. Also

include the FDA docket number found in brackets in the heading of this document.

FOR FURTHER INFORMATION CONTACT: Jonna Capezzuto, Office of Information Management (HFA-710), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301-796-3794.

SUPPLEMENTARY INFORMATION: In compliance with 44 U.S.C. 3507, FDA has submitted the following proposed collection of information to OMB for review and clearance.

Irradiation in the Production, Processing, and Handling of Food—(OMB Control Number 0910-0186)—Extension

Under sections 201(s) and 409 of the Federal Food, Drug, and Cosmetic Act (the act) (21 U.S.C. 321(s) and 348), food irradiation is subject to regulation under the food additive premarket approval provisions of the act. The regulations providing for uses of irradiation in the production, processing, and handling of food are found in part 179 (21 CFR part 179). To ensure safe use of a radiation source, § 179.21(b)(1) requires that the label of sources bear appropriate and accurate information identifying the source of radiation and the maximum (or minimum and maximum) energy of radiation emitted by x-ray tube sources. Section 179.21(b)(2) requires that the label or accompanying labeling bear adequate directions for installation and use and a statement supplied by FDA that indicates maximum dose of radiation allowed. Section 179.26(c) requires that the label or accompanying labeling bear a logo and a radiation disclosure statement. Section 179.25(e) requires that food processors who treat food with radiation make and retain, for

1 year past the expected shelf life of the products up to a maximum of 3 years, specified records relating to the irradiation process (e.g., the food treated, lot identification, scheduled process, etc.). The records required by § 179.25(e) are used by FDA inspectors to assess compliance with the regulation that establishes limits within which radiation may be safely used to treat food. The agency cannot ensure safe use without a method to assess compliance with the dose limits, and there are no practicable methods for analyzing most foods to determine whether they have been treated with ionizing radiation and are within the limitations set forth in part 179. Records inspection is the only way to determine whether firms are complying with the regulations for treatment of foods with ionizing radiation.

In this request for extension of OMB approval, FDA proposes to include and consolidate into the subject collection of information (OMB control number 0910-0186) the collection of information and associated burden hours from OMB control number 0910-0549. This inclusion is reflected in the estimated burden reported in table 1 of this document, which has increased by the addition of one recordkeeper in the large processors line, increasing the number of estimated recordkeepers from two to three.

Description of Respondents: Respondents are businesses engaged in the irradiation of food.

In the **Federal Register** of February 13, 2009 (74 FR 7236), FDA published a 60-day notice requesting public comment on the information collection provisions. No comments were received.

FDA estimates the burden of this collection of information as follows:

TABLE 1.—ESTIMATED ANNUAL RECORDKEEPING BURDEN¹

21 CFR Section	No. of Recordkeepers	Annual Frequency per Recordkeeping	Total Annual Records	Hours per Record	Total Hours
179.25(e), large processors	3	300	900	1	900
179.25(e), small processors	4	30	120	1	120
Total					1,020

¹There are no capital costs or operating and maintenance costs associated with this collection of information.

FDA bases its estimate of burden for the recordkeeping provisions of § 179.25(e) on the agency's experience regulating the safe use of radiation as a direct food additive. The number of firms who process food using irradiation is extremely limited. FDA estimates that there are 3 irradiation plants whose business is devoted primarily (i.e., approximately 100 percent) to irradiation of food and other agricultural products. Four other firms also irradiate small quantities of food. FDA estimates that this irradiation accounts for no more than 10 percent of the business for each of these firms. Therefore, the average estimated burden is based on: Three facilities devoting 100 percent of their business to food irradiation (3 × 300 hours = 900 hours for recordkeeping annually); four facilities devoting 10 percent of their business to food irradiation (4 × 30 hours = 120 hours for recordkeeping annually).

No burden has been estimated for the labeling requirements in § 179.21(b)(1) and (b)(2) and § 179.26(c) because the information to be disclosed is information that has been supplied by FDA. Under 5 CFR 1320.3(c)(2), the public disclosure of information originally supplied by the Federal Government to the recipient for the purpose of disclosure to the public is not a collection of information.

Dated: May 14, 2009.

Jeffrey Shuren,

Associate Commissioner for Policy and Planning.

[FR Doc. E9-11931 Filed 5-20-09; 8:45 am]

BILLING CODE 4160-01-S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Diabetes and Digestive and Kidney Diseases Diabetes Mellitus Interagency Coordinating Committee; Notice of Meeting

The National Institute of Diabetes and Digestive and Kidney Diseases (NIDDK), on behalf of the National Institutes of Health (NIH), the Centers for Disease Control and Prevention (CDC), and the Diabetes Mellitus Interagency Coordinating Committee (DMICC), is convening an ad hoc planning and evaluation meeting to provide a mid-course assessment of ongoing pre-clinical research efforts supported by the Special Statutory Funding Program for Type 1 Diabetes Research and to discuss possible future directions for these efforts.

Sessions of the meeting will be open to the public as indicated below, with attendance limited to space available. Certain sessions, during which confidential information will be discussed, will be closed to the public. Members of the public planning to attend the meeting must register online at: <http://www.scgcorp.com/Type1Diabetes09/registration.asp>. This is not a meeting to solicit public comment. Therefore, members of the public are permitted to attend the open sessions as observers only. Individuals who plan to attend and need special assistance, such as sign language interpretation or other reasonable accommodations, should inform the Contact Person listed below at least 10 days in advance of the meeting.

Name: Meeting on Pre-Clinical Research Supported by the Special Statutory Funding Program for Type 1 Diabetes Research.

Place: National Institutes of Health, Neuroscience Building, 6001 Executive Blvd., Conference Room C, Bethesda, MD 20852.

Date: June 17, 2009.

Open: 8 a.m. to 8:45 a.m.

Agenda: Meeting introduction; overview of the Type 1 Diabetes—Rapid Access to Intervention Development (T1D-RAID) research program.

Closed: 8:45 a.m. to 9:30 a.m.

Agenda: Mid-course assessment of T1D-RAID.

Open: 9:30 a.m. to 10 a.m.

Agenda: Overview of the Type 1 Diabetes Preclinical Testing Program (T1D-PTP)—Prevention or Reversal of Type 1 Diabetes in Rodent Models.

Closed: 10 a.m. to 10:30 a.m.

Agenda: Mid-course assessment of the T1D-PTP—Prevention or Reversal of Type 1 Diabetes in Rodent Models.

Open: 10:45 a.m. to 11:15 a.m.

Agenda: Overview of the T1D-PTP—Prevention or Reversal of Diabetic Complications in Rodent Models.

Closed: 11:15 a.m. to 11:45 a.m.

Agenda: Mid-course assessment of the T1D-PTP—Prevention or Reversal of Diabetic Complications in Rodent Models.

Open: 12:30 p.m. to 1 p.m.

Agenda: Overview of the Animal Models of Diabetic Complications Consortium (AMDCC) research program.

Closed: 1 p.m. to 2 p.m.

Agenda: Mid-course assessment of the AMDCC.

Open: 2 p.m. to 2:30 p.m.

Agenda: Overview of the Type 1 Diabetes Resource.

Closed: 2:30 p.m. to 3:15 p.m.

Agenda: Mid-course assessment of the Type 1 Diabetes Resource.

Open: 3:30 p.m. to 4 p.m.

Agenda: Overview of Beta Cell Biology Consortium (BCBC).

Closed: 4 p.m. to 5 p.m.

Agenda: Mid-course assessment of the BCBC.

Contact Person: Julie Wallace, PhD, Health Science Policy Analyst, Office of Scientific Program and Policy Analysis, National Institute of Diabetes and Digestive and Kidney Diseases, 9000 Rockville Pike, Building 31, Room 9A05, Bethesda, MD 20892, (301) 496-6623, wallaceja@nidddk.nih.gov.

Name: Meeting on Pre-Clinical Research Supported by the Special Statutory Funding Program for Type 1 Diabetes Research.

Place: National Institutes of Health, Neuroscience Building, 6001 Executive Blvd., Conference Room C, Bethesda, MD 20852.

Date: June 18, 2009.

Open: 8 a.m. to 8:30 a.m.

Agenda: Overview of the Cooperative Study Group for Autoimmune Disease Prevention (Prevention Centers) research program.

Closed: 8:30 a.m. to 9 a.m.

Agenda: Mid-course assessment of the Prevention Centers.

Open: 9 a.m. to 9:30 a.m.

Agenda: Overview of the Immunobiology of Xenotransplantation Cooperative Research Program (IXCRP) research program.

Closed: 9:30 a.m. to 10:15 a.m.

Agenda: Mid-course assessment of the IXCRP.

Open: 10:30 a.m. to 11 a.m.

Agenda: Overview of the NHP Transplantation Tolerance Cooperative Study Group (NHPCSG).

Closed: 11 a.m. to 12:15 p.m.

Agenda: Mid-course assessment of the NHPCSG; discussion of cross-cutting themes for strengthening the ongoing preclinical research portfolio.

Open: 12:30 p.m. to 1:30 p.m.

Agenda: Discussion of future opportunities for preclinical research.

Contact Person: Julie Wallace, PhD, Health Science Policy Analyst, Office of Scientific Program and Policy Analysis, National Institute of Diabetes and Digestive and Kidney Diseases, 9000 Rockville Pike, Building 31, Room 9A05, Bethesda, MD 20892, (301) 496-6623, wallaceja@nidDK.nih.gov.

Please Note: The NIH has instituted security measures to ensure the safety of NIH employees and property. Upon your arrival at the Neuroscience Building, enter through the main lobby where you will be greeted at the security guard's desk. Visitors who are not NIH employees will be required to show one form of identification (for example, a government-issued photo ID, driver's license, or passport) and to have their bags searched in order to enter the building. You will then be issued a visitor badge. In estimating your travel time, please allow for these security measures, particularly if you are arriving in a group. Self-parking is available for a maximum of \$8 per day.

A registration link, information about the meeting, and the agenda are available online: <http://www3.nidDK.nih.gov/fund/otherType1Diabetes09/>.

Dated: May 12, 2009.

Sanford Garfield,

Executive Secretary, DMICC, Division of Diabetes, Endocrinology and Metabolic Diseases, NIDDK, National Institutes of Health.

[FR Doc. E9-11698 Filed 5-20-09; 8:45 am]

BILLING CODE 4140-01-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Arthritis and Musculoskeletal and Skin Diseases; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. App.), notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Arthritis and Musculoskeletal and Skin Diseases Special Emphasis Panel, Mentored Career Development, Institutional Research Training & Pathways to Independence Reviews.

Date: June 5, 2009.

Time: 11 a.m. to 12 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, One Democracy Plaza, 6701 Democracy Boulevard, Bethesda, MD 20892. (Telephone Conference Call)

Contact Person: Charles H. Washabaugh, PhD, Scientific Review Administrator, Review Branch, NIAMS/NIH, 6701 Democracy Blvd., Room 816, Bethesda, MD 20892, 301-451-4838, washabac@mail.nih.gov.

Name of Committee: National Institute of Arthritis and Musculoskeletal and Skin Diseases Special Emphasis Panel, Building Interdisciplinary Research Team (BIRT) II RFA.

Date: June 12, 2009.

Time: 8 a.m. to 6 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, One Democracy Plaza, 6701 Democracy Boulevard, Bethesda, MD 20892. (Virtual Meeting)

Contact Person: Charles H. Washabaugh, EP Review Branch NIAMS, One Democracy Plaza, Suite 800, MSC 4872, 6701 Democracy Plaza, Bethesda, MD 20892-4872, 301-496-9568, washabac@mail.nih.gov.

Name of Committee: National Institute of Arthritis and Musculoskeletal and Skin Diseases Special Emphasis Panel, Competitive Revision Reviews.

Date: June 24, 2009.

Time: 8 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Embassy Suites at the Chevy Chase Pavilion, 4300 Military Road, NW., Washington, DC 20015.

Contact Person: Michael L. Bloom, Ph.D., MBA, Scientific Review Administrator, EP Review Branch, NIH/NIAMS, One Democracy Plaza, Room 820, MSC 4872, 6701 Democracy Blvd., Bethesda, MD 20892-4872, 301-594-4953, Michael_Bloom@nih.gov.

(Catalogue of Federal Domestic Assistance Program Nos. 93.846, Arthritis, Musculoskeletal and Skin Diseases Research, National Institutes of Health, HHS)

Dated: May 14, 2009.

Jennifer Spaeth,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. E9-11831 Filed 5-20-09; 8:45 am]

BILLING CODE 4140-01-P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

Disease, Disability, and Injury Prevention and Control Special Emphasis Panel (SEP): A Creutzfeldt-Jakob Disease (CJD) Lookback Study: Assessing the Risk of Blood Borne Transmission of Classic Forms of Creutzfeldt-Jakob Disease, Funding Opportunity Announcement (FOA) CK09-002, Initial Review

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: 12 p.m.-3 p.m., June 5, 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 initial review, discussion, and evaluation of "A Creutzfeldt-Jakob Disease Lookback Study: Assessing the Risk of Blood Borne Transmission of Classic Forms of Creutzfeldt-Jakob Disease, FOA CK09-002."

Contact Person for More Information: Wendy Carr, Ph.D., CDC, 1600 Clifton Road, NE., Mailstop D60, Atlanta, GA 30333, *Telephone:* (404) 498-2276.

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: May 15, 2009.

Elaine L. Baker,

Director, Management Analysis and Services Office, Centers for Disease Control and Prevention.

[FR Doc. E9-11905 Filed 5-20-09; 8:45 am]

BILLING CODE 4163-18-P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Arthritis and Musculoskeletal and Skin Diseases; Notice of Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. App.), notice is hereby given of a meeting of the National Arthritis and Musculoskeletal and Skin Diseases Advisory Council.

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 Arthritis and Musculoskeletal and Skin Diseases Advisory Council.

Date: June 2, 2009.

Open: 8 a.m. to 12 p.m.

Agenda: To discuss administrative details relating to the Council's business and special Reports.

Place: National Institutes of Health, Building 31, 31 Center Drive, Conference Room 6, Bethesda, MD 20892.

Closed: 1 p.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Building 31, 31 Center Drive, Conference Room 6, Bethesda, MD 20892.

Contact Person: Susana Serrate-Sztejn, MD, Director, Division of Skin and Rheumatic Diseases, NIAMS/NIH, 6701 Democracy Blvd., Suite 800, Bethesda, MD 20892-4872. (301) 594-5032. szteins@mail.nih.gov.

Any interested person may file written comments with the committee by forwarding the statement to the Contact Person listed on this notice. The statement should include the name, address, telephone number and when applicable, the business or professional affiliation of the interested person.

In the interest of security, NIH has instituted stringent procedures for entrance onto the NIH campus. All visitor vehicles, including taxicabs, hotel, and airport shuttles will be inspected before being allowed on campus. Visitors will be asked to show one form of identification (for example, a government-issued photo ID, driver's license, or passport) and to state the purpose of their visit.

(Catalogue of Federal Domestic Assistance Program Nos. 93.846, Arthritis, Musculoskeletal and Skin Diseases Research, National Institutes of Health, HHS)

Dated: May 14, 2009.

Jennifer Spaeth,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. E9-11830 Filed 5-20-09; 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. App.), notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: Center for Scientific Review Special Emphasis Panel VMD-ARRA Competitive Revision Applications

Date: May 29, 2009.

Time: 11 a.m. to 4 p.m.

Agenda: To review and evaluate grant applications.

Place: Doubletree Hotel Washington, DC, 1515 Rhode Island Avenue, NW., Washington, DC 20005.

Contact Person: Jian, Wang, PhD, Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4095D, MSC 7812, Bethesda, MD 20892, (301) 435-2778, wangjia@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; Drug Discover ARRA CR.

Date: May 29, 2009.

Time: 1 p.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Mayflower Park Hotel, 405 Olive Way, Seattle, WA 98101.

Contact Person: Hungyi Shau, PhD, Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 6186, MSC 7804, Bethesda, MD 20892, 301-435-1720, shauhung@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; Special Emphasis Panel for KNOD Revision Applications.

Date: June 2, 2009.

Time: 3 p.m. to 6 p.m.

Agenda: To review and evaluate grant applications.

Place: New Orleans Marriott at the Convention Center, 859 Convention Center Boulevard, New Orleans, LA 70130.

Contact Person: Fungai F. Chanetsa, MPH, PhD, Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3135, MSC 7770, Bethesda, MD 20892, 301-435-1262, chanetsaf@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; Epidemiology of Cancer Revision Applications.

Date: June 3, 2009.

Time: 9 a.m. to 2 p.m.

Agenda: To review and evaluate grant applications.

Place: Hilton Alexandria Old Town, 1767 King Street, Alexandria, VA 22314.

Contact Person: Denise Wiesch, PhD, Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3150, MSC 7770, Bethesda, MD 20892, (301) 435-0684, wieschd@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; Lung Toxicology ARRA CR.

Date: June 3, 2009.

Time: 11 a.m. to 1 p.m.

Agenda: To review and evaluate grant applications.

Place: Warwick Seattle Hotel, 401 Lenora Street, Seattle, WA 98121.

Contact Person: Ghenima Dirami, PhD, Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4112,

MSC 7814, Bethesda, MD 20892, 301-594-1321, diramig@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; Review of Competing Revisions.

Date: June 5, 2009.

Time: 8 a.m. to 12 p.m.

Agenda: To review and evaluate grant applications.

Place: Hotel Palomar, 2121 P Street, NW., Washington, DC 20037.

Contact Person: Elisabeth Koss, PhD, Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3139, MSC 7770, Bethesda, MD 20892, (301) 435-1721, kosse@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; Competitive Revisions; Neurotechnology.

Date: June 5, 2009.

Time: 8 a.m. to 6 p.m.

Agenda: To review and evaluate grant applications.

Place: Melrose Hotel, 2430 Pennsylvania Avenue, NW., Washington, DC 20037.

Contact Person: Robert C. Elliott, PhD, Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3130, MSC 7850, Bethesda, MD 20892, 301-435-3009, elliottro@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; Molecular Obesity and Diabetes ARRA CR.

Date: June 5, 2009.

Time: 10:45 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Embassy Suites New Orleans—Convention Center, 315 Julia Street, New Orleans, LA 70130.

Contact Person: Ann A. Jerkins, PhD, Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 6154, MSC 7892, Bethesda, MD 20892, 301-435-4514, jerkinsa@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; Bioengineering Competitive Revisions.

Date: June 5, 2009.

Time: 2 p.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Crowne Plaza Dulles Airport Hotel, 2200 Centreville Road, Herndon, VA 20170.

Contact Person: Marc Rigas, PhD, Scientific Review Officer, Center for Scientific Review,

National Institutes of Health, 6701 Rockledge Drive, Room 5158, MSC 7849, Bethesda, MD 20892, 301-402-1074, rigasm@mail.nih.gov.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Center for Scientific Review Special Emphasis Panel; Psychosocial Risk Prevention: ARRA Revision Applications.

Date: June 5, 2009.

Time: 12 p.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Avenue Hotel Chicago, 160 Huron Street, Chicago, IL 60611.

Contact Person: Anna L. Riley, PhD, Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3114, MSC 7759, Bethesda, MD 20892, 301-435-2889, rileyann@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; Topics in Anti-Microbial and Resistance.

Date: June 5, 2009.

Time: 12 p.m. to 3 p.m.

Agenda: To review and evaluate grant applications.

Place: Hyatt Regency Bethesda, One Bethesda Metro Center, 7400 Wisconsin Avenue, Bethesda, MD 20814.

Contact Person: Guangyong Ji, PhD, Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3211, MSC 7808, Bethesda, MD 20892, 301-435-1146, jig@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: May 13 2009.

Jennifer Spaeth,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. E9-11827 Filed 5-20-09; 8:45 am]

BILLING CODE 4140-01-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Arthritis and Musculoskeletal and Skin Diseases; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. App.), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: Arthritis and Musculoskeletal and Skin Diseases Special Grants Review Committee.

Date: June 2-3, 2009.

Time: 7 p.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Hyatt Regency Bethesda, One Bethesda Metro Center, 7400 Wisconsin Avenue, Bethesda, MD 20814.

Contact Person: Helen Lin, PhD, Scientific Review Administrator, NIH/NIAMS/RB, 6701 Democracy Blvd., Suite 800, Plaza One, Bethesda, MD 20817, 301-594-4952, linh1@mail.nih.gov.

(Catalogue of Federal Domestic Assistance Program Nos. 93.846, Arthritis, Musculoskeletal and Skin Diseases Research, National Institutes of Health, HHS)

Dated: May 14, 2009.

Jennifer Spaeth,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. E9-11828 Filed 5-20-09; 8:45 am]

BILLING CODE 4140-01-P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Resources and Services Administration

Privacy Act of 1974 Report of an Altered System of Records

AGENCY: Health Resources and Services Administration (HRSA), HHS.

ACTION: Notice of an altered system of records.

SUMMARY: In accordance with the requirements of the Privacy Act of 1974, the Health Resources and Services Administration (HRSA) is publishing notice of a proposal to alter the system of records for the C.W. Bill Young Cell Transplantation Program. This system of records is required to comply with the implementation directives of Public Law 109-129. Records are used for the C.W. Bill Young Cell Transplantation Program's planning, implementation, evaluation, monitoring, and document storage purposes.

The purposes of these alterations are to update the locations of this system,

to clarify that existing routine use number 4 for this system includes disclosures to subcontractors, and to add routine use number 9 related to notification of breaches in security or confidentiality of records maintained in the system.

DATES: Persons wishing to comment on this revised system of records notice may do so until June 30, 2009. Unless there is a further notice in the **Federal Register**, this revised system of records will become effective on June 30, 2009.

ADDRESSES: Please address comments to Director, Blood Stem Cell Transplantation Program, HRSA/HSB/DoT, 5600 Fishers Lane, Room 12C-06, Rockville, Maryland 20857; telephone (301) 443-7577. This is not a toll-free number. Comments received will be available for inspection at this same address from 9 a.m. to 3 p.m., Monday through Friday.

FOR FURTHER INFORMATION CONTACT: Director, Blood Stem Cell Transplantation Program, HRSA/HSB/DoT, 5600 Fishers Lane, Room 12C-06, Rockville, Maryland 20857; telephone (301) 443-7577; fax (301) 594-6095. These are not toll-free numbers.

SUPPLEMENTARY INFORMATION: The Health Resources and Services Administration published in the **Federal Register** of August 17, 2007, notice of a new system of records, 09-15-0068, C.W. Bill Young Cell Transplantation Program. The Stem Cell Therapeutic and Research Act of 2005 (the Act) establishes the C.W. Bill Young Cell Transplantation Program (the Program), which maintains information related to patients in need of a blood stem cell transplant and potential adult volunteer blood stem cell donors who have agreed to be listed on the registry maintained by the Program. Additionally, the Program maintains information related to the outcomes of patients who have undergone blood stem cell transplantation.

The Stem Cell Therapeutic and Research Act of 2005 authorizes the C.W. Bill Young Cell Transplantation Program and provides for the collection, maintenance, and distribution of human blood stem cells for the treatment of patients and for research. The Program consists of four interrelated components each operated under a separate contract. The four components are: The Bone Marrow Coordinating Center; the Cord Blood Coordinating Center; the Office of Patient Advocacy/Single Point of Access; and the Stem Cell Therapeutic Outcomes Database. The contracts for operation of the Bone Marrow Coordinating Center, Cord Blood

Coordinating Center, and Office of Patient Advocacy/Single Point of Access were awarded to the National Marrow Donor Program in September, 2006. A single contract for the Stem Cell Therapeutic Outcomes Database was awarded to the Center for International Blood and Marrow Transplant Research (CIBMTR) at the Medical College of Wisconsin in September 2006 as well.

As identified by the Act, the Program is charged with: Operating a system for identifying, matching, and facilitating the distribution of bone marrow that is suitably matched to candidate patients; operating a system for identifying, matching, and facilitating the distribution of donated umbilical cord blood units that are suitably matched to candidate patients; providing a means by which transplant physicians, other healthcare professionals, and patients can electronically search for and access all available adult marrow donors available through the Program; recruiting potential adult volunteer marrow donors; coordinating with other Federal programs to maintain and expand medical contingency response capabilities; carrying out informational and educational activities; providing patient advocacy services; providing case management services for potential donors; and collecting, analyzing, and publishing blood stem cell transplantation related data, including patient outcomes data, in a standardized electronic format. This system of records is required to comply with the implementation directives of the Act, Public Law 109-129. The records will be used for the C.W. Bill Young Cell Transplantation Program's planning, implementation, evaluation, monitoring, and document storage purposes.

Mary K. Wakefield,
Administrator.

SYSTEM NUMBER:
09-15-0068.

SYSTEM NAME:
C.W. Bill Young Cell Transplantation Program.

SECURITY CLASSIFICATION:
None.

SYSTEM LOCATION:
Data collected by the C.W. Bill Young Cell Transplantation Program (the Program) are maintained by the National Marrow Donor Program (NMDP) and the Medical College of Wisconsin, contractors for the Program. The Division of Transplantation within the Health Resources and Services Administration oversees the Program

and the contracts with the NMDP and Medical College of Wisconsin.

Records associated with the C.W. Bill Young Cell Transplantation Program are located at the National Marrow Donor Program, 3001 Broadway Street, NE., Suite 500, Minneapolis, MN 55413 and Time Warner Telecom, 5488 Feltl Road, Minnetonka, MN 55343.

Additional records associated with the Stem Cell Therapeutic Outcomes Database component of the Program are located at the Medical College of Wisconsin's Center for International Blood and Marrow Transplant Research (CIBMTR), 9200 W. Wisconsin Avenue, Milwaukee, WI 53226.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

1. Volunteers whose bone marrow, peripheral blood or cord blood donations are to be used for hematopoietic reconstitution or other therapeutic applications on behalf of patients in need.
2. Patients searching for an unrelated donor or who are receiving transplant or ancillary services through the C.W. Bill Young Cell Transplantation Program.
3. Recipients of allogeneic blood stem cell transplantation.

CATEGORIES OF RECORDS IN THE SYSTEM:

Records consist of documents (printed and electronic) containing all information necessary to manage and facilitate patient searches and to track detailed post-transplant clinical status, including documentation and correspondence concerning patients in need of (or recipients of) blood stem cell transplants and volunteers listed on the Program's registry as potential blood stem cell donors. These documents include all information necessary to manage and facilitate patient searches, and to track detailed post-transplant and post-donation clinical status. The following information is maintained in the system: Individual identifiers about the recipients and donors (*e.g.*, social security number (voluntary), names, date of birth, etc.); recipient and donor demographics and socio-demographics; recipients' disease, disease history and treatment, transplant procedure details, post-transplantation medical history, events, and complications; donor medical history; donation procedure and blood stem cell product details; long-term follow-up of medical outcomes and assessment of functioning for donors and recipients; provider identifiers; transplant and collection facility identifiers; and donor management center identifiers.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Public Law 109–129 establishes the C.W. Bill Young Cell Transplantation Program, authorizing the Department to establish by contract a system for identifying, matching, and facilitating bone marrow and cord blood transplants, including recruitment, patient advocacy and maintenance of a stem cell therapeutic outcomes database.

PURPOSE(S):

The C.W. Bill Young Cell Transplantation Program is comprised of the Office of Patient Advocacy/Single Point of Access, the Bone Marrow Coordinating Center, the Cord Blood Coordinating Center, and the Stem Cell Therapeutic Outcomes Database. The purpose of the system is to support the Program's mission to facilitate and increase access to blood stem cell transplantation. Additionally, information in the system will be used to advise the Secretary of the Department of Health and Human Services and the Advisory Council on Blood Stem Cell Transplantation on matters related to the Program and for ongoing monitoring of the Program by the Health Resources and Services Administration to determine the effectiveness of the Program and to guide implementation of the policies and procedures that govern the Program's structure. Records from this system will be used to carry out the statutory charge of the C.W. Bill Young Cell Transplantation Program. Specifically, records vital and attendant to the full scope of activities involved at every stage of the process of facilitation of blood stem cell transplantation or other therapies for recipients suitably matched to biologically unrelated donors; analyzing factors affecting transplant outcomes; monitoring and reporting of adverse events; monitoring and reporting of quality, compliance, and performance indicators; monitoring and reporting on the size and composition of the registry of adult bone marrow donors and size and composition of the umbilical cord blood inventory; and to provide pertinent information to transplant programs, physicians, patients, other entities awarded a contract under Section 379 of the Public Health Service Act, donor registries, and cord blood banks as stated in Public Law 109–129.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

Disclosure of records from this system of records may be made as provided in the Privacy Act, 5 U.S.C. 552a(b), and to

the following recipients for the purposes stated:

1. Departmental contractors who have been engaged by the Department to assist in accomplishment of a departmental function related to the purposes of this system of records and who have a need to access the records in order to carry out that function.

2. Transplant centers, physicians and staff, and NMDP participating organizations, for the purpose of searching for donors or products and/or facilitating transplants, matching donor blood stem cells with recipients, monitoring participant outcomes, and monitoring compliance of member organizations with contractor requirements.

3. Personnel involved in the care of volunteer blood stem cell donors and management of their participation in the Program. Disclosures of clinically relevant de-identified information contained in certain donor records may be made to transplant physicians, patients or their designated representatives for purposes of facilitating searches for blood stem cell donors or products and/or facilitation of unrelated donor transplants.

4. Disclosures may be made by the contractors for the Office of Patient Advocacy/Single Point of Access, the Bone Marrow Coordinating Center, the Cord Blood Coordinating Center, the Stem Cell Therapeutic Outcomes Database, NMDP and CIBMTR participating centers to one another and their subcontractors (so long as such subcontractors are contractually bound to comply with the Privacy Act) as well as participating umbilical cord blood banks to carry out the purposes of the C.W. Bill Young Cell Transplantation Program.

5. Disclosure may be made to the Department of Justice when: (a) The agency or any component thereof; or (b) any employee of the agency in his or her official capacity; (c) any employee of the agency in his or her individual capacity where agency or the Department of Justice has agreed to represent the employee; or (d) the United States Government, is a party to litigation or has an interest in such litigation, and by careful review, the agency determines that the records are both relevant and necessary to the litigation and the use of such records by the Department of Justice is therefore deemed by the agency to be for a purpose that is compatible with the purpose for which the agency collected the records.

6. Disclosure may be made to a court or adjudicative body in a proceeding when: (a) The agency or any component thereof; or (b) any employee of the

agency in his or her official capacity; (c) any employee of the agency in his or her individual capacity where agency or the Department of Justice has agreed to represent the employee; or (d) the United States Government, is a party to litigation or has an interest in such litigation, and by careful review, the agency determines that the records are both relevant and necessary to the litigation and the use of such records is therefore deemed by the agency to be for a purpose that is compatible with the purpose for which the agency collected the records.

7. Disclosure may be made to a congressional office from the record of an individual in response to a verified inquiry from the congressional office made at the written request of that individual.

8. Disclosure may be made for research purposes. Rarely, with the appropriate safeguards and consistent with the applicable provisions of the Privacy Act and the Common Rule (45 CFR Part 46), disclosure for research purposes may be made when the Department, independently or through its contractor(s): (a) Has determined that the use or disclosure does not violate legal or policy limitations under which the record was provided, collected, or obtained; (b) has determined that a bona fide research/analysis purpose exists; (c) has required the recipient to: (1) Establish strict limitations concerning the receipt and use of patient-identified data; (2) establish reasonable administrative, technical, and physical safeguards to protect the confidentiality of the data and to prevent the unauthorized use or disclosure of the record; (3) remove, destroy, or return the information that identifies the individual at the earliest time at which removal or destruction can be accomplished consistent with the purpose of the research project, unless the recipient has presented adequate justification of a research or health nature for retaining such information; and (4) make no further use or disclosure of the record except as authorized by HHS or its contractor(s) or when required by law; (d) has determined that other applicable safeguards or protocols will be followed; and (e) has secured a written statement attesting to the recipient's understanding of, and willingness to abide by these provisions.

9. To appropriate Federal agencies and Department contractors that have a need to know the information for the purpose of assisting the Department's efforts to respond to a suspected or confirmed breach of the security or confidentiality of information

maintained in this system of records, and the information disclosed is relevant and necessary for that assistance.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM: STORAGE:

Records are maintained in file folders and in computer data files.

RETRIEVABILITY:

Patient and donor records may be retrieved by a unique ID assigned by the system or through the use of other identifying information (e.g., names, date of birth, Social Security Number, or address).

SAFEGUARDS:

1. *Authorized users:* Access is limited to authorized personnel responsible for administering the program, including program managers and program specialists who have responsibilities for implementing the program and the HRSA Information Systems Security Officer. The contractor(s) shall maintain current lists of authorized users. Retrieval of donor or patient records will be limited to authorized users for search, outcomes data collection and data auditing, or transplant management purposes.

2. *Assign Responsibility for Security:* Responsibility is assigned to a management official knowledgeable of the nature of the information and processes supported by the C.W. Bill Young Cell Transplantation Program and in the management, personnel, operational, and technical controls used to protect it.

3. *Perform Risk Assessment:* A risk assessment was conducted in conjunction with the development of the system. The system design ensures vulnerabilities, risks, and other security concerns are identified and addressed in the system design and throughout the life cycle of the project. This is consistent with the HHS Automated Information Systems Security Program Handbook.

4. *Certification and Accreditation:* The Program's electronic data systems are certified under the auspices of HRSA's Office of Information Technology Certification and Accreditation system.

5. *Physical safeguards:* All computer equipment and files and hard copy files are stored in areas where fire and life safety codes (e.g., OSHA standards) are strictly enforced. All automated and non-automated documents are protected on a 24-hour basis. Perimeter security includes intrusion alarms, key/passcard/combo controls, and

receptionist controlled area. Most hard copy files are maintained in a file room used solely for purposes of the Program with access limited by combination lock to authorized users identified above. Computer files are password protected and are accessible only by use of computers which are password protected. Servers are password protected and protected in locked rooms, with access restricted to specific authorized staff using controls specified in the certification and accreditation process.

6. *Procedural safeguards:* A password is required to access computer files. All users of personal information in connection with the performance of their jobs protect information from public view and from unauthorized personnel entering an unsupervised area. All authorized users sign a nondisclosure statement. All passwords, keys and/or combinations are changed when a person leaves or no longer has authorized duties. Access to records is limited to those authorized personnel trained in accordance with the Privacy Act and automated data processing (ADP) security procedures. The transmission of records is protected using secure protocols. Individuals with access to the system have User IDs and passwords and must be granted access to the system. External access to the data requires two-factor authentication. The safeguards described above were established in accordance with NIST 800-53 and OMB Circular A-130 Appendix III.

RETENTION AND DISPOSAL:

HRSA is working with the National Archives and Records Administration (NARA) to obtain the appropriate retention value of these records.

SYSTEM MANAGER AND ADDRESS:

Director, Blood Stem Cell Transplantation Program, HRSA, Parklawn Building, Room 12C-06, 5600 Fishers Lane, Rockville, MD 20857.

NOTIFICATION PROCEDURE:

Requests must be made to the System Manager.

Requests by mail: Requests for information and/or access to records received by mail must contain information providing the identity of the writer, and a reasonable description of the record desired, and whom it concerns. Written requests must contain the name and address of the requester, his/her date of birth and his/her signature. Requests must be notarized to verify the identity of the requester, or the requester must certify that (s)he is the individual who (s)he claims to be

and that (s)he understands that to knowingly and willfully request or acquire a record pertaining to another individual under false pretenses is a criminal offense under the Privacy Act subject to a \$5,000 fine (45 CFR 5b.5(b)(2)(ii)).

Requests in person or by telephone, electronic mail or facsimile cannot be honored.

REQUESTS IN PERSON:

No requests in person at the system location will be honored.

REQUESTS BY TELEPHONE:

Since positive identification of the caller cannot be established, telephone requests are not honored.

RECORD ACCESS PROCEDURES:

Record access procedures are the same as notification procedures. Requesters should also provide a reasonable description of the contents of the record being sought. A parent or guardian who requests notification of, or access to, a minor's/incompetent person's record shall designate a family physician or other health professional (other than a family member) to whom the record, if any, will be sent. The parent or guardian must verify relationship to the minor/incompetent person as well as his/her own identity. Records will be mailed only to the requester's address that is on file, unless a different address is demonstrated by official documentation.

CONTESTING RECORD PROCEDURES:

To contest a record in the system, contact the official at the address specified above and reasonably identify the record, specify the information being contested, and state the corrective action sought and the reason(s) for requesting the correction, along with supporting documentation to show how the record is inaccurate, incomplete, untimely, or irrelevant.

RECORD SOURCE CATEGORIES:

Sources of records include, but are not limited to, patients, donors, and/or their representatives under the C.W. Bill Young Cell Transplantation Program and any other sources of information or documentation submitted by any other person or entity for inclusion in a request for the purpose of facilitating and monitoring blood stem cell transplantation (e.g., transplant center healthcare professionals).

SYSTEMS EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT:

None.

[FR Doc. E9-11946 Filed 5-20-09; 8:45 am]

BILLING CODE 4165-15-P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Resources and Services Administration

Advisory Commission of Childhood Vaccines; Request for Nominations for Voting Members

AGENCY: Health Resources and Services Administration, HHS.

ACTION: Notice.

SUMMARY: The Health Resources and Services Administration (HRSA) is requesting nominations to fill three vacancies on the Advisory Commission on Childhood Vaccines (ACCV). The ACCV was established by Title XXI of the Public Health Service Act (the Act), as enacted by Public Law (Pub. L.) 99-660 and as subsequently amended, and advises the Secretary of Health and Human Services (the Secretary) on issues related to implementation of the National Vaccine Injury Compensation Program (VICP).

DATES: The agency must receive nominations on or before June 22, 2009.

ADDRESSES: All nominations are to be submitted to the Director, Division of Vaccine Injury Compensation, Healthcare Systems Bureau (HSB), HRSA, Parklawn Building, Room 11C-26, 5600 Fishers Lane, Rockville, Maryland 20857.

FOR FURTHER INFORMATION CONTACT: Ms. Michelle Herzog, Principal Staff Liaison, Policy Analysis Branch, Division of Vaccine Injury Compensation, HSB, HRSA at (301) 443-0650 or *e-mail*: mherzog@hrsa.gov.

SUPPLEMENTARY INFORMATION: Under the authorities that established the ACCV, the Federal Advisory Committee Act of October 6, 1972 (Pub. L. 92-463) and section 2119 of the Act, 42 U.S.C. 300aa-19, as added by Public Law 99-660 and amended, HRSA is requesting nominations for three voting members of the ACCV.

The ACCV advises the Secretary on the implementation of the VICP. The activities of the ACCV include: recommending changes in the Vaccine Injury Table at its own initiative or as the result of the filing of a petition; advising the Secretary in implementing section 2127 regarding the need for childhood vaccination products that result in fewer or no significant adverse reactions; surveying Federal, State, and local programs and activities related to gathering information on injuries associated with the administration of childhood vaccines, including the adverse reaction reporting requirements

of section 2125(b); advising the Secretary on the methods of obtaining, compiling, publishing, and using credible data related to the frequency and severity of adverse reactions associated with childhood vaccines; consulting on the development or revision of the Vaccine Information Statements and recommending to the Director of the National Vaccine Program that vaccine safety research be conducted on various vaccine injuries.

The ACCV consists of nine voting members appointed by the Secretary as follows: (1) Three health professionals, who are not employees of the United States Government and have expertise in the health care of children, and the epidemiology, etiology, and prevention of childhood diseases, and the adverse reactions associated with vaccines, at least two shall be pediatricians; (2) three members from the general public, at least two shall be legal representatives (parents or guardians) of children who have suffered a vaccine-related injury or death; and (3) three attorneys, at least one shall be an attorney whose specialty includes representation of persons who have suffered a vaccine-related injury or death, and one shall be an attorney whose specialty includes representation of vaccine manufacturers. In addition, the Director of the National Institutes of Health, the Assistant Secretary for Health, the Director of the Centers for Disease Control and Prevention, and the Commissioner of the Food and Drug Administration (or the designees of such officials) serve as nonvoting *ex officio* members.

Specifically, HRSA is requesting nominations for three voting members of the ACCV representing: (1) A health professional, who has expertise in the health care of children; and the epidemiology, etiology, and prevention of childhood diseases; (2) an attorney whose specialty includes representation of a vaccine manufacturer; and (3) a member of the general public. Nominees will be invited to serve a 3-year term beginning January 1, 2010, and ending December 31, 2012.

Interested persons may nominate one or more qualified persons for membership on the ACCV. Nominations shall state that the nominee is willing to serve as a member of the ACCV and appears to have no conflict of interest that would preclude the ACCV membership. Potential candidates will be asked to provide detailed information concerning consultancies, research grants, or contracts to permit evaluation of possible sources of conflicts of interest. A curriculum vitae or resume should be submitted with the nomination.

The Department of Health and Human Services has special interest in assuring that women, minority groups, and the physically disabled are adequately represented on advisory committees; and therefore, extends particular encouragement to nominations for appropriately qualified female, minority, or disabled candidates.

Dated: May 15, 2009.

Alexandra Huttinger,

Director, Division of Policy Review and Coordination.

[FR Doc. E9-11928 Filed 5-20-09; 8:45 am]

BILLING CODE 4165-15-P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Administration for Children and Families

Family Youth and Services Bureau

AGENCY: Family Youth And Services Bureau, ACF, DHHS.

ACTION: Notice to Award a Single-Source Replacement Grant.

CFDA#: 93.616.

Legislative Authority: Section 439 of the Social Security Act, as amended by the Child and Family Services Improvement Act of 2006 (Pub. L. 109-288)

Amount of Award: \$292,000.

Project Period: April 1, 2009–September 29, 2010.

SUMMARY: The Family and Youth Services Bureau (FYSB) awarded a Mentoring Children of Prisoners grant (Grant No. 90CV0343) to Prevent Child Abuse California of North Highlands, CA on September 30, 2007. On October 31, 2008, Prevent Child Abuse California submitted a letter relinquishing their grant. Amador Tuolumne Community Action Agency of Jackson, CA, an eligible non-profit organization, submitted their letter along with their grant application requesting approval as the replacement grantee for the Mentoring Children of Prisoners grant. FYSB has received and reviewed the application from Amador Tuolumne Community Action Agency. Upon finding that the proposed project will be able to carry out objectives originally intended to be completed by Prevent Child Abuse California, this organization has been awarded funds in the amount of \$292,000 as the permanent successor grantee.

Amador Tuolumne Community Action Agency will continue through a community-based approach to work toward the goal of creating high-quality, one-to-one lasting mentoring

relationships that provide young people, who have an incarcerated parent with caring adult volunteers.

Additional information about this program and its purpose can be located on the following Web site: <http://www.acf.hhs.gov/programs/fysb>.

Contact for Further Information:
Gloria Watkins, Family Youth and Services Bureau, 1250 Maryland Ave., SW., Washington, DC 20047. Telephone: (202) 205-9546. E-mail: Gloria.Watkins@acf.hhs.gov.

Dated: May 12, 2009.

Maiso L. Bryant,

Acting Commissioner, Administration on Children, Youth and Families.

[FR Doc. E9-11816 Filed 5-20-09; 8:45 am]

BILLING CODE P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA-2009-N-0210]

Temporary Deferment of Activities Relating to Medical Device Submissions

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing that the Center for Devices and Radiological Health (CDRH) will be moving from various Rockville, Maryland locations to Building 66 at 10903 New Hampshire Avenue in Silver Spring, Maryland from approximately mid May 2009 until the beginning of August 2009. Offices will progressively move over weekends during this period. Specifically, moves will occur on Friday, Saturday, and Sunday except on holiday weekends. During the period required for relocation of files, equipment, and agency personnel, the Center for Devices and Radiological Health will not officially receive premarket submissions on the Friday of a move weekend and the Monday after a move weekend.

FOR FURTHER INFORMATION CONTACT: Marjorie Shulman, Center for Devices and Radiological Health (HFZ-404), Food and Drug Administration, 9200 Corporate Blvd., Rockville, MD 20850, 240-276-4186 or Marjorie.shulman@fda.hhs.gov.

SUPPLEMENTARY INFORMATION:

I. Background

CDRH is responsible for activities under sections 510, 513, 515, and 520 of

the Federal Food, Drug, and Cosmetic Act (the act) (21 U.S.C. 360, 360c, 360e, and 360j). These activities include, but are not limited to:

1. Advising the Director, CDRH, and other FDA officials on all medical device submissions, such as premarket notification submissions under section 510(k) of the act, device classifications under section 513 of the act, premarket approval applications (PMA's) and product development protocols (PDP's) under section 515 of the act, and clinical investigations under section 520 of the act;

2. Determining substantial equivalence for premarket notification submissions;

3. Planning, conducting, and coordinating CDRH actions regarding PMA's, PDP's, and investigational device exemption approvals, denials, or withdrawals of approval;

4. Monitoring sponsors' compliance with regulatory requirements; and

5. Conducting a continuing review, surveillance, and medical evaluation of the labeling, clinical experience, and required reports submitted by sponsors holding approved applications.

In an effort to consolidate CDRH offices, FDA is moving various CDRH offices from their present Rockville, Maryland locations to Building 66 at 10903 New Hampshire Avenue in Silver Spring, Maryland. Offices will progressively move, during weekends, during this period. Specifically, moves will occur on Friday, Saturday, and Sunday except on holiday weekends. During the period required for relocation of files, equipment, and agency personnel, the agency, specifically the Center for Devices and Radiological Health, will not officially receive submissions on the Friday of a move weekend and the Monday after a move weekend. Although mail will be delivered to a CDRH address during the move, CDRH will not be able to receive it on Fridays and Mondays, and will have limited capacity on Tuesday. Accordingly, mail delivered on Friday or Monday will be logged in on a staggered basis to preserve equity in the order of receipt and manageability of the accumulated workload. Specifically, mail delivered on Friday or Monday will be received on Tuesday and mail delivered on Tuesday will be received by Wednesday. Mail delivered on Wednesdays and Thursdays will remain unaffected.

The new mailing address for submissions and updated telephone contact information may be found by accessing www.fda.gov/cdrh/whiteoakmove.

II. Comments

Persons who may be affected by this temporary deferment should contact FDA with any questions they may have regarding CDRH's move to the White Oak, Maryland. These persons should call CDRH's Division of Small Manufacturers, International, and Consumer Assistance at 800-638-2041 (in Maryland, 240-276-3150).

Dated: May 13, 2009.

Daniel G. Schultz,

Director, Center for Devices and Radiological Health.

[FR Doc. E9-11840 Filed 5-20-09; 8:45 am]

BILLING CODE 4160-01-S

DEPARTMENT OF HOMELAND SECURITY

U.S. Customs and Border Protection

Accreditation and Approval of Intertek USA, Inc., as a Commercial Gauger and Laboratory

AGENCY: U.S. Customs and Border Protection, Department of Homeland Security.

ACTION: Notice of accreditation and approval of Intertek USA, Inc., as a commercial gauger and laboratory.

SUMMARY: Notice is hereby given that, pursuant to 19 CFR 151.12 and 19 CFR 151.13, Intertek USA, Inc., 101 20th Street South, Texas City, TX 77590, has been approved to gauge and accredited to test petroleum and petroleum products, organic chemicals and vegetable oils for customs purposes, in accordance with the provisions of 19 CFR 151.12 and 19 CFR 151.13. Anyone wishing to employ this entity to conduct laboratory analyses and gauger services should request and receive written assurances from the entity that it is accredited or approved by the U.S. Customs and Border Protection to conduct the specific test or gauger service requested. Alternatively, inquires regarding the specific test or gauger service this entity is accredited or approved to perform may be directed to the U.S. Customs and Border Protection by calling (202) 344-1060. The inquiry may also be sent to cbp.labhq@dhs.gov. Please reference the Web site listed below for a complete listing of CBP approved gaugers and accredited laboratories. http://cbp.gov/xp/cgov/import/operations_support/labs_scientific_svcs/commercial_gaugers/.

DATES: The accreditation and approval of Intertek USA, Inc., as commercial gauger and laboratory became effective

on February 18, 2009. The next triennial inspection date will be scheduled for February 2012.

FOR FURTHER INFORMATION CONTACT: Anthony Malana, Laboratories and Scientific Services, U.S. Customs and Border Protection, 1300 Pennsylvania Avenue, NW., Suite 1500N, Washington, DC 20229, 202-344-1060.

Dated: May 15, 2009.

Ira S. Reese,

Executive Director, Laboratories and Scientific Services.

[FR Doc. E9-11932 Filed 5-20-09; 8:45 am]

BILLING CODE 9111-14-P

DEPARTMENT OF HOMELAND SECURITY

U.S. Customs and Border Protection

Information Collection Activities: Deferral of Duty on Large Yachts Imported for Sale

AGENCY: U.S. Customs and Border Protection (CBP), Department of Homeland Security.

ACTION: 60-Day notice and request for comments; Extension of an existing information collection: 1651-0080.

SUMMARY: As part of its continuing effort to reduce paperwork and respondent burden, CBP invites the general public and other Federal agencies to comment on an information collection requirement concerning the Deferral of Duty on Large Yachts Imported for Sale. This request for comment is being made pursuant to the Paperwork Reduction Act of 1995 (Pub. L. 104-13; 44 U.S.C. 3505(c)(2)).

DATES: Written comments should be received on or before July 20, 2009, to be assured of consideration.

ADDRESSES: Direct all written comments to U.S. Customs and Border Protection, Attn: Tracey Denning, Office of Regulations and Rulings, 799 9th Street, NW., 7th Floor, Washington, DC 20229-1177.

FOR FURTHER INFORMATION CONTACT: Requests for additional information should be directed to Tracey Denning, U.S. Customs and Border Protection, Office of Regulations and Rulings, 799 9th Street, NW., 7th Floor, Washington, DC 20229-1177, at 202-325-0265.

SUPPLEMENTARY INFORMATION: CBP invites the general public and other Federal agencies to comment on proposed and/or continuing information collections pursuant to the Paperwork Reduction Act of 1995 (Pub. L. 104-13; 44 U.S.C. 3505(c)(2)). The comments should address: (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 estimates 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 including the use of automated collection techniques or the use of other forms of information technology; and (e) estimates of capital or start-up costs and costs of operations, maintenance, and purchase of services to provide information. The comments that are submitted will be summarized and included in the request for Office of Management and Budget (OMB) approval. All comments will become a matter of public record. In this document the CBP is soliciting comments concerning the following information collection:

Title: Deferral of Duty on Large Yachts Imported for Sale.

OMB Number: 1651-0080.

Form Number: None.

Abstract: Section 2406(a) of the Miscellaneous Trade and Technical Corrections Act of 1999 provides that an otherwise dutiable "large yacht" may be imported without the payment of duty if the yacht is imported with the intention to offer for sale at a boat show in the U.S.

Current Actions: There are no changes to the information collection. This submission is being made to extend the expiration date.

Type of Review: Extension (without change).

Affected Public: Business and non-profit institutions.

Estimated Number of Respondents: 100.

Estimated Time per Respondent: 1 hour.

Estimated Total Annual Burden Hours: 100.

Dated: May 14, 2009.

Tracey Denning,

Agency Clearance Officer, Customs and Border Protection.

[FR Doc. E9-11771 Filed 5-20-09; 8:45 am]

BILLING CODE 9111-14-P

DEPARTMENT OF HOMELAND SECURITY

U.S. Citizenship and Immigration Services

Agency Information Collection Activities: Form I-643, Extension of an Existing Information Collection; Comment Request

ACTION: 60-Day Notice of Information Collection Under Review: Form I-643, Health and Human Services Statistical Data for Refugee/Asylee Adjusting Status; OMB Control No. 1615-0070.

The Department of Homeland Security, U.S. Citizenship and Immigration Services has submitted the following information collection request for review and clearance in accordance with the Paperwork Reduction Act of 1995. The information collection is published to obtain comments from the public and affected agencies. Comments are encouraged and will be accepted for sixty days until July 20, 2009.

During this 60-day period, USCIS will be evaluating whether to revise the Form I-643. Should USCIS decide to revise the Form I-634, we will advise the public when we publish the 30-day notice in the **Federal Register** in accordance with the Paperwork Reduction Act. The public will then have 30 days to comment on any revisions to the Form I-643.

Written comments and suggestions regarding the item contained in this notice, and especially regarding the estimated public burden and associated response time, should be directed to the Department of Homeland Security (DHS), USCIS, Chief, Regulatory Products Division, Clearance Office, 111 Massachusetts Avenue, NW., Washington, DC 20529-2210.

Comments may also be submitted to DHS via facsimile to 202-272-8352, or via e-mail at rfs.regs@dhs.gov. When submitting comments by e-mail, please add the OMB Control Number 1615-0070 in the subject box.

Written comments and suggestions from the public and affected agencies concerning the collection of information should address one or more of the following four points:

(1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(2) Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

(3) Enhance the quality, utility, and clarity of the information to be collected; and

(4) Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

Overview of This Information Collection

(1) *Type of Information Collection:* Extension of an existing information collection.

(2) *Title of the Form/Collection:* Health and Human Services Statistical Data for Refugee/Asylee Adjusting Status.

(3) *Agency form number, if any, and the applicable component of the Department of Homeland Security sponsoring the collection:* Form I-643. U.S. Citizenship and Immigration Services.

(4) *Affected public who will be asked or required to respond, as well as a brief abstract:* *Primary:* Individuals or Households. Refugees and Asylees, Cuban/Haitian Entrants under section 202 of Public Law 99-603, and Amerasians under Public Law 97-359, must use this form when applying for adjustment of status, with the U.S. Citizenship and Immigration Services (USCIS). USCIS will provide the data collected on this form to the Department of Health and Human Services (HHS).

(5) *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond:* 195,000 responses at 55 minutes (.916) per response.

(6) *An estimate of the total public burden (in hours) associated with the collection:* 178,620 annual burden hours.

If you need a copy of the information collection instrument, please visit: <http://www.regulations.gov/fdmspublic/component/main>.

We may also be contacted at: USCIS, Regulatory Products Division, 111 Massachusetts Avenue, NW., Washington, DC 20529-2210, telephone number 202-272-8377.

Dated: May 15, 2009.

Stephen Tarragon,

Deputy Chief, Regulatory Products Division, U.S. Citizenship and Immigration Services, Department of Homeland Security.

[FR Doc. E9-11832 Filed 5-20-09; 8:45 am]

BILLING CODE 9111-97-P

DEPARTMENT OF HOMELAND SECURITY

U.S. Customs and Border Protection

Agency Information Collection Activities: Declaration for Free Entry of Returned American Products

AGENCY: U.S. Customs and Border Protection (CBP), Department of Homeland Security.

ACTION: 60-Day notice and request for comments; Extension of an existing information collection: 1651-0011.

SUMMARY: As part of its continuing effort to reduce paperwork and respondent burden, CBP invites the general public and other Federal agencies to comment on an information collection requirement concerning the Declaration for Free Entry of Returned American Products. This request for comment is being made pursuant to the Paperwork Reduction Act of 1995 (Pub. L. 104-13; 44 U.S.C. 3505(c)(2)).

DATES: Written comments should be received on or before July 20, 2009, to be assured of consideration.

ADDRESSES: Direct all written comments to U.S. Customs and Border Protection, Attn: Tracey Denning, Office of Regulations and Rulings, 799 9th Street, NW., 7th Floor, Washington, DC 20229-1177.

FOR FURTHER INFORMATION CONTACT:

Requests for additional information should be directed to Tracey Denning, U.S. Customs and Border Protection, Office of Regulations and Rulings, 799 9th Street, NW., 7th Floor, Washington, DC 20229-1177, at 202-325-0265.

SUPPLEMENTARY INFORMATION:

CBP invites the general public and other Federal agencies to comment on proposed and/or continuing information collections pursuant to the Paperwork Reduction Act of 1995 (Pub. L. 104-13; 44 U.S.C. 3505(c)(2)). The comments should address: (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 estimates 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 including the use of automated collection techniques or the use of other forms of information technology; and (e) estimates of capital or start-up costs and costs of operations, maintenance, and purchase of services to provide information. The comments that are submitted will be summarized and

included in the request for Office of Management and Budget (OMB) approval. All comments will become a matter of public record. In this document the CBP is soliciting comments concerning the following information collection:

Title: Declaration of Free Entry of Returned American Products.

OMB Number: 1651-0011.

Form Number: Form-3311.

Abstract: When free entry is claimed for a shipment of returned American products under the Harmonized Tariff Schedules of the United States (HTSUS), Form-3311 is one of the supporting documents which substantiates the claim for duty free status.

Current Actions: This submission is being made to extend the expiration date without a change to the burden hours.

Type of Review: Extension (without change).

Affected Public: Businesses.

Estimated Number of Respondents: 12,000.

Estimated Number of Annual Responses per Respondent: 35.

Estimated Number of Total Responses: 420,000.

Estimated Time per Respondent: 7 minutes.

Estimated Total Annual Burden Hours: 51,000.

Dated: May 14, 2009.

Tracey Denning,

Agency Clearance Officer, Customs and Border Protection.

[FR Doc. E9-11781 Filed 5-20-09; 8:45 am]

BILLING CODE 9111-14-P

DEPARTMENT OF HOMELAND SECURITY

U.S. Customs and Border Protection

Agency Information Collection Activities: Importer's ID Input Record

AGENCY: U.S. Customs and Border Protection (CBP), Department of Homeland Security.

ACTION: 60-Day Notice and request for comments; Extension of an existing collection of information: 1651-0064.

SUMMARY: As part of its continuing effort to reduce paperwork and respondent burden, CBP invites the general public and other Federal agencies to comment on an information collection requirement concerning the Importer's ID Input Record. This request for comment is being made pursuant to the Paperwork Reduction Act of 1995 (Pub. L. 104-13; 44 U.S.C. 3505(c)(2)).

DATES: Written comments should be received on or before July 20, 2009, to be assured of consideration.

ADDRESSES: Direct all written comments to U.S. Customs and Border Protection, Attn: Tracey Denning, Office of Regulations and Rulings, 799 9th Street, NW., 7th Floor, Washington, DC 20229-1177.

FOR FURTHER INFORMATION CONTACT:

Requests for additional information should be directed to Tracey Denning, U.S. Customs and Border Protection, Office of Regulations and Rulings, 799 9th Street, NW., 7th Floor, Washington, DC 20229-1177, at 202-325-0265.

SUPPLEMENTARY INFORMATION: CBP invites the general public and other Federal agencies to comment on proposed and/or continuing information collections pursuant to the Paperwork Reduction Act of 1995 (Pub. L. 104-13; 44 U.S.C. 3505(c)(2)). The comments should address: (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 estimates 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 including the use of automated collection techniques or the use of other forms of information technology; and (e) the annual costs burden to respondents or record keepers from the collection of information (a total capital/startup costs and operations and maintenance costs). The comments that are submitted will be summarized and included in the CBP request for Office of Management and Budget (OMB) approval. All comments will become a matter of public record. In this document CBP is soliciting comments concerning the following information collection:

Title: Importer's ID Input Record.

OMB Number: 1651-0064.

Form Number: Form 5106.

Abstract: Form 5106 is filed with the first formal entry or the first request for services that will result in the issuance of a bill or a refund check upon adjustment of a cash collection. The number, name, and address conveyed on the Form 5106 is the basis for establishing bond coverage, release and entry of merchandise, liquidation, issuance of bills and refunds, and processing of drawback and FP&F actions.

Current Actions: There are no changes to the information collection. This submission is being made to extend the expiration date.

Type of Review: Extension (without change).

Affected Public: Businesses.

Estimated Number of Respondents: 500.

Estimated Number of Annual Responses per Respondent: 2.

Estimated Number of Total Annual Responses: 1,000.

Estimated Time per Response: 6 minutes.

Estimated Total Annual Burden Hours: 100.

Dated: May 14, 2009.

Tracey Denning,

Agency Clearance Officer, Customs and Border Protection.

[FR Doc. E9-11779 Filed 5-20-09; 8:45 am]

BILLING CODE 9111-14-P

DEPARTMENT OF HOMELAND SECURITY

U.S. Customs and Border Protection; Agency Information Collection Activities: General Declaration

AGENCY: U.S. Customs and Border Protection, Department of Homeland Security.

ACTION: 30-Day Notice and request for comments; Extension of an existing information collection: 1651-0002.

SUMMARY: U.S. Customs and Border Protection (CBP) of the Department of Homeland Security has submitted the following information collection request to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act: General Declaration. This is a proposed extension of an information collection that was previously approved. CBP is proposing that this information collection be extended with no change to the burden hours. This document is published to obtain comments from the public and affected agencies. This proposed information collection was previously published in the **Federal Register** (74 FR 11125) on March 16, 2009, allowing for a 60-day comment period. This notice allows for an additional 30 days for public comments. This process is conducted in accordance with 5 CFR 1320.10.

DATES: Written comments should be received on or before June 22, 2009.

ADDRESSES: Interested persons are invited to submit written comments on the proposed information collection to the Office of Information and Regulatory Affairs, Office of Management and Budget. Comments should be addressed to the OMB Desk Officer for Customs

and Border Protection, Department of Homeland Security, and sent via electronic mail to oir_submission@omb.eop.gov or faxed to (202) 395-6974.

SUPPLEMENTARY INFORMATION: U.S. Customs and Border Protection (CBP) encourages the general public and affected Federal agencies to submit written comments and suggestions on proposed and/or continuing information collection requests pursuant to the Paperwork Reduction Act (Pub. L. 104-13). Your comments should address one of the following four points:

- (1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency/component, including whether the information will have practical utility;
- (2) Evaluate the accuracy of the agencies/components estimate of the burden of The proposed collection of information, including the validity of the methodology and assumptions used;
- (3) Enhance the quality, utility, and clarity of the information to be collected; and

(4) Minimize the burden of the collections of information on those who are to respond, including the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.*, permitting electronic submission of responses.

Title: General Declaration.

OMB Number: 1651-0002.

Form Number: Form 7507.

Abstract: CBP Form 7507 allows an agent or pilot to make entry of an aircraft, as required by statute. This form is used to document clearance of the arriving aircraft at the required inspectional facilities, and inspections by appropriate regulatory agency staffs.

Current Actions: There are no changes to the information collection. This submission is being made to extend the expiration date.

Type of Review: Extension (without change).

Affected Public: Businesses or other for-profit institutions.

Estimated Number of Respondents: 500.

Estimated Number of Total Annual Responses: 1,000,000.

Estimated Time per Response: 5 minutes.

Estimated Total Annual Burden Hours: 83,333.

If additional information is required contact: Tracey Denning, U.S. Customs and Border Protection, Office of Regulations and Rulings, 799 9th Street, NW., 7th Floor, Washington, DC 20229-1177, at 202-325-0265.

Dated: May 14, 2009.

Tracey Denning,

Agency Clearance Officer, Customs and Border Protection.

[FR Doc. E9-11777 Filed 5-20-09; 8:45 am]

BILLING CODE 9111-14-P

DEPARTMENT OF HOMELAND SECURITY

U.S. Customs and Border Protection

Agency Information Collection Activities: Application To Use the Automated Commercial Environment (ACE)

AGENCY: U.S. Customs and Border Protection, Department of Homeland Security.

ACTION: 30-Day Notice and request for comments; Extension of an existing information collection: 1651-0105.

SUMMARY: U.S. Customs and Border Protection (CBP) of the Department of Homeland Security has submitted the following information collection request to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act: Application to Use the Automated Commercial Environment (ACE). This is a proposed extension of an information collection that was previously approved. CBP is proposing that this information collection be extended with no change to the burden hours. This document is published to obtain comments from the public and affected agencies. This proposed information collection was previously published in the **Federal Register** (74 FR 11126) on March 16, 2009, allowing for a 60-day comment period. This notice allows for an additional 30 days for public comments. This process is conducted in accordance with 5 CFR 1320.10.

DATES: Written comments should be received on or before June 22, 2009.

ADDRESSES: Interested persons are invited to submit written comments on the proposed information collection to the Office of Information and Regulatory Affairs, Office of Management and Budget. Comments should be addressed to the OMB Desk Officer for Customs and Border Protection, Department of Homeland Security, and sent via electronic mail to oir_submission@omb.eop.gov or faxed to (202) 395-6974.

SUPPLEMENTARY INFORMATION: U.S. Customs and Border Protection (CBP) encourages the general public and affected Federal agencies to submit written comments and suggestions on

proposed and/or continuing information collection requests pursuant to the Paperwork Reduction Act (Pub. L. 104-13). Your comments should address one of the following four points:

(1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency/component, including whether the information will have practical utility;

(2) Evaluate the accuracy of the agencies/components estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

(3) Enhance the quality, utility, and clarity of the information to be collected; and

(4) Minimize the burden of the collections of information on those who are to respond, including the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

Title: Application to Use ACE.

OMB Number: 1651-0105.

Form Number: None.

Abstract: CBP collects basic information from companies participating in ACE pilots in order to establish account structures for each company.

Current Actions: This submission is being made to extend the expiration date.

Type of Review: Extension (without change).

Affected Public: Businesses.

Estimated Number of Respondents: 21,000.

Estimated Time per Response: 20 minutes.

Estimated Total Annual Burden Hours: 6,930.

If additional information is required contact: Tracey Denning, U.S. Customs and Border Protection, Office of Regulations and Rulings, 799 9th Street, NW., 7th Floor, Washington, DC 20229-1177, at 202-325-0265.

Dated: May 14, 2009.

Tracey Denning,

Agency Clearance Officer, Customs and Border Protection.

[FR Doc. E9-11772 Filed 5-20-09; 8:45 am]

BILLING CODE 9111-14-P

DEPARTMENT OF HOMELAND SECURITY

U.S. Customs and Border Protection

Agency Information Collection Activities: Importers of Merchandise Subject to Actual Use Provisions

AGENCY: U.S. Customs and Border Protection, Department of Homeland Security

ACTION: 30-Day Notice and request for comments; Extension of an existing information collection: 1651-0032

SUMMARY: U.S. Customs and Border Protection (CBP) of the Department of Homeland Security has submitted the following information collection request to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act: Importers of Merchandise Subject to Actual Use Provisions. This is a proposed extension of an information collection that was previously approved. CBP is proposing that this information collection be extended with no change to the burden hours. This document is published to obtain comments from the public and affected agencies. This proposed information collection was previously published in the **Federal Register** (74 FR 5846) on February 2, 2009, allowing for a 60-day comment period. This notice allows for an additional 30 days for public comments. This process is conducted in accordance with 5 CFR 1320.10.

DATES: Written comments should be received on or before June 22, 2009.

ADDRESSES: Interested persons are invited to submit written comments on the proposed information collection to the Office of Information and Regulatory Affairs, Office of Management and Budget. Comments should be addressed to the OMB Desk Officer for Customs and Border Protection, Department of Homeland Security, and sent via electronic mail to oir_submission@omb.eop.gov or faxed to (202) 395-6974.

SUPPLEMENTARY INFORMATION: U.S. Customs and Border Protection (CBP) encourages the general public and affected Federal agencies to submit written comments and suggestions on proposed and/or continuing information collection requests pursuant to the Paperwork Reduction Act (Pub. L. 104-13). Your comments should address one of the following four points:

(1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency/component,

including whether the information will have practical utility;

(2) Evaluate the accuracy of the agency's/component's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

(3) Enhance the quality, utility, and clarity of the information to be collected; and

(4) Minimize the burden of the collections 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, e.g., permitting electronic submission of responses.

Title: Importers of Merchandise Subject to Actual Use Provisions.

OMB Number: 1651-0032.

Form Number: None.

Abstract: The Importers of Merchandise Subject to Actual Use Provision is provided for in CBP regulation 19 CFR 10.137. It allows that certain items may be admitted duty-free such as farming implements, seed, potatoes, etc., providing the importer can prove these items were actually used as contemplated by law. The importer must maintain detailed records including a statement of use.

Current Actions: This submission is being made to extend the expiration date.

Type of Review: Extension (without change).

Affected Public: Businesses.

Estimated Number of Respondents: 12,000.

Estimated Time per Respondent: 65 minutes.

Estimated Total Annual Burden Hours: 13,000.

If additional information is required contact: Tracey Denning, U.S. Customs and Border Protection, Office of Regulations and Rulings, 799 9th Street, NW., 7th Floor, Washington, DC 20229-1177, at 202-325-0265.

Dated: May 14, 2009.

Tracey Denning,

Agency Clearance Officer, Customs and Border Protection.

[FR Doc. E9-11775 Filed 5-20-09; 8:45 am]

BILLING CODE 9111-14-P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[LLWO35000.L14300000.ER0000.24-1A; OMB Control Number 1004-0029]

Notice of Proposed Information Collection for 1004-0029

AGENCY: Bureau of Land Management, Interior.

ACTION: 60-Day notice and request for comments.

SUMMARY: In compliance with the Paperwork Reduction Act of 1995, the Bureau of Land Management (BLM) is announcing its intention to request approval to continue the collection of information from those persons who submit a Color-of-Title Application to apply for public lands under a color-of-title claim. This information collection activity was previously approved by the Office of Management and Budget (OMB), and assigned clearance numbers 1004-0029.

DATES: Comments on the proposed information collection must be received by July 20, 2009, to be assured of consideration.

ADDRESSES: Comments may be mailed to U.S. Department of the Interior, Bureau of Land Management, Mail Stop 401-LS, 1849 C St., NW., Washington, DC 20240. Comments may also be submitted electronically to

Jean_Sonneman@blm.gov. Please attach "Attn: 1004-0029" to either form of comment.

FOR FURTHER INFORMATION CONTACT: To receive a copy of the information collection request, contact Alzata L. Ransom, Lands and Realty Group, on 202-452-7772 (Commercial or FTS). Persons who use a telecommunication device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) on 1-800-877-8330, 24 hours a day, seven days a week, to contact Ms. Ransom.

SUPPLEMENTARY INFORMATION: OMB regulations at 5 CFR 1320, which implementing provisions of the Paperwork Reduction (Act 44 U.S.C. 3501-3521), require that interested members of the public and affected agencies have an opportunity to comment on information collection and recordkeeping activities (see 5 CFR 1320.8 (d) and 1320.12(a)). This notice identifies an information collection that the BLM will be submitting to OMB for approval. This collection is contained in 43 CFR part 2540, Color-of-Title and Omitted Lands. The BLM will request a 3-year term of approval for this information collection activity.

Comments are invited on: (1) The need for the collection of information for the performance of the functions of the agency; (2) the accuracy of the agency's burden estimates; (3) ways to enhance the quality, utility and clarity of the information collection; and (4) ways to minimize the information collection burden on respondents, such as use of automated means of collection of the information. A summary of the public comments will accompany OSM's submission of the information collection requests to OMB.

Before including your address, phone number, e-mail address, or other personal identifying information in your comment, you should be aware that your entire comment—including your personal identifying information—may be made publicly available at any time. While you can ask us in your comment to withhold your personal identifying information from public review, we cannot guarantee that we will be able to do so.

The following information is provided for the information collection: (1) Title of the information collection; (2) OMB control number; (3) summary of the information collection activity; and (4) frequency of collection, description of the respondents, estimated total annual responses, and the total annual reporting and recordkeeping burden for the collection of information.

Title: 43 CFR part 2540—Color-of-Title and Omitted Lands.

OMB Control Number: 1004-0029.

SUMMARY: The Color-of-Title Act (43 U.S.C. 1068-1068b) provides for the transfer of legal title to public lands from the United States to eligible individuals, groups, or corporations who have a valid color-of-title claim. The BLM needs to collect information in order to determine whether a claimant possesses valid evidence that would support a transfer of title. Responses are required to obtain a benefit.

Frequency of Collection: Once.

Description of Respondents: Applicants who claim title to public lands under the Color of Title Act.

Total Annual Responses: 264.

Total Annual Burden Hours for Applicants: 3,652.

Dated: May 15, 2009.

Jean Sonneman,

Acting Information Collection Clearance Officer, Bureau of Land Management.

[FR Doc. E9-11898 Filed 5-20-09; 8:45 am]

BILLING CODE 4310-84-P

DEPARTMENT OF THE INTERIOR**National Park Service****Notice of Availability of the Abbreviated Final General Management Plan/Environmental Impact Statement for Minuteman Missile National Historic Site, SD**

SUMMARY: Pursuant to Section 102(2)(C) of the National Environmental Policy Act of 1969, 42 U.S.C. 4332(2)(C), the National Park Service (NPS) announces the availability of the Abbreviated Final General Management Plan (GMP)/Environmental Impact Statement (EIS) for Minuteman Missile National Historic Site, South Dakota.

DATES: The final GMP/EIS will remain available for public review for 30 days following the publishing of the notice of availability in the **Federal Register** by the U.S. Environmental Protection Agency.

ADDRESSES: Requests for copies should be sent to Superintendent Mark Herberger, Minuteman Missile National Historic Site, 21280 South Dakota Highway 240, Philip, South Dakota 57567, by telephone at 605-433-5552, or by electronic mail to Mark_E_Herberger@nps.gov. You may also view the document via the Internet through the NPS Planning, Environment, and Public Comment Web site (<http://parkplanning.nps.gov>); simply click on the link to Minuteman Missile National Historic Site.

SUPPLEMENTARY INFORMATION: The NPS studied a no-action and three action management alternatives that vary in how Delta One and Delta Nine might be presented to visitors. The concept for alternative 4, the preferred alternative, commemorates the Cold War by presenting Delta One in its ready-alert status and by presenting Delta Nine in its stand-down appearance. The plan includes the preferred location for a 7,700 square-foot visitor/administrative facility to be placed north of exit 131 in 2 stages. The first stage starts with constructing a stand-alone visitor center of 5,300 square feet. Its design will be such that the administrative portion of the second stage can be added at a later date. A shuttle system will be developed for operation after such a time as the level of visitation warrants. In lieu of a shuttle, visitors will drive to both Delta One and Delta Nine. Visitors benefit from this plan because of opportunities to see and learn about the missile sites as symbols that commemorate the Cold War including guided tours, onsite interpretive media, and interpretive programs at the envisioned visitor/administrative facility.

The NPS prepared a Draft GMP/EIS for Minuteman Missile National Historic Site and made it available for public review for 60 days (February 29 through April 29, 2008), during which time the NPS distributed more than 200 copies of the draft. In addition to the distribution, the Draft GMP/EIS was also made available at the national historic site, on the Internet, and at area libraries. In response, a total of 46 written comments were received on the draft document, and 72 participants attended public meetings. The consensus from the public comment period was that the NPS is pursuing the correct path for the national historic site in alternative 4, the preferred alternative. Comments from individuals and public agencies did not require the NPS to add other alternatives, significantly alter existing alternatives, or make changes to the impact analysis of the effects of any alternative. Because of the lack of substantive comments, the NPS is issuing an abbreviated Final EIS/GMP.

FOR FURTHER INFORMATION CONTACT: Contact Superintendent Mark Herberger, Minuteman Missile National Historic Site, at the address, telephone number, or e-mail address above.

Dated: May 12, 2009.

Alan M. Hutchings,

Acting Regional Director, Midwest Region.

[FR Doc. E9-11891 Filed 5-20-09; 8:45 am]

BILLING CODE P

DEPARTMENT OF JUSTICE**Office of Justice Programs**

[OMB Number 1121-0188]

Agency Information Collection Activities: Proposed Collection; Comment Request

ACTION: Emergency 60-day notice of information collection under review (revision of a currently approved collection)—budget detail worksheet.

The Department of Justice, Office of Justice Programs, Office of the Comptroller, will be submitting the following information collection request for review and clearance in accordance with the Paperwork Reduction Act of 1995. This proposed information collection is published to obtain comments from the public and affected agencies. Comments are encouraged and will be accepted for "sixty days" until July 20, 2009.

If you have additional comments, suggestions, or need a copy of the proposed information collection instrument with instructions or

additional information, please contact Marcia K. Paull, Chief Financial Officer at (202) 353-2820, Office of the Chief Financial Officer, Office of Justice Programs, U.S. Department of Justice, 810 7th Street, NW., Washington, DC 20531. Written comments and suggestions from the public and affected agencies concerning the proposed collection of information should address one or more of the following four points:

(1) Evaluate whether the proposed collection of information is necessary for the proper performance of the function of the agency, including whether the information will have practical utility;

(2) Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

(3) Enhance the quality, utility, and clarity of the information to be collected; and

(4) Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

Overview of this information:

(1) *Type of information collection:* Revision of a currently approved collection.

(2) *The title of the form/collection:* Budget Detail Worksheet.

(3) *The agency form number, if any, and the applicable component of the Department sponsoring the collection:* Non-applicable.

(4) *Affected public who will be asked or required to respond, as well as a brief abstract: Primary:* All potential grantee partners who are possible recipients of our discretionary grant programs. The eligible recipients include state and local governments, Indian tribes, profit entities, non-profit entities, educational institutions, and individuals.

The form is not mandatory and is recommended as a guide to assist the recipient in preparing the budget narrative as authorized in 28 CFR parts 66 and 70.

(5) An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond/reply: It is estimated that 2500 respondents will complete a 4-hour form.

(6) An estimate of the total public burden (in hours) associated with the collection: The total hour burden to complete the forms is 10,000 annual burden hours.

If additional information is required contact: Ms. Lynn Bryant, Department Clearance Officer, United States Department of Justice, Policy and Planning Staff, Justice Management Division, Suite 1600, Patrick Henry Building, 1331 Pennsylvania, NW., Washington, DC 20530.

Dated: May 18, 2009.

Ms. Lynn Bryant,

Department Clearance Officer, PRA, United States Department of Justice.

[FR Doc. E9-11924 Filed 5-20-09; 8:45 am]

BILLING CODE 4410-18-P

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

[Docket No. DEA-318P]

Controlled Substances: Proposed Aggregate Production Quotas for 2010

AGENCY: Drug Enforcement Administration (DEA), Justice.

ACTION: Notice of proposed year 2010 aggregate production quotas.

SUMMARY: This notice proposes initial year 2010 aggregate production quotas for controlled substances in schedules I and II of the Controlled Substances Act (CSA).

DATES: Comments or objections must be received on or before June 22, 2009.

ADDRESSES: To ensure proper handling of comments, please reference "Docket No. DEA-318P" on all written and electronic correspondence. Written comments should be sent to the DEA Headquarters, Attn: DEA Federal Register Representative/ODL, 8701 Morrisette Drive, Springfield, Virginia

22152. Comments may be directly sent to DEA electronically by sending an electronic message to *dea.diversion.policy@usdoj.gov*. Comments may also be sent electronically through *http://www.regulations.gov* using the electronic comment form provided on that site. An electronic copy of this document is also available at the *http://www.regulations.gov* Web site. DEA will accept attachments to electronic comments in Microsoft Word, WordPerfect, Adobe PDF, or Excel file formats only. DEA will not accept any file format other than those specifically listed here.

FOR FURTHER INFORMATION CONTACT:

Christine A. Sannerud, Ph.D., Chief, Drug and Chemical Evaluation Section, 8701 Morrisette Drive, Springfield, Virginia 22152, Telephone: (202) 307-7183.

SUPPLEMENTARY INFORMATION: Section 306 of the CSA (21 U.S.C. 826) requires that the Attorney General establish aggregate production quotas for each basic class of controlled substance listed in schedules I and II. This responsibility has been delegated to the Administrator of the DEA by 28 CFR Section 0.100. The Administrator, in turn, has redelegated this function to the Deputy Administrator, pursuant to 28 CFR Section 0.104.

The proposed year 2010 aggregate production quotas represent those quantities of controlled substances that may be produced in the United States in 2010 to provide adequate supplies of each substance for: The estimated medical, scientific, research, and industrial needs of the United States; lawful export requirements; and the

establishment and maintenance of reserve stocks. These quotas do not include imports of controlled substances for use in industrial processes.

In determining the year 2010 aggregate production quotas, the Deputy Administrator considered the following factors: Total actual 2008 and estimated 2009 and 2010 net disposals of each substance by all manufacturers; estimates of 2009 year-end inventories of each substance and of any substance manufactured from it and trends in accumulation of such inventories; product development requirements of both bulk and finished dosage form manufacturers; projected demand as indicated by procurement quota applications filed pursuant to 21 CFR Section 1303.12; and other pertinent information.

Pursuant to 21 CFR Section 1303, the Deputy Administrator of the DEA will adjust the 2010 aggregate production quotas and individual manufacturing quotas allocated for the year based upon 2009 year-end inventory and actual 2009 disposition data supplied by quota recipients for each basic class of schedule I or II controlled substance.

Therefore, under the authority vested in the Attorney General by § 306 of the CSA of 1970 (21 U.S.C. 826), and delegated to the Administrator of the DEA by 28 CFR Section 0.100, and redelegated to the Deputy Administrator pursuant to 28 CFR Section 0.104, the Deputy Administrator hereby proposes that the year 2010 aggregate production quotas for the following controlled substances, expressed in grams of anhydrous acid or base, be established as follows:

Basic class—schedule I	Established 2010 quotas
2,5-Dimethoxyamphetamine	2 g
2,5-Dimethoxy-4-ethylamphetamine (DOET)	2 g
3-Methylfentanyl	2 g
3-Methylthiofentanyl	2 g
3,4-Methylenedioxyamphetamine (MDA)	25 g
3,4-Methylenedioxy-N-ethylamphetamine (MDEA)	10 g
3,4-Methylenedioxymethamphetamine (MDMA)	20 g
3,4,5-Trimethoxyamphetamine	2 g
4-Bromo-2,5-dimethoxyamphetamine (DOB)	2 g
4-Bromo-2,5-dimethoxyphenethylamine (2-CB)	2 g
4-Methoxyamphetamine	27 g
4-Methylaminorex	2 g
4-Methyl-2,5-dimethoxyamphetamine (DOM)	2 g
5-Methoxy-3,4-methylenedioxyamphetamine	2 g
5-Methoxy-N,N-diisopropyltryptamine	5 g
Acetyl-alpha-methylfentanyl	2 g
Acetyldihydrocodeine	2 g
Acetylmethadol	2 g
Allylprodine	2 g
Alphacetylmethadol	2 g
Alpha-ethyltryptamine	2 g
Alphameprodine	2 g
Alphamethadol	2 g

Basic class—schedule I	Established 2010 quotas
Alpha-methylfentanyl	2 g
Alpha-methylthiofentanyl	2 g
Aminorex	2 g
Benzylmorphine	2 g
Betacetylmethadol	2 g
Beta-hydroxy-3-methylfentanyl	2 g
Beta-hydroxyfentanyl	2 g
Betameprodine	2 g
Betamethadol	2 g
Betaprodine	2 g
Bufotenine	3 g
Cathinone	3 g
Codeine-N-oxide	602 g
Diethyltryptamine	2 g
Difenoxin	3,000 g
Dihydromorphine	2,549,000 g
Dimethyltryptamine	3 g
Gamma-hydroxybutyric acid	24,200,000 g
Heroin	20 g
Hydromorphenol	2 g
Hydroxypethidine	2 g
Ibogaine	1 g
Lysergic acid diethylamide (LSD)	10 g
Marihuana	4,500,000 g
Mescaline	7g
Methaqualone	5 g
Methcathinone	4 g
Methyldihydromorphine	2 g
Morphine-N-oxide	605 g
N-Benzylpiperazine	2 g
N,N-Dimethylamphetamine	7 g
N-Ethylamphetamine	2 g
N-Hydroxy-3,4-methylenedioxyamphetamine	2 g
Noracymethadol	2 g
Norlevorphanol	52 g
Normethadone	2 g
Normorphine	16 g
Para-fluorofentanyl	2 g
Phenomorphan	2 g
Pholcodine	2 g
Psilocybin	7 g
Psilocyn	7 g
Tetrahydrocannabinols	312,500 g
Thiofentanyl	2 g
Trimeperidine	2 g

Basic class—schedule II	Established 2010 quotas
1-Phenylcyclohexylamine	2 g
1-piperidinocyclohexanecarbonitrile	2 g
Alfentanil 8,	000 g
Alphaprodine	2 g
Amobarbital	3 g
Amphetamine (for sale)	17,000,000 g
Amphetamine (for conversion)	5,000,000 g
Cocaine	247,000 g
Codeine (for sale)	39,605,000 g
Codeine (for conversion)	65,000,000 g
Dextropropoxyphene	106,000,000 g
Dihydrocodeine	1,200,000 g
Diphenoxylate	947,000 g
Ecgonine	83,000 g
Ethylmorphine	2 g
Fentanyl	1,428,000 g
Glutethimide	2 g
Hydrocodone (for sale)	55,000,000 g
Hydromorphone	3,300,000 g
Isomethadone	2 g
Levo-alphaacetylmethadol (LAAM)	3 g
Levomethorphan	5 g
Levorphanol	10,000 g
Lisdexamfetamine	6,200,000 g

Basic class—schedule II	Established 2010 quotas
Meperidine	8,600,000 g
Meperidine Intermediate-A	3 g
Meperidine Intermediate-B	7 g
Meperidine Intermediate-C	3 g
Metazocine	1 g
Methadone (for sale)	25,000,000 g
Methadone Intermediate	26,000,000 g
Methamphetamine	3,130,000 g
[680,000 grams of levo-desoxyephedrine for use in a non-controlled, non-prescription product; 2,405,000 grams for methamphetamine mostly for conversion to a schedule III product; and 45,000 grams for methamphetamine (for sale)]	
Methylphenidate	50,000,000 g
Morphine (for sale)	35,000,000 g
Morphine (for conversion)	100,000,000 g
Nabilone	9,002 g
Noroxymorphone (for sale)	10,000 g
Noroxymorphone (for conversion)	9,000,000 g
Opium (powder)	230,000 g
Opium (tincture)	1,050,000 g
Oripavine	15,000,000 g
Oxycodone (for sale)	77,560,000 g
Oxycodone (for conversion)	3,400,000 g
Oxymorphone (for sale)	2,000,000 g
Oxymorphone (for conversion)	12,000,000 g
Pentobarbital	28,000,000 g
Phenazocine	1 g
Phencyclidine	20 g
Phenmetrazine	2 g
Phenylacetone	1 g
Racemethorphan	2 g
Remifentanyl	500 g
Secobarbital	67,000 g
Sufentanyl	10,300 g
Tapentadol	519,000 g
Thebaine	126,000,000 g

The Deputy Administrator further proposes that aggregate production quotas for all other schedules I and II controlled substances included in 21 CFR Sections 1308.11 and 1308.12 be established at zero.

All interested persons are invited to submit their comments in writing or electronically regarding this proposal following the procedures in the "ADDRESSES" section of this document. A person may object to or comment on the proposal relating to any of the above-mentioned substances without filing comments or objections regarding the others. If a person believes that one or more of these issues warrant a hearing, the individual should so state and summarize the reasons for this belief.

In the event that comments or objections to this proposal raise one or more issues which the Deputy Administrator finds warrant a hearing, the Deputy Administrator shall order a public hearing by notice in the **Federal Register**, summarizing the issues to be heard and setting the time for the hearing.

The Office of Management and Budget has determined that notices of aggregate production quotas are not subject to

centralized review under Executive Order 12866.

This action does not preempt or modify any provision of State law; nor does it impose enforcement responsibilities on any State; nor does it diminish the power of any State to enforce its own laws. Accordingly, this action does not have federalism implications warranting the application of Executive Order 13132.

The Deputy Administrator hereby certifies that this action will have no significant impact upon small entities whose interests must be considered under the Regulatory Flexibility Act, 5 U.S.C. 601 *et seq.* The establishment of aggregate production quotas for schedules I and II controlled substances is mandated by law and by international treaty obligations. The quotas are necessary to provide for the estimated medical, scientific, research and industrial needs of the United States for export requirements and the establishment and maintenance of reserve stocks. While aggregate production quotas are of primary importance to large manufacturers, their impact upon small entities is neither negative nor beneficial. Accordingly, the Deputy Administrator has determined

that this action does not require a regulatory flexibility analysis.

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

This action will not result in the expenditure by State, local, and tribal governments, in the aggregate, or by the private sector, of \$120,000,000 or more in any one year, and will not significantly or uniquely affect small governments. Therefore, no actions were deemed necessary under the provisions of the Unfunded Mandates Reform Act of 1995.

This action is not a major rule as defined by Section 804 of the Small Business Regulatory Enforcement Fairness Act of 1996. This action will not result in an annual effect on the economy of \$100,000,000 or more; a major increase in costs or prices; or significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based companies to compete with foreign-based companies in domestic and export markets.

Dated: May 15, 2009.

Michele M. Leonhart,

Deputy Administrator.

[FR Doc. E9-11929 Filed 5-20-09; 8:45 am]

BILLING CODE 4410-09-P

DEPARTMENT OF JUSTICE

United States Parole Commission

Public Announcement Pursuant to the Government in the Sunshine Act (Pub. L. 94-409) [5 U.S.C. Section 552b]

AGENCY HOLDING MEETING: Department of Justice, United States Parole Commission.

DATE AND TIME: 10 a.m., Thursday, May 21, 2009.

PLACE: U.S. Parole Commission, 5550 Friendship Boulevard, 4th Floor, Chevy Chase, Maryland 20815.

STATUS: Closed.

MATTERS CONSIDERED: The following matter will be considered during the closed meeting: Approval or disapproval of a hearing examiner appointment.

AGENCY CONTACT: Thomas W. Hutchison, Chief of Staff, United States Parole Commission, (301) 492-5990.

Dated: May 14, 2009.

Rockne Chickinell,

General Counsel, U.S. Parole Commission.

[FR Doc. E9-11699 Filed 5-20-09; 8:45 am]

BILLING CODE 4410-31-M

DEPARTMENT OF JUSTICE

Antitrust Division

Notice Pursuant to the National Cooperative Research and Production Act of 1993—Interchangeable Virtual Instruments Foundation, Inc.

Notice is hereby given that, on April 10, 2009, pursuant to Section 6(a) of the National Cooperative Research and Production Act of 1993, 15 U.S.C. 4301 *et seq.* ("the Act"), Interchangeable Virtual Instruments Foundation, Inc. has filed written notifications simultaneously with the Attorney General and the Federal Trade Commission disclosing changes in its membership. The notifications were filed for the purpose of extending the Act's provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances. Specifically, Konrad GmbH, Radolfzell, GERMANY has been added as a party to this venture. Also, Vektrex Electronic Systems, San Diego, CA has withdrawn as a party to this venture. In addition,

VXI Technology has changed its name to VTI Instruments, Irvine, CA.

No other changes have been made in either the membership or planned activity of the group research project. Membership in this group research project remains open, and Interchangeable Virtual Instruments Foundation, Inc. intends to file additional written notifications disclosing all changes in membership.

On May 29, 2001, Interchangeable Virtual Instruments Foundation, Inc. filed its original notification pursuant to Section 6(a) of the Act. The Department of Justice published a notice in the **Federal Register** pursuant to Section 6(b) of the Act on July 30, 2001 (66 FR 39336).

The last notification was filed with the Department on January 21, 2009. A notice was published in the **Federal Register** pursuant to Section 6(b) of the Act on February 26, 2009 (74 FR 8811).

Patricia A. Brink,

Deputy Director of Operations, Antitrust Division.

[FR Doc. E9-11823 Filed 5-20-09; 8:45 am]

BILLING CODE 4410-11-M

DEPARTMENT OF JUSTICE

Antitrust Division

Notice Pursuant to the National Cooperative Research and Production Act of 1993—IMS Global Learning Consortium, Inc.

Notice is hereby given that, on April 16, 2009, pursuant to Section 6(a) of the National Cooperative Research and Production Act of 1993, 15 U.S.C. 4301 *et seq.* ("the Act"), IMS Global Learning Consortium, Inc. has filed written notifications simultaneously with the Attorney General and the Federal Trade Commission disclosing changes in its membership. The notifications were filed for the purpose of extending the Act's provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances. Specifically, CourseSmart, Belmont, CA; and American Public University System, Charles Town, WV have been added as parties to this venture. Also, CREDITJ Co., Ltd., Chung-Gu, Seoul, REPUBLIC OF KOREA has withdrawn as a party to this venture.

No other changes have been made in either the membership or planned activity of the group research project. Membership in this group research project remains open, and IMS Global Learning Consortium, Inc. intends to file additional written notifications disclosing all changes in membership.

On April 7, 2000, IMS Global Learning Consortium, Inc. filed its original notification pursuant to Section 6(a) of the Act. The Department of Justice published a notice in the **Federal Register** pursuant to Section 6(b) of the Act on September 13, 2000 (65 FR 55283)

The last notification was filed with the Department on February 12, 2009. A notice was published in the **Federal Register** pursuant to Section 6(b) of the Act on March 13, 2009 (74 FR 10967)

Patricia A. Brink,

Deputy Director of Operations, Antitrust Division.

[FR Doc. E9-11824 Filed 5-20-09; 8:45 am]

BILLING CODE 4410-11-M

DEPARTMENT OF JUSTICE

Antitrust Division

Notice Pursuant to the National Cooperative Research and Production Act of 1993—Open DeviceNet Vendor Association, Inc.

Notice is hereby given that, on April 10, 2009, pursuant to Section 6(a) of the National Cooperative Research and Production Act of 1993, 15 U.S.C. 4301 *et seq.* ("the Act"), Open DeviceNet Vendor Association, Inc. ("ODVA") has filed written notifications simultaneously with the Attorney General and the Federal Trade Commission disclosing changes in its membership. The notifications were filed for the purpose of extending the Act's provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances. Specifically, Microscan Systems, Inc., Renton, WA; B & PLUS, Saitama, JAPAN; Plasmart, Inc. Daejeon, Daejeon, REPUBLIC OF KOREA; TOKYO TRON CO., LTD., Tokyo-to, JAPAN; THK CO., LTD., Ota-ku, Tokyo, JAPAN; Alpha Wire Company, Elizabeth, NJ; and Delta Electronics, Inc., Taipei, TAIWAN have been added as parties to this venture.

Also, RivaTek, Inc., Minneapolis, MN; Micro Motion, Inc. (Emerson Electric), Boulder, CO; SEC (Samsung Electronics Co., Ltd.), Kyungki-do, REPUBLIC OF KOREA; and Amphenol Alden Products, Brockton, MA have withdrawn as parties to this venture.

No other changes have been made in either the membership or planned activity of the group research project. Membership in this group research project remains open, and ODVA intends to file additional written notifications disclosing all changes in membership.

On June 21, 1995, ODVA filed its original notification pursuant to Section 6(a) of the Act. The Department of Justice published a notice in the **Federal Register** pursuant to Section 6(b) of the Act on February 15, 1996 (61 FR 6039).

The last notification was filed with the Department on December 3, 2008. A notice was published in the **Federal Register** pursuant to Section 6(b) of the Act on December 31, 2008 (73 FR 80430).

Patricia A. Brink,

Deputy Director of Operations, Antitrust Division.

[FR Doc. E9-11826 Filed 5-20-09; 8:45 am]

BILLING CODE 4410-11-M

DEPARTMENT OF JUSTICE

Antitrust Division

Notice Pursuant to the National Cooperative Research and Production Act of 1993—Semiconductor Test Consortium, Inc.

Notice is hereby given that, on April 10, 2009, pursuant to Section 6(a) of the National Cooperative Research and Production Act of 1993, 15 U.S.C. 4301 *et seq.* ("the Act"), Semiconductor Test Consortium, Inc. has filed written notifications simultaneously with the Attorney General and the Federal Trade Commission disclosing changes in its membership. The notifications were filed for the purpose of extending the Act's provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances. Specifically, Advanced Inquiry Systems, Inc., Hillsboro, OR; Rasco GmbH, Kolbermoor, GERMANY; Geotest-Marvin Test Systems, Irvine, CA; Aeroflex Test Solutions, Stevenage Hertfordshire, UNITED KINGDOM; and Tom Jackson (individual member), Merrimack, NH have been dropped as parties to this venture. Also, Matsushita Electric Works, Ltd. has changed its name to Panasonic Electric Works Co., Ltd., Tsu Mie, JAPAN.

No other changes have been made in either the membership or planned activity of the group research project. Membership in this group research project remains open, and Semiconductor Test Consortium, Inc. intends to file additional written notifications disclosing all changes in membership.

On May 27, 2003, Semiconductor Test Consortium, Inc. filed its original notification pursuant to Section 6(a) of the Act. The Department of Justice published a notice in the **Federal**

Register pursuant to Section 6(b) of the Act on June 17, 2003 (68 FR 35913).

The last notification was filed with the Department on January 21, 2009. A notice was published in the **Federal Register** pursuant to Section 6(b) of the Act on February 26, 2009 (74 FR 8812).

Patricia A. Brink,

Deputy Director of Operations, Antitrust Division.

[FR Doc. E9-11825 Filed 5-20-09; 8:45 am]

BILLING CODE 4410-11-M

DEPARTMENT OF LABOR

Office of the Secretary

Submission for OMB Review: Comment Request

May 14, 2009.

The Department of Labor (DOL) hereby announces the submission of 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). A copy of this ICR, with applicable supporting documentation; including among other things a description of the likely respondents, proposed frequency of response, and estimated total burden may be obtained from the *RegInfo.gov* Web site at <http://www.reginfo.gov/public/do/PRAMain> or by contacting Darrin King on 202-693-4129 (this is not a toll-free number)/e-mail: DOL_PRA_PUBLIC@dol.gov.

Interested parties are encouraged to send comments to the Office of Information and Regulatory Affairs, Attn: OMB Desk Officer for the Department of Labor—Bureau of Labor Statistics (BLS), Office of Management and Budget, Room 10235, Washington, DC 20503, Telephone: 202-395-7316/ Fax: 202-395-6974 (these are not toll-free numbers), E-mail: OIRA_submission@omb.eop.gov within 30 days from the date of this publication in the **Federal Register**. In order to ensure the appropriate consideration, comments should reference the OMB Control Number (see below).

The OMB is particularly interested in comments which:

- Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;
- Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information,

including the validity of the methodology and assumptions used;

- Enhance the quality, utility, and clarity of the information to be collected; and
- Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

Agency: Bureau of Labor Statistics.

Type of Review: Revision of a currently approved collection.

Title of Collection: National Longitudinal Survey of Youth 1997.

OMB Control Number: 1220-0157.

Affected Public: Individuals or households.

Total Estimated Number of Respondents: 7,620.

Total Estimated Annual Burden Hours: 8,314.

Total Estimated Annual Costs Burden: \$0.

Description: The information obtained in this survey will be used by the Department of Labor, other government agencies, academic researchers, the news media, and the general public to understand the employment experiences and school-to-work transitions of men and women born in the years 1980 to 1984. For additional information, see related notice published at Vol. 74 Fed. Reg. 8813 on February 26, 2009.

Darrin A. King,

Departmental Clearance Officer.

[FR Doc. E9-11841 Filed 5-20-09; 8:45 am]

BILLING CODE 4510-24-P

DEPARTMENT OF LABOR

Proposed Information Collection Request on the ETA 5159, Claims and Payment Activities; Comment Request for Extension Without Change

AGENCY: Employment and Training Administration

ACTION: Notice.

SUMMARY: The Department of Labor, as part of its continuing effort to reduce paperwork and respondent burden, conducts a preclearance consultation program to provide the general public and Federal agencies with an opportunity to comment on proposed and/or continuing collection of information in accordance with the Paperwork Reduction Act of 1995 (PRA95) [44 U.S.C. 3506(c)(2)(A)]. This program helps to ensure that requested

data can be provided in the desired format, reporting burden (time and financial resources) is minimized, collection instruments are clearly understood, and the impact of collection requirements on respondents can be properly assessed.

A copy of the proposed information collection request (ICR) can be obtained by contacting the office listed below in the addressee section of this notice or by accessing: <http://www.doleta.gov/OMB/OMBControlNumber.cfm>.

DATES: Written comments must be submitted to the office listed in the addressee section below on or before July 20, 2009.

ADDRESSES: Send comments to Scott Gibbons, U.S. Department of Labor, Employment and Training Administration, Office of Workforce Security, 200 Constitution Avenue, NW., Frances Perkins Bldg., Room S-4531, Washington, DC 20210, telephone number (202)-693-3308 (this is not a toll-free number) or by e-mail: gibbons.scott@dol.gov.

SUPPLEMENTARY INFORMATION:

I. Background: The ETA 5159 report contains information on claims activities including the number of initial claims, first payments, weeks claimed, weeks compensated, benefit payments and final payments. These data are used in budgetary and administrative planning, program evaluation, actuarial and program research, and reports to Congress and the public.

II. Desired Focus of Comments: Currently, the Employment and Training Administration is soliciting comments concerning the proposed extension of the ETA 5159, Claims and Payment Activities report. Comments are requested to:

- Evaluate whether the proposed collection of information is necessary to describe claims and payment activities, 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 the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submissions of responses.

III. Current Actions: This is a request for OMB approval under the Paperwork

Reduction Act of 1995 (44 U.S.C. 3506(c)(2)(A)) for continuing an existing collection of information previously approved and assigned OMB Control No. 1205-0010.

Type of Review: Extension.

Agency: Employment and Training Administration

Title: Claims and Payment Activities.

OMB Number: 1205-0010.

Agency Number: ETA 5159.

Affected Public: State Government.

Cite/Reference/Form/etc: ETA 5159.

Total Respondents: 53.

Frequency: Monthly.

Total Responses: 636.

Average Time per Response: 2 hours.

Estimated Total Burden Hours: 1,272 hours per year.

Total Burden Cost (capital/startup): \$0.

Total Burden Cost (operating/maintaining): \$0.

Comments submitted in response to this notice will be summarized and/or included in the request for Office of Management and Budget approval of the information collection request; they will also become a matter of public record.

Dated: March 11, 2009.

Cheryl Atkinson,

Administrator, Office of Workforce Security.

[FR Doc. E9-11914 Filed 5-20-09; 8:45 am]

BILLING CODE 4510-FW-P

DEPARTMENT OF LABOR

Proposed Information Collection Request on Applications for UI Modernization Incentive Payments; Comment Request for Extension Without Change

AGENCY: Employment and Training Administration, Labor.

ACTION: Notice.

SUMMARY: The Department of Labor, as part of its continuing effort to reduce paperwork and respondent burden, conducts a preclearance consultation program to provide the general public and Federal agencies with an opportunity to comment on proposed and/or continuing collection of information in accordance with the Paperwork Reduction Act of 1995 (PRA95) [44 U.S.C. 3506(c)(2)(A)]. This program helps to ensure that requested data can be provided in the desired format, reporting burden (time and financial resources) is minimized, collection instruments are clearly understood, and the impact of collection requirements on respondents can be properly assessed.

A copy of the proposed information collection request (ICR) can be obtained

by contacting the office listed below in the **ADDRESSES** section of this notice or by accessing: <http://www.doleta.gov/OMB/OMBControlNumber.cfm>.

DATES: Written comments must be submitted to the office listed in the addressee section below on or before July 20, 2009.

ADDRESSES: Send comments to Scott Gibbons, U.S. Department of Labor, Employment and Training Administration, Office of Workforce Security, 200 Constitution Avenue, NW., Frances Perkins Bldg. Room S-4531, Washington, DC 20210, telephone number (202) 693-3008 (this is not a toll-free number) or by e-mail: gibbons.scott@dol.gov.

SUPPLEMENTARY INFORMATION:

I. Background: Section 2003(f) of the American Recovery and Reinvestment Act of 2009 (ARRA) provides for Unemployment Insurance (UI) modernization incentive payments to be made from the Unemployment Trust Fund (UTF) to the states. The total amount available for all states is \$7 billion dollars. To obtain its share, the state must make an application to the Department of Labor demonstrating that its UI law contains certain benefit eligibility provisions. The last date on which an incentive distribution may be made is September 30, 2011. When applying for a share of the UI modernization incentive payments, a state must document the provisions of its law that meet the requirements for obtaining an incentive payment. The state is also required to describe how it intends to use any incentive payment to improve or strengthen its UI program.

II. Desired Focus of Comments: Currently, the Employment and Training Administration is soliciting comments concerning this data collection. Comments are requested that:

- Evaluate whether the proposed collection of information is necessary to evaluate proposals, 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;
- Address the quality, utility, and clarity of the information to be collected; and
- Address 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, e.g., permitting electronic submissions of responses.

III. Current Actions: This is a request for OMB approval under the Paperwork Reduction Act of 1995 (44 U.S.C. 3506(c)(2)(A)) for continuing an existing collection of information previously approved and assigned OMB Control No. 1205-0470.

Type of Review: Extension without change.

Agency: Employment and Training Administration.

Title: Applications for Unemployment Insurance Modernization Incentive Payments.

OMB Number: 1205-0470.

Agency Number: N/A.

Affected Public: State Government.

Cite/Reference/Form/etc: N/A.

Total Respondents: 53.

Frequency: One time collection.

Total Responses: 53.

Average Time per Response: 8 hours.

Estimated Total Burden Hours: 424

hours.

Total Burden Cost (capital/startup): \$0.

Total Burden Cost (operating/maintaining): \$0.

Comments submitted in response to this notice will be summarized and/or included in the request for Office of Management and Budget approval of the information collection request; they will also become a matter of public record.

Dated: Friday, May 15, 2009.

Cheryl Atkinson,

Administrator, Office of Workforce Security.

[FR Doc. E9-11892 Filed 5-20-09; 8:45 am]

BILLING CODE 4510-FN-P

DEPARTMENT OF LABOR

Office of the Secretary

Submission for OMB Review: Comment Request

May 18, 2009.

The Department of Labor (DOL) hereby announces the submission of 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). A copy of this ICR, with applicable supporting documentation, including among other things a description of the likely respondents, proposed frequency of response, and estimated total burden may be obtained from the RegInfo.gov Web site at <http://www.reginfo.gov/public/do/PRAMain> or by contacting Darrin King on 202-693-4129 (this is not a toll-free number)/email: DOL_PRA_PUBLIC@dol.gov.

Interested parties are encouraged to send comments to the Office of Information and Regulatory Affairs, Attn: OMB Desk Officer for the Department of Labor—Bureau of Labor Statistics (BLS), Office of Management and Budget, Room 10235, Washington, DC 20503, Telephone: 202-395-7316/ Fax: 202-395-6974 (these are not toll-free numbers), E-mail: OIRA_submission@omb.eop.gov within 30 days from the date of this publication in the **Federal Register**. In order to ensure the appropriate consideration, comments should reference the OMB Control Number (see below).

The OMB is particularly interested in comments which:

- Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;
- Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
- Enhance the quality, utility, and clarity of the information to be collected; and
- Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

Agency: Bureau of Labor Statistics.

Type of Review: Reinstatement without change of a previously approved collection.

Title of Collection: Veterans Supplement to the CPS.

OMB Control Number: 1220-0102.

Affected Public: Individuals or households.

Total Estimated Number of Respondents: 12,000.

Total Estimated Annual Burden Hours: 400.

Total Estimated Annual Costs Burden: \$0.

Description: The Veterans Supplement to the Current Population Survey (CPS) is conducted biennially and the next scheduled date is August 2009. This supplement is co-sponsored by the U.S. Department of Veterans Affairs (VA) and by the U.S. Department of Labor's Veterans Employment and Training Service (VETS). Data collected through this supplement will be used to determine policies that better meet the needs of our Nation's veteran population. The supplement provided

information on the labor force status of veterans with a service-connected disability, combat veterans, past or present National Guard and Reserve members, and recently discharged veterans. Data are provided by period of service and a range of demographic characteristics. The supplement also provides information about veterans participation in various transition and employment training programs. Respondents are veterans who are not currently on active duty or are members of a household where a veteran lives. For additional information, see related notice published at Vol. 74 FR 9830 on March 6, 2009.

Darrin A. King,

Departmental Clearance Officer.

[FR Doc. E9-11899 Filed 5-20-09; 8:45 am]

BILLING CODE 4510-24-P

DEPARTMENT OF LABOR

Comment Request for Information Collection for Unemployment Compensation for Ex-Servicemembers (UCX) Handbook; Extension Without Change

AGENCY: Employment and Training Administration.

ACTION: Notice.

SUMMARY: The Department of Labor, as part of its continuing effort to reduce paperwork and respondent burden, conducts a preclearance consultation program to provide the general public and Federal agencies with an opportunity to comment on proposed and/or continuing collections of information in accordance with the Paperwork Reduction Act of 1995 (PRA95) [44 U.S.C. 3506(c)(2)(A)]. This program helps to ensure that requested data can be provided in the desired format, reporting burden (time and financial resources) is minimized, collection instruments are clearly understood, and the impact of collection requirements on respondents can be properly assessed. Currently, the Employment and Training Administration is soliciting comments concerning the extension of the Unemployment Compensation for Ex-Servicemembers (UCX) Handbook, Number 384.

A copy of the proposed information collection request (ICR) can be obtained by contacting the office listed below in the addressee section of this notice or by accessing: <http://www.doleta.gov/OMB/OMBControlNumber.cfm>.

DATES: Written comments must be submitted to the office listed in the

addressee's section below on or before July 20, 2009.

ADDRESSES: Submit written comments to Keith Ribnick, Office of Workforce Security, Room S-4231, Employment and Training Administration, 200 Constitution Avenue, NW., Washington, DC 20210. Telephone 202-693-3223 (this is not a toll-free number). Fax 202-693-3975.

SUPPLEMENTARY INFORMATION:

I. Background: The UCX law (5 U.S.C. 8521-8525) requires SWAs to administer the UCX program in accordance with the same terms and conditions of the paying state's unemployment insurance law which apply to unemployed claimants who worked in the private sector. Each state agency needs to obtain certain military service information on claimants filing for UCX benefits to enable the state to determine their eligibility for benefits. As needed, state agencies may record or obtain required UCX information on the form developed by the Department of Labor, ETA 843, Request for Military Document and Information. The use of this form may be essential to the UCX claims process. Form ETA 841, Request for Determination of Federal Military Service and Wages, is no longer used by most states; it has become an optional form.

Information pertaining to the UCX claimant can only be obtained from the individual's military discharge papers, the appropriate branch of military service or the Department of Veterans' Affairs (formerly the Veterans' Administration). Without the claimant's military information, the state cannot adequately determine the UCX eligibility of ex-servicemembers and would not be able to properly administer the program.

II. Review Focus: The Department of Labor 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.

III. Current Actions:

Type of Review: Extension without changes.

Title: Unemployment Compensation for Ex-Servicemembers Handbook; Comment Request.

OMB Number: 1205-0176.

Affected Public: Federal Government, State Workforce Agencies and individuals.

Form: Handbook 384; ETA 841, ETA 843.

Total Respondents: 1.

Frequency: As needed.

Total Responses: 5,297.

Average Time per Response: 1 minute.

Estimated Total Burden Hours: 88.28.

Total Burden Cost: \$0.

Comments submitted in response to this comment request will be summarized and/or included in the request for Office of Management and Budget approval of the information collection request; they will also become a matter of public record.

Dated: Friday, May 15, 2009.

Cheryl Atkinson,

Administrator, Office of Workforce Security, Employment and Training Administration.

[FR Doc. E9-11893 Filed 5-20-09; 8:45 am]

BILLING CODE 4510-FW-P

DEPARTMENT OF LABOR

Employee Benefits Security Administration

Technical Correction of the Texts of Individual Exemption Involving: (1) The Bank of New York Mellon Corporation (74 FR 20990); and (2) UBS AG (UBS), and Its Affiliates UBS Financial Services Inc. (UBS Financial) and UBS Financial Services Inc. of Puerto Rico (PR Financial) (74 FR 20997)

AGENCY: Employee Benefits Security Administration, Department of Labor (the Department).

ACTION: Notice of technical correction.

In the May 6, 2009 issue of the **Federal Register**, the Department published separate administrative exemptions from the prohibited transaction provisions of the Employee Retirement Income Security Act of 1974 and the Internal Revenue Code of 1986 for: (1) The Bank of New York Mellon Corporation (hereinafter "the BNYMC Grant"); and (2) UBS AG (UBS) and its affiliates UBS Financial Services Inc. (UBS Financial) and UBS Financial

Services Inc. of Puerto Rico (PR Financial) (hereinafter "the UBS Grant").

The Department notes that the operative language of the BNYMC Grant (which begins at the middle of the third column of page 20990 of the May 6, 2009 issue of the **Federal Register** after the boldface heading "Exemption") was not preceded by the customary caption indicating the name of the entity seeking the exemption, the prohibited transaction exemption grant number, and the exemption application file number. Accordingly, to correct this publication error, the following caption should be inserted immediately before the boldface heading "Exemption" on page 20990, third column:

The Bank of New York Mellon Corporation (the Applicant), Located in New York, New York

[Prohibited Transaction Exemption 2009-13; Exemption Application Number D-11458]

In addition, the Department notes that the operative language of the UBS Grant (which begins at the middle of the first column of page 20997 of the May 6, 2009 issue of the **Federal Register** after the boldface heading "Exemption") was not preceded by the customary caption indicating the name(s) of the entities seeking the exemption, the prohibited transaction exemption grant number, and the exemption application file number(s). Accordingly, to correct this publication error, the following caption should be inserted immediately before the boldface heading "Exemption" on page 20997, first column:

UBS AG (UBS), and Its Affiliates UBS Financial Services Inc. (UBS Financial) and UBS Financial Services Inc. of Puerto Rico (PR Financial), Located, Respectively, in Zurich, Switzerland; New York, New York; and San Juan, Puerto Rico

[Prohibited Transaction Exemption 2009-14; Exemption Application Numbers D-11477, D-11478, and D-11479, Respectively]

FOR FURTHER INFORMATION CONTACT: Mr. Mark Judge, Office of Exemption Determinations, Employee Benefits Security Administration, U.S. Department of Labor, Washington, DC at (202) 693-8339 (this is not a toll-free number).

Signed at Washington, DC, this 15th day of May, 2009.

Alan D. Lebowitz,

Deputy Assistant Secretary for Program Operations, Employee Benefits Security Administration.

[FR Doc. E9-11774 Filed 5-20-09; 8:45 am]

BILLING CODE P

DEPARTMENT OF LABOR

Employment and Training Administration

[TA-W-65,719]

AGC Flat Glass North America, Inc., Kingsport Corporate Services Office, Kingsport, TN; Notice of Termination of Investigation

Pursuant to Section 221 of the Trade Act of 1974, as amended, an investigation was initiated on March 31, 2009 in response to a petition filed by a company official on behalf of the workers of AGC Flat Glass North America, Inc., Kingsport Corporate Services Office, Kingsport, Tennessee.

The petitioner has requested that the petition be withdrawn. Consequently, the investigation has been terminated.

Signed at Washington, DC, this 27th day of April 2009.

Richard Church,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. E9-11870 Filed 5-20-09; 8:45 am]

BILLING CODE 4510-FN-P

DEPARTMENT OF LABOR

Employment and Training Administration

[TA-W-65,710]

Numonyx—California Technology Center, Santa Clara, CA; Notice of Termination of Investigation

Pursuant to Section 221 of the Trade Act of 1974, as amended, an investigation was initiated on March 31, 2009 in response to a worker petition filed on behalf of workers at Numonyx—California Technology Center, Santa Clara, California.

The petitioners have requested that the petition be withdrawn. Consequently, the investigation has been terminated.

Signed at Washington, DC, this 28th day of April 2009.

Richard Church,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. E9-11867 Filed 5-20-09; 8:45 am]

BILLING CODE 4510-FN-P

DEPARTMENT OF LABOR

Employment and Training Administration

[TA-W-65,647]

Manitowac Cranes, Shady Grove, PA; Notice of Termination of Investigation

Pursuant to Section 221 of the Trade Act of 1974, as amended, an investigation was initiated on March 20, 2009 in response to a petition filed on behalf of workers of Manitowac Cranes, Shady Grove, Pennsylvania.

The petitioners have requested that the petition be withdrawn. Consequently, the investigation has been terminated.

Signed at Washington, DC, this 27th day of April 2009.

Elliott S. Kushner,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. E9-11862 Filed 5-20-09; 8:45 am]

BILLING CODE 4510-FN-P

DEPARTMENT OF LABOR

Employment and Training Administration

[TA-W-65,646]

Honeywell International, Olathe, KS; Notice of Termination of Investigation

Pursuant to Section 221 of the Trade Act of 1974, as amended, an investigation was initiated on March 20, 2009 in response to a worker petition filed by a company official on behalf of workers of Honeywell International, Olathe, Kansas.

The petitioner has requested that the petition be withdrawn. Consequently, the investigation has been terminated.

Signed at Washington, DC this 29th day of April 2009.

Elliott S. Kushner,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. E9-11861 Filed 5-20-09; 8:45 am]

BILLING CODE 4510-FN-P

DEPARTMENT OF LABOR

Employment and Training Administration

[TA-W-65,616]

Tensolite d/b/a Carlisle Interconnect Company, Vancouver, WA; Notice of Termination of Investigation

Pursuant to Section 221 of the Trade Act of 1974, as amended, an investigation was initiated on March 16,

2009 in response to a petition filed on behalf of the workers at Tensolite, d/b/a Carlisle Interconnect Company, Vancouver, Washington.

The petitioners have requested that the petition be withdrawn. Consequently, the investigation has been terminated.

Signed at Washington, DC, this 28th day of April 2009.

Richard Church,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. E9-11858 Filed 5-20-09; 8:45 am]

BILLING CODE 4510-FN-P

DEPARTMENT OF LABOR

Employment and Training Administration

[TA-W-65,785]

Dell USA LP, Global Finance Division, Round Rock, TX; Notice of Termination of Investigation

In accordance with Section 221 of the Trade Act of 1974, as amended, an investigation was initiated on April 15, 2009 in response to a worker petition filed on behalf of workers of Dell USA LP, Global Finance Division, Round Rock, Texas.

The petitioners have requested that the petition be withdrawn. Consequently, the investigation has been terminated.

Signed at Washington, DC, this 22nd day of April 2009.

Richard Church,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. E9-11874 Filed 5-20-09; 8:45 am]

BILLING CODE 4510-FN-P

DEPARTMENT OF LABOR

Employment and Training Administration

[TA-W-65,732]

Essilor Laboratories of America, Joe's Creek Processing Center, St. Petersburg, FL; Notice of Termination of Investigation

In accordance with Section 221 of the Trade Act of 1974, as amended, an investigation was initiated on April 2, 2009 in response to a petition filed by a company official on behalf of workers of Essilor Laboratories of America, Joe's Creek Processing Center, St. Petersburg, Florida.

The petitioner has requested that the petition be withdrawn. Consequently, the investigation has been terminated.

Signed in Washington, DC, this 23rd day of April 2009.

Richard Church,
*Certifying Officer, Division of Trade
Adjustment Assistance.*

[FR Doc. E9-11871 Filed 5-20-09; 8:45 am]

BILLING CODE 4510-FN-P

DEPARTMENT OF LABOR

Employment and Training Administration

[TA-W-65,686]

Pandora Manufacturing, LLC, Pandora, OH; Notice of Termination of Investigation

In accordance with Section 221 of the Trade Act of 1974, as amended, an investigation was initiated on March 26, 2009 in response to a petition filed by a United Automobile, Aerospace, and Agricultural International Union, Region 2-B representative on behalf of workers of Pandora Manufacturing, LLC, Pandora, Ohio.

The petitioner has requested that the petition be withdrawn. Consequently, the investigation has been terminated.

Signed in Washington, DC, this 22nd day of April 2009.

Richard Church,
*Certifying Officer, Division of Trade
Adjustment Assistance.*

[FR Doc. E9-11864 Filed 5-20-09; 8:45 am]

BILLING CODE 4510-FN-P

DEPARTMENT OF LABOR

Employment and Training Administration

[TA-W-65,670]

Dalure Fashions, Inc., Gatesville, NC; Notice of Termination of Investigation

In accordance with Section 221 of the Trade Act of 1974, as amended, an investigation was initiated on March 25, 2009 in response to a worker petition filed on behalf of workers of Dalure Fashions, Inc., Gatesville, North Carolina.

The petitioners have requested that the petition be withdrawn. Consequently, the investigation has been terminated.

Signed in Washington, DC, this 22nd day of April 2009.

Richard Church,
*Certifying Officer, Division of Trade
Adjustment Assistance.*

[FR Doc. E9-11863 Filed 5-20-09; 8:45 am]

BILLING CODE 4510-FN-P

DEPARTMENT OF LABOR

Employment and Training Administration

[TA-W-65,622]

Groat Brothers, Inc., Woodland, WA; Notice of Termination of Investigation

Pursuant to Section 221 of the Trade Act of 1974, as amended, an investigation was initiated on March 18, 2009, in response to a petition filed on behalf of workers at Groat Brothers, Inc., Woodland, Washington.

The petitioner has requested that the petition be withdrawn. Consequently, the investigation has been terminated.

Signed in Washington, DC this 29th day of April 2009.

Elliott S. Kushner,
*Certifying Officer, Division of Trade
Adjustment Assistance.*

[FR Doc. E9-11859 Filed 5-20-09; 8:45 am]

BILLING CODE 4510-FN-P

DEPARTMENT OF LABOR

Employment and Training Administration

[TA-W-65, 615]

Temic Automotive of North America, Inc., Northbrook, IL; Notice of Termination of Investigation

Pursuant to Section 221 of the Trade Act of 1974, as amended, an investigation was initiated on March 17, 2009 in response to a petition filed by a company official on behalf of workers at Temic Automotive of North America, Inc., Northbrook, Illinois. The workers at the subject facility produce automotive electronic components.

The petitioner has requested that the petition be withdrawn. Consequently, the investigation has been terminated.

Signed in Washington, DC, this 28th day of April 2009.

Richard Church,
*Certifying Officer, Division of Trade
Adjustment Assistance.*

[FR Doc. E9-11857 Filed 5-20-09; 8:45 am]

BILLING CODE 4510-FN-P

DEPARTMENT OF LABOR

Employment and Training Administration

[TA-W-65,606]

SUMCO Phoenix Corporation, Cincinnati Division, Maineville, OH; Notice of Termination of Investigation

Pursuant to Section 221 of the Trade Act of 1974, as amended, an investigation was initiated on March 16, 2009 in response to a worker petition filed on behalf of workers of SUMCO Phoenix Corporation, Cincinnati Division, Maineville, Ohio.

The petitioner has requested that the petition be withdrawn. Consequently, the investigation has been terminated.

Signed in Washington, DC, this 30th day of April 2009.

Linda G. Poole,
*Certifying Officer, Division of Trade
Adjustment Assistance.*

[FR Doc. E9-11856 Filed 5-20-09; 8:45 am]

BILLING CODE 4510-FN-P

DEPARTMENT OF LABOR

Employment and Training Administration

[TA-W-65,392]

Smead Manufacturing Company, Springfield, OH; Notice of Termination of Investigation

In accordance with 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 on behalf of workers of Smead Manufacturing Company, Logan, Ohio.

The petitioners have requested that the petition be withdrawn. Consequently, the investigation has been terminated.

Signed in Washington, DC, this 23rd day of April 2009.

Richard Church,
*Certifying Officer, Division of Trade
Adjustment Assistance.*

[FR Doc. E9-11854 Filed 5-20-09; 8:45 am]

BILLING CODE 4510-FN-P

DEPARTMENT OF LABOR**Employment and Training Administration**

[TA-W-65,380]

L and L Products, Inc., Romeo, MI; 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 on behalf of workers at L and L Products, Inc., Romeo, Michigan. The workers at the subject facility produce automotive sealants.

The petitioners have requested that the petition be withdrawn. Consequently, the investigation has been terminated.

Signed in Washington, DC, this 28th day of April 2009.

Richard Church,*Certifying Officer, Division of Trade Adjustment Assistance.*

[FR Doc. E9-11853 Filed 5-20-09; 8:45 am]

BILLING CODE 4510-FN-P

DEPARTMENT OF LABOR**Employment and Training Administration**

[TA-W-65,365]

International Automotive Components Group, North America, Dearborn, MI; 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 at International Automotive Components Group, North America, Dearborn, Michigan, and including workers at plants in Rochester Hills and Plymouth, Michigan. The workers at the subject facilities are engaged in employment related to the production of automotive components.

The petitioner has requested that the petition be withdrawn. Consequently, the investigation has been terminated.

Signed in Washington, DC, this 27th day of April 2009.

Richard Church,*Certifying Officer, Division of Trade Adjustment Assistance.*

[FR Doc. E9-11852 Filed 5-20-09; 8:45 am]

BILLING CODE 4510-FN-P

DEPARTMENT OF LABOR**Employment and Training Administration**

[TA-W-65,308]

Edscha North America, Centerpoint Administrative Offices, Pontiac, MI; 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 petition filed on behalf of workers at Edscha North America, Centerpoint Administrative Offices, Pontiac, Michigan.

The petitioner has requested that the petition be withdrawn. Consequently, the investigation has been terminated.

Signed at Washington, DC this 22nd day of April 2009.

Elliott S. Kushner,*Certifying Officer, Division of Trade Adjustment Assistance.*

[FR Doc. E9-11851 Filed 5-20-09; 8:45 am]

BILLING CODE 4510-FN-P

DEPARTMENT OF LABOR**Employment and Training Administration**

[TA-W-65,182]

General Motors Grand Rapids Stamping, Metal Fabricating Division, Wyoming, MI; 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 petition filed by a company official and by United Auto Workers Local 730 on behalf of workers at General Motors Grand Rapids Stamping, Metal Fabricating Division, Wyoming, Michigan.

The petitioners have requested that the petition be withdrawn. Consequently, the investigation has been terminated.

Signed at Washington, DC this 29th day of April 2009.

Elliott S. Kushner,*Certifying Officer, Division of Trade Adjustment Assistance.*

[FR Doc. E9-11850 Filed 5-20-09; 8:45 am]

BILLING CODE 4510-FN-P

DEPARTMENT OF LABOR**Employment and Training Administration**

[TA-W-65,745]

Delphi Corporation, Flint, MI; Notice of Termination of Investigation

In accordance with Section 221 of the Trade Act of 1974, as amended, an investigation was initiated on April 3, 2009 in response to a petition filed by a United Auto Workers Local 651 Union representative on behalf of workers of Delphi Corporation, Flint, Michigan.

The petitioner has requested that the petition be withdrawn. Consequently, the investigation has been terminated.

Signed in Washington, DC, this 23rd day of April 2009.

Richard Church,*Certifying Officer, Division of Trade Adjustment Assistance.*

[FR Doc. E9-11872 Filed 5-20-09; 8:45 am]

BILLING CODE 4510-FN-P

DEPARTMENT OF LABOR**Employment and Training Administration**

[TA-W-65,703]

Viscotec Automotive Products, LLC, Morganton, NC; Notice of Termination of Investigation

In accordance with Section 221 of the Trade Act of 1974, as amended, an investigation was initiated on March 31, 2009 in response to a worker petition filed on behalf of workers of Viscotec Automotive Products, LLC, Morganton, North Carolina.

The petitioners have requested that the petition be withdrawn. Consequently, the investigation has been terminated.

Signed in Washington, DC, this 29th day of April 2009.

Richard Church,*Certifying Officer, Division of Trade Adjustment Assistance.*

[FR Doc. E9-11866 Filed 5-20-09; 8:45 am]

BILLING CODE 4510-FN-P

DEPARTMENT OF LABOR**Employment and Training Administration**

[TA-W-65,692]

Tricon Timber, LLC, Superior, MT; Notice of Termination of Investigation

Pursuant to Section 221 of the Trade Act of 1974, as amended, an

investigation was initiated on March 27, 2009 in response to a petition filed by a company official on behalf of workers of Tricon Timber, LLC, Superior, Montana.

The petitioner has requested that the petition be withdrawn. Consequently, the investigation has been terminated.

Signed at Washington, DC, this 23rd day of April 2009.

Richard Church,
Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. E9-11865 Filed 5-20-09; 8:45 am]

BILLING CODE 4510-FN-P

DEPARTMENT OF LABOR

Employment and Training Administration

[TA-W-65,469]

The Hershey Company, Hershey, 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 workers at The Hershey Company, Hershey, Pennsylvania. The workers at the subject facility produce candy.

The petitioners have requested that the petition be withdrawn. Consequently, the investigation has been terminated.

Signed in Washington, DC, this 28th day of April 2009.

Richard Church,
Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. E9-11855 Filed 5-20-09; 8:45 am]

BILLING CODE 4510-FN-P

DEPARTMENT OF LABOR

Employment and Training Administration

[TA-W-65,717]

Moyno, Inc., a Division of Robbins & Myers, Inc., Springfield, OH; Notice of Termination of Investigation

In accordance with Section 221 of the Trade Act of 1974, as amended, an investigation was initiated on March 31, 2009 in response to a petition filed by a United Auto Workers Local 902 Union representative on behalf of workers of Moyno, Inc., a Division of Robbins & Myers, Inc., Springfield, Ohio.

The petitioner has requested that the petition be withdrawn. Consequently, the investigation has been terminated.

Signed in Washington, DC, this 23rd day of April 2009.

Richard Church,
Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. E9-11869 Filed 5-20-09; 8:45 am]

BILLING CODE 4510-FN-P

DEPARTMENT OF LABOR

Employment and Training Administration

[TA-W-65,713]

Peterson Manufacturing Company, Grandview, MO; Notice of Termination of Investigation

Pursuant to Section 221 of the Trade Act of 1974, as amended, an investigation was initiated on March 31, 2009 in response to a petition filed by a company official on behalf of workers of Peterson Manufacturing Company, Grandview, Missouri.

The petitioner has requested that the petition be withdrawn. Therefore, the investigation under this petition has been terminated.

Signed at Washington, DC, this 27th day of April, 2009.

Linda G. Poole,
Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. E9-11868 Filed 5-20-09; 8:45 am]

BILLING CODE 4510-FN-P

DEPARTMENT OF LABOR

Employment and Training Administration

[TA-W-65,077]

Janesville Acoustics, Norwalk, OH; 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 worker petition filed on behalf of workers of Janesville Acoustics, Norwalk, Ohio.

The petitioners have requested that the petition be withdrawn. Consequently, the investigation has been terminated.

Signed at Washington, DC, this 22nd day of April 2009.

Richard Church,
Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. E9-11849 Filed 5-20-09; 8:45 am]

BILLING CODE 4510-FN-P

DEPARTMENT OF LABOR

Employment and Training Administration

[TA-W-65,056]

B/E Aerospace, Inc., Marysville, WA; 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 worker petition on behalf of workers at B/E Aerospace, Inc., Marysville, Washington.

The petitioners have requested that the petition be withdrawn. Consequently, the investigation has been terminated.

Signed at Washington, DC, this 23rd day of April 2009.

Richard Church,
Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. E9-11848 Filed 5-20-09; 8:45 am]

BILLING CODE 4510-FN-P

DEPARTMENT OF LABOR

Employment and Training Administration

[TA-W-65,043]

Daramic, LLC, Owensboro, KY; 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 International Brotherhood of Boilermakers, Local Lodge 726, on behalf of workers of Daramic, LLC, Owensboro, Kentucky.

The petitioner has requested that the petition be withdrawn. Consequently, the investigation has been terminated.

Signed at Washington, DC, this 30th day of April 2009.

Elliott S. Kushner,
Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. E9-11847 Filed 5-20-09; 8:45 am]

BILLING CODE 4510-FN-P

DEPARTMENT OF LABOR**Employment and Training
Administration**

[TA-W-65,757]

**Corning, Incorporated, Blacksburg
Virginia Plant, Environmental Products
Division, Christiansburg, VA; Notice of
Termination of Investigation**

Pursuant to Section 221 of the Trade Act of 1974, as amended, an investigation was initiated on April 6, 2009 in response to a petition filed by the United Steelworkers of America, Local 1022 on behalf of workers of Corning, Incorporated, Blacksburg Virginia Plant, Environmental Products Division, Christiansburg, Virginia.

The petitioner has requested that the petition be withdrawn. Therefore, the investigation under this petition has been terminated.

Signed at Washington, DC, this 27th day of April, 2009.

Linda G. Poole,

*Certifying Officer, Division of Trade
Adjustment Assistance.*

[FR Doc. E9-11873 Filed 5-20-09; 8:45 am]

BILLING CODE 4510-FN-P

DEPARTMENT OF LABOR**Employment and Training
Administration**

[TA-W-64,913]

**Phillips Plastics Corporation, Custom
Division, Including On-Site Leased
Workers From Manpower, Phillips, WI;
Notice of Termination of Investigation**

Pursuant to Section 221 of the Trade Act of 1974, as amended, an investigation was initiated on January 15, 2009 in response to a petition filed on behalf of workers of Phillips Plastics Corporation, Custom Division, Phillips, Wisconsin.

The petitioner has requested that the petition be withdrawn. Consequently, the investigation has been terminated.

Signed at Washington, DC, this 22nd day of April 2009.

Linda G. Poole,

*Certifying Officer, Division of Trade
Adjustment Assistance.*

[FR Doc. E9-11846 Filed 5-20-09; 8:45 am]

BILLING CODE 4510-FN-P

DEPARTMENT OF LABOR**Employment and Training
Administration**

[TA-W-65,847]

**Timbar Packaging and Display, Oneida
Division, Vernon, NY; Notice of
Termination of Investigation**

Pursuant to Section 221 of the Trade Act of 1974, as amended, an investigation was initiated on April 24, 2009 in response to a petition filed by a company official on behalf of workers of TimBar Packaging and Display, Oneida Division, Vernon, New York.

The petitioner has requested that the petition be withdrawn. Therefore, the investigation under this petition has been terminated.

Signed at Washington, DC, this 27th day of April 2009.

Linda G. Poole,

*Certifying Officer, Division of Trade
Adjustment Assistance.*

[FR Doc. E9-11845 Filed 5-20-09; 8:45 am]

BILLING CODE 4510-FN-P

**OFFICE OF MANAGEMENT AND
BUDGET****Office of Federal Procurement Policy****Determination of Executive
Compensation Benchmark Amount**

AGENCY: Office of Federal Procurement Policy, OMB.

ACTION: Notice.

SUMMARY: The Office of Management and Budget is publishing the attached memorandum to the Heads of Executive Departments and Agencies concerning the determination of the maximum benchmark compensation amount that will be allowable under government contracts during contractors' fiscal year 2009—\$684,181. This determination is required under Section 39 of the Office of Federal Procurement Policy (OFPP) Act (41 U.S.C. 435) as amended. The benchmark compensation amount applies equally to both defense and civilian procurement agencies.

FOR FURTHER INFORMATION CONTACT: Raymond Wong, OFPP, at 202-395-6805.

Lesley A. Field,
Acting Administrator.

**Memorandum for the Heads of
Executive Departments and Agencies**

From: Lesley A. Field, Acting Administrator, Office of Federal Procurement Policy.

Subject: Determination of Executive Compensation Benchmark Amount, Pursuant to Section 39 of the Office of Federal Procurement Policy (OFPP) Act (41 U.S.C. 435), as amended.

This memorandum sets forth the benchmark compensation amount as required by Section 39 of the OFPP Act, as amended. Under Section 39, the benchmark compensation amount is the median amount of the compensation provided for all senior executives of benchmark corporations for the most recent year for which data is available. The benchmark compensation amount established by Section 39 limits the allowability of compensation costs under government contracts in accordance with FAR 31.205-6(p). The benchmark compensation amount does not limit the compensation that an executive may otherwise receive. This amount is based on data from commercially available surveys of executive compensation that analyze the relevant data made available by the Securities and Exchange Commission. More specifically, as required by Section 39 of the OFPP Act, the data used is the median (50th percentile) amount of compensation accrued over a recent 12-month period for the top five highest paid executives of publicly traded companies with annual sales over \$50 million. After consultation with the Director of the Defense Contract Audit Agency, we have determined pursuant to the requirements of Section 39 that the benchmark compensation amount for contractors' fiscal year (FY) 2009 is \$684,181. This amount is for contractors' FY 2009 and subsequent contractor fiscal years, unless and until revised by OFPP. The benchmark compensation amount applies to contract costs incurred after January 1, 2009, under covered contracts of both the defense and civilian procurement agencies as specified in Section 39 of the OFPP Act (41 U.S.C. 435), as amended.

Questions concerning this memorandum may be addressed to Raymond Wong, OFPP, at 202-395-6805.

[FR Doc. E9-11837 Filed 5-20-09; 8:45 am]

BILLING CODE P

**NATIONAL AERONAUTICS AND
SPACE ADMINISTRATION****Notice of Information Collection**

AGENCY: National Aeronautics and Space Administration (NASA).

Notice: (09-042).

ACTION: Notice of information collection.

SUMMARY: The National Aeronautics and Space Administration, 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 (Pub. L. 104-13, 44 U.S.C. 3506(c)(2)(A)).

DATES: All comments should be submitted within 60 calendar days from the date of this publication.

ADDRESSES: All comments should be addressed to Dr. Walter Kit, National Aeronautics and Space Administration, Washington, DC 20546-0001.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the information collection instrument(s) and instructions should be directed to Dr. Walter Kit, NASA Clearance Officer, NASA Headquarters, 300 E Street, SW., JE0000, Washington, DC 20546, (202) 358-1350, *Walter.Kit-1@nasa.gov*.

SUPPLEMENTARY INFORMATION:

I. Abstract

NASA will collect information to determine which applicants meet required selection criteria and to what extent. Ten secondary educators from institutions nation-wide will be selected to participate in the Airborne Research Experience for Educators (AREE) project based on their experience and educational background.

II. Method of Collection

Applicants will complete an online application hosted on the AREE Web site. The application form can be downloaded using Adobe software and submitted electronically using the e-mail submit button located on the form. The collection of information from the application, resume, and letters of reference will all occur electronically.

III. Data

Title: Airborne Research Experience for Educators (AREE) Application.

OMB Number: 2700-XXXX.

Type of Review: New Collection.

Affected Public: Individuals or households.

Estimated Number of Respondents: 25.

Estimated Number of Responses per Respondent: 1.

Estimated Time per Response: 1 hour.

Estimated Total Annual Burden Hours: 25 hours.

IV. Request for Comments

Comments are invited on: (1) Whether the proposed collection of information is necessary for the proper performance of the functions of NASA, including whether the information collected has practical utility; (2) the accuracy of NASA's estimate of the burden (including hours and cost) 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 automated collection techniques or the use of other forms of information technology.

Comments submitted in response to this notice will be summarized and included in the request for OMB approval of this information collection. They will also become a matter of public record.

Dr. Walter Kit,

NASA Clearance Officer.

[FR Doc. E9-11923 Filed 5-20-09; 8:45 am]

BILLING CODE -P

NUCLEAR REGULATORY COMMISSION

[Docket No. NRC-2009-0040]

Agency Information Collection Activities: Submission for the Office of Management and Budget (OMB) Review; Comment Request

AGENCY: U.S. Nuclear Regulatory Commission (NRC).

ACTION: Notice of the OMB review of information collection and solicitation of public comment.

SUMMARY: The NRC has recently submitted to OMB for review the following proposal for the collection of information under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35). The NRC hereby informs potential respondents that an agency may not conduct or sponsor, and that a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. The NRC published a **Federal Register** Notice with a 60-day comment period on this information collection on February 2, 2009.

1. *Type of Submission, New, Revision, or Extension:* Extension.

2. *The Title of the Information Collection:* Billing Instructions for NRC Cost Type Contracts.

3. *Current OMB Approval Number:* 3150-0109.

4. *The Form Number if Applicable:* None.

5. *How Often the Collection Is Required:* Monthly and on occasion.

6. *Who Will Be Required or Asked To Report:* NRC Contractors.

7. *An Estimate of the Number of Annual Responses:* 2,404.

8. *The Estimated Number of Annual Respondents:* 64.

9. *An Estimate of the Total Number of Hours Needed Annually To Complete the Requirement or Request:* 1,202.

10. *Abstract:* In administering its contracts, the NRC Division of Contracts provides billing instructions for its contractors to follow in preparing invoices. These instructions stipulate the level of detail in which supporting data must be submitted for NRC review. The review of this information ensures that all payments made by NRC for valid and reasonable costs are in accordance with the contract terms and conditions.

A copy of the final 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 and questions should be directed to the OMB reviewer listed below by June 22, 2009. Comments received after this date will be considered if it is practical to do so, but assurance of consideration cannot be given to comments received after this date.

NRC Desk Officer, Office of Information and Regulatory Affairs (3150-0109), NEOB-10202, Office of Management and Budget, Washington, DC 20503.

The NRC Clearance Officer is Gregory Trussell, (301) 415-6445.

Dated at Rockville, Maryland, this 15th day of May 2009.

For the Nuclear Regulatory Commission.

Tremaine Donnell,

Acting NRC Clearance Officer, Office of Information Services.

[FR Doc. E9-11876 Filed 5-20-09; 8:45 am]

BILLING CODE 7590-01-P

NUCLEAR REGULATORY COMMISSION

[Docket Nos. 50–334 and 50–412; NRC–2008–0531]

Firstenergy Nuclear Operating Company; Notice of Availability of the Final Supplement 36 to the Generic Environmental Impact Statement for License Renewal of Nuclear Plants, Regarding the License Renewal of Beaver Valley Power Station, Units 1 and 2

Notice is hereby given that the U.S. Nuclear Regulatory Commission (the Commission or NRC) has published a final plant-specific supplement to the “Generic Environmental Impact Statement for License Renewal of Nuclear Plants (GEIS),” NUREG–1437, regarding the renewal of operating licenses DPR–66 and NPF–73 for an additional 20 years of operation for the Beaver Valley Power Station, Units 1 and 2, which are located in Shippingport, PA about 25 miles northwest of Pittsburgh, PA. Possible alternatives to the proposed action (license renewal) include no action and reasonable alternative energy sources.

As discussed in Section 9.3 of the final Supplement 36, based on: (1) The analysis and findings in the GEIS; (2) the Environmental Report submitted by FirstEnergy Nuclear Operating Company; (3) consultation with Federal, State, and local agencies; (4) the NRC staff’s own independent review; and (5) the NRC staff’s consideration of public comments during the scoping and draft Supplemental Environment Impact Statement (SEIS) comment period, the recommendation of the staff is that the Commission determine that the adverse environmental impacts of license renewal for BVPS Units 1 and 2 are not so great that preserving the option of license renewal for energy-planning decision makers would be unreasonable.

The final Supplement 36 to the GEIS is publicly available at the NRC Public Document Room (PDR), located at One White Flint North, 11555 Rockville Pike, Rockville, Maryland 20852, or from the NRC’s Agencywide Documents Access and Management System (ADAMS). The ADAMS Public Electronic Reading Room is accessible at <http://adamswebsearch.nrc.gov/dologin.htm>. The Accession Number for the final Supplement 36 to the GEIS is ML091260011. Persons who do not have access to ADAMS, or who encounter problems in accessing the documents located in ADAMS, should contact the NRC’s PDR reference staff by telephone at 1–800–397–4209, or 301–415–4737, or by e-mail at pdr.resource@nrc.gov. In

addition, the following libraries have agreed to make the final SEIS available for public inspection.

- Beaver Area Memorial Library, 100 College Ave., Beaver, PA 15009–2704, telephone 724–775–1132
- Beaver County Library System, 1 Campus Drive, Monaca, PA 15061, telephone 724–728–3737

FOR FURTHER INFORMATION, CONTACT: Mr. Emmanuel Sayoc, Projects Branch 2, Division of License Renewal, Office of Nuclear Reactor Regulation, U.S. Nuclear Regulatory Commission, Mail Stop O–11F1, Washington, DC 20555–0001. Mr. Emmanuel Sayoc may be contacted by telephone at 1–800–368–5642, extension 1924 or by e-mail at Emmanuel.Sayoc@nrc.gov.

Dated at Rockville, Maryland, this 14th day of May, 2009. For the Nuclear Regulatory Commission.

David J. Wrona,

Chief, Projects Branch 2, Division of License Renewal, Office of Nuclear Reactor Regulation.

[FR Doc. E9–11877 Filed 5–20–09; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[Docket No. 52–038; NRC–2008–0581]

Nine Mile Point 3 Nuclear Project, LLC and UniStar Nuclear Operating Services, LLC; Nine Mile Point 3 Nuclear Power Plant Combined License Application; Notice of Intent To Prepare an Environmental Impact Statement and Conduct Scoping

Nine Mile Point 3 Nuclear Project, LLC and UniStar Nuclear Operating Services, LLC have submitted an application for a combined license (COL) to build Unit 3 at its Nine Mile Point Nuclear Power Plant (NMPNPP) site, located on approximately 921 acres in Oswego County, New York on Lake Ontario, approximately five miles north-northeast of Oswego, New York. Nine Mile Point 3 Nuclear Project, LLC and UniStar Nuclear Operating Services, LLC submitted the application for the COL to the U.S. Nuclear Regulatory Commission (NRC) by letter dated September 30, 2008, pursuant to Title 10 of the Code of Federal Regulations (10 CFR) Part 52. A notice of receipt and availability of the application, including the Environmental Report (ER), was published in the **Federal Register** on Tuesday, October 28, 2008 (73 FR 63998). A notice of acceptance for docketing of the application for the COL was published in the **Federal Register** on December 19, 2008 (73 FR 77862). A

notice of hearing and opportunity to petition for leave to intervene in the proceeding on the application will be published in a future **Federal Register** Notice. The purposes of this notice of intent are (1) to inform the public that the NRC staff will be preparing an environmental impact statement (EIS) as part of the review of the application for the COL and (2) to provide the public with an opportunity to participate in the environmental scoping process as defined in 10 CFR 51.29.

In addition, as outlined in 36 CFR 800.8(c), “Coordination with the National Environmental Policy Act,” the NRC staff plans to coordinate compliance with Section 106 of the National Historic Preservation Act (NHPA) with steps taken to meet the requirements of the National Environmental Policy Act of 1969, as amended (NEPA). Pursuant to 36 CFR 800.8(c), the NRC staff intends to use the process and documentation for the preparation of the EIS on the proposed action to comply with Section 106 of the NHPA in lieu of the procedures set forth at 36 CFR 800.3 through 800.6.

In accordance with 10 CFR 51.45 and 51.50, Nine Mile Point 3 Nuclear Project, LLC and UniStar Nuclear Operating Services, LLC submitted the ER as part of the application. The ER was prepared pursuant to 10 CFR Parts 51 and 52 and is available for public inspection at the NRC Public Document Room (PDR) located at One White Flint North, 11555 Rockville Pike (first floor), Rockville, Maryland 20852, or from the Publicly Available Records (PARS) component of NRC’s Agencywide Documents Access and Management System (ADAMS). ADAMS is accessible at <http://www.nrc.gov/reading-rm/adams.html> which provides access through the NRC’s Electronic Reading Room (ERR) link. The accession number in ADAMS for the environmental report is ML090970496. Persons who do not have access to ADAMS or who encounter problems in accessing the documents located in ADAMS should contact the NRC’s PDR Reference staff at 1–800–397–4209/301–415–4737 or by e-mail to pdr.resource@nrc.gov. The application may also be viewed on the Internet at <http://www.nrc.gov/reactors/new-reactors/col/nine-mile-point.html>. In addition, both the Oswego Public Library at 120 East First Street, Oswego, New York and SUNY Oswego Penfield Library at 7060 State Route 104, Oswego, New York have agreed to make the ER available for public inspection.

The following key reference documents related to the application and the NRC staff’s review processes are

available through the NRC's Web site at <http://www.nrc.gov>:

- a. 10 CFR Part 51, Environmental Protection Regulations for Domestic Licensing and Related Regulatory Function;
- b. 10 CFR Part 52, Licenses, Certifications, and Approvals for Nuclear Power Plants;
- c. 10 CFR Part 100, Reactor Site Criteria;
- d. NUREG-1555, Standard Review Plans for Environmental Reviews for Nuclear Power Plants;
- e. NUREG/BR-0298, Brochure on Nuclear Power Plant Licensing Process;
- f. Regulatory Guide 4.2, Preparation of Environmental Reports for Nuclear Power Stations;
- g. Regulatory Guide 4.7, General Site Suitability Criteria for Nuclear Power Stations;
- h. Fact Sheet on Nuclear Power Plant Licensing Process;
- i. Regulatory Guide 1.206, Combined License Applications for Nuclear Power Plants; and
- j. Nuclear Regulatory Commission Policy Statement on the Treatment of Environmental Justice Matters in NRC Regulatory and Licensing Actions.

The regulations, NUREG-series documents, regulatory guides, and the fact sheet can be found under Document Collections in the Electronic Reading Room on the NRC Web page. The environmental justice policy statement can be found in the **Federal Register**, 69 FR 52040, August 24, 2004.

This notice advises the public that the NRC intends to gather the information necessary to prepare an EIS as part of the review of the application for the COL at the Nine Mile Point 3 Nuclear Power Plant site. Possible alternatives to the proposed action (issuance of the COL for the Nine Mile Point 3 Nuclear Power Plant) include no action, reasonable alternative energy sources, and alternate sites. As set forth in 10 CFR 51.20(b)(2), issuance of a COL under 10 CFR Part 52 is an action that requires an EIS. This notice is being published in accordance with NEPA and the NRC's regulations in 10 CFR Part 51.

The NRC will first conduct a scoping process for the EIS and, as soon as practicable thereafter, will prepare a draft EIS for public comment. Participation in this scoping process by members of the public and local, State, Tribal, and Federal government agencies is encouraged. The scoping process for the draft EIS will be used to accomplish the following:

- a. Define the proposed action that is to be the subject of the EIS;

- b. Determine the scope of the EIS and identify the significant issues to be analyzed in depth;

- c. Identify and eliminate from detailed study those issues that are peripheral or that are not significant;

- d. Identify any environmental assessments and other EISs that are being or will be prepared that are related to but are not part of the scope of the EIS being considered;

- e. Identify other environmental review and consultation requirements related to the proposed action;

- f. Identify parties consulting with the NRC under the NHPA, as set forth in 36 CFR 800.8(c)(1)(i);

- g. Indicate the relationship between the timing of the preparation of the environmental analyses and the Commission's tentative planning and decision-making schedule;

- h. Identify any cooperating agencies and, as appropriate, allocate assignments for preparation and schedules for completing the EIS to the NRC and any cooperating agencies; and

- i. Describe how the EIS will be prepared, including any contractor assistance to be used. The NRC invites the following persons or entities to participate in the scoping process:

- a. The applicants, Nine Mile Point 3 Nuclear Project, LLC and UniStar Nuclear Operating Services, LLC;

- b. Any Federal agency that has jurisdiction by law or special expertise with respect to any environmental impact involved or that is authorized to develop and enforce relevant environmental standards;

- c. Affected State and local government agencies, including those authorized to develop and enforce relevant environmental standards;

- d. Any affected Indian Tribe;

- e. Any person who requests or has requested an opportunity to participate in the scoping process; and

- f. Any person who intends to petition for leave to intervene in the proceeding, or who has submitted such a petition, or who is admitted as a party.

In accordance with 10 CFR 51.26, the scoping process for an EIS may include a public scoping meeting to help identify significant issues related to a proposed activity and to determine the scope of issues to be addressed in an EIS. The NRC will hold two public scoping meetings for the EIS regarding the COL application. The scoping meetings will be held at SUNY-Oswego, Sheldon Hall, 7060 Route 104, Oswego, NY 13126 on Wednesday, June 10, 2009. The first meeting will convene at 1 p.m. and will continue until approximately 4 p.m. This meeting will be transcribed and will include the following: (1) An

overview by the NRC staff of the NEPA environmental review process, the proposed scope of the EIS, and the proposed review schedule; and (2) the opportunity for interested government agencies, organizations, and individuals to submit comments or suggestions on the environmental issues or the proposed scope of the EIS. For the afternoon scoping meeting, persons may preregister to attend or present oral comments on the scope of the NEPA review by contacting Mr. Paul Michalak by telephone at 1-800-368-5642, extension 7612, or by e-mail to the NRC at NMP3.COLEIS@nrc.gov no later than June 5, 2009. Members of the public may also register to speak at the meeting prior to the start of the session. Individual oral comments may be limited by the time available, depending on the number of persons who register. Members of the public who have not registered may also have an opportunity to speak, if time permits. Additionally, the NRC staff will host informal discussions for one hour prior to the start of the afternoon meeting. No formal comments on the proposed scope of the EIS will be accepted during the informal discussions. At the afternoon scoping meeting, comments to be considered in the development of the EIS must be provided either at the transcribed public meeting or in writing, as discussed below.

The second meeting will convene at 6 p.m. and will continue until approximately 9 p.m. This meeting will be conducted in an open-house format, with NRC staff available to answer questions concerning the NEPA environmental review process, including the staff's technical approaches to environmental review areas covered in the EIS; the proposed scope of the EIS; and the proposed review schedule. Given the informal structure of the open-house meeting, members of the public are encouraged to attend any time between 6 p.m. and 9 p.m. A court reporter will be present to transcribe formal comments or suggestions on environmental issues or the proposed scope of the EIS from interested government agencies, organizations, and individuals. Written comments will also be accepted during the open house scoping meeting. To avoid potential waiting lines at the court reporter, members of the public can choose to preregister to provide oral comments on the scope of the NEPA review by contacting Mr. Paul Michalak by telephone at 1-800-368-5642, extension 7612, or by e-mail to the NRC at NMP3.COLEIS@nrc.gov no later than June 5, 2009. Preregistration will

include the name of the individual/organization and the time (*i.e.*, between 6 and 9 p.m.) the oral comment will be provided. Individuals/organizations may also register to provide oral comments during the open-house meeting. Individual oral comments may be limited by the time available, depending on the number of persons who register.

Please note that if special equipment or accommodations are needed to attend or present information at either public meeting, the need should be brought to Mr. Michalak's attention no later than June 5, 2009, so that the NRC staff can determine whether the request can be accommodated.

Members of the public may send written comments on the scope of the Nine Mile Point 3 Nuclear Power Plant COL environmental review to the Chief, Rulemaking and Directives Branch, Division of Administrative Services, Office of Administration, Mailstop TWB-05-B01M, U.S. Nuclear Regulatory Commission, Washington, DC 20555-0001, and should cite the publication date and page number of this **Federal Register** notice. To ensure that comments will be considered in the scoping process, written comments must be postmarked by July 20, 2009. Electronic comments may be sent by e-mail to the NRC at NMP3.COLEIS@nrc.gov. Electronic submissions must be sent no later than July 20, 2009. Comments will be made available electronically and will be accessible through the NRC's Electronic Reading Room link <http://www.nrc.gov/reading-rm/adams.html>. The NRC staff may, at its discretion, consider comments submitted after the end of the comment period.

Participation in the scoping process for the EIS does not entitle participants to become parties to the proceeding to which the EIS relates. A notice of hearing and opportunity to petition for leave intervene in the proceeding on the application for the COL will be published in a future **Federal Register** notice.

At the conclusion of the scoping process, the NRC staff will prepare a concise summary of the determinations, and conclusions reached on the scope of the environmental review including the significant issues identified, and will send this summary to each participant in the scoping process for whom the staff has an address. The staff will then prepare and issue for comment the draft EIS, which will be the subject of a separate **Federal Register** notice and a separate public meeting. Copies of the draft EIS will be available for public inspection at the PDR through the

above-mentioned address and one copy per request will be provided free of charge. After receipt and consideration of comments on the draft EIS, the NRC will prepare a final EIS, which will also be available to the public.

Information about the proposed action, the EIS, and the scoping process may be obtained from Mr. Paul Michalak at U.S. Nuclear Regulatory Commission, Mail Stop T6-D32, Washington, DC 20555-0001, by phone at 301-415-7612, or by e-mail at Paul.Michalak@nrc.gov.

Dated at Rockville, Maryland, this 14th day of May 2009.

For the Nuclear Regulatory Commission.

Scott C. Flanders,

Director, Division of Site and Environmental Reviews, Office of New Reactors.

[FR Doc. E9-11878 Filed 5-20-09; 8:45 am]

BILLING CODE 7590-01-P

NUCLEAR REGULATORY COMMISSION

[Docket No. 72-04; NRC-2008-0333]

Notice of Availability of Environmental Assessment and Finding of No Significant Impact for the Renewal of U.S. Nuclear Regulatory Commission License No. SNM-2503 for Oconee Nuclear Station Independent Spent Fuel Storage Installation

AGENCY: Nuclear Regulatory Commission.

ACTION: Notice of availability.

FOR FURTHER INFORMATION CONTACT: Haimanot Yilma, Environmental Project Manager, Environmental Review Branch, Division of Waste Management and Environmental Protection, Office of Federal and State Materials and Environmental Management Programs, U.S. Nuclear Regulatory Commission, Rockville, Maryland 20852. Telephone: (301) 415-8029; fax number: (301) 415-3502; e-mail: haimanot.yilma@nrc.gov.

SUPPLEMENTARY INFORMATION:

I. Introduction

The U.S. Nuclear Regulatory Commission (NRC) is considering an application dated January 30, 2008, from Duke Power Company LLC d/b/a Duke Energy Carolinas, LLC, (Duke) for the renewal of its Special Nuclear Material (SNM) License SNM-2503, under the provisions of 10 CFR part 72, for the receipt, possession, storage and transfer of spent fuel and other radioactive materials associated with spent fuel storage at the Oconee Nuclear Station (ONS) Independent Spent Fuel Storage Installation (ISFSI), located at

the ONS site in Oconee County, South Carolina. If granted, the renewed license will authorize Duke to continue to store spent fuel in a dry cask storage system at the ISFSI. Pursuant to the provisions of 10 CFR 72.42, the renewal term of the license for an ISFSI is limited to 20 years. Duke, however, has also submitted an exemption request with its license renewal application, pursuant to 10 CFR 72.7, seeking a license renewal term of 40 years. In accordance with 10 CFR 72.34, Duke's renewal application included an Environmental Report (which is attached as Enclosure 3, Appendix E of Duke's application).

SNM-2503 expires on January 31, 2010. This renewal and exemption request, if granted, will extend the term of SNM-2503 to January 31, 2050.

The NRC has prepared an Environmental Assessment (EA) in support of this action in accordance with the requirements of 10 CFR Part 51. Based on the EA, the NRC has determined that a Finding of No Significant Impact (FONSI) is appropriate. If Duke's request is approved, the NRC will issue the renewed license following the publication of this EA and FONSI.

II. EA Summary

Description of the Proposed Action

Duke requests approval to renew SNM-2503 for an additional 40 years at the ONS, South Carolina facility. If approved, Duke will be allowed to receive, possess, store and transfer the power reactor spent fuel and other radioactive materials associated with spent fuel storage at the ISFSI until January 31, 2050.

Need for the Proposed Action

Duke owns and operates three nuclear power reactor units on the ONS site, Oconee Units 1, 2, and 3, which began commercial operation on July 15, 1973, September 9, 1974, and December 16, 1974, respectively. The current Facility Operating licenses (FOLs) for Oconee Units 1, 2, and 3 will expire on February 6, 2033; October 6, 2033; and July 19, 2034, respectively. The ONS ISFSI is needed to provide continued spent fuel storage capacity so that the ONS can continue to generate electricity. SNM-2503, if renewed for only the 20 year term provided by the applicable regulation, 10 CFR 72.42, will expire on January 31, 2030, which is approximately 4 years before the FOLs expire. During that time, Duke anticipates that the ISFSI will continue to be required for spent fuel storage in concert with the ONS spent fuel pools and the additional independent spent

fuel installation on the ONS site, constructed and operated under the 10 CFR part 72 general license (10 CFR 72.210).

It is unclear when DOE will begin to accept spent nuclear fuel at the Federal geological repository mandated by the Nuclear Waste Policy Act of 1982. Development of the repository continues to experience delays and it is not projected to commence operation until 2017, at the earliest. Even if DOE does begin taking spent fuel in 2017, it is unlikely that the ISFSI could be emptied of spent fuel before 2030. Duke's most recent decommissioning analyses, which assume DOE accepts ONS spent fuel beginning in 2015, project operation of the ISFSI licensed under SNM-2503, the subject of this proposed action, and the ISFSI operated under the general license, through 2044.

Offsite shipment of the spent fuel from the ISFSI prior to a 2030 expiration of the renewed license would not be practical for a variety of reasons. Currently, there are no commercial or federal facilities available to accept spent fuel. If such a facility becomes available, shipment would require repackaging of the spent fuel since the ISFSI canisters are not licensed for transport. Spent fuel shipping containers would have to be either leased or purchased. Also, this would result in considerable occupational exposure for both ONS personnel and personnel at the receiving facility. Finally, the spent fuel would still have to be shipped to the repository once it becomes available.

Transfer of the spent fuel from the SNM-2503 ISFSI into the ONS general license ISFSI, prior to a 2030 expiration of SNM-2503, would also not be practical. As the ISFSI storage units are not approved for use under the general license, this would require repackaging the spent fuel assemblies from the ISFSI into general license storage units. The cost of an additional 40 storage units coupled with the additional occupational exposure and the potential for fuel handling incidents, render this option impractical.

Therefore, Duke, under 10 CFR 72.7, requests an exemption from the 20 year renewal term specified in 10 CFR 72.42, and seeks a 40 year renewal term for SNM-2503, which would allow the ISFSI to continue to store spent fuel until January 31, 2050.

Environmental Impacts of the Proposed Action

The NRC has prepared an EA that analyzed the impact of renewing SNM-2503 on 12 environmental categories: land use; transportation;

socioeconomics; air quality; water quality; geology and soils; endangered and threatened species; noise; historic and cultural; scenic and visual; public and occupational health; and waste management as a result of the proposed action. Based on this assessment, the NRC staff has determined that no significant radiological or non-radiological impact from normal operations of the ISFSI during the 40 year renewal period are expected. The ISFSI is a passive facility that produces no liquid or gaseous effluents and requires no power or regular maintenance. The license renewal request does not require altering the site footprint nor does it change the operating processes of the existing facility; therefore there are no anticipated impacts in any of the above listed environmental categories.

The radiological dose rates from the ISFSI will be limited by the design of the horizontal storage module. Occupational dose estimates from routine monitoring activities and transfer of spent fuel for disposal must be maintained "as low as is reasonably achievable" (ALARA) and must be within the limits of 10 CFR 20.1201 per the ONS radiation protection program. The annual dose to the nearest potential member of the public from ISFSI activities remains significantly below the annual dose limits specified in 10 CFR 72.104 and 10 CFR 20.1301(a). The cumulative dose to an individual offsite from all site activities will be less than the limits specified in 10 CFR 72.104 and 10 CFR 20.1301. These doses are also a small fraction of the doses resulting from naturally occurring terrestrial and cosmic radiation of about 300 mrem/yr in the vicinity of the ONS ISFSI.

Therefore, the NRC staff concludes that the proposed action will not result in a significant impact to human health or the environment.

Agencies and Persons Contacted

NRC staff consulted with other agencies regarding the proposed action, including the U.S. Fish and Wildlife Service, the South Carolina State Historic Preservation Office, the Economic Development Commission of Oconee County, the Oconee County Planning Office, the Oconee Soil and Water Conservation District Office, the Oconee County Park, Recreation and Tourism office, and the School District of Oconee County. The consultations ensured that the requirements of Section 7 of the Endangered Species Act and Section 106 of the National Historic Preservation Act were met and provided the designated liaison agency the

opportunity to comment on the proposed action. The conclusions by all agencies consulted were consistent with the staff's conclusions.

III. Finding of No Significant Impact

On the basis of the EA, the NRC staff concludes that there are no significant radiological or non-radiological impacts associated with the proposed action and that issuance of renewal of the license for the interim storage of spent nuclear fuel at the ONS ISFSI for a renewal term of 40 years will have no significant impact on the quality of the human environment. Therefore, pursuant to 10 CFR 51.31 and 51.32, a finding of no significant impact is appropriate and an EIS need not be prepared for the renewal of SNM-2503.

IV. Further Information

Documents related to this action, including the application for renewal of SNM-2503 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 Agency-wide Document Access and Management System (ADAMS), which provides text and image files of NRC's public documents. The ADAMS accession numbers for the documents related to this notice are:

DOCUMENT ADAMS ACCESSION NUMBER

ONS ISFSI License Renewal Application (Duke's environmental report is at Enclosure 3, Appendix E of the application).	ML081280084
Consultation Letters: Section 106 and Section 7.	ML081410669
FWS Response Letter to Section 7 Request.	ML081850455
SHPO Response e-mail to section 106 Request.	ML091271071
RAI for EA Review	ML083110387
Environmental Assessment ...	ML091340557

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, O1F21, One White Flint North, 11555 Rockville Pike, Rockville, MD 20852. The PDR reproduction contractor will copy documents for a fee.

Dated at Rockville, Maryland, this 15th day of May 2009.

For the Nuclear Regulatory Commission.
Andrea Kock,
*Chief, Environmental Review Branch,
 Environmental Protection and Performance
 Assessment Directorate, Division of Waste
 Management and Environmental Protection,
 Office of Federal and State Materials and
 Environmental Management Programs.*
 [FR Doc. E9-11860 Filed 5-20-09; 8:45 am]
BILLING CODE 7590-01-P

SMALL BUSINESS ADMINISTRATION

[Disaster Declaration #11707 and #11708]

North Dakota Disaster Number ND-00016

AGENCY: U.S. Small Business Administration.
ACTION: Amendment 2.

SUMMARY: This is an amendment of the Presidential declaration of a major disaster for the State of North Dakota (FEMA-1829-DR), dated 04/10/2009.
Incident: Severe Storms and Flooding.
Incident Period: 03/13/2009 and continuing.
Effective Date: 05/13/2009.
Physical Loan Application Deadline Date: 06/09/2009.
EIDL Loan Application Deadline Date: 01/11/2010.

ADDRESSES: Submit completed loan applications to: U.S. Small Business Administration, Processing and Disbursement Center, 14925 Kingsport Road, Fort Worth, TX 76155.

FOR FURTHER INFORMATION CONTACT: A. Escobar, Office of Disaster Assistance, U.S. Small Business Administration, 409 3rd Street, SW., Suite 6050, Washington, DC 20416.

SUPPLEMENTARY INFORMATION: The notice of the Presidential disaster declaration for the State of North Dakota, dated 04/10/2009 is hereby amended to include the following areas as adversely affected by the disaster:

Primary Counties: (Physical Damage and Economic Injury Loans):
 Ramsey, The Turtle Mountain Band of Chippewa Indian Reservation.

All other counties contiguous to the above named primary counties have previously been declared.

All other information in the original declaration remains unchanged.

(Catalog of Federal Domestic Assistance Numbers 59002 and 59008)

James E. Rivera,
Acting Associate Administrator for Disaster Assistance.
 [FR Doc. E9-11879 Filed 5-20-09; 8:45 am]
BILLING CODE 8025-01-P

SMALL BUSINESS ADMINISTRATION

[Disaster Declaration #11720 and #11721]

Indiana Disaster Number IN-00030

AGENCY: U.S. Small Business Administration.
ACTION: Amendment 1.

SUMMARY: This is an amendment of the Presidential declaration of a major disaster for the State of Indiana (FEMA-1832-DR), dated 04/22/2009.

Incident: Severe Storms, Tornadoes, and Flooding.

Incident Period: 03/08/2009 through 03/14/2009.

DATES: *Effective Date:* 05/13/2009.
Physical Loan Application Deadline Date: 06/22/2009.
EIDL Loan Application Deadline Date: 01/22/2010.

ADDRESSES: Submit completed loan applications to: U.S. Small Business Administration, Processing and Disbursement Center, 14925 Kingsport Road, Fort Worth, TX 76155.

FOR FURTHER INFORMATION CONTACT: A. Escobar, Office of Disaster Assistance, U.S. Small Business Administration, 409 3rd Street, SW., Suite 6050, Washington, DC 20416.

SUPPLEMENTARY INFORMATION: The notice of the Presidential disaster declaration for the State of Indiana, dated 04/22/2009 is hereby amended to include the following areas as adversely affected by the disaster:

Primary Counties: (Physical Damage and Economic Injury Loans): Daviess, Lawrence, St Joseph.

Contiguous Counties: (Economic Injury Loans Only):

Indiana: Dubois, Greene, Jackson, Knox, Martin, Monroe, Orange, Pike, Washington.
 Michigan: Cass.

All other information in the original declaration remains unchanged.

(Catalog of Federal Domestic Assistance Numbers 59002 and 59008)

James E. Rivera,
Acting Associate Administrator for Disaster Assistance.
 [FR Doc. E9-11880 Filed 5-20-09; 8:45 am]
BILLING CODE 8025-01-P

SMALL BUSINESS ADMINISTRATION

[Disaster Declaration #11746 and #11747]

Mississippi Disaster #MS-00030

AGENCY: U.S. Small Business Administration.
ACTION: Notice.

SUMMARY: This is a Notice of the Presidential declaration of a major disaster for Public Assistance Only for the State of Mississippi (FEMA-1837-DR), dated 05/12/2009.

Incident: Severe Storms, Flooding, and Tornadoes.

Incident Period: 03/25/2009 through 03/28/2009.

DATES: *Effective Date:* 05/12/2009.
Physical Loan Application Deadline Date: 07/13/2009.
Economic Injury (EIDL) Loan Application Deadline Date: 02/12/2010.

ADDRESSES: Submit completed loan applications to : U.S. Small Business Administration, Processing and Disbursement Center, 14925 Kingsport Road, Fort Worth, TX 76155.

FOR FURTHER INFORMATION CONTACT: A. Escobar, Office of Disaster Assistance, U.S. Small Business Administration, 409 3rd Street, SW., Suite 6050, Washington, DC 20416.

SUPPLEMENTARY INFORMATION: Notice is hereby given that as a result of the President's major disaster declaration on 05/12/2009, Private Non-Profit organizations that provide essential services of governmental nature may file disaster loan applications at the address listed above or other locally announced locations.

The following areas have been determined to be adversely affected by the disaster:

Primary Counties: Amite, Greene, Jackson, Lawrence, Lincoln, Simpson, Stone, Walthall, Wayne, Wilkinson.

The Interest Rates are:

	Percent
Other (Including Non-Profit Organizations) With Credit Available Elsewhere	4.500
Businesses and Non-Profit Organizations Without Credit Available Elsewhere	4.000

The number assigned to this disaster for physical damage is 11746B and for economic injury is 11747B.

(Catalog of Federal Domestic Assistance Numbers 59002 and 59008)

James E. Rivera,
Acting Associate Administrator for Disaster Assistance.
 [FR Doc. E9-11882 Filed 5-20-09; 8:45 am]
BILLING CODE 8025-01-P

SMALL BUSINESS ADMINISTRATION

[Disaster Declaration #11742 and #11743]

Mississippi Disaster #MS-00029

AGENCY: U.S. Small Business Administration.

ACTION: Notice.

SUMMARY: This is a notice of an Administrative declaration of a disaster for the State of Mississippi dated 05/14/2009.

Incident: Severe storms and flooding.
Incident Period: 05/06/2009 through 05/08/2009.

Effective Date: 05/14/2009.
Physical Loan Application Deadline Date: 07/13/2009.

Economic Injury (EIDL) Loan Application Deadline Date: 02/15/2010.

ADDRESSES: Submit completed loan applications to: U.S. Small Business Administration, Processing and Disbursement Center, 14925 Kingsport Road, Fort Worth, TX 76155.

FOR FURTHER INFORMATION CONTACT: A. Escobar, Office of Disaster Assistance, U.S. Small Business Administration, 409 3rd Street, SW., Suite 6050, Washington, DC 20416.

SUPPLEMENTARY INFORMATION: Notice is hereby given that as a result of the Administrator's disaster declaration, applications for disaster loans may be filed at the address listed above or other locally announced locations.

The following areas have been determined to be adversely affected by the disaster:

Primary Counties: Panola.

Contiguous Counties:

Mississippi: Lafayette, Quitman, Tallahatchie, Tate, Tunica, Yalobusha.

The Interest Rates are:

	Percent
Homeowners with Credit Available Elsewhere	4.875
Homeowners without Credit Available Elsewhere	2.437
Businesses with Credit Available Elsewhere	6.000
Businesses & Small Agricultural Cooperatives without Credit Available Elsewhere	4.000
Other (Including Non-Profit Organizations) with Credit Available Elsewhere	4.500
Businesses and Non-Profit Organizations without Credit Available Elsewhere	4.000

The number assigned to this disaster for physical damage is 11742 B and for economic injury is 11743 0.

The State which received an EIDL Declaration # is Mississippi.

(Catalog of Federal Domestic Assistance Numbers 59002 and 59008)

Dated: May 14, 2009.

Karen G. Mills,
Administrator.

[FR Doc. E9-11884 Filed 5-20-09; 8:45 am]

BILLING CODE 8025-01-P

SMALL BUSINESS ADMINISTRATION

[Disaster Declaration #11744 and #11745]

Texas Disaster #TX-00336

AGENCY: U.S. Small Business Administration.

ACTION: Notice.

SUMMARY: This is a notice of an Administrative declaration of a disaster for the State of Texas dated 05/14/2009.

Incident: Wildland Fires.

Incident Period: 04/07/2009 Through 04/12/2009.

Effective Date: 05/14/2009.

Physical Loan Application Deadline Date: 07/13/2009.

Economic Injury (EIDL) Loan Application Deadline Date: 02/15/2010.

ADDRESSES: Submit completed loan applications to: U.S. Small Business Administration, Processing and Disbursement Center, 14925 Kingsport Road, Fort Worth, TX 76155.

FOR FURTHER INFORMATION CONTACT: A. Escobar, Office of Disaster Assistance, U.S. Small Business Administration, 409 3rd Street, SW., Suite 6050, Washington, DC 20416.

SUPPLEMENTARY INFORMATION: Notice is hereby given that as a result of the Administrator's disaster declaration, applications for disaster loans may be filed at the address listed above or other locally announced locations.

The following areas have been determined to be adversely affected by the disaster:

Primary Counties: Montague.

Contiguous Counties:

Texas: Clay, Cooke, Jack, Wise.

Oklahoma: Jefferson, Love.

The Interest Rates are:

	Percent
Homeowners With Credit Available Elsewhere	4.375
Homeowners Without Credit Available Elsewhere	2.187
Businesses With Credit Available Elsewhere	6.000

	Percent
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 11744 5 and for economic injury is 11745 0.

The States which received an EIDL Declaration # are Texas, Oklahoma.

(Catalog of Federal Domestic Assistance Numbers 59002 and 59008)

Dated: May 14, 2009.

Karen G. Mills,
Administrator.

[FR Doc. E9-11886 Filed 5-20-09; 8:45 am]

BILLING CODE 8025-01-P

SMALL BUSINESS ADMINISTRATION

[Disaster Declaration #11748 and #11749]

Texas Disaster #TX-00338

AGENCY: U.S. Small Business Administration.

ACTION: Notice.

SUMMARY: This is a notice of an Administrative declaration of a disaster for the State of TEXAS dated 05/15/2009.

Incident: Severe Storm and Flooding.
Incident Period: 04/27/2009 through 04/28/2009.

Effective Date: 05/15/2009.

Physical Loan Application Deadline Date: 07/14/2009.

Economic Injury (EIDL) Loan Application Deadline Date: 02/15/2010.

ADDRESSES: Submit completed loan applications to: U.S. Small Business Administration, Processing and Disbursement Center, 14925 Kingsport Road, Fort Worth, TX 76155.

FOR FURTHER INFORMATION CONTACT: A. Escobar, Office of Disaster Assistance, U.S. Small Business Administration, 409 3rd Street, SW., Suite 6050, Washington, DC 20416.

SUPPLEMENTARY INFORMATION: Notice is hereby given that as a result of the Administrator's disaster declaration, applications for disaster loans may be filed at the address listed above or other locally announced locations.

The following areas have been determined to be adversely affected by the disaster:

Primary Counties: Harris.

Contiguous Counties:

Texas: Brazoria, Chambers, Fort Bend, Galveston, Liberty, Montgomery, Waller.

The Interest Rates are:

	Percent
Homeowners With Credit Available Elsewhere	4.875
Homeowners Without Credit Available Elsewhere	2.437
Businesses With Credit Available Elsewhere	6.000
Businesses & Small Agricultural Cooperatives Without Credit Available Elsewhere	4.000
Other (Including Non-Profit Organizations) With Credit Available Elsewhere	4.500
Businesses and Non-Profit Organizations Without Credit Available Elsewhere	4.000

The number assigned to this disaster for physical damage is 11748 6 and for economic injury is 11749 0.

The State which received an EIDL Declaration # is Texas.

(Catalog of Federal Domestic Assistance Numbers 59002 and 59008)

Dated: May 15, 2009.

Karen G. Mills,
Administrator.

[FR Doc. E9-11883 Filed 5-20-09; 8:45 am]

BILLING CODE 8025-01-P

SMALL BUSINESS ADMINISTRATION

[Disaster Declaration #11694 and #11695]

North Dakota Disaster Number ND-00015

AGENCY: U.S. Small Business Administration.

ACTION: Amendment 2.

SUMMARY: This is an amendment of the Presidential declaration of a major disaster for Public Assistance Only for the State of North Dakota (FEMA-1829-DR), dated 03/24/2009.

Incident: Severe Storms and Flooding.
Incident Period: 03/13/2009 and continuing.

Effective Date: 05/13/2009.

Physical Loan Application Deadline Date: 05/26/2009.

Economic Injury (EIDL) Loan Application Deadline Date: 12/24/2009.

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: The notice of the President's major disaster declaration for Private Non-Profit organizations in the State of North Dakota, dated 03/24/2009, is hereby amended to include the following areas as adversely affected by the disaster.

Primary Counties: Rolette, Sheridan, The Turtle Mountain Band of Chippewa Indian Reservation.

All other information in the original declaration remains unchanged.

(Catalog of Federal Domestic Assistance Numbers 59002 and 59008)

James E. Rivera,

Acting Associate Administrator for Disaster Assistance.

[FR Doc. E9-11881 Filed 5-20-09; 8:45 am]

BILLING CODE 8025-01-P

OFFICE OF SCIENCE AND TECHNOLOGY POLICY

Executive Office of the President; Transparency and Open Government

SUMMARY: The President's January 21, 2009, memorandum entitled, *Transparency and Open Government*, directed the Chief Technology Officer, in coordination with the Office of Management and Budget (OMB) and the General Services Administration (GSA), to develop a set of recommendations that will inform an Open Government Directive. This directive will be issued by OMB and will instruct executive departments and agencies on specific actions to implement the principles set forth in the President's memorandum. Members of the public are invited to participate in the process of developing recommendations via email or the White House Web site at <http://www.whitehouse.gov/open> offering comments, ideas, and proposals about possible initiatives and about how to increase openness and transparency in government.

DATES: Comments must be received by June 19, 2009.

ADDRESSES: Submit comments by one of the following methods:

- <http://www.whitehouse.gov/open>.
- E-mail: opengov@ostp.gov.
- Mail: Office of Science and Technology Policy, Attn: Open Government Recommendations, 725 17th Street, Washington, DC 20502.

Comments submitted in response to this notice could be made available to the public online or by alternative means. For this reason, please do not include in your comments information of a confidential nature, such as sensitive personal information or

proprietary information. If you submit an e-mail comment, your e-mail address will be captured automatically and included as part of the comment that is placed in the public docket and made available on the Internet.

FOR FURTHER INFORMATION CONTACT:

Office of Science and Technology Policy, Attn: Open Government, 725 17th Street, NW., Washington, DC 20502.

SUPPLEMENTARY INFORMATION: In his January 21, 2009, Presidential Memorandum to the Heads of Executive Departments and Agencies, published in the **Federal Register** [74 FR 4685, January 26, 2009], the President outlined three principles for promoting a transparent and open government:

- Transparency promotes accountability and provides information to citizens about what their Government is doing;

- Participation enhances the Government's effectiveness and improves the quality of its decisions by tapping knowledge that is widely dispersed in society; and

- Collaboration harnesses innovative tools, methods, and systems to promote cooperation across all levels of Government and with the private sector.

The Presidential Memorandum requests recommendations to inform an OMB Directive that will instruct executive departments and agencies on specific actions to implement the three principles of transparency, participation, and collaboration.

The purpose of this **Federal Register** notice is to solicit public participation in the development of those recommendations. There is a great deal of dispersed information among the nation's citizens. With twenty-first century tools, the United States is in a unique position to take advantage of that dispersed information to inform the policymaking process. Our goal is to use the principles of open government to obtain fresh ideas about open government itself.

Comments on open government may relate to government-wide or agency-specific policy, project ideas, and relevant examples. Comments may address law, policy, technology, culture, and practice on issues such as:

- What government information should be more readily available on-line or more easily searched?

- How might the operations of government be made more transparent and accountable?

- How might federal advisory committees, rulemaking, or electronic

rulemaking be better used to improve decisionmaking?

- What alternative models exist to improve the quality of decisionmaking and increase opportunities for citizen participation?
- What are the limitations to transparency?
- What strategies might be employed to adopt greater use of Web 2.0 in agencies?
- What policy impediments to innovation in government currently exist?
- What changes in training or hiring of personnel would enhance innovation?
- What performance measures are necessary to determine the effectiveness of open government policies?

This public process is not intended to, and does not, create any right or benefit, substantive or procedural, enforceable at law or in equity by any party against the United States, its departments, agencies, or entities, its officers, employees, or agents, or any other person.

John P. Holdren,

Director, Office of Science and Technology Policy.

[FR Doc. E9-12026 Filed 5-20-09; 8:45 am]

BILLING CODE 3170-W9-P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-59923; File No. SR-NASDAQ-2009-046]

Self-Regulatory Organizations; The NASDAQ Stock Market LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Relating to the Criteria for Securities That Underlie Options Traded on the Exchange

May 14, 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 May 8, 2009, The NASDAQ Stock Market LLC (“Nasdaq”) filed with the Securities and Exchange Commission (“SEC” or “Commission”) the proposed rule change as described in Items I and II below, which Items have been prepared by Nasdaq. Nasdaq filed the proposed rule change as a “non-controversial” proposed rule change pursuant to Section 19(b)(3)(A) of the Act³ 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

Nasdaq proposes for NOM to modify Chapter IV, Section 3 (Criteria for Underlying Securities) and Section 4 (Withdrawal of Approval of Underlying Securities) of its options rules to: (1) Enable listing and trading of options on equity index-linked securities, commodity-linked securities, currency-linked securities, fixed income index-linked securities, futures-linked securities, and multifactor index-linked securities (collectively referred to as “Index-Linked Securities”) that are principally traded on a national securities exchange and an “NMS stock” as defined in Rule 600 of Regulation NMS; (2) enable listing and trading of options on Index Multiple Exchange Traded Fund Shares (“Index Multiple ETFs”) and Index Inverse Exchange Traded Fund Shares (“Index Inverse ETFs”); (3) enable listing and trading of options on certain funds that hold specified non-U.S. currencies (“Currency Trust Shares”); and (4) enable listing and trading of options on commodity pool interests that hold and/or manage portfolios or baskets of securities, commodity futures contracts, options on commodity futures contracts, swaps, forward contracts and/or options on physical commodities and/or non-U.S. currency (“Commodity Pool ETFs”).

The text of the proposed rule change is available from Nasdaq’s Web site at <http://nasdaq.cchwallstreet.com>, at Nasdaq’s principal office, and at the Commission’s Public Reference Room.

II. Self-Regulatory Organization’s Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, Nasdaq included statements concerning the purpose of, and basis for, the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. Nasdaq has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization’s Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

This proposed rule change is based directly on recent rule change proposals of NASDAQ OMX PHLX, Inc. (“Phlx”)⁵ and other option exchanges.⁶

This rule change is being proposed, subsequent to the merger of The NASDAQ OMX Group, Inc. (“NASDAQ OMX”) and the Philadelphia Stock Exchange, Inc. (now NASDAQ OMX PHLX),⁷ to more closely align, to the extent practicable, certain listing rules of the Exchange (NOM) and Phlx.⁸

Chapter IV, Sections 3 and 4 (referred to in this filing as “Sections 3 and 4” or individually as “Section 3” and “Section 4”) generally indicate on which underlying securities the Exchange may initially list and continue to list options. The purpose of the proposed rule change is to revise Sections 3 and 4 to enable the listing and trading of options on: Index-Linked Securities that are principally traded on a national securities exchange and an “NMS stock” as defined in Rule 600 of Regulation NMS; Index Multiple ETFs and Index Inverse ETFs (together known as “Multiple Inverse ETFs”); Currency

⁵ See Securities Exchange Act Release Nos. 58571 (September 17, 2008), 73 FR 55188 (September 24, 2008) (SR-Phlx-2008-60) (notice of filing and immediate effectiveness regarding Index-Linked Securities and Currency Trust Shares); 57715 (April 25, 2009), 73 FR 23518 (April 30, 2008) (SR-Phlx-2008-30) (notice of filing and immediate effectiveness regarding Index Multiple ETFs and Index Inverse ETFs); and 55951 (June 25, 2007), 72 FR 37298 (July 9, 2007) (SR-Phlx-2007-35) (approval order regarding Commodity Pool ETFs).

⁶ See, regarding Index-Linked Securities, Exchange Act Release Nos. 58204 (July 22, 2008), 73 FR 43807 (July 28, 2008) (SR-CBOE-2008-64) (approval order); and 58985 (November 20, 2008), 73 FR 72538 (November 28, 2008) (SR-ISE-2008-86) (notice of filing and immediate effectiveness). See also, regarding Index Multiple ETFs and Index Inverse ETFs, Exchange Act Release No. 56715 (October 29, 2007), 72 FR 62287 (November 2, 2007) (SR-CBOE-2007-119) (approval order); and 56871 (November 30, 2007), 72 FR 68924 (December 6, 2007) (SR-ISE-2007-87) (approval order). See also, regarding Commodity Pool Units (ETFs), 55630 (April 13, 2007), 72 FR 19993 (April 20, 2007) (SR-CBOE-2007-21) (approval order); and 55635 (April 16, 2007), 72 FR 19999 (April 20, 2007) (SR-ISE-2007-16) (approval order). See also, regarding Currency Trust Shares, Securities Exchange Act Release No. 54983 (December 20, 2006), 71 FR 78476 (December 29, 2006) (AMEX-2006-87) (approval order).

⁷ See Securities Exchange Act Release No. 58179 (July 17, 2008), 73 FR 42874 (July 23, 2008) (SR-Phlx-2008-31). See also Securities Exchange Act Release No. 58183 (July 17, 2008), 73 FR 26182 (May 8, 2008) (SR-NASDAQ-2008-035).

⁸ See, e.g., Securities Exchange Act Release No. 59697 (April 2, 2009), 74 FR 16249 (April 9, 2009), (SR-Phlx-2009-23) (notice of filing); and 59794 (April 20, 2009), 74 FR 18761 (April 24, 2009) (SR-Phlx-2009-17) (approval order).

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).

Trust Shares; and Commodity Pool ETFs.

Index-Linked Securities

Index-Linked Securities are designed for investors who desire to participate in a specific market segment by providing exposure to one or more identifiable underlying securities, commodities, currencies, derivative instruments or market indexes of the foregoing (“Underlying Index” or “Underlying Indexes”). Index-Linked Securities are the non-convertible debt of an issuer that have a term of at least one (1) year but not greater than thirty (30) years. Despite the fact that Index-Linked Securities are linked to an underlying index, each trades as a single, exchange-listed security. Accordingly, rules pertaining to the listing and trading of standard equity options will apply to Index-Linked Securities.

Listing Criteria (Index-Linked Securities)

Currently, there is no provision in the Exchange’s initial listing rules, which are found in Section 3, for trading options on Index-Linked Securities. The Exchange will consider listing and trading options on Index-Linked Securities provided that they meet the new criteria for underlying securities set forth in Section 3.

The Exchange proposes to add new subsection (l) to Section 3, which indicates that six types of Index-Linked Securities are deemed appropriate for options representing ownership of a security that provides for the payment at maturity, as described below:

(1) *Equity Index-Linked Securities* are securities that provide for the payment at maturity of a cash amount based on the performance of an underlying index or indexes of equity securities (“Equity Reference Asset”);

(2) *Commodity-Linked Securities* are securities that provide for the payment at maturity of a cash amount based on the performance of one or more physical commodities or commodity futures, options or other commodity derivatives or Commodity-Based Trust Shares or a basket or index of any of the foregoing (“Commodity Reference Asset”);

(3) *Currency-Linked Securities* are securities that provide for the payment at maturity of a cash amount based on the performance of one or more currencies, or options or currency futures or other currency derivatives or Currency Trust Shares⁹ or a basket or

index of any of the foregoing (“Currency Reference Asset”);

(4) *Fixed Income Index-Linked Securities* are securities that provide for the payment at maturity of a cash amount based on the performance of one or more notes, bonds, debentures or evidence of indebtedness that include, but are not limited to, U.S. Department of Treasury securities (“Treasury Securities”), government sponsored entity securities (“GSE Securities”), municipal securities, trust preferred securities, supranational debt and debt of a foreign country or a subdivision thereof or a basket or index of any of the foregoing (“Fixed Income Reference Asset”);

(5) *Futures-Linked Securities* are securities that provide for the payment at maturity of a cash amount based on the performance of an index of (a) futures on Treasury Securities, GSE Securities, supranational debt and debt of a foreign country or a subdivision thereof, or options or other derivatives on any of the foregoing; or (b) interest rate futures or options or derivatives on the foregoing in this subparagraph (b) (“Futures Reference Asset”); and

(6) *Multifactor Index-Linked Securities* are securities that provide for the payment at maturity of a cash amount based on the performance of any combination of two or more Equity Reference Assets, Commodity Reference Assets, Currency Reference Assets, Fixed Income Reference Assets or Futures Reference Assets (“Multifactor Reference Asset”). For the purposes of Section 3(l), Equity Reference Assets, Commodity Reference Assets, Currency Reference Assets, Fixed Income Reference Assets and Multifactor Reference Assets, will be collectively referred to as “Reference Assets.” Index-Linked Securities must meet the criteria and guidelines for underlying securities set forth in Section 3(b), or the Index-Linked Securities must be redeemable at the option of the holder at least on a weekly basis through the issuer at a price related to the applicable underlying Reference Asset. In addition, the issuing company is obligated to issue or repurchase the securities in aggregation units for cash or cash equivalents satisfactory to the issuer of Index-Linked Securities which underlie

owner to receive the specified non-U.S. currency or currencies; and (c) pays the beneficial owner interest and other distributions on deposited non-U.S. currency or currencies, if any, declared and paid by the trust. See proposed Section 3(i), which is based on Commentary .06 to Phlx Rule 1009. See also Securities Exchange Act Release No. 58571 (September 17, 2008), 73 FR 55188 (September 24, 2008)(SR-Phlx-2008-60)(notice of filing and immediate effectiveness).

the option as described in the Index-Linked Securities prospectus.

Continued Listing Requirements (Index-Linked Securities)

The Exchange proposes to establish new Section 4(k), which will include criteria related to the continued listing of options on Index-Linked Securities.

Under the applicable continued listing criteria proposed in Section 4(k), options on Index Linked Securities initially approved for trading pursuant to proposed Section 3(l) may be subject to the suspension of opening transactions as follows: (1) Non-compliance with the terms of Section 3(l); (2) non-compliance with the terms of Section 4(b), except in the case of options covering Index Linked Securities approved pursuant to Section 3(l)(iii)² that are redeemable at the option of the holder at least on a weekly basis, then option contracts of the class covering such securities may only continue to be open for trading as long as the securities are listed on a national securities exchange and are an “NMS stock” as defined in Rule 600 of Regulation NMS; (3) in the case of any Index-Linked Security trading pursuant to Section 3(l), the value of the Reference Asset is no longer calculated or available; or (4) such other event shall occur or condition exist that in the opinion of the Exchange makes further dealing in such options on the Exchange inadvisable.

The Exchange represents that the listing and trading of options on Index-Linked Securities under Section 3(l) will not have any effect on the rules pertaining to position and exercise limits¹⁰ or margin.¹¹ Options on Index-Linked Securities will be subject to all rules governing the trading of equity options and the current continuing or maintenance listing standards for options trading on the Exchange.

The Exchange represents that its existing surveillance procedures applicable to trading in options are adequate to properly monitor the trading in options on Index-Linked Securities and to deter and detect violations of Exchange rules.¹²

¹⁰ See NOM Rules Chapter III, Sections 7 and 8; Chapter XIV, Sections 7 and 8; Chapter III, Section 9; and Chapter XIV, Section 9.

¹¹ See NOM Rules Chapter VIII.

¹² See, e.g., Section 3(l)(iv)(discussing, among other things, comprehensive surveillance agreements).

⁹ “Currency Trust Shares” is defined as a security that: (a) Holds a specified non-U.S. currency deposited with the trust or similar entity; (b) when aggregated in some specified minimum number may be surrendered to the trust by the beneficial

Index Multiple ETFs and Index Inverse ETFs

Index Multiple ETFs¹³ seek to provide investment results, before fees and expenses, that correspond to a specified multiple of the percentage performance on a given day of a particular foreign or domestic stock index. Index Inverse ETFs seek to provide investment results, before fees and expenses, that correspond to the inverse (opposite) of the percentage performance on a given day of a particular foreign or domestic stock index by a specified multiple. Index Multiple ETFs and Index Inverse ETFs differ from traditional exchange-traded fund shares in that they do not merely correspond to the performance of a given index, but rather attempt to match a multiple or inverse of such underlying index performance.¹⁴ The ProShares Ultra Funds, which currently trade on NYSE Arca and traded on the American Stock Exchange (“Amex”), is an example of an Index Multiple ETF. NYSE Arca also currently lists for trading Index Inverse ETFs, namely the Short Funds and the UltraShort Funds.¹⁵

Generally, in order to achieve investment results that provide either a positive multiple or inverse of the benchmark index, Index Multiple ETFs or Index Inverse ETFs may hold a combination of financial instruments, including, among other things: Stock index futures contracts; options on futures; options on securities and indexes; equity caps, collars and floors; swap agreements; forward contracts; repurchase agreements; and reverse repurchase agreements. The underlying portfolios of Index Multiple ETFs generally will hold at least 85% of their assets in the component securities of the underlying relevant benchmark index.

¹³ ETFs are also known as “Fund Shares” or “Funds;” these terms may be used interchangeably.

¹⁴ Index Multiple ETFs and Index Inverse ETFs together may be known as “Multiple-Inverse ETFs.”

¹⁵ See Securities Exchange Act Release Nos. 52553 (October 3, 2005), 70 FR 59100 (October 11, 2005)(SR-AMEX-2004-62)(approving the listing and trading of Ultra Funds and Short Funds) and 54040 (June 23, 2006), 71 FR 37629 (June 30, 2006)(SR-AMEX-2006-41)(approving the listing and trading of the UltraShort Funds). The Ultra Funds are expected to gain, on a percentage basis, approximately twice (200%) as much as the underlying benchmark index and should lose approximately twice (200%) as much as the underlying benchmark index when such prices decline. The Short Funds are expected to achieve investment results, before fees and expenses, that correspond to the inverse or opposite of the daily performance (–100%) or an underlying benchmark index. Lastly, the UltraShort Funds are expected to achieve investment result, before fees and expenses, that correspond to twice the inverse or opposite of the daily performance (–200%) of the underlying benchmark index.

The remainder of any assets is devoted to Financial Instruments that are intended to create the additional needed exposure to such underlying index necessary to pursue its investment objective. Normally, 100% of the value of the underlying portfolios of Index Inverse ETFs will be devoted to Financial Instruments and money market instruments, including U.S. government securities and repurchase agreements.

Listing Criteria (Index Multiple ETFs and Index Inverse ETFs)

Currently, there is no provision in the Exchange’s initial listing rules for trading options on Index Multiple ETFs or Index Inverse ETFs. Section 3(i) currently provides that securities deemed appropriate for options trading shall include shares or other securities (“Fund Shares”) that represent interests in registered investment companies (or series thereof) organized as open-end management investment companies, unit investment trusts or similar entities that are principally traded on a national securities exchange or through the facilities of a national securities association and reported as “national market” securities, and that hold portfolios of securities comprising or otherwise based on or representing investments in indexes or portfolios of securities (or that hold securities in one or more other registered investment companies that themselves hold such portfolios of securities) (“Funds”) or represent interests in the SPDR Gold Trust.¹⁶

The Exchange proposes to amend Section 3(i) to indicate that Index Multiple ETFs or Index Inverse ETFs are deemed appropriate for options trading. Section 3(i) is expanded to indicate that options eligible for listing and trading include those that are based on Index Multiple ETFs and Index Inverse ETFs that may hold or invest in any combination of securities, Financial Instruments and/or Money Market Instruments.¹⁷

As further set forth in proposed amended Section 3(l), securities deemed appropriate for options trading (Fund

¹⁶ Similarly to Commentary .06 to Phlx Rule 1009, the Exchange proposes to indicate in Section 3(i) that these interests may be in the SPDR Gold Trust or issued by the iShares COMEX Gold Trust or iShares Silver Trust.

¹⁷ “Financial Instruments” are defined to include stock index futures contracts, options on futures, options on securities and indexes, equity caps, collars and floors, swap agreements, forward contracts, repurchase agreements and reverse repurchase agreements. “Money Market Instruments” are defined to include U.S. government securities and repurchase agreements. See Section 3(i), which is based on Commentary .06 to Phlx Rule 1009.

Shares) that may include Partnership Units,¹⁸ Index Multiple ETFs and Index Inverse ETFs must be traded on a national securities exchange and must be an “NMS stock” as defined under Rule 600 of Regulation NMS. In addition, securities deemed appropriate for options trading must meet either: (i) The criteria and guidelines under Chapter 3, Section 3(b); or (ii) be available for creation or redemption each business day in cash or in kind from the investment company, commodity pool¹⁹ or other entity at a price related to net asset value. In addition, the investment company, commodity pool or other entity shall provide that shares may be created even though some or all of the securities and/or cash (in lieu of the Financial Instruments) needed to be deposited have not been received by the unit investment trust or the management investment company, provided the authorized creation participant has undertaken to deliver the shares and/or cash as soon as possible and such undertaking has been secured by the delivery and maintenance of collateral consisting of cash or cash equivalents satisfactory to the fund which underlies the option as described in the prospectus.

The Exchange proposes to also make clarifying changes to Section 3(i) to conform it to Commentary .06 of Phlx Rule 1009, as well as the rules of other option exchanges, regarding interests in a fund or trust that holds a specified non-U.S. currency or currencies, and surveillance agreements in respect thereof.²⁰ Thus, the Exchange proposes to amend its Section 3(i) to expand the type of options to include options on funds (trusts) that represent an interest in a trust or other similar entity that holds specified non-U.S. currency or currencies deposited with the trust or

¹⁸ “Partnership Unit” is defined as a security that: (a) Is issued by a partnership that invests in any combination of futures contracts, options on futures contracts, forward contracts, commodities (as defined in Section 1(a)(4) of the Commodity Exchange Act) and/or securities; and (b) is issued and redeemed daily in specified aggregate amounts at net asset value. See proposed Section 3(m), which is based on Commentary .06 to Phlx Rule 1009.

¹⁹ Commodity pool interests that are principally engaged, directly or indirectly, in holding and/or managing portfolios or baskets of securities, commodity futures contracts, options on commodity futures contracts, swaps, forward contracts and/or options on physical commodities and/or non-U.S. currency are known as “Commodity Pool ETFs.” See Chapter IV, Section 3(i), which is based on Commentary .06 to Phlx Rule 1009.

²⁰ Section 3(i) as proposed, and Commentary .06 to Phlx Rule 1009, are substantially similar to Interpretation and Policy .06(ii) and (v)(D) to CBOE Rule 5.3 and ISE Rule 502(h)(ii) and (h)(B)(4).

similar entity (Currency Trust Shares). The Exchange is also proposing to require in Section 3(i)(iv) that for Funds that hold specified non-U.S. currencies deposited with the trust, the Exchange will have entered into a comprehensive surveillance sharing agreement with the marketplace or marketplaces with last sale reporting that represent(s) the highest volume in derivatives (options or futures) on the non-U.S. currency or currencies, which are utilized by the national securities exchange where the underlying Funds are listed and traded.²¹

Continued Listing Requirements (Index Multiple ETFs and Index Inverse ETFs)

The Exchange proposes to amend Section 4 to indicate that the index or portfolio may consist of various securities, Financial Instruments and/or Money Market Instruments. The Exchange proposes to clarify that the relevant instruments have to be an "NMS stock" under Rule 600 of Regulation NMS. Under the applicable continued listing criteria in Section 4(h), options on ETFs may be subject to the suspension of opening transactions as follows: (1) Following the initial twelve-month period beginning upon the commencement of trading of the ETFs, there are fewer than 50 record and/or beneficial holders of the ETFs for 30 or more consecutive trading days; (2) the value of the index or portfolio of securities, non-U.S. currency, or portfolio of commodities including commodity futures contracts, options on commodity futures contracts, swaps, forward contracts and/or options on physical commodities and/or Financial Instruments and Money Market Instruments on which Fund Shares (ETFs) are based is no longer calculated or available; or (3) such other event occurs or condition exists that in the opinion of the Exchange makes further dealing in such options inadvisable.²² Section 4(h) is expanded, similarly to Section 3(i), to indicate that options

eligible for continued listing and trading include those that are based on Index Multiple ETFs and Index Inverse ETFs that may hold or invest in any combination of securities, Financial Instruments and/or Money Market Instruments.

The Exchange represents that the listing and trading of options on Index Multiple ETFs and Index Inverse ETFs will not have any effect on the rules pertaining to position and exercise limits²³ or margin.²⁴ Options on Index Multiple ETFs and Index Inverse ETFs will be subject to all rules governing the trading of equity options and the current continuing or maintenance listing standards for options trading on the Exchange.

This proposal is necessary to enable the Exchange to list and trade options on the shares of funds such as the Short Fund and UltraShort Fund of the ProShares Trust.²⁵ The proposed amendment is also necessary to enable the Exchange to continue to list and trade interests in Funds that hold specified non-U.S. currencies. The Exchange believes that the ability to trade options on these products will provide investors with greater risk management tools.

The Exchange represents that its existing surveillance procedures applicable to trading in options are adequate to properly monitor the trading in options on Index Multiple ETFs and Index Inverse ETFs and to deter and detect violations of Exchange rules.²⁶

Commodity Pool ETFs

Commodity Pool ETFs directly or indirectly trade commodity futures products. As such, Commodity Pool ETFs are subject to the Commodity Exchange Act due to their status as a commodity pool,²⁷ and therefore are regulated by the Commodity Futures Trading Commission ("CFTC").²⁸

Commodity Pool ETFs may hold or trade in one or more types of investments that may include any combination of securities, commodity futures contracts, options on commodity futures contracts, swaps, and forward contracts.

Listing Criteria and Continued Listing Requirements (Commodity Pool ETFs)

Currently, there is no provision in the Exchange's initial listing rules for trading options on Commodity Pool ETFs.

The Exchange proposes to amend Section 3(i) to indicate that, similarly to Index-Linked Securities and Index Multiple ETFs and Index Inverse ETFs, Commodity Pool ETFs are deemed appropriate for options trading. As such, Commodity Pool ETFs are proposed to represent commodity pool interests principally engaged, directly or indirectly, in holding and/or managing portfolios or baskets of securities, commodity futures contracts, options on commodity futures contracts, swaps, forward contracts and/or options on physical commodities and/or non-U.S. currency.²⁹ To be eligible for options trading, Commodity Pool ETFs, like other option eligible securities, must be registered with the SEC and be an "NMS stock" as defined in Rule 600 of Regulation NMS under the Exchange Act.

The Exchange also proposes in Section 3 to establish a comprehensive surveillance agreement requirement for Commodity Pool ETFs.³⁰ The Exchange represents that its existing surveillance procedures applicable to trading in options are adequate to properly monitor the trading in options on Commodity Pool ETFs and to deter and detect violations of Exchange rules.

The listing and trading of options on Commodity Pool ETFs will not have any

exclusions apply, as a commodity pool operator ("CPO") and commodity trading advisor ("CTA") with the CFTC and become a member of the National Futures Association ("NFA").

²⁹ See Section 3(i)(ii), which is based on Commentary .06 to Phlx Rule 1009. See also 55951 (June 25, 2007), 72 FR 37298 (July 9, 2007) (SR-Phlx-2007-35).

³⁰ For Commodity Pool ETFs that engage in holding and/or managing portfolios or baskets commodity futures contracts, options on commodity futures contracts, swaps, forward contracts, options on physical commodities, options on non-U.S. currency and/or securities, the Exchange has entered into a comprehensive surveillance sharing agreement with the marketplace or marketplaces with last sale reporting that represent(s) the highest volume in such commodity futures contracts and/or options on commodity futures contracts on the specified commodities or non-U.S. currency, which are utilized by the national securities exchange where the underlying Commodity Pool ETFs are listed and traded. See Section 3(i)(iv), which is based on Commentary .06(b) to Phlx Rule 1009.

²¹ See, e.g., Securities Exchange Act Release No. 54983 (December 20, 2006), 71 FR 78476 (December 29, 2006)(AMEX-2006-87). AMEX noted in the filing that the proposed amendments to its Rule 915 would permit it to list options on products such as the Euro Currency Trust, which issues Euro Shares that represent units of fractional undivided beneficial interest in, and ownership of, the noted trust; and that the investment objective of the trust was for the Euro Shares to reflect the price of the euro.

²² As discussed in detail below, the Exchange will not open for trading any additional series of equity options already approved for trading that do not meet the requirements for continued approval and may determine to delist the entire class of options for inadequate volume. See proposed Section 4(l), which is based on Commentary .11 to Phlx Rule 1010.

²³ See NOM Rules Chapter III, Sections 7 and 8; Chapter XIV, Sections 7 and 8; Chapter III, Section 9; and Chapter XIV, Section 9.

²⁴ See NOM Rules Chapter VIII.

²⁵ See Securities Exchange Act Release Nos. 52553 (October 3, 2005), 70 FR 59100 (October 11, 2005)(SR-AMEX-2004-62 and 54040 (June 23, 2006), 71 FR 37629 (June 3)(SR-AMEX-2006-41).

²⁶ See, e.g., Section 3(i)(i)(discussing, among other things, comprehensive surveillance agreements).

²⁷ A "commodity pool" is defined in CFTC Regulation 4.10(d)(1) as any investment trust, syndicate, or similar form of enterprise operated for the purpose of trading commodity interests. CFTC regulations further provide that a "commodity interest" means a commodity futures contract and any contract, agreement or transaction subject to Commission regulation under section 4c or 19 of the Act. See CFTC Regulation 4.10(a).

²⁸ The manager or operator of a "commodity pool" is required to register, unless applicable

effect on the rules pertaining to position and exercise limits³¹ or margin.³² Options on Commodity Pool ETFs will be subject to all rules governing the trading of equity options and the current continuing or maintenance listing standards for options trading on the Exchange.

Inadequate Volume Delisting

In terms of housekeeping, the Exchange proposes to amend Section 4 so that the Exchange may delist options that have inadequate trading volume, similarly to Phlx and other option exchanges.³³

Section 4(l), which is based on Commentary .11 to Phlx Rule 1010,³⁴ would allow the Exchange to cease listing additional series of equity options and to delist the class of equity options where the option has been trading on the Exchange not less than six (6) months and the Exchange average daily volume ("ADV") of the entire class of options was less than twenty (20) contracts over the last six (6) month period. The proposal also would provide that if an option is singly listed only on the Exchange, the Exchange will cease to add new series and may delist the option when there is no remaining open interest in the product. Should the Exchange determine to delist an equity option pursuant to subsection (l) of Section 4, it will provide notification of the determination to delist such option not less than three (3) days prior to the scheduled delisting date.

The Exchange believes that its low ADV delisting proposal is consistent with the Exchange's maintenance and delisting criteria in Section 4 and should reduce or eliminate the quotation traffic attendant to low volume options listings that may nevertheless experience significant quoting activity. This should, in turn, diminish the total number of strikes that need to be maintained by the Exchange and potentially may thereby reduce

technology costs for the Exchange and its member organizations and free up Exchange capacity. The Exchange further believes that expanding its ability to manage quotation traffic should benefit not only the Exchange and its members, but also public and professional traders and ultimately the industry.

2. Statutory Basis

The Exchange believes that its proposal is consistent with Section 6(b) of the Act³⁵ in general, and furthers the objectives of Section 6(b)(5) of the Act³⁶ in particular, in that it is designed to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general to protect investors and the public interest. The Exchange believes that the proposed rules applicable to trading Index-Linked Securities, Multiple-Inverse ETFs, Currency Trust Shares, and Commodity Pool ETFs, together with the Exchange's surveillance procedures applicable to trading in the securities covered by the proposed rules, serve to foster investor protection.

B. Self-Regulatory Organization's Statement on Burden on Competition

Nasdaq does not believe that the proposed rule change will result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

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

Because the foregoing proposed rule change: (1) Does not significantly affect the protection of investors or the public interest; (2) does not impose any significant burden on competition; and (3) by its terms does not become operative for 30 days after the date of this filing, or such shorter time as the Commission may designate if consistent with the protection of investors and the public interest, the proposed rule change has become effective pursuant to Section 19(b)(3)(A) of the Act³⁷ and Rule 19b-4(f)(6) thereunder.³⁸

³⁵ 15 U.S.C. 78f(b).

³⁶ 15 U.S.C. 78f(b)(5).

³⁷ 15 U.S.C. 78s(b)(3)(A).

³⁸ 17 CFR 240.19b-4(f)(6). In addition, Rule 19b-4(f)(6)(iii) requires a self-regulatory organization to

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 list and trade options on Index-Linked Securities, Index Multiple ETFs, Index Inverse ETFs, Currency Trust Shares, and Commodity Pool ETFs immediately. The Commission notes the proposal is substantively identical to rules of other exchanges that have been previously approved by the Commission and does not raise any new regulatory issues.³⁹ In addition, the proposal would allow Nasdaq to list and trade products that currently trade on other options exchanges. The Commission believes that waiving the 30-day operative delay to permit the listing and trading of options on these products on an additional exchange as soon as possible is consistent with the protection of investors and the public interest.⁴⁰ 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:

provide the Commission with written notice of its intent to file the proposed rule change, along with a brief description and text of the proposed rule change, at least five business days prior to the date of filing of the proposed rule change, or such shorter time as designated by the Commission. The Exchange has fulfilled this requirement.

³⁹ See e.g., NASDAQ OMX PHLX Rules 1009 and 1010; Chicago Board Options Exchange Rules 5.3 and 5.4, and International Securities Exchange Rules 502 and 503.

⁴⁰ 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).

³¹ See NOM Rules Chapter III, Sections 7 and 8; Chapter XIV, Sections 7 and 8; Chapter III, Section 9; and Chapter XIV, Section 9.

³² See NOM Rules Chapter VIII.

³³ See Securities Exchange Act No. 56881 (December 3, 2007), 72 FR 69276 (December 7, 2007) (SR-Phlx-2007-72) (approval order regarding delisting equity options classes where average daily volume is less than 20 contracts). Other options exchanges have similar delisting provisions. See Securities Exchange Act Release Nos. 55154 (January 23, 2007), 72 FR 4743 (February 1, 2007) (SR-CBOE-2006-92) (delisting equity options classes where ADV is less than 20 contracts); and 55161 (January 24, 2007), 72 FR 4754 (February 1, 2007) (SR-ISE-2006-62) (delisting equity options classes where ADV is less than 20 contracts).

³⁴ See Securities Exchange Act No. 56881 (December 3, 2007), 72 FR 69276 (December 7, 2007) (SR-Phlx-2007-72).

Electronic Comments

- Use the Commission's Internet comment form (<http://www.sec.gov/rules/sro.shtml>); or
- Send an e-mail to rule-comments@sec.gov. Please include File Number SR-NASDAQ-2009-046 on the subject line.

Paper Comments

- Send paper comments in triplicate to Elizabeth M. Murphy, Secretary, Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549-1090.

All submissions should refer to File Number SR-NASDAQ-2009-046. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (<http://www.sec.gov/rules/sro.shtml>). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room, 100 F Street, NE., Washington, DC 20549, on official business days between the hours of 10 a.m. and 3 p.m. Copies of such filing also will be available for inspection and copying at the principal office of the Nasdaq. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR-NASDAQ-2009-046 and should be submitted on or before June 11, 2009.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.⁴¹

Florence E. Harmon,
Deputy Secretary.

[FR Doc. E9-11807 Filed 5-20-09; 8:45 am]

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-59917; File Nos. SR-DTC-2009-07, SR-FICC-2009-06, SR-NSCC-2009-03]

Self-Regulatory Organizations; The Depository Trust Company, Fixed Income Clearing Corporation, and National Securities Clearing Corporation; Notice of Filing and Immediate Effectiveness of Proposed Rule Changes Relating to Economic Sanctions and Embargo Programs Administered and Enforced by the Office of Foreign Assets Control

May 14, 2009.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),¹ notice is hereby given that on March 31, 2009, April 1, 2009, and April 22, 2009, the Fixed Income Clearing Corporation ("FICC"), the National Securities Clearing Corporation ("NSCC"), and The Depository Trust Company ("DTC"), respectively, filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Item I, II, and III, below, which Items have been prepared primarily by FICC, NSCC, and DTC (collectively, "Clearing Agencies"). The Clearing Agencies filed the proposed rule changes pursuant to Section 19(b)(3)(A)(iii) of the Act² and Rule 19b-4(f)(4) thereunder³ so that the proposals were effective upon filing with the Commission. The Commission is publishing this notice to solicit comments on the proposed rule changes from interested persons.

I. Self-Regulatory Organizations' Statement of Terms of Substance of the Proposed Rule Changes

The Clearing Agencies are adding language to their rules to make clear that the Clearing Agencies' participants, members, and pledgees (collectively, "members") must comply with the U.S. Department of the Treasury's Office of Foreign Asset Control's ("OFAC") sanctions and embargo programs and as part of their compliance with OFAC sanctions regulations must agree not to conduct any transaction or activity through the Clearing Agencies that violate OFAC regulations.

II. Self-Regulatory Organizations' Statement of Purpose of, and Statutory Basis for, the Proposed Rule Changes

In their filing with the Commission, the Clearing Agencies included

statements concerning the purpose of and basis for the proposed rule changes and discussed any comments they received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Clearing Agencies have prepared summaries, set forth in Section A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organizations' Statement of Purpose of, and Statutory Basis for, the Proposed Rule Changes

The purpose of these rule filings is to add new language to the Clearing Agencies' rules⁴ to clarify that the Clearing Agencies' members must comply with OFAC's sanctions and embargo programs and as part of their compliance with OFAC sanctions regulations must agree not to conduct any transaction or activity through the Clearing Agencies that violate such OFAC regulations.

In addition, members subject to United States jurisdiction must confirm to the Clearing Agencies that it has implemented a risk-based OFAC compliance program. The Clearing Agencies will require each member to execute a "Confirmation of an OFAC Program" letter ("OFAC Letter"), which will serve to confirm that the member has "implemented a risk-based program reasonably designed to comply with applicable OFAC sanctions regulations."⁵ Each U.S. member's OFAC Compliance Officer, Chief Compliance Officer, or other individual with responsibility for managing the OFAC compliance program will be required to submit the OFAC Letter at least every two years.⁶ Failure to properly submit the OFAC Letter to the Clearing Agencies will result in a \$5,000 fine.

The Clearing Agencies state that the proposed rule changes are consistent with the requirements of Section 17A of the Act⁷ and the rules and regulations thereunder because such changes will enhance the Clearing Agencies' ability to comply with applicable laws thereby reducing risks and associated costs to the Clearing Agencies and their participants.

⁴ FICC is amending Government Securities Division Rule 3, Section 9, and Mortgage-Backed Securities Division Article III, Rule 1, Section 7. NSCC is amending Rule 2, Section 4. DTC is amending Rule 2, Section 8.

⁵ The OFAC Letter is not intended to reallocate legal liability related to the sanctions administered and enforced by OFAC.

⁶ The form of the OFAC Letter is attached to each of the clearing agencies' rule filings with the Commission.

⁷ 15 U.S.C. 78q-1.

¹ 15 U.S.C. 78s(b)(1).

² 15 U.S.C. 78s(b)(3)(A)(iii).

³ 17 CFR 240.19b-4(f)(4).

⁴¹ 17 CFR 200.30-3(a)(12).

B. Self-Regulatory Organizations' Statement on Burden on Competition

The Clearing Agencies do not believe that the proposed rule changes will have any impact on or impose any burden on competition.

C. Self-Regulatory Organizations' Statement on Comments on the Proposed Rule Changes Received From Members, Participants, or Others

The Clearing Agencies have not solicited or received written comments relating to the proposed rule changes. The Clearing Agencies will notify the Commission of any written comments they receive.

III. Date of Effectiveness of the Proposed Rule Changes and Timing for Commission Action

The foregoing rule changes have become effective upon filing pursuant to Section 19(b)(3)(A)(iii) of the Act⁸ and Rule 19b-4(f)(4)⁹ thereunder because each of the proposed rule changes effects a change in an existing service of one of the Clearing Agencies that (i) does not adversely affect the safeguarding of securities or funds in the custody or control of the Clearing Agencies or for which it is responsible and (ii) does not significantly affect the respective rights of the clearing agencies or persons using the service. At any time within sixty days of the filing of such rule changes, the Commission may summarily abrogate such rule changes 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 changes are 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-FICC-2009-06, SR-NSCC-2009-03, or SR-DTC-2009-07 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 No. SR-FICC-2009-06, SR-NSCC-2009-03, or DTC-2009-07. At least one of these file numbers should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (<http://www.sec.gov/rules/sro.shtml>). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section, 100 F Street, NE., Washington, DC 20549, on official business days between the hours of 10 a.m. and 3 p.m. Copies of such filings also will be available for inspection and copying at FICC's, NSCC's, and DTC's principal office and on FICC's, NSCC's, and DTC's Web sites, respectively at <http://ficc.com/gov/gov.docs.jsp?NS-query=#rf>, http://www.dtcc.com/legal/rule_filings/nsc/2009.php, and <http://www.dtc.org/impNtc/mor/index.html>. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File No. SR-FICC-2009-06, SR-NSCC-2009-03, or DTC-2009-07 and should be submitted on or before June 11, 2009.

For the Commission by the Division of Trading and Markets, pursuant to delegated authority.¹⁰

Florence E. Harmon,

Deputy Secretary.

[FR Doc. E9-11808 Filed 5-20-09; 8:45 am]

BILLING CODE 8010-01-P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-59918; File No. SR-BX-2009-024]

Self-Regulatory Organizations; NASDAQ OMX BX, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Making Clerical Corrections of the Rules of the Boston Options Exchange Facility

May 14, 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 May 7, 2009, NASDAQ OMX BX, Inc. (the "Exchange") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the self-regulatory organization. The Exchange filed the proposed rule change pursuant to Section 19(b)(3)(A)(i) 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 from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to amend the Rules of the Boston Options Exchange Group, LLC ("BOX") to make clerical corrections to Chapter V, Section 18 of the BOX Rules. The Exchange shall implement this rule proposal immediately. The text of the proposed rule change is available from the principal office of the Exchange, at the Commission's Public Reference Room and also on the Exchange's Internet Web site at <http://nasdaqomxbx.cchwallstreet.com/NASDAQOMXBX/Filings/>.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The self-regulatory organization has

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ 15 U.S.C. 78s(b)(3)(A)(i).

⁴ 17 CFR 240.19b-4(f)(3).

⁸ 15 U.S.C. 78s(b)(3)(A)(iii).

⁹ 17 CFR 240.19b-4(f)(4).

¹⁰ 17 CFR 200.30-3(a)(12).

prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange proposes to make clerical corrections to the rule text of Chapter V, Section 18 of the BOX Rules and the supplementary material thereto. These changes had been previously approved by the Commission.⁵

Subsequent to the Commission's approval of the amendments to Chapter V, Section 18 of the BOX Rules and the supplementary material thereto, the Commission approved, further amendments to Chapter V, Section 18 of the BOX Rules and the supplementary material thereto.⁶ The later amendments are currently reflected in the BOX Rules. The Exchange proposes to make clerical corrections to Supplementary Material .03, as originally proposed, and renumber current Supplementary Material .03 as Supplementary Material .04.⁷

2. Basis

The Exchange believes that the proposal is consistent with the requirements of Section 6(b) of the Act,⁸ in general, and Section 6(b)(5) of the Act,⁹ in particular, in that it is designed to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in facilitating transactions in securities, to prevent fraudulent and manipulative acts, to remove impediments to and perfect the mechanism of a free and open market and a national market system and, in general, to protect investors and the public interest. The proposed rule change will allow the

⁵ See Securities Exchange Act Release No. 55415 (March 7, 2007), 72 FR 11411 (March 13, 2007) (SR-BSE-2006-03).

⁶ In SR-BSE-2006-56, the Commission, among other things, approved the current Supplementary Material .03 to Chapter V, Section 18 of the BOX Rules. If Supplementary Material .03, previously approved in SR-BSE-2006-03, was reflected in the BOX Rules at the time when SR-BSE-2006-56 was ultimately approved, then current Supplementary Material .03 should have been included within Section 18 as Supplementary Material .04. See Securities Exchange Act Release No. 56186 (August 2, 2007), 72 FR 44593 (August 8, 2007) (SR-BSE-2006-56).

⁷ The insertion of the clerical corrections to the Supplementary Material as .03 and renumbering of current Supplementary Material .03 as Supplementary Material .04 will not affect the meaning, interpretation or function of Chapter V, Section 18 of the BOX Rules or any other sections of the BOX Rules.

⁸ 15 U.S.C. 78f(b).

⁹ 15 U.S.C. 78f(b)(5).

Exchange to properly reflect the appropriate approved text in the BOX Rules.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

The Exchange has neither solicited nor received comments on the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Pursuant to Section 19(b)(3)(A) of the Act¹⁰ and Rule 19b-4(f)(3) thereunder,¹¹ the Exchange has designated this proposal as one that is concerned solely with the administration of the self-regulatory organization. Accordingly, the Exchange believes that its proposal should become immediately effective. At any time within 60 days of the filing of the proposed rule change, the Commission may summarily abrogate the rule change if it appears to the Commission that the action is necessary or appropriate in the public interest, for the protection of investors, or would otherwise further the purposes of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (<http://www.sec.gov/rules/sro.shtml>); or
- Send an e-mail to rule-comments@sec.gov. Please include File Number SR-BX-2009-024 on the subject line.

Paper Comments

- Send paper comments in triplicate to Elizabeth M. Murphy, Secretary, Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549-1090.

All submissions should refer to File Number SR-BX-2009-024. This file

¹⁰ 15 U.S.C. 78s(b)(3)(A).

¹¹ 17 C.F.R. 210.19b-4(f)(3) [sic].

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-BX-2009-024 and should be submitted on or before June 11, 2009.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.¹²

Florence E. Harmon,

Deputy Secretary.

[FR Doc. E9-11809 Filed 5-20-09; 8:45 am]

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-59920; File No. SR-CBOE-2009-029]

Self-Regulatory Organizations; Chicago Board Options Exchange, Incorporated; Notice of Filing of a Proposed Rule Change To Permanently Establish the Quarterly Option Series Pilot Program

May 14, 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 May 7, 2009, the Chicago Board Options Exchange, Incorporated (the "Exchange")

¹² 17 CFR 200.30-3(a)(12).

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

or "CBOE") filed with the Securities and Exchange Commission (the "Commission") the proposed rule change, as described in Items I, II, and III below, which Items have been prepared by the Exchange. The 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 is proposing to make permanent its Quarterly Option Series pilot program ("QOS Program"). The text of the proposed rule change is available on the Exchange's Web site (<http://www.cboe.org/Legal>), at the Office of the Secretary, CBOE and at the Commission.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of those statements may be examined at the places specified in Item IV below. 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 the Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange is proposing to make the QOS Program permanent. On July 7, 2006, the Exchange filed with the Commission SR-CBOE-2006-65, which was effective on filing and established the QOS Program.³ The QOS Program allows CBOE to list and trade Quarterly Option Series, which expire at the close of business on the last business day or a calendar quarter. Under the QOS Program, CBOE may select up to five (5) currently listed exchange traded fund ("ETF") or index option classes on which Quarterly Option Series may be

³ See Securities Exchange Act Release No. 54123 (July 11, 2006), 71 FR 40558, (July 17, 2006) (SR-CBOE-2006-65). The QOS Program has since been extended and is currently scheduled to expire on July 10, 2009. See Securities Exchange Act Release Nos. 56035 (July 10, 2007), 72 FR 38851, (July 16, 2007) (SR-CBOE-2007-70) (immediately effective rule change extending the QOS Program through July 10, 2008) and 58018 (June 25, 2008), 73 FR 38010 (July 2, 2008) (SR-CBOE-2008-62) (immediately effective rule change extending the QOS Program through July 10, 2009).

opened. In addition, CBOE may also list Quarterly Option Series on any options classes that are selected by other securities exchanges that employ a similar pilot program under their respective rules.

The Exchange may list series that expire at the end of the next consecutive four (4) calendar quarters, as well as the fourth quarter of the next calendar year. For example, if the Exchange is trading Quarterly Options Series in the month of May 2009, it may list series that expire at the end of the second, third, and fourth quarters of 2009, as well as the first and fourth quarters of 2010. Following the second quarter 2009 expiration, the Exchange could add series that expire at the end of the second quarter of 2010.

Quarterly Option Series are P.M. settled.

Quarterly Option Series in ETF Options

If an ETF option is selected for participation in the QOS Program, the strike price of each Quarterly Option Series is fixed at a price per share, with at least two strike prices above and two strike prices below the approximate value of the underlying security at about the time the Quarterly Options Series is opened for trading on the Exchange. CBOE shall list strikes prices for a Quarterly Option series that are within \$5 from the closing price of the underlying on the preceding day.

The Exchange may open for trading additional Quarterly Options Series of the same class when the Exchange deems it necessary to maintain an orderly market, to meet customer demand or when the market price of the underlying security moves substantially from the initial exercise price or prices. To the extent that any additional strike prices are listed by the Exchange, such additional strike prices shall be within thirty percent (30%) above or below the closing price of the underlying ETF (or "Units" as defined in Rule 5.3.06) on the preceding day.⁴ The Exchange may also open additional strike prices of Quarterly Option Series in ETF options that are more than 30% above or below the current price of the underlying ETF provided that demonstrated customer interest exists for such series, as expressed by institutional, corporate or individual customers or their brokers. Market-Makers trading for their own account shall not be considered when determining customer interest under this provision. The opening of the new

⁴ See Securities Exchange Act Release No. 57410 (March 3, 2008), 73 FR 12483 (March 7, 2008) (SR-CBOE-2007-96) (amended QOS Program to permit the listing of additional Quarterly Option Series in ETF options).

Quarterly Options Series shall not affect the series of options of the same class previously opened. In addition to the initial listed series, the Exchange may list up to sixty (60) additional series per expiration month for each Quarterly Options Series in ETF options.

The interval between strike prices on Quarterly Options Series shall be the same as the interval for strike prices for series in that same options class that expire in accordance with the normal monthly expiration cycle.

The Exchange has adopted a delisting policy with respect to QOS in ETF options.⁵ On a monthly basis, the Exchange reviews series that are outside a range of five (5) strikes above and five (5) strikes below the current price of the underlying ETF, and delists series with no open interest in both the put and the call series having a: (i) Strike higher than the highest strike price with open interest in the put and/or call series for a given expiration month; and (ii) strike lower than the lowest strike price with open interest in the put and/or call series for a given expiration month.

Notwithstanding the delisting policy, customer requests to add strikes and/or maintain strikes in QOS in ETF options in series eligible for delisting shall be granted.

Further, in connection with the delisting policy, if the Exchange identifies series for delisting, the Exchange shall notify other options exchanges with similar delisting policies regarding eligible series for listing, and shall work with such other exchanges to develop a uniform list of series to be delisted, so as to ensure uniform series delisting of multiply listed options classes.

During the last quarter of 2008 (and for the new expiration month added after December Quarterly Option Series expiration), the Exchange was permitted to list up to one hundred (100) additional series per expiration month for each Quarterly Options Series in ETF options.⁶

Quarterly Option Series in Index Options

If an index option is selected for participation in the QOS Program, the strike price of each Quarterly Option Series will be fixed at a price per share, with at least two, but no more than five, strike prices above and at least two, but no more than five, strike prices below the value of the underlying index at

⁵ See *id.*

⁶ See Securities Exchange Act Release No. 58887 (October 30, 2008), 73 FR 66083 (November 6, 2008) (SR-CBOE-2008-111) (temporary increase to the number of additional Quarterly Option Series in ETF options).

about the time that a Quarterly Options Series is opened for trading on the Exchange. The Exchange shall list strike prices for Quarterly Options Series that are reasonably related to the current index value of the underlying index to which such series relates at about the time such series of options is first opened for trading on the Exchange. The term "reasonably related to the current index value of the underlying index" means that the exercise price is within thirty percent (30%) of the current index value.

The Exchange may open for trading additional Quarterly Options Series of the same class when the Exchange deems it necessary to maintain an orderly market, to meet customer demand or when the market price of the underlying security moves substantially from the initial exercise price or prices. The Exchange may also open for trading additional Quarterly Options Series that are more than thirty percent (30%) of the current index value, provided that demonstrated customer interest exists for such series, as expressed by institutional, corporate, or individual customers or their brokers. Market-Makers trading for their own account shall not be considered when determining customer interest under this provision.

The Exchange may open additional strike prices of a Quarterly Option Series that are above the value of the underlying index provided that the total number of strike prices above the value of the underlying index is no greater than five. The Exchange may open additional strike prices of a Quarterly Option Series that are below the value of the underlying index provided that the total number of strike prices below the value of the underlying index is no greater than five. The opening of any new Quarterly Option Series shall not affect the series of options of the same class previously opened.

By definition, Quarterly Option Series on an option class can never expire in the same week in which monthly option series on the same class expires. The same, however, is not the case with regards to Short Term Option Series. Quarterly Option Series and Short Term Option Series on the same options class may expire concurrently. However, to avoid any confusion in the market place, the Exchange will not list a Short Term Option Series on an options class whose expiration coincides with that of a Quarterly Option Series on the same options class. In other words, the Exchange will not list a Short Term Options Series on an ETF or an index if a Quarterly Option Series on that ETF or index were to expire on a Friday, the

only day of the week during which both Quarterly Option Series and a P.M.-settled Short Term Option Series can potentially expire concurrently.

There being one exception to this rule. The Exchange may list a P.M.-settled Quarterly Option Series on an options class concurrent with an A.M.-settled Short Term Options Series on that same options class, both of which may expire on a Friday. In other words, the Exchange may list a P.M.-settled Quarterly Option Series on an ETF on an index concurrent with an A.M.-settled Short Term Option Series on that ETF or index and both of which expire on a Friday. The Exchange believes that the concurrent listing of an A.M.-settled Short Term Option Series and a P.M.-settled Quarterly Option Series on the same underlying ETF or index will provide investors with yet another hedging mechanism. Finally, the interval between strike prices on Quarterly Option Series shall be the same as the interval for strike prices for series in the same options class that expires in accordance with the normal monthly expiration cycles.

The Exchange has selected the following five ETF option classes to participate in the QOS Program: DIAMONDS Trust (DIA) options, Standard and Poor's Depository Receipts/SPDRs (SPY) options, iShares Russell 2000 Index Fund (IWM) options, PowerShares QQQ Trust (QQQQ) options and Energy Select SPDR (XLE) options. CBOE believes the QOS Program has been successful and well received by its members and the investing public for the nearly three years that it has been in operation as a pilot.

CBOE is now proposing to make the QOS Program permanent. In support of approving the QOS Program on a permanent basis, the Exchange has submitted to the Commission a Pilot Program Report ("Report") detailing the Exchange's experience with the QOS Program. Specifically, the Report contains data and written analysis regarding the five ETF option classes included in the QOS Program. The Report was submitted under separate cover and seeks confidential treatment under the Freedom of Information Act.

The Exchange believes there is sufficient investor interest and demand in the QOS Program to warrant its permanent approval. The Exchange believes that, for the nearly three years that it has been in operation, the QOS Program has provided investors with additional means of managing their risk exposures and carrying out their investment objectives. Furthermore, the Exchange has not experienced any

capacity-related problems with respect to Quarterly Option Series. The Exchange also represents that it has the necessary system capacity to continue to support the option series listed under the QOS Program.

In seeking permanent approval, the Exchange is taking this opportunity to update the expiration examples provided in Rules 5.5, and 24.9. The revisions do not change the substance of the QOS Program.

2. Statutory Basis

The Exchange believes the proposed rule change is consistent with the Act⁷ and the rules and regulations thereunder and, in particular, the requirements of Section 6(b) of the Act.⁸ Specifically, the Exchange believes the proposed rule change is consistent with the Section 6(b)(5)⁹ requirements that the rules of an exchange be designed to promote just and equitable principles of trade, to prevent fraudulent and manipulative acts, to remove impediments to and to perfect the mechanism for a free and open market and a national market system, and, in general, to protect investors and the public interest. The Exchange believes that permanent approval of the QOS Program will result in an ongoing benefit to investors, and will continue to allow them additional means to manage their risk exposures and carry out their investment objectives.

B. Self-Regulatory Organization's Statement on Burden on Competition

CBOE does not believe that the proposed rule change will impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

The Exchange neither solicited nor received comments on the proposal.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory

⁷ 15 U.S.C. 78s(b)(1).

⁸ 15 U.S.C. 78f(b).

⁹ 15 U.S.C. 78f(b)(5).

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-CBOE-2009-029 on the subject line.

Paper Comments

- Send paper comments in triplicate to Elizabeth M. Murphy, Secretary, Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549-1090.

All submissions should refer to File Number SR-CBOE-2009-029. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (<http://www.sec.gov/rules/sro.shtml>). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room, 100 F Street, NE., Washington, DC 20549, on official business days between the hours of 10 a.m. and 3 p.m. Copies of such filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR-CBOE-2009-029 and

should be submitted on or before June 11, 2009.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.¹⁰

Florence E. Harmon,

Deputy Secretary.

[FR Doc. E9-11811 Filed 5-20-09; 8:45 am]

BILLING CODE 8010-01-P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-59921; File No. SR-FINRA-2009-028]

Self-Regulatory Organizations; Financial Industry Regulatory Authority, Inc.; Notice of Filing of Proposed Rule Change To Adopt FINRA Rule 2231 (Customer Account Statements) in the Consolidated FINRA Rulebook

May 14, 2009.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("SEA" or "Act")¹ and Rule 19b-4 thereunder,² notice is hereby given that on April 22, 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 Rule 2340 (Customer Account Statements) with certain changes as FINRA Rule 2231 in the new consolidated FINRA rulebook ("Consolidated FINRA Rulebook").³ The proposed rule change would also delete

¹⁰ 17 CFR 200.30-3(a)(12).

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).

NYSE Rule 409⁴ (Statements of Accounts of Customers), except for paragraph (f), and certain of its related interpretations.

The text of the proposed rule change is available at FINRA, the Commission's Public Reference Room, and <http://www.finra.org>.

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, FINRA is proposing to adopt NASD Rule 2340 (Customer Account Statements) with certain changes as FINRA Rule 2231 in the Consolidated FINRA Rulebook. The proposed rule change would also delete: (1) NYSE Rule 409 (Statements of Accounts to Customers), except for paragraph (f) and its related supplementary material; and (2) NYSE Rule Interpretations 409(a) and 409(b), except for paragraphs 409(a)/01 and 409(a)/03, as the rule and its related interpretations are, in main part, duplicative of NASD Rule 2340. However, as further described herein, the proposed rule change would incorporate certain provisions of NYSE Rule 409 and its interpretations into new FINRA Rule 2231.

PROPOSED FINRA RULE 2231 (CUSTOMER ACCOUNT STATEMENTS)

Frequency of Delivery of Account Statements and Disclosures

NASD Rule 2340 generally requires each general securities member to send customers at least once each calendar quarter account statements containing a description of any securities positions, money balances or account activity in the accounts since the prior account statements were sent. NYSE Rule 409(a)

⁴ For convenience, the proposed rule change refers to Incorporated NYSE Rules as NYSE Rules.

similarly requires member organizations to send customer account statements at least once each calendar quarter.

In contrast, proposed FINRA Rule 2231(a) would impose an additional requirement that each general securities member send account statements at least once every calendar month to each customer whose account had account activity during the period since the last statement was sent to the customer, and continue to require that a statement be sent at least once every calendar quarter to each customer whose account had a security position or money balance during the period since the last statement was sent to the customer.

Proposed FINRA Rule 2231 would adopt the definitions of the terms “general securities member” and “account activity” set forth in NASD Rule 2340. A “general securities member” would be any member that conducts a general securities business and is required to calculate its net capital pursuant to the provisions of SEA Rule 15c3-1(a).⁵ However, as is the case under NASD Rule 2340 currently, a member that does not carry customer accounts and does not hold customer funds or securities would continue to be exempt from the provisions of FINRA Rule 2231. “Account activity” would continue to be defined broadly and would include, but not be limited to, purchases, sales, interest credits or debits, charges or credits, dividend payments, transfer activity, securities receipts or deliveries and/or journal entries relating to securities or funds in the possession or control of the member.

FINRA believes the proposed amendment better reflects current industry practice as a significant number of members already send customers monthly account statements through their clearing firms. FINRA believes that receipt of monthly statements will allow customers to review their statements in a timely manner for errors, possibly identify theft or other potential problems.

Proposed FINRA Rule 2231(a) would also retain the requirement in NASD Rule 2340(a) (and NYSE Rule 409(e)) to include on customer account statements a statement advising customers to report promptly any inaccuracy or discrepancy in their account to the introducing firm and clearing firm (where there are two different firms) and to re-confirm any oral communications in writing to further protect the customer’s rights, including rights under the Securities Investor Protection Act.

DVP/RVP Securities on Account Statements

Proposed FINRA Rule 2231(b) would incorporate without substantive change the provisions in NASD Rule 2340(b) (and NYSE Rule 409(a)) providing that account statements do not need to be sent to a customer if the customer’s account is carried solely for execution on a Delivery versus Payment/Receive versus Payment (“DVP/RVP”) basis, subject to certain specified conditions. The rule would continue to provide that it does not qualify or condition the obligations of members under SEA Rule 15c3-2 concerning quarterly notices of free credit balances on statements.⁶

Value of DPP/REIT Securities on Account Statements

Proposed FINRA Rule 2231(c) would incorporate without substantive change the provisions in NASD Rule 2340(c) regarding the disclosure of values for unlisted or illiquid direct participation program (“DPP”) and real estate investment trust (“REIT”) securities on customer account statements. The proposed rule would require that estimated values for DPP/REIT securities must be disclosed under certain circumstances and describe how such estimated values must be determined. NYSE Rule 409 does not include the requirement regarding disclosure of values for DPPs and REITs.

Definitions

Proposed FINRA Rule 2231(d) would incorporate without substantive change the definitions of significant terms used in the rule, such as account activity, general securities member, direct participation program, real estate investment trust, annual report and DVP/RVP account (this last term is also defined in NYSE Rule 409(a)).

Exemptions

Proposed FINRA Rule 2231(e) would incorporate without substantive change the provision in NASD Rule 2340(e) authorizing FINRA to exempt members from the provisions of the rule pursuant to the Rule 9600 Series.

PROPOSED SUPPLEMENTARY MATERIALS TO FINRA RULE 2231

FINRA is proposing to adopt the following provisions as supplementary materials to FINRA Rule 2231. As further described below, these provisions are adopted largely from NYSE Rule 409 and its related interpretations.

Proposed Supplementary Material .01 (Transmission of Customer Account Statements to Other Persons or Entities)

This provision, which is based in part on NYSE Rule 409(b), would expressly require a firm to obtain written instructions from the customer in order to send/deliver customer statements, confirmations or other communications to other persons or entities.

Proposed Supplementary Material .02 (Use of Electronic Media To Satisfy Delivery Obligations)

This provision would allow a firm to satisfy its delivery obligations under the rule by using electronic media, subject to compliance with standards established by the SEC on the use of electronic media for delivery purposes. This provision is consistent with prior guidance issued by FINRA on the use of electronic media to satisfy delivery obligations.⁷

Proposed Supplementary Material .03 (Information To Be Disclosed on Statement)

This provision, which is based on NYSE Rule Interpretation 409(a)/02, would require the following items to be prominently disclosed on the front of the statement: (i) The identity of the introducing and clearing firm (if different) and their respective contact information for customer service (though the identity of the clearing firm and its contact information may appear on the back of the statement provided such information is in “bold” or “highlighted” letters); (ii) that the clearing firm is a member of SIPC; and (iii) the opening and closing balances for the account.

Proposed Supplementary Material .04 (Assets Externally Held and Included on Statements Solely as a Service to Customers)

This provision, which is based on NYSE Rule Interpretation 409(a)/04, would provide that account statements must clearly indicate those instances where certain assets are externally held but included on the statement as a courtesy.

Proposed Supplementary Material .05 (Use of Logos, Trademarks, etc.)

This provision, which is based on NYSE Rule Interpretation 409(a)/05, would regulate the use of trademarks and logos of other persons on account statements.

⁵ 17 CFR 240.15c3-1(a).

⁶ 17 CFR 240.15c3-2.

⁷ See NASD Notice to Members 98-3 (January 1998).

Proposed Supplementary Material .06
(Use of Summary Statements)

This provision, which is based on NYSE Rule Interpretation 409(a)/06, would regulate the use of aggregated account statements for a customer who has accounts with other persons.

ELIMINATED PROVISIONS OF NYSE
RULE 409

FINRA is proposing to delete NYSE Rule 409 in its entirety (except for NYSE Rule 409(f) which will be reviewed as part of a later phase of the rulebook consolidation process).⁸ The following describes certain provisions that are found in NYSE Rule 409 and its related interpretations that would not be adopted in proposed FINRA Rule 2231:

Duplicate Account Statements

NYSE Rule 409(b) contains provisions prohibiting, without NYSE's consent, the delivery of statements, confirmations or other communications to non-member customers (1) in care of a person holding power of attorney over the customer's account unless the customer has provided written instructions to send such confirmations, statements or communications to such person, or duplicate copies are sent to the customer at some other address designated in writing; or (2) at the address of any member or in care of any partner, stockholder who is actively engaged in the member's business or employee of the member.

NYSE Rule 409(g) also provides that members carrying margin accounts for customers should send duplicate copies of monthly statements of guaranteed accounts to the respective guarantors unless such guarantors have specifically provided in writing that they do not want such statements sent to them.

NASD Rule 2340 does not contain a counterpart to either provision. As noted above, proposed supplementary material .01 to proposed FINRA Rule 2231 is based in part on NYSE Rule 409(b), but eliminates the reference to non-member customers and requires that a member have written instructions from a customer to send communications relating to the customer's account to any third parties designated by the customer. FINRA is

proposing to eliminate NYSE Rule 409(g) because it believes that the provision generally advising members to send duplicate account statements to guarantors, absent contrary instructions from the guarantor, need not be incorporated into proposed FINRA Rule 2231, and the provision's purpose is better addressed by the general requirement described above to obtain written instructions from the customer to send customer statements to any third parties.

Legends on Account Statements

NYSE Rule 409(e)(1) requires the inclusion of a legend on all account statements that notifies a customer that the firm's financial statements are available for inspection at its offices or a copy can be mailed upon request. FINRA is proposing to eliminate this requirement in light of existing requirements under SEA Rule 17a-5(c),⁹ which generally requires broker-dealers that carry customer accounts to provide statements of the broker-dealer's financial condition to their customers, and NASD Rule 2270 (Disclosure of Financial Condition to Customers), which requires a member to make information relative to a member's financial condition available to inspection by customers, upon request. FINRA will consider NASD Rule 2270 as part of a later phase of the rulebook consolidation process.

NYSE Supplementary Material and Interpretations To Be Deleted

FINRA is proposing to eliminate NYSE Rule Interpretation 409(b)/01 (Standards for Holding Mail for Foreign Customers), which provides guidelines for holding confirmations, statements and other communications for foreign customers. FINRA is addressing members' obligations with respect to customer mail as part of the consolidated FINRA rules governing supervision and the related proposal to adopt FINRA Rule 3150 (Holding of Customer Mail).¹⁰

TECHNICAL CHANGES

In addition, the proposal reflects certain technical, non-substantive

⁹17 CFR 240.17a-5(c).

¹⁰ See *Regulatory Notice* 08-24 (May 2008). FINRA is not proposing to eliminate the following NYSE Rule Interpretations as part of this rule filing: 409(a)/01 (Applicability), which provides that the member firm carrying the account is responsible for compliance with the rule unless responsibility has been allocated to a non-member broker-dealer carrying organization pursuant to an approved carrying agreement; and 409(a)/03 (Use of Third Party Agents), which regulates the use of third party agents to prepare and/or transmit statements. These interpretations will be reviewed as part of a later phase of the rulebook consolidation process.

amendments to NASD Rule 2340 to change all references to "NASD" to "FINRA," and to change all references to "SEC" Rules to "SEA" Rules.

As noted above, 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,¹¹ 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 will provide customers with critical information regarding their accounts and will allow them to review their statements in a timely manner, while also clarifying and streamlining the customer account rules for adoption as FINRA Rules in the Consolidated FINRA Rulebook.

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

(B) Instructe 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

⁸ NYSE Rule 409(f) states "[c]onfirmations of all transactions (including those made "over-the-counter" and on other exchanges) in securities admitted to dealings on the Exchange, sent by members or member organizations to their customers, shall clearly set forth with a suitable legend the settlement date of each transaction. This requirement also applies to confirmations or reports from an organization to a correspondent, but does not apply to reports made by floor brokers to the member organization from whom the orders were received. (See SEC Rule 10b-10)."

¹¹ 15 U.S.C. 78o-3(b)(6).

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-2009-028 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-2009-028. 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-2009-028 and should be submitted on or before June 11, 2009.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.¹²

Florence E. Harmon,

Deputy Secretary.

[FR Doc. E9-11812 Filed 5-20-09; 8:45 am]

BILLING CODE 8010-01-P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-59919; File No. SR-BX-2009-025]

Self-Regulatory Organizations; NASDAQ OMX BX, Inc.; Notice of Filing of Proposed Rule Change To Retroactively Amend the Fee Schedule To Clarify and Correct References to the Volume Discount Given to Market Makers

May 14, 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 May 8, 2009, NASDAQ OMX BX, Inc. (the "Exchange") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The purpose of the proposed rule change is to amend the Fee Schedule of the Boston Options Exchange Group, LLC ("BOX") on a retroactive basis to clarify and correct references relating to the volume discount ("Volume Discount") given to Market Makers. The text of the proposed rule change is available from the principal office of the Exchange, at the Commission's Public Reference Room and also on the Exchange's Internet Web site at <http://nasdaqomxbx.cchwallstreet.com/NASDAQOMXBX/Filings/>.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received

on the proposed rule change. The text of those statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant parts of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange proposes to amend on a retroactive basis Section 3 (Market Maker Trading Fees) of the BOX Fee Schedule.³ BOX applies a Volume Discount to the fees charged to BOX Market Makers who engage in particularly active trading volume on BOX. The proposed changes will clarify and correct the Fee Schedule to reflect that trading volume in options classes included within the Liquidity Make or Take Pricing Structure ("Make or Take"), as set forth in Section 7 of the BOX Fee Schedule, is excluded when determining a Market Maker's Volume Discount.⁴ The text explicitly stating this was inadvertently removed from the BOX Fee Schedule in a prior filing, SR-BSE-2007-52.⁵

The Exchange requests that the current proposed changes be made effective retroactive to November 30, 2007, which is the date of filing and effectiveness of SR-BSE-2007-52. The Exchange believes that the proposed changes will eliminate any gap in the treatment of Make or Take volume when calculating the Volume Discount and is consistent with previous Commission action on similar matters pertaining to the allocation of exchange member fees and dues.⁶ Additionally, the Exchange

³ The BOX Fee Schedule can be found on the BOX Web site at <http://www.bostonoptions.com>.

⁴ Make or Take volume is excluded when determining a Market Maker's monthly trading volume for purposes of the Volume Discount and is not eligible to have a Volume Discount applied to it.

⁵ See Securities Exchange Act Release No. 56948 (December 12, 2007), 72 FR 72426 (December 20, 2007) (SR-BSE-2007-52).

⁶ See Securities Exchange Act Release No. 55549 (March 28, 2007), 72 FR 16837 (April 5, 2007) (SR-CHX-2007-02) (Order Granting Accelerated Approval of a Proposed Rule Change To Amend the CHX Fee Schedule on a Retroactive Basis To Clarify the Application of a Credit Against Specialist Fixed Fees). The approval order stated that the rule change clarified the application of a specialist fixed fee credit that the exchange was offering as an incentive for specialists and would reconcile the discrepancy between the manner in which the exchange intended to apply the credit and the description of the credit in a prior proposal. The order also stated that approval would clarify ambiguity about the application of the specialist fixed fee credit. The Commission believed that

¹² 17 CFR 200.30-3(a)(12).

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

believes that the inadvertent elimination of the language in question from the BOX Fee Schedule did not alter BOX Market Makers' understanding that Make or Take volume was excluded from the calculation of the Volume Discount.⁷

2. Statutory Basis

The Exchange believes that the proposal is consistent with the requirements of Section 6(b) of the Act,⁸ in general, and Section 6(b)(4) of the Act,⁹ in particular, in that it is designed to provide for the equitable allocation of reasonable dues, fees, and other charges among its members and issuers and other persons using its facilities. The proposed changes will result in clarification of the fees charged for trading activity on BOX. The Exchange believes that retroactive approval of the proposed rule change will clarify the BOX Fee Schedule and eliminate any concern of inequitable allocation of fees as between the Market Makers and other Options Participants during the retroactive period.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will result in any burden on competition that is not

accelerated approval would provide clarity without delay. See also Securities Exchange Act Release No. 57347 (February 19, 2008), 73 FR 10080 (February 25, 2008) (SR-NASDAQ-2007-100) (Order Approving Proposed Rule Change to Nasdaq Rule 7033 To Modify the Fees Charged for the Mutual Fund Quotation Service and To Correct Certain Errors in the Rule Manual). The Commission approved a Nasdaq proposal seeking retroactive approval for the implementation of previously approved Mutual Fund Quotation Service ("MFQS") fees which Nasdaq failed to transfer from the NASD rule to the corresponding Nasdaq rule when Nasdaq commenced operations as a national securities exchange, more than one and one half year earlier, on August 1, 2006. The Commission stated that such approval was appropriate as it corrected an omission in Nasdaq's rules. See also Securities Exchange Act Release No. 56240 (August 13, 2007), 72 FR 46527 (August 20, 2007) (SR-ISE-2007-49) (Order Approving Proposed Rule Change Relating to Fee Changes on a Retroactive Basis). The Commission stated that application of the amendments to ISE's Schedule of Fees on a retroactive basis, to a point in time approximately six months prior, were appropriate and aligned revenue collected from members with license costs charged to ISE.

⁷ See BOX Information Circular entitled "Amended BOX Fee Schedule—Expansion of 'Make or Take' and Elimination of Minimum Activity Charger (MAC)" that was distributed to Participants on November 28, 2007 which stated that the establishment of the Make or Take Credit set forth in the then proposed rule filing SR-BSE-2007-52 would not impact Volume Discounts. Specifically, the BOX Information Circular stated: "Current discounts based upon average daily volumes (ADV) of over 25,000 and 50,000 contracts will be maintained."

⁸ 15 U.S.C. 78f(b).

⁹ 15 U.S.C. 78f(b)(4).

necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

The Exchange has neither solicited nor received comments on the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

A. By order approve such proposed rule change, or

B. Institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (<http://www.sec.gov/rules/sro.shtml>); or
- Send an e-mail to rule-comments@sec.gov. Please include File Number SR-BX-2009-025 on the subject line.

Paper Comments

- Send paper comments in triplicate to Elizabeth M. Murphy, Secretary, Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549-1090.

All submissions should refer to File Number SR-BX-2009-025. 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-BX-2009-025 and should be submitted on or before June 11, 2009.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.¹⁰

Florence E. Harmon,

Deputy Secretary.

[FR Doc. E9-11810 Filed 5-20-09; 8:45 am]

BILLING CODE 8010-01-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 and a new collection.

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 shown below.

(OMB), Office of Management and Budget, Attn: Desk Officer for SSA, Fax: 202-395-6974, E-mail address: OIRA_Submission@omb.eop.gov.

¹⁰ 17 CFR 200.30-3(a)(12).

(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 we consider your comments, we must receive them no later than July 20, 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 we list above.

1. Disability Report—Adult—20 CFR 404.1512, 416.912—0960-0579. State Disability Determination Services (DDS) use the information collected by the SSA-3368 and its electronic versions to determine if an adult disability applicant's impairment(s) is severe and, if so, how the impairment(s) affects the applicant's ability to work. This

determination dictates whether the DDSs and SSA will find the applicant to be disabled. Therefore, the information the DDSs collect on this form is crucial in making disability determinations for all adult claimants filing for SSA disability benefits and/or Supplemental Security Income (SSI) payments. The respondents are applicants for Title II benefits and/or Title XVI payments.

Type of Request: Revision of an OMB-approved information collection.

Collection method	Number of respondents	Frequency of response	Average burden per response (hours)	Estimated annual burden (hours)
SSA-3368 (Paper Form)	22,950	1	1	22,950
Electronic Disability Collection System (EDCS)	2,238,826	1	1	2,238,826
i3368 (Internet)	319,994	1	1½	479,991
i3368PRO (Internet professional users-rollout only)	10,264	1	1½	15,396
Totals	2,592,034	.....	.....	2,757,163

2. Function Report Adult-Third Party—20 CFR 404.1512 & 416.912—0960-0635. Disability Determination Services (DDS) use the information from the SSA-3380-BK to determine eligibility for SSI and Social Security

Disability Insurance (SSDI) claims. The information is an evidentiary source DDS evaluators use to determine eligibility for SSI and SSDI claims. The respondents are third parties familiar with the functional limitations (or lack

thereof) of claimants who apply for SSI and SSDI benefits.

Type of Request: Revision of an OMB-approved information collection.

Respondent types	Number of respondents	Frequency of response	Average burden per response (minutes)	Estimated annual burden (hours)
Individuals	500,000	1	61	508,333
Private Sector	500,000	1	61	508,333
Total:	1,000,000	.....	.....	1,016,666

3. Function Report Adult—20 CFR 404.1512 & 416.912—0960-0681. State DDSs use Form SSA-3373-BK to collect information about a disability applicant's or recipient's impairment-related limitations and ability to function. The information is an evidentiary source DDS evaluators use to determine eligibility for SSI and SSDI claims. The respondents are Title II and Title XVI applicants (or current recipients undergoing redeterminations) for disability benefits.

Type of Request: Revision of an OMB-approved information collection.

Number of Respondents: 4,005,367.

Frequency of Response: 1.

Average Burden per Response: 61 minutes.

Estimated Annual Burden: 4,072,123 hours.

II. SSA has submitted the information collections we list below to OMB for clearance. Your comments on the information collections would be most useful if OMB and SSA receive them

within 30 days from the date of this publication. To be sure we consider your comments, we must receive them no later than June 22, 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 email address.

1. Request for Workers' Compensation/Public Disability Benefit Information—20 CFR 404.408(e)—0960-0098. SSA uses Form SSA-1709 to verify Worker's Compensation/Public Disability Benefits (WC/PDB). SSA uses the information to compute the correct reduction of disability insurance benefits. The claimant may be able to furnish adequate verification of the WC/PDB benefits by submitting a copy of his or her award notice, benefit check, etc. SSA considers the claimant the primary source of verification. If he or she provides the necessary evidence, we do not use the form. If the claimant cannot provide evidence, the other reliable

source of this information is the entity giving the benefits, its agent (such as an insurance carrier), or an administering public agency. The respondents are Federal, state, and local agencies administering WC/PDB, insurance carriers, and public or private self-insured companies.

Type of Request: Extension of an OMB-approved information collection.

Number of Respondents: 120,000.

Frequency of Response: 1.

Average Burden per Response: 15 minutes.

Estimated Annual Burden: 30,000 hours.

2. Prohibition of Payment of SSI Benefits to Fugitive Felons and Parole/ Probation Violators—20 CFR 416.708(o)—0960-0617. Section 1611(e)(4) of the Social Security Act precludes eligibility for SSI payments for certain fugitives and probation/parole violators. Regulations at 20 CFR 416.708(o) require individuals to report to SSA that he or she is fleeing to avoid

prosecution for a crime, fleeing to avoid custody or confinement after conviction of a crime, or violating a condition of probation or parole. SSA will use the information reported to deny eligibility or to suspend recipient's SSI payments. The respondents are SSI applicants/recipients or representative payees of SSI recipients who are reporting the applicant's/recipients' status as a fugitive felon or probation/parole violator.

Type of Request: Extension of an OMB-approved information collection.
Number of Respondents: 1,000.

Frequency of Response: 1.

Average Burden per Response: 1 minute.

Estimated Annual Burden: 17 hours.

Dated: May 14, 2009.

John Biles,

Reports Clearance Officer, Center for Reports Clearance, Social Security Administration.

[FR Doc. E9-11716 Filed 5-20-09; 8:45 am]

BILLING CODE 4191-02-P

DEPARTMENT OF STATE

[Public Notice 6624]

Bureau of Diplomatic Security, Office of Foreign Missions; 30-Day Notice of Proposed Information Collection: Forms DS-2003 & DS-2004, Notification of Appointment of Foreign Diplomatic Officer, Career Consular Officer, and Foreign Government Employee; Form DS-2005, Notification of Appointment of Honorary Consular Officer; Form DS-2006, Notification of Change—Identification Card Request; Form DS-2007, Notification of Dependents of Diplomatic, Consular and Foreign Government Employees (Continuation Sheet); Form DS-2008, Notice of Termination of Diplomatic, Consular, or Foreign Government Employment; Forms DS-98 and DS-99, Application for Diplomatic Exemption From Taxes On; Forms DS-100, DS-101, DS-102, & DS-104, Diplomatic Motor Vehicle Applications for: Vehicle Registration, Title, & Replacement Plates; Department of State Form DS-1504; Request for Customs Clearance of Merchandise; Form DS-1972, U.S. Department of State Driver License and Tax Exemption Card Application; Foreign Diplomatic Services Applications, OMB Collection Number 1405-0105

ACTION: Notice of request for public comment and submission to OMB of proposed collection of information.

SUMMARY: The Department of State has submitted the following information

collection request to the Office of Management and Budget (OMB) for approval in accordance with the Paperwork Reduction Act of 1995.

• *Title of Information Collection:* Notification of Appointment of Foreign Diplomatic Officer, Career Consular Officer, and Foreign Government Employee.

• *OMB Control Number:* 1405-0105.
• *Type of Request:* Revision of Currently Approved Collection.
• *Originating Office:* Diplomatic Security/Office of Foreign Missions (DS/OFM).

• *Form Numbers:* DS-2003, DS-2004, & e-2003.

• *Respondents:* Foreign government representatives assigned to the United States.

• *Estimated Number of Respondents:* 350 missions.

• *Estimated Number of Responses:* 11,154 responses (DS-2003: 800), (DS-2004: 1654), & (e-2003: 8,700).

• *Average Hours per Response:* 25 minutes.

• *Total Estimated Burden:* 4,640 hours divided among the missions.

• *Frequency:* On occasion.

• *Obligation to Respond:* Mandatory.

• *Title of Information Collection:*

Notification of Appointment of Honorary Consular Officer.

• *OMB Control Number:* 1405-0105.

• *Type of Request:* Revision of Currently Approved Collection.

• *Originating Office:* Diplomatic Security/Office of Foreign Missions (DS/OFM).

• *Form Number:* DS-2005.

• *Respondents:* Foreign government representatives assigned to the United States.

• *Estimated Number of Respondents:* 155 missions.

• *Estimated Number of Responses:* 200 forms per year.

• *Average Hours per Response:* 20 minutes.

• *Total Estimated Burden:* 67 hours divided among the missions.

• *Frequency:* On occasion.

• *Obligation to Respond:* Mandatory.

• *Title of Information Collection:*

Notification of Change—Identification Card Request.

• *OMB Control Number:* 1405-0105.

• *Type of Request:* Revision of Currently Approved Collection.

• *Originating Office:* Diplomatic Security/Office of Foreign Missions (DS/OFM).

• *Form Numbers:* DS-2006, & e-2006.

• *Respondents:* Foreign government representatives assigned to the United States.

• *Estimated Number of Respondents:* 350 missions.

• *Estimated Number of Responses:* 8,116 responses (DS-2006: 7,124), (e-2006: 992).

• *Average Hours per Response:* 9 minutes.

• *Total Estimated Burden:* 1,217 hours divided among the missions.

• *Frequency:* On occasion.

• *Obligation to Respond:* Mandatory.

• *Title of Information Collection:*

Notification of Dependents of Diplomatic, Consular, and Foreign Government Employees (Continuation Sheet).

• *OMB Control Number:* 1405-0105.

• *Type of Request:* Revision of Currently Approved Collection.

• *Originating Office:* Diplomatic Security/Office of Foreign Missions (DS/OFM).

• *Form Number:* DS-2007.

• *Respondents:* Foreign government representatives assigned to the United States.

• *Estimated Number of Respondents:* 350 missions.

• *Estimated Number of Responses:* 3,000 forms per year.

• *Average Hours per Response:* 10 minutes.

• *Total Estimated Burden:* 498 hours divided among the missions.

• *Frequency:* On occasion.

• *Obligation to Respond:* Mandatory.

• *Title of Information Collection:*

Notice of Termination of Diplomatic, Consular, or Foreign Government Employment.

• *OMB Control Number:* 1405-0105.

• *Type of Request:* Revision of Currently Approved Collection.

• *Originating Office:* Diplomatic Security/Office of Foreign Missions (DS/OFM).

• *Form Numbers:* DS-2008, & e-2008.

• *Respondents:* Foreign government representatives assigned to the United States.

• *Estimated Number of Respondents:* 350 missions.

• *Estimated Number of Responses:* 6,685 eGov responses.

• *Average Hours per Response:* 10 minutes.

• *Total Estimated Burden:* 1,110 hours divided among the missions.

• *Frequency:* On occasion.

• *Obligation to Respond:* Mandatory.

• *Title of Information Collection:*

Application for Diplomatic Exemption from Taxes.

• *OMB Control Number:* 1405-0105.

• *Type of Request:* Revision of an approved collection.

• *Originating Office:* Diplomatic Security/Office of Foreign Missions (DS/OFM).

• *Form Numbers:* DS-98, DS-99, e-98, & e-99.

- *Respondents*: Eligible foreign diplomatic or consular missions, certain foreign government organizations, and designated international organizations.

- *Estimated Number of Respondents*: 350.

- *Estimated Number of Responses*: 5,089 eGov submissions (e-98: 2,413), (e-99: 2,676).

- *Average Hours per Response*: 15 minutes.

- *Total Estimated Burden*: 1,272 hours.

- *Frequency*: On occasion.

- *Obligation to Respond*: Required to obtain or retain a benefit.

- *Title of Information Collection*: Diplomatic Motor Vehicle Applications for: Vehicle Registration, Title, & Replacement Plates.

- *OMB Control Number*: 1405–0105.

- *Type of Request*: Revision of a Currently Approved Collection.

- *Originating Office*: Diplomatic Security/Office of Foreign Missions (DS/OFM).

- *Form Numbers*: DS–100, DS–101, DS–102, & DS–104.

- *Respondents*: Foreign government representatives assigned to the United States.

- *Estimated Number of Respondents*: 350.

- *Estimated Number of Responses*: 14,865.

- *Average Hours per Response*: 30 minutes.

- *Total Estimated Burden*: 7,433.

- *Frequency*: On occasion.

- *Obligation to Respond*: Required to obtain or retain a benefit.

- *Title of Information Collection*: Request for Customs Clearance of Merchandise.

- *OMB Control Number*: 1405–0105.

- *Type of Request*: Revision of a Currently Approved Collection.

- *Originating Office*: Diplomatic Security/Office of Foreign Missions (DS/OFM).

- *Form Number*: DS–1504.

- *Respondents*: Foreign government representatives assigned to the United States.

- *Estimated Number of Respondents*: 350.

- *Estimated Number of Responses*: 7,938.

- *Average Hours per Response*: 30 minutes.

- *Total Estimated Burden*: 3,969 hours.

- *Frequency*: On Occasion.

- *Obligation to Respond*: Required to Obtain or Retain a Benefit.

- *Title of Information Collection*: U.S. Department of State Driver License and Tax Exemption Card Application.

- *OMB Control Number*: 1405–0105.

- *Type of Request*: Revision of a currently approved collection.

- *Originating Office*: Diplomatic Security/Office of Foreign Missions (DS/OFM).

- *Form Numbers*: DS–1972, DS–1972D, DS–1972T.

- *Respondents*: Foreign government representatives assigned to the United States.

- *Estimated Number of Respondents*: 350 foreign missions.

- *Estimated Number of Responses*: 12,725 responses (DS–1972: 1,402), (DS–1972D: 6,282), (DS–1972T: 5,041).

- *Average Hours per Response*: DS–1972 (30 minutes), DS–1972D (20 minutes), DS–1972T (15 minutes).

- *Total Estimated Burden*: 4,053 hours.

- *Frequency*: On occasion.

- *Obligation to Respond*: Required to obtain or retain benefits.

DATES: Submit comments to the Office of Management and Budget (OMB) for up to 30 days from date of publication in the **Federal Register**.

ADDRESSES: Direct comments and questions to Katherine Astrich, the Department of State Desk Officer in the Office of Information and Regulatory Affairs at the Office of Management and Budget (OMB), who may be reached at 202–395–4718. You may submit comments by any of the following methods:

- *E-mail*: kastrich@omb.eop.gov. You must include the DS form number, information collection title, and OMB control number in the subject line of your message.

- *Mail (paper, disk, or CD-ROM submissions)*: Office of Information and Regulatory Affairs, Office of Management and Budget, 725 17th Street, NW., Washington, DC 20503.

- *Fax*: 202–395–6974.

FOR FURTHER INFORMATION CONTACT: You may obtain copies of the proposed information collection and supporting documents from: Jacqueline Robinson, Diplomatic Security, Office of Foreign Missions, 2201 C Street, NW., Room 2236, Washington, DC 20520, who may be reached on (202) 647–3416 or OFMInfo@state.gov.

SUPPLEMENTARY INFORMATION: We are soliciting public comments to permit the Department to:

- Evaluate whether the proposed information collection is necessary to properly perform our functions.

- Evaluate the accuracy of our estimate of the burden of the proposed collection, including the validity of the methodology and assumptions used.

- Enhance the quality, utility, and clarity of the information to be collected.

- Minimize the reporting burden on those who are to respond.

Abstract of Proposed Collection: The Foreign Diplomatic Service Applications (FDSA) associated with OMB Collection number 1405–0105 (DS–2003, DS–2004, DS–2005, DS–2006, DS–2007, and DS–2008) are the means by which the Department of State obtains the information necessary to accept the appointments and terminations of foreign government employees and diplomatic, career and honorary consular officers serving in the United States; their dependents and personal servants accompanying them on tours-of-duty in the United States; to issue documents or update information previously submitted; to extend or terminate privileges and immunities accorded under the Vienna Convention on Diplomatic Relations, 1961 and the Vienna Convention on Consular Relations, 1963. Also, FDSA DS–1504, DS–98, DS–99, and DS–1972, also associated with OMB number 1405–0105, are the means by which the Department provide customs duty-free entry privileges, exemption from taxes on the use of public utilities and the purchase of gasoline and other motor fuels, the issuance of a driver license and/or a sales tax exemption card for foreign mission personnel and their dependents. In addition, DS–100, DS–101, DS–102, & DS–104 are the means by which the Department provides foreign missions and their members with registration, titling, and issuance of license plates for motor vehicles they own/operate. These “benefits” were designated under the Foreign Missions Act, 22 U.S.C. 4301 *et seq.* (FMA), and must be obtained through the U.S. Department of State. The applications provide the Department with the information necessary to administer the benefits effectively and efficiently and to monitor compliance with local laws, including the ability to identify and take action against motor vehicle operators who repeatedly receive traffic citations. It also facilitates the Department’s ability to monitor and enforce the compliance with Federal laws regarding liability insurance for all foreign mission-operated motor vehicles. FMA, 22 U.S.C. 4303a; Diplomatic Relations Act, 22 U.S.C. 254e.

Methodology: These applications/ information collections are submitted by all foreign missions to the Office of Foreign Missions via the following methods: Electronically, mail, and/or personal delivery.

Dated: May 1, 2009.

Robert D. Barton,

Managing Director, Bureau of Diplomatic Security, Office of Foreign Missions, U.S. Department of State.

[FR Doc. E9-11930 Filed 5-20-09; 8:45 am]

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DEPARTMENT OF STATE

[Public Notice 6623]

Bureau of Educational and Cultural Affairs (ECA) Request for Grant Proposals: Intensive Summer Language Institutes for Teachers Program

Announcement Type: New Cooperative Agreement.

Funding Opportunity Number: Catalog of Federal Domestic

Assistance Number: 00.000.

Key Dates:

Application Deadline: July 7, 2009.

Executive Summary: The Teacher Exchange Branch in the Office of Global Educational Programs at the Bureau of Educational and Cultural Affairs (ECA), U.S. Department of State, announces an open competition for a program that will enable U.S. language teachers to study Arabic, Chinese (Mandarin) and Russian in an Arabic-speaking country, the People's Republic of China, and Russia respectively during the summer of 2010. Public and private non-profit organizations meeting the provisions described in Internal Revenue Code section 501(c)(3) may submit proposals to cooperate with the Bureau in the administration of the program. Applicant organizations should design and implement three summer institutes for a minimum total of 25 teachers—fifteen to study Chinese (Mandarin), and five each to study Arabic and Russian. These summer institutes should offer intensive, structured classroom instruction as well as less formal interactive learning opportunities through a comprehensive exchange experience that primarily emphasizes language learning.

I. Funding Opportunity Description

Authority: Overall grant making authority for this program is contained in the Mutual Educational and Cultural Exchange Act of 1961, Public Law 87-256, as amended, also known as the Fulbright-Hays Act. The purpose of the Act is "to enable the Government of the United States to increase mutual understanding between the people of the United States and the people of other countries * * *; to strengthen the ties which unite us with other nations by demonstrating the educational and

cultural interests, developments, and achievements of the people of the United States and other nations * * * and thus to assist in the development of friendly, sympathetic and peaceful relations between the United States and the other countries of the world." The funding authority for the program above is provided through legislation.

Purpose: To strengthen the instruction of Arabic, Chinese (Mandarin), and Russian at U.S. K-12 schools and community colleges through intensive, substantive overseas language study for teachers, community college instructors, and students in the advanced stages of preparation to become teachers or instructors in these languages.

Foreign language skills are essential tools for engaging foreign governments and peoples, especially in critical world regions, for promoting mutual understanding, and for conveying respect for other cultures. These skills equip Americans to support the nation's foreign affairs priorities, its economic competitiveness, and its educational institutions in efforts to prepare future citizens for full engagement in the global environment.

ECA plans to award a single Cooperative Agreement for the administration and implementation of all three Intensive Summer Language Institutes for Teachers under this program. Organizations without expertise in the teaching of all three of the indicated languages are encouraged to seek partners with expertise in teaching the other language(s) in preparing their proposals. Consortia and other combinations of institutions must designate a lead institution to receive the award and administer the program.

Applicant organizations may submit a proposal requesting funds not exceeding \$500,000 to implement all three overseas language institutes between June and August 2010.

Proposals should outline four distinct program components: (1) Publicity, recruitment, and selection; (2) orientation; (3) the language institutes; and (4) follow-on activities.

(1) *Publicity, Recruitment, and Selection:* The cooperating agency will publicize the three language institutes as well as recruit, screen, and select U.S. elementary and secondary school teachers, community college instructors, and eligible students for the program. Applicant organizations should propose a comprehensive outreach plan to publicize and recruit for the program within the K-12, community college, and foreign language educational community in the U.S. This plan should include separate strategies for reaching teachers of Arabic, Chinese (Mandarin),

and Russian. Information about the program, along with all accompanying application materials, should be posted online by the cooperating agency. All application materials should be available in a sortable, searchable, electronically accessible database format that can be shared easily with the Bureau's program office upon request. The cooperating agency will be responsible for convening independent committees to select candidates for the program. The Bureau should be consulted regarding the selection of candidates and will approve the principal and alternate candidates for participation in the program.

The Bureau intends to include participants who represent the diversity of the U.S. in all components of the program. Selection should be based on the teachers' professional backgrounds as language teachers, dedication to language teaching, and leadership potential. Applicants must be U.S. citizens and language teachers at elementary or secondary schools, community college instructors, or students in an advanced stage of preparation to teach Arabic, Chinese (Mandarin), or Russian.

(2) *Orientation:* The cooperating organization will organize a substantive, in-person, pre-departure orientation in the U.S. for all participants. The orientation should include thorough discussions of the goals and objectives of the program and should be developed and administered in consultation with the ECA program office. Comprehensive information packets should be provided to all participants prior to the orientation.

Standardized pre-institute testing should be done to determine participants' initial language proficiency and subsequent progress. Applicant organizations should include in their proposals their plans to develop and implement an instrument to measure participants' increased language proficiency resulting from their participation in the program.

The cooperating agency should provide the participants with an in-country orientation upon arrival to familiarize them with the language institute and surrounding community.

(3) *Language Institutes:* Each six-week institute will provide intensive language instruction in a classroom setting for approximately twenty hours per week, in addition to language-learning opportunities through immersion in the cultural, social, and educational life of the host country. Classes should provide formal instruction in grammar, vocabulary, and pronunciation in addition to covering the four main

language skills: Speaking, listening, reading, and writing. The institutes should also provide access to tutors for individualized language learning. Visits to schools or interactions with local teachers should be included, where possible. The exchange program should enhance the participants' knowledge of the host country's history, culture, and political system as these support language learning. Language study must be the primary focus of the program and should be a specific element of all cultural enrichment activities as well.

Staff should be physically present and available to support the participants throughout the institutes.

Applicant organizations should explain in their proposal how they will ensure the quality of programs overseas.

Applicant organizations should arrange for participants to earn academic credit from a U.S. institution for successful completion of the program.

The Bureau reserves the right to make changes in placement countries based on safety and security concerns.

A. Arabic Language Summer Institute: Applicant organizations should present a plan for not fewer than five participants in the Arabic language institute. Classroom instruction should emphasize Modern Standard Arabic with class time devoted also to colloquial Arabic. Participants should also gain knowledge of colloquial Arabic through informal study and through interaction with their host community. Applicant organizations should propose a study location in a country/region in North Africa, the Middle East, or the Gulf region with the exception of Algeria, Iraq, Israel, Lebanon, Libya, Saudi Arabia, and West Bank and Gaza.

B. Chinese Language Summer Institute: Applicant organizations should present a plan for not fewer than fifteen participants in the Chinese language institute. The cooperating agency should be prepared to provide multiple levels of language instruction—from advanced beginner through superior. Applicant organizations should propose a study location in the People's Republic of China.

C. Russian Language Summer Institute: Applicant organizations should present a plan for not fewer than five participants in the Russian language institute. Applicant organizations should propose a study location in Russia other than St. Petersburg and Moscow.

(4) **Follow-on Activities:** Proposals should outline strategies for providing small grants to increase further the

participants' language skills after the study program; to purchase educational resources to enhance their home institution's foreign language curriculum; to develop their understanding of foreign language teaching methodology; to attend conferences, seminars, or workshops; and to conduct other activities that will contribute to the goals of the program. The development and approval of follow-on grants must be coordinated by the cooperating agency in conjunction with the Teacher Exchange Branch.

Please refer to the PSI for additional guidance on alumni outreach and follow-on engagement.

The Intensive Summer Language Institutes for Teachers Program will be funded through a Cooperative Agreement. Please note that in a Cooperative Agreement, the Teacher Exchange Branch (ECA/A/S/X) is substantially involved in program activities above and beyond routine monitoring, Bureau activities and responsibilities include:

- Participation in the design and direction of program activities;
- Approval of key personnel;
- Approval and input on program timelines, agendas and administrative procedures;
- Guidance in execution of all program components;
- Review and approval of all program publicity and recruitment materials;
- Approval of participants;
- Approval of decisions related to special circumstances or problems throughout the duration of the program;
- Assistance with participant emergencies;
- Approval of follow-on projects; and
- Liaison with relevant U.S. embassies.

Programs must conform with Bureau requirements and guidelines outlined in the Solicitation Package, which includes the Request for Grant Proposals (RFGP), the Project Objectives, Goals, and Implementation (POGI) and the Proposal Submission Instructions (PSI).

II. Award Information

Type of Award: Cooperative Agreement.

Fiscal Year Funds: 2010.

Approximate Total Funding: \$500,000 pending availability of funds.

Approximate Number of Awards: 1.

Anticipated Award Date: Pending availability of funds, October 1, 2009.

Anticipated Project Completion Date: September 30, 2012.

Additional Information: Pending successful implementation of this program and the availability of funds in subsequent fiscal years, it is ECA's

intent to renew this grant or cooperative agreement for two additional fiscal years, before openly competing it again.

III. Eligibility Information

III.1. Eligible Applicants:

Applications may be submitted by public and private non-profit organizations meeting the provisions described in Internal Revenue Code section 26 U.S.C. 501(c)(3).

III.2. Cost Sharing or Matching Funds:

There is no minimum or maximum percentage required for this competition. However, the Bureau encourages applicants to provide maximum levels of cost sharing and funding in support of its programs.

When cost sharing is offered, it is understood and agreed that the applicant must provide the amount of cost sharing as stipulated in its proposal and later included in an approved agreement. Cost sharing may be in the form of allowable direct or indirect costs. For accountability, you must maintain written records to support all costs which are claimed as your contribution, as well as costs to be paid by the Federal government. Such records are subject to audit. The basis for determining the value of cash and in-kind contributions must be in accordance with OMB Circular A-110, (Revised), Subpart C.23—Cost Sharing and Matching. In the event you do not provide the minimum amount of cost sharing as stipulated in the approved budget, ECA's contribution will be reduced in like proportion.

III.3. Other Eligibility Requirements:

(a) Bureau grant guidelines require that organizations with less than four years experience in conducting international exchanges be limited to \$60,000 in Bureau funding. ECA anticipates making one award, in an amount up to \$500,000 to support program and administrative costs required to implement this exchange program. Therefore, organizations with less than four years experience in conducting international exchanges are ineligible to apply under this competition. The Bureau encourages applicants to provide maximum levels of cost sharing and funding in support of its programs.

IV. Application and Submission Information

Note: Please read the complete announcement before sending inquiries or submitting proposals. Once the RFGP deadline has passed, Bureau staff may not discuss this competition with applicants until the proposal review process has been completed.

IV.1 Contact Information to Request an Application Package: Please contact

Mr. William Heaton in the Teacher Exchange Branch, ECA/A/S/X, U.S. Department of State, SA-44, 301 4th Street, SW., Washington, DC 20547, telephone: (202) 453-8888, fax: (202) 453-8890, e-mail: heatonwe@state.gov, to request a Solicitation Package. Please refer to the Funding Opportunity Number ECA/A/S/X-10-04 located at the top of this announcement when making your request. Alternatively, an electronic application package may be obtained from grants.gov. Please see section IV.3f for further information.

The Solicitation Package contains the Proposal Submission Instruction (PSI) document which consists of required application forms, and standard guidelines for proposal preparation.

It also contains the Project Objectives, Goals and Implementation (POGI) document, which provides specific information, award criteria and budget instructions tailored to this competition.

IV.2. To Download a Solicitation Package Via Internet: The entire Solicitation Package may be downloaded from the Bureau's Web site at <http://exchanges.state.gov/grants/open2.html>, or from the Grants.gov Web site at <http://www.grants.gov>.

Please read all information before downloading.

IV.3. Content and Form of Submission: Applicants must follow all instructions in the Solicitation Package. The application should be submitted per the instructions under IV.3f. Application Deadline and Methods of Submission section below.

IV.3a. You are required to have a Dun and Bradstreet Data Universal Numbering System (DUNS) number to apply for a grant or cooperative agreement from the U.S. Government. This number is a nine-digit identification number, which uniquely identifies business entities. Obtaining a DUNS number is easy and there is no charge. To obtain a DUNS number, access <http://www.dunandbradstreet.com> or call 1-866-705-5711. Please ensure that your DUNS number is included in the appropriate box of the SF-424 which is part of the formal application package.

IV.3b. All proposals must contain an executive summary, proposal narrative and budget.

Please Refer to the Solicitation Package. It contains the mandatory Proposal Submission Instructions (PSI) document and the Project Objectives, Goals and Implementation (POGI) document for additional formatting and technical requirements.

IV.3c. You must have nonprofit status with the IRS at the time of application.

Please note: Effective January 7, 2009, all applicants for ECA Federal assistance awards must include in their application the names of directors and/or senior executives (current officers, trustees, and key employees, regardless of amount of compensation). In fulfilling this requirement, applicants must submit information in one of the following ways:

(1) Those who file Internal Revenue Service Form 990, "Return of Organization Exempt From Income Tax," must include a copy of relevant portions of this form.

(2) Those who do not file IRS Form 990 must submit information above in the format of their choice.

In addition to final program reporting requirements, award recipients will also be required to submit a one-page document, derived from their program reports, listing and describing their grant activities. For award recipients, the names of directors and/or senior executives (current officers, trustees, and key employees), as well as the one-page description of grant activities, will be transmitted by the State Department to OMB, along with other information required by the Federal Funding Accountability and Transparency Act (FFATA), and will be made available to the public by the Office of Management and Budget on its USASpending.gov Web site as part of ECA's FFATA reporting requirements.

If your organization is a private nonprofit which has not received a grant or cooperative agreement from ECA in the past three years, or if your organization received nonprofit status from the IRS within the past four years, you must submit the necessary documentation to verify nonprofit status as directed in the PSI document. Failure to do so will cause your proposal to be declared technically ineligible.

IV.3d. Please take into consideration the following information when preparing your proposal narrative:

IV.3d.1. Adherence to All Regulations Governing the J Visa

The Bureau of Educational and Cultural Affairs places critically important emphases on the security and proper administration of the Exchange Visitor (J visa) Programs and adherence by award recipients and sponsors to all regulations governing the J visa. Therefore, proposals should demonstrate the applicant's capacity to meet all requirements governing the administration of the Exchange Visitor Programs as set forth in 22 CFR 62, including the oversight of Responsible Officers and Alternate Responsible Officers, screening and selection of program participants, provision of pre-

arrival information and orientation to participants, monitoring of participants, proper maintenance and security of forms, record-keeping, reporting and other requirements.

The award recipient will be responsible for issuing DS-2019 forms to participants in this program.

A copy of the complete regulations governing the administration of Exchange Visitor (J) programs is available at <http://exchanges.state.gov> or from: United States Department of State Office of Exchange Coordination and Designation, ECA/EC/ECD-SA-44, Room 734, 301 4th Street, SW., Washington, DC 20547, Telephone: (202) 203-5029, Fax: (202) 453-8640.

Please refer to Solicitation Package for further information.

IV.3d.2. Diversity, Freedom and Democracy Guidelines

Pursuant to the Bureau's authorizing legislation, programs must maintain a non-political character and should be balanced and representative of the diversity of American political, social, and cultural life. "Diversity" should be interpreted in the broadest sense and encompass differences including, but not limited to ethnicity, race, gender, religion, geographic location, socio-economic status, and disabilities. Applicants are strongly encouraged to adhere to the advancement of this principle both in program administration and in program content. Please refer to the review criteria under the 'Support for Diversity' section for specific suggestions on incorporating diversity into your proposal. Public Law 104-319 provides that "in carrying out programs of educational and cultural exchange in countries whose people do not fully enjoy freedom and democracy," the Bureau "shall take appropriate steps to provide opportunities for participation in such programs to human rights and democracy leaders of such countries." Public Law 106-113 requires that the governments of the countries described above do not have inappropriate influence in the selection process. Proposals should reflect advancement of these goals in their program contents, to the full extent deemed feasible.

IV.3d.3. Program Monitoring and Evaluation

Proposals must include a plan to monitor and evaluate the project's success, both as the activities unfold and at the end of the program. The Bureau recommends that your proposal include a draft survey questionnaire or other technique plus a description of a methodology to use to link outcomes to

original project objectives. The Bureau expects that the recipient organization will track participants or partners and be able to respond to key evaluation questions, including satisfaction with the program, learning as a result of the program, changes in behavior as a result of the program, and effects of the program on institutions (institutions in which participants work or partner institutions). The evaluation plan should include indicators that measure gains in mutual understanding as well as substantive knowledge.

Successful monitoring and evaluation depend heavily on setting clear goals and outcomes at the outset of a program. Your evaluation plan should include a description of your project's objectives, your anticipated project outcomes, and how and when you intend to measure these outcomes (performance indicators). The more that outcomes are "smart" (specific, measurable, attainable, results-oriented, and placed in a reasonable time frame), the easier it will be to conduct the evaluation. You should also show how your project objectives link to the goals of the program described in this RFGP.

Your monitoring and evaluation plan should clearly distinguish between program *outputs* and *outcomes*. *Outputs* are products and services delivered, often stated as an amount. Output information is important to show the scope or size of project activities, but it cannot substitute for information about progress towards outcomes or the results achieved. Examples of outputs include the number of people trained or the number of seminars conducted. *Outcomes*, in contrast, represent specific results a project is intended to achieve and is usually measured as an extent of change. Findings on outputs and outcomes should both be reported, but the focus should be on outcomes.

We encourage you to assess the following four levels of outcomes, as they relate to the program goals set out in the RFGP (listed here in increasing order of importance):

1. Participant satisfaction with the program and exchange experience.
2. Participant learning, such as increased knowledge, aptitude, skills, and changed understanding and attitude. Learning includes both substantive (subject-specific) learning and mutual understanding.
3. Participant behavior, concrete actions to apply knowledge in work or community; greater participation and responsibility in civic organizations; interpretation and explanation of experiences and new knowledge gained; continued contacts between

participants, community members, and others.

4. Institutional changes, such as increased collaboration and partnerships, policy reforms, new programming, and organizational improvements.

Please note: Consideration should be given to the appropriate timing of data collection for each level of outcome. For example, satisfaction is usually captured as a short-term outcome, whereas behavior and institutional changes are normally considered longer-term outcomes.

Overall, the quality of your monitoring and evaluation plan will be judged on how well it (1) Specifies intended outcomes; (2) gives clear descriptions of how each outcome will be measured; (3) identifies when particular outcomes will be measured; and (4) provides a clear description of the data collection strategies for each outcome (*i.e.*, surveys, interviews, or focus groups). (Please note that evaluation plans that deal only with the first level of outcomes [satisfaction] will be deemed less competitive under the present evaluation criteria.)

Recipient organizations will be required to provide reports analyzing their evaluation findings to the Bureau in their regular program reports. All data collected, including survey responses and contact information, must be maintained for a minimum of three years and provided to the Bureau upon request.

IV.3e. Please take the following information into consideration when preparing your budget:

IV.3e.1. Applicants must submit SF-424A—"Budget Information—Non-Construction Programs" along with a comprehensive budget for the entire program. There must be a summary budget as well as breakdowns reflecting both administrative and program budgets. Applicants may provide separate sub-budgets for each program component, phase, location, or activity to provide clarification. It is anticipated that funding for the cooperative agreement for program administration will be approximately \$500,000.

IV.3f. Application Deadline and Methods of Submission:

Application Deadline Date: July 7, 2009.

Reference Number: ECA/A/S/X-10-04.

Methods of Submission: Applications may be submitted in one of two ways:

- (1) In hard-copy, via a nationally recognized overnight delivery service (*i.e.*, Federal Express, UPS, Airborne Express, or U.S. Postal Service Express Overnight Mail, *etc.*), or

(2) Electronically through <http://www.grants.gov>.

Please Note: ECA strongly encourages organizations interested in applying for this competition to submit printed, hard copy applications as outlined in section IV.3f.1., below rather than submitting electronically through Grants.gov. This recommendation is being made as a result of the anticipated high volume of grant proposals that will be submitted via the Grants.gov web portal as part of the Recovery Act stimulus package. As stated in this RFGP, ECA bears no responsibility for data errors resulting from transmission or conversion processes for proposals submitted via Grants.gov

Along with the Project Title, all applicants must enter the above Reference Number in Box 11 on the SF-424 contained in the mandatory Proposal Submission Instructions (PSI) of the solicitation document.

IV.3f.1. Submitting Printed Applications

Applications must be shipped no later than the above deadline. Delivery services used by applicants must have in-place, centralized shipping identification and tracking systems that may be accessed via the Internet and delivery people who are identifiable by commonly recognized uniforms and delivery vehicles. Proposals shipped on or before the above deadline but received at ECA more than seven days after the deadline will be ineligible for further consideration under this competition. Proposals shipped after the established deadlines are ineligible for consideration under this competition. ECA will *not* notify you upon receipt of application. It is each applicant's responsibility to ensure that each package is marked with a legible tracking number and to monitor/confirm delivery to ECA via the Internet. Delivery of proposal packages *may not* be made via local courier service or in person for this competition. Faxed documents will not be accepted at any time. Only proposals submitted as stated above will be considered.

Important note: When preparing your submission please make sure to include one extra copy of the completed SF-424 form and place it in an envelope addressed to "ECA/EX/PM".

The original and 5 copies of the application should be sent to: U.S. Department of State, SA-44, Bureau of Educational and Cultural Affairs, *Ref.:* ECA/A/S/X-10-04, Program Management, ECA/EX/PM, Room 534, 301 4th Street, SW., Washington, DC 20547.

IV.3f.2. Submitting Electronic Applications

Applicants have the option of submitting proposals electronically through Grants.gov (<http://www.grants.gov>). Complete solicitation packages are available at Grants.gov in the "Find" portion of the system.

Please Note: ECA strongly encourages organizations interested in applying for this competition to submit printed, hard copy applications as outlined in section IV.3f.1., below rather than submitting electronically through Grants.gov. This recommendation is being made as a result of the anticipated high volume of grant proposals that will be submitted via the Grants.gov Web portal as part of the Recovery Act stimulus package. As stated in this RFGP, ECA bears no responsibility for data errors resulting from transmission or conversion processes for proposals submitted via Grants.gov.

Please follow the instructions available in the 'Get Started' portion of the site (<http://www.grants.gov/GetStarted>).

Several of the steps in the Grants.gov registration process could take several weeks. Therefore, applicants should check with appropriate staff within their organizations immediately after reviewing this RFGP to confirm or determine their registration status with Grants.gov.

Once registered, the amount of time it can take to upload an application will vary depending on a variety of factors including the size of the application and the speed of your Internet connection. In addition, validation of an electronic submission via Grants.gov can take up to two business days.

Therefore, we strongly recommend that you not wait until the application deadline to begin the submission process through Grants.gov.

The Grants.gov Web site includes extensive information on all phases/aspects of the Grants.gov process, including an extensive section on frequently asked questions, located under the "For Applicants" section of the Web site. ECA strongly recommends that all potential applicants review thoroughly the Grants.gov Web site, well in advance of submitting a proposal through the Grants.gov system. ECA bears no responsibility for data errors resulting from transmission or conversion processes.

Direct all questions regarding Grants.gov registration and submission to: Grants.gov Customer Support, Contact Center Phone: 800-518-4726, Business Hours: Monday-Friday, 7 a.m.-9 p.m. Eastern Time, E-mail: support@grants.gov.

Applicants have until midnight (12 a.m.), Washington, DC time of the

closing date to ensure that their entire application has been uploaded to the Grants.gov site. *There are no exceptions to the above deadline. Applications uploaded to the site after midnight of the application deadline date will be automatically rejected by the Grants.gov system, and will be technically ineligible.*

Please refer to the Grants.gov Web site, for definitions of various "application statuses" and the difference between a submission receipt and a submission validation. Applicants will receive a validation e-mail from Grants.gov upon the successful submission of an application. Again, validation of an electronic submission via Grants.gov can take up to two business days. *Therefore, we strongly recommend that you not wait until the application deadline to begin the submission process through Grants.gov.* ECA will *not* notify you upon receipt of electronic applications.

It is the responsibility of all applicants submitting proposals via the Grants.gov Web portal to ensure that proposals have been received by Grants.gov in their entirety, and ECA bears no responsibility for data errors resulting from transmission or conversion processes.

IV.3g. *Intergovernmental Review of Applications:* Executive Order 12372 does not apply to this program.

V. Application Review Information

V.1. *Review Process:* The Bureau will review all proposals for technical eligibility. Proposals will be deemed ineligible if they do not fully adhere to the guidelines stated herein and in the Solicitation Package. All eligible proposals will be reviewed by the program office, as well as the relevant Embassy Public Diplomacy section overseas, where appropriate. Eligible proposals will be subject to compliance with Federal and Bureau regulations and guidelines and forwarded to Bureau grant panels for advisory review. Proposals may also be reviewed by the Office of the Legal Adviser or by other Department elements. Final funding decisions are at the discretion of the Department of State's Assistant Secretary for Educational and Cultural Affairs. Final technical authority for cooperative agreements resides with the Bureau's Grants Officer.

Review Criteria

Technically eligible applications will be competitively reviewed according to the criteria stated below. These criteria are not rank ordered and all carry equal weight in the proposal evaluation:

1. *Quality of the program idea:* Proposals should exhibit originality, substance, precision, and relevance to the Bureau's mission.

2. *Program planning:* Detailed agenda and relevant work plan should demonstrate substantive undertakings and logistical capacity. Agenda and plan should adhere to the program overview and guidelines described above.

3. *Ability to achieve program objectives:* Objectives should be reasonable, feasible, and flexible. Proposals should clearly demonstrate how the institution will meet the program's objectives and plan.

4. *Institutional Capacity:* Proposed personnel and institutional resources should be adequate and appropriate to achieve the program or project's goals.

5. *Support of Diversity:* Proposals should demonstrate substantive support of the Bureau's policy on diversity. Achievable and relevant features should be cited in both program administration (selection of participants, program venue and program evaluation) and program content (orientation and wrap-up sessions, program meetings, resource materials and follow-up activities).

6. *Project Evaluation:* Proposals should include a plan to evaluate the activity's success, both as the activities unfold and at the end of the program. A draft survey questionnaire or other technique plus description of a methodology to use to link outcomes to original project objectives is recommended.

7. *Cost-effectiveness/Cost-sharing:* The overhead and administrative components of the proposal, including salaries and honoraria, should be kept as low as possible. Proposals should maximize cost-sharing through other private sector support as well as institutional direct funding contributions.

VI. Award Administration Information

VI.1a. *Award Notices:* Final awards cannot be made until funds have been appropriated by Congress, allocated and committed through internal Bureau procedures. Successful applicants will receive a Federal Assistance Award (FAA) from the Bureau's Grants Office. The FAA and the original proposal with subsequent modifications (if applicable) shall be the only binding authorizing document between the recipient and the U.S. Government. The FAA will be signed by an authorized Grants Officer, and mailed to the recipient's responsible officer identified in the application.

Unsuccessful applicants will receive notification of the results of the application review from the ECA

program office coordinating this competition.

VI.2. *Administrative and National Policy Requirements:* Terms and Conditions for the Administration of ECA agreements include the following:

Office of Management and Budget Circular A-122, "Cost Principles for Nonprofit Organizations."

Office of Management and Budget Circular A-21, "Cost Principles for Educational Institutions."

OMB Circular A-87, "Cost Principles for State, Local and Indian Governments".

OMB Circular No. A-110 (Revised), Uniform Administrative Requirements for Grants and Agreements with Institutions of Higher Education, Hospitals, and other Nonprofit Organizations.

OMB Circular No. A-102, Uniform Administrative Requirements for Grants-in-Aid to State and Local Governments.

OMB Circular No. A-133, Audits of States, Local Government, and Non-profit Organizations.

Please reference the following Web sites for additional information: <http://www.whitehouse.gov/omb/grants>; <http://fa.statebuy.state.gov>.

VI.3. *Reporting Requirements:* You must provide ECA with a hard copy original plus two copies of the following reports:

(1) A final program and financial report no more than 90 days after the expiration of the award;

(2) A concise, one-page final program report summarizing program outcomes no more than 90 days after the expiration of the award. This one-page report will be transmitted to OMB, and be made available to the public via OMB's USAspending.gov Web site—as part of ECA's Federal Funding Accountability and Transparency Act (FFATA) reporting requirements.

(3) A SF-PPR, "Performance Progress Report" Cover Sheet with all program reports.

(4) Quarterly program and financial reports.

Award recipients will be required to provide reports analyzing their evaluation findings to the Bureau in their regular program reports. (*Please refer to IV. Application and Submission Instructions (IV.3.d.3) above for Program Monitoring and Evaluation information.*)

All data collected, including survey responses and contact information, must be maintained for a minimum of three years and provided to the Bureau upon request.

All reports must be sent to the ECA Grants Officer and ECA Program Officer listed in the final assistance award document.

Program Data Requirements: Award recipients will be required to maintain specific data on program participants and activities in an electronically accessible database format that can be shared with the Bureau as required. As a minimum, the data must include the following:

(1) Name, address, contact information and biographic sketch of all persons who travel internationally on funds provided by the agreement or who benefit from the award funding but do not travel.

(2) Itineraries of international and domestic travel, providing dates of travel and cities in which any exchange experiences take place. Final schedules for in-country and U.S. activities must be received by the ECA Program Officer at least three work days prior to the official opening of the activity.

VII. Agency Contacts

For questions about this announcement, contact: William Heaton, Teacher Exchange Branch, ECA/A/S/X, U.S. Department of State, SA-44, 301 4th Street, SW., Room 349, Washington, DC 20547, *phone:* (202) 453-8888, *fax:* (202) 453-8890, *e-mail:* heatonwe@state.gov.

All correspondence with the Bureau concerning this RFGP should reference the above title and number ECA/A/S/X-10-04.

Please read the complete announcement before sending inquiries or submitting proposals. Once the RFGP deadline has passed, Bureau staff may not discuss this competition with applicants until the proposal review process has been completed.

VIII. Other Information

Notice: The terms and conditions published in this RFGP are binding and may not be modified by any Bureau representative. Explanatory information provided by the Bureau that contradicts published language will not be binding. Issuance of the RFGP does not constitute an award commitment on the part of the Government. The Bureau reserves the right to reduce, revise, or increase proposal budgets in accordance with the needs of the program and the availability of funds. Awards made will be subject to periodic reporting and evaluation requirements per section VI.3 above.

Dated: May 13, 2009.

C. Miller Crouch,

Acting Assistant Secretary for Bureau of Educational and Cultural Affairs, Department of State.

[FR Doc. E9-11949 Filed 5-20-09; 8:45 am]

BILLING CODE 4710-05-P

DEPARTMENT OF TRANSPORTATION

Office of the Secretary

[Docket No. DOT-OST-2008-0388]

Revision of a Previously Approved Collection: Public Charters, 14 CFR, Part 380

AGENCY: Office of the Secretary.

ACTION: Notice and request for comments.

SUMMARY: In compliance with the Paperwork Reduction Act of 1995, Public Law 104-13, the Department of Transportation (DOT) invites the general public, industry and other governmental parties to comment on the Public Charters, 14 CFR Part 380. The pre-existing information collection request was previously approved by the Office of Management and Budget (OMB).

DATES: Written comments should be submitted by July 20, 2009.

FOR FURTHER INFORMATION CONTACT: Ms. Reather Flemmings (202-366-1865) and Ms. Torlanda Archer (202-366-1037), Office of the Secretary, Office of International Aviation, Special Authorities Division, X-46, 1200 New Jersey Avenue, SE., Washington, DC 20590.

ADDRESSES: You may submit comments [identified by Docket No. DOT-OST-2008-0388] through one of the following methods:

- *Federal eRulemaking Portal:* <http://www.regulations.gov>. Follow the online instructions for submitting comments.

- *Fax:* 1-202-493-2251.

- *Mail or Hand Delivery:* Docket Management Facility, U.S. Department of Transportation, 1200 New Jersey Avenue, SE., West Building, Room W12-140, Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except on Federal holidays.

SUPPLEMENTARY INFORMATION:

OMB Control Number: 2106-0005.

Title: Public Charters, 14 CFR Part 380.

Form Numbers: 4532, 4533, 4534, 4535.

Type of Review: Revision of a previously approved collection: The current OMB inventory has decreased and the changes are listed below.

Abstract: 14 CFR Part 380 (Part 380) establishes the regulations of the Department's terms and conditions governing Public Charter operators to conduct air transportation using direct air carriers. Public Charter operators arrange transportation for groups of people on chartered aircraft. This arrangement is less expensive for the

travelers than individually buying a ticket. Part 380 exempts charter operators from certain provisions of the U.S. code in order that they may provide this service. A primary goal of Part 380 is to seek protection for the consumer. Accordingly, the rule stipulates that the charter operator must file evidence (a prospectus—that consists of OST Forms 4532, 4533, 4534 and 4535) with the Department for each charter program certifying that it has entered into a binding contract with a direct air carrier to provide air transportation and that it has also entered into agreements with Department-approved financial institutions for the protection of charter participants' funds. The prospectus must be approved by the Department prior to the operator's advertising, selling or operating the charter. If the prospectus information were not collected, it would be extremely difficult to assure compliance with agency rules and to assure that public security and other consumer protection requirements were in place for the traveling public. The information collected is available for public inspection (*unless the respondent specifically requests confidential treatment*). Part 380 does not provide any assurances of confidentiality.

Burden Statement: Completion of all forms in a prospectus can be accomplished in approximately two hours (30 minutes per form) for new filers and one hour for amendments (existing filings). The forms are simplified and request only basic information about the proposed programs and the private sector. The respondent can submit a filing to operate for up to one year and include as many flights as desired, in most cases. The operator is then required by regulations to file revisions to its original prospectus.

Respondents: Private Sector: Air carriers; tour operators; the general public (including groups and individuals, corporations, and Universities or Colleges, etc.)

Number of Respondents: 245.

Number of Responses: 1,782.

Total Annual Burden: 891.

Frequency of Responses:

245 (respondents) \times 4 = 980.

401 (amendments *from the same respondents*) \times 2 = 802.

Total estimated responses: 980 + 802 = 1,782.

The frequency of response is dependent upon whether the operator is requesting a new program or amending their existing prospectus. Variations occur due to the respondents' criteria.

On average four responses (OST Forms 4532, 4533, 4534 and/or 4535) are required for filing new prospectuses and two of the responses (forms) are required for amendments. The separate hour burden estimate is as follows:

Total Annual Burden: 891.

Approximately 1,782 (responses) \times 0.50 (per form) = 891.

Public Comments Invited: (a) 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; (b) the accuracy of the Department's estimate of the burden of the proposed information collection; (c) ways to enhance the quality, utility and clarity of the information collection; and (d) ways to minimize the burden of the collection of information on respondents, by the use of electronic means, including the use of automated collection techniques or other forms of information technology. All responses to this notice will be summarized and included in the request for OMB approval. All comments will also become a matter of public record.

Authority: The Paperwork Reduction Act of 1995; 44 U.S.C. Chapter 35, as amended; and 49 CFR 1.48.

Patricia Lawton,

DOT Paperwork Reduction Act Clearance Officer, Office of the Chief Information Officer.

[FR Doc. E9-11904 Filed 5-20-09; 8:45 am]

BILLING CODE 4910-9X-P

DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

[STB Docket No. AB-55 (Sub-No. 694X)]

CSX Transportation, Inc.— Abandonment Exemption—in McMinn County, TN

On May 1, 2009, CSX Transportation, Inc. (CSXT), filed with the Board a petition under 49 U.S.C. 10502 for exemption from the provisions of 49 U.S.C. 10903 to abandon a 6.4-mile rail line, known as the Athens Branch, on its Southern Region, Huntington-West Division, KD Subdivision between milepost OKW 327, at Englewood, and milepost OKW 333.4, at Athens, in McMinn County, TN. The line traverses United States Postal Service Zip Codes 37329 and 37303, and includes the Athens station (milepost OKW 334).

The line does not contain federally granted rights-of-way. Any documentation in CSXT's possession will be made available promptly to those requesting it.

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).

By issuing this notice, the Board is instituting an exemption proceeding pursuant to 49 U.S.C. 10502(b). A final decision will be issued by August 19, 2009.

Any offer of financial assistance (OFA) under 49 CFR 1152.27(b)(2) will be due no later than 10 days after service of a decision granting the petition for exemption. Each OFA must be accompanied by a \$1,500 filing fee. See 49 CFR 1002.2(f)(25).

All interested persons should be aware that, following 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 CFR 1152.28 or for trail use/rail banking under 49 CFR 1152.29 will be due no later than June 10, 2009. Each trail use request must be accompanied by the appropriate filing fee. See 49 CFR 1002.2(f)(27).¹

All filings in response to this notice must refer to STB Docket No. AB-55 (Sub-No. 694X), and must be sent to: (1) Surface Transportation Board, 395 E Street, SW., Washington, DC 20423-0001; and (2) Louis E. Gitomer, Esq., Law Offices of Louis E. Gitomer, 600 Baltimore Avenue, Suite 301, Towson, MD 21204. Replies to the petition are due on or before June 10, 2009.

Persons seeking further information concerning abandonment procedures may contact the Board's Office of Public Assistance, Governmental Affairs, and Compliance at (202) 245-0238 or refer to the full abandonment or discontinuance regulations at 49 CFR part 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 1-800-877-8339.]

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. Other interested persons may contact SEA to obtain a copy of the EA (or EIS).

¹ Until June 3, 2009, the filing fee for a request for a trail use condition is \$200. On June 4, 2009, that fee will increase to \$250. See *Regulations Governing Fees for Services Performed in Connection with Licensing and Related Services—2009 Update*, STB Ex Parte No. 542 (Sub-No. 16) (STB served May 4, 2009).

EAs in these abandonment proceedings normally will be made available within 60 days of the filing of the petition. The deadline for submission of comments on the EA will generally be within 30 days of its service.

Board decisions and notices are available on our Web site at <http://www.stb.dot.gov>.

Decided: May 15, 2009.

By the Board, Rachel D. Campbell,
Director, Office of Proceedings.

Kulunie L. Cannon,
Clearance Clerk.

[FR Doc. E9-11875 Filed 5-20-09; 8:45 am]

BILLING CODE 4915-01-P

DEPARTMENT OF TRANSPORTATION

Federal Railroad Administration

[Docket No. FRA 2009-0001-N-11]

Proposed Agency Information Collection Activities; Comment Request

AGENCY: Federal Railroad
Administration, DOT.

ACTION: Notice.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995 and its implementing regulations, the Federal Railroad Administration (FRA) hereby announces that it is seeking approval of the following information collection activities. Before submitting these information collection requirements for clearance by the Office of Management and Budget (OMB), FRA is soliciting public comment on specific aspects of the activities identified below.

DATES: Comments must be received no later than July 20, 2009.

ADDRESSES: Submit written comments on any or all of the following proposed activities by mail to either: Mr. Robert Brogan, Office of Safety, Planning and Evaluation Division, RRS-21, Federal Railroad Administration, 1200 New Jersey Ave., SE., Mail Stop 17, Washington, DC 20590, or Ms. Nakia Jackson, Office of Information Technology, RAD-20, Federal Railroad Administration, 1200 New Jersey Ave., SE., Mail Stop 35, Washington, DC 20590. Commenters requesting FRA to acknowledge receipt of their respective comments must include a self-addressed stamped postcard stating, "Comments on OMB control number 2130-New." Alternatively, comments may be transmitted via facsimile to (202) 493-6216 or (202) 493-6497, or via e-mail to Mr. Brogan at robert.brogan@dot.gov, or to Ms. Jackson at

nakia.jackson@dot.gov. Please refer to the assigned OMB control number and the title of the information collection in any correspondence submitted. FRA will summarize comments received in response to this notice in a subsequent notice and include them in its information collection submission to OMB for approval.

FOR FURTHER INFORMATION CONTACT: Mr. Robert Brogan, Office of Planning and Evaluation Division, RRS-21, Federal Railroad Administration, 1200 New Jersey Ave., SE., Mail Stop 17, Washington, DC 20590 (telephone: (202) 493-6292) or Ms. Nakia Jackson, Office of Information Technology, RAD-20, Federal Railroad Administration, 1200 New Jersey Ave., SE., Mail Stop 35, Washington, DC 20590 (telephone: (202) 493-6073). (These telephone numbers are not toll-free.)

SUPPLEMENTARY INFORMATION: The Paperwork Reduction Act of 1995 (PRA), Public Law No. 104-13, § 2, 109 Stat. 163 (1995) (codified as revised at 44 U.S.C. 3501-3520), and its implementing regulations, 5 CFR Part 1320, require Federal agencies to provide 60-days notice to the public for comment on information collection activities before seeking approval of such activities by OMB. 44 U.S.C. 3506(c)(2)(A); 5 CFR 1320.8(d)(1), 1320.10(e)(1), 1320.12(a). Specifically, FRA invites interested respondents to comment on the following summary of proposed information collection activities regarding: (i) Whether the information collection activities are necessary for FRA to properly execute its functions, including whether the activities will have practical utility; (ii) the accuracy of FRA's estimates of the burden of the information collection activities, including the validity of the methodology and assumptions used to determine the estimates; (iii) ways for FRA to enhance the quality, utility, and clarity of the information being collected; and (iv) ways for FRA to minimize the burden of information collection activities on the public by automated, electronic, mechanical, or other technological collection techniques or other forms of information technology (e.g., permitting electronic submission of responses). See 44 U.S.C. 3506(c)(2)(A)(I)-(iv); 5 CFR 1320.8(d)(1)(I)-(iv). FRA believes that soliciting public comment will promote its efforts to reduce the administrative and paperwork burdens associated with the collection of information mandated by Federal regulations. In summary, FRA reasons that comments received will advance three objectives: (i) Reduce reporting burdens; (ii) ensure that it

organizes information collection requirements in a "user friendly" format to improve the use of such information; and (iii) accurately assess the resources expended to retrieve and produce information requested. See 44 U.S.C. 3501.

Below is a brief summary of the proposed information collection activities that FRA will submit for clearance by OMB as required under the PRA:

Title: Work Schedules and Sleep Patterns of Train Crews in Commuter Passenger Service.

OMB Control Number: 2130-New.

Abstract: The Railroad Safety Improvement Act of 2008 (RSIA), Public Law 110-432, grants the Federal Railroad Administration (FRA) the authority to prescribe regulations " * * * Governing the Hours of Service of Train Employees of Commuter and Intercity Passenger Railroad Carriers." (§ 21109). This section of the law provides that:

Such regulations and orders may address railroad operating and scheduling practices, including unscheduled duty calls, communications during time off duty, and time spent waiting for deadhead transportation or in deadhead transportation from a duty assignment to the place of final release, that could affect employee fatigue and railroad safety.

Furthermore, the regulations shall consider

* * * scientific and medical research related to fatigue and fatigue abatement, railroad scheduling and operating practices that improve safety or reduce employee fatigue, a railroad's use of new or novel technology intended to reduce or eliminate human error, the variations in freight and passenger railroad scheduling practices and operating conditions, the variations in duties and operating conditions for employees subject to this chapter, a railroad's required or voluntary use of fatigue management plans covering employees subject to this chapter, and any other relevant factors.

The purpose of the research addressed under this proposed study is to provide FRA with the necessary information to meet the requirements of RSIA as noted above.

The proposed study has two primary purposes:

- To document and characterize the work/rest schedules and sleep patterns of train crews in commuter passenger service
- To examine the relationship between these schedules and level of alertness/fatigue for the individuals who work these schedules.

The intent is to report results in aggregate, not by railroad.

The study will seek to describe the work and sleep patterns for this group

of railroad employees. It will also obtain subjective ratings from participants of their alertness/sleepiness on both work and non-work days. Data collection will be through the use of a daily diary or log as well as a brief background questionnaire for each participant. Analysis of the diary data will allow the

FRA to assess whether or not there are any work-related fatigue issues. The proposed study will provide a defensible and definitive estimate of the work/rest cycle parameters and fatigue in this group of railroad employees that will inform FRA regulatory policy and action.

Form Number(s): FRA F 6180.130; FRA F 6180.131.
Affected Public: Railroad Employees.
Respondent Universe: 155 Individuals.
Frequency of Submission: On occasion.
Reporting Burden:

Form No.	Respondent universe (individuals)	Total annual responses	Average time per response (minutes)	Total annual burden hours
Background Data (Form FRA F 6180.130)	155	155	15	39
Daily Log (FRA F 6180.131)	155	2,170	10	362

Total Responses: 2,325.
Estimated Total Annual Burden: 401 hours.
Status: Regular Review.
 Pursuant to 44 U.S.C. 3507(a) and 5 CFR 1320.5(b), 1320.8(b)(3)(vi), FRA informs all interested parties that it may not conduct or sponsor, and a respondent is not required to respond to, a collection of information unless it displays a currently valid OMB control number.

Authority: 44 U.S.C. 3501–3520.
 Issued in Washington, DC, on May 18, 2009.
Kimberly Orben,
Director, Office of Financial Management, Federal Railroad Administration.
 [FR Doc. E9–11925 Filed 5–20–09; 8:45 am]
BILLING CODE 4910–06–P

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

[Docket No. NHTSA–2009–0068]

Notice of Technical Workshops and Demonstrations (One or Two Days During the Week of June 22, 2009)

AGENCY: National Highway Traffic Safety Administration (NHTSA), DOT.
ACTION: Notice of technical workshops and demonstrations.

SUMMARY: This notice announces that NHTSA will hold two compliance test program workshops to discuss and demonstrate the Office of Vehicle Safety Compliance (OVSC) Laboratory Test Procedures (TPs) for the agency’s Federal motor vehicle safety standard (FMVSS) No. 216a, *Roof crush resistance*, and 49 CFR part 537, *Automotive Fuel Economy Reports*, vehicle foot print determination. Vehicle manufacturers and other interested persons who wish to participate in either of the workshops are asked to pre-register (the number of

attendees may need to be limited due to space constraints) and are invited to submit test procedure related technical issues to be considered for discussion during the workshops. Attendance requires registration and is free.

DATE AND TIME: The workshops and demonstrations for the test procedures will be held on one or two days during the week of June 22, 2009, beginning each day between 8 a.m. and 9 a.m.

ADDRESSES: The workshops and demonstrations will be held at General Testing Laboratories (GTL) in Colonial Beach, Virginia. Directions to the meeting location and final agenda will be sent to registered participants.

FOR FURTHER INFORMATION CONTACT: For registration to one or both workshops, media representatives should contact Rae Tyson at (202) 366–9550 or via e-mail at rae.tyson@dot.gov. Congressional staff should contact Will Otero at (202) 366–9263 or via e-mail at will.otero@dot.gov. All other interested parties should contact either Ms. Maritza Marshall or Ms. Elena Sonsev, contractors for the Office of Vehicle Safety Compliance, NVS–220, National Highway Traffic Safety Administration, 1200 New Jersey Avenue, SE., Washington, DC 20590, telephone (202) 366–6017 or (202) 366–9897 respectively, or via electronic mail at maritza.marshall@dot.gov or elena.sonsev@dot.gov. For technical issues relating to roof crush resistance testing, contact Mr. James Jones, at the same address, telephone (202) 366–5294, or via electronic mail at james.jones@dot.gov. For technical issues relating to vehicle footprint measurements, contact Mr. John Finneran, at the same address, telephone (202) 366–0645, or via electronic mail at john.finneran@dot.gov.

SUPPLEMENTARY INFORMATION:
FMVSS No. 216a: On May 12, 2009, the agency upgraded FMVSS No. 216a, *Roof Crush Resistance*, as part of its

comprehensive plan for reducing the serious risk of death and injury in rollover crashes. For the vehicles currently subject to the standard, passenger cars and multipurpose passenger vehicles, trucks and buses with a GVWR of 2,722 kilograms (6,000 pounds) or less, the final rule doubles the amount of force the vehicle’s roof structure must withstand in the specified test, from 1.5 times the vehicle’s unloaded weight to 3.0 times the vehicle’s unloaded weight. The final rule also extends the applicability of the standard to vehicles up to a GVWR of 4,536 kilograms (10,000 pounds), establishing a force requirement of 1.5 times the vehicle’s unloaded weight for these heavier vehicles. Vehicles must meet the specified force requirements in a two-sided test instead of a single-sided test, i.e., the same vehicle must meet the force requirements when tested first on one side and then on the other side of the vehicle. The final rule also establishes a new requirement for maintenance of headroom, i.e., survival space, in addition to the existing limit on the amount of roof crush. The final rule includes special provisions to address the needs of multi-stage manufacturers, alterers, and small volume manufacturers. NHTSA issued a TP indicating the protocol for the conduct of these tests.

49 CFR Part 537: In the effort to substantially improve Corporate Average Fuel Economy (CAFE) standards, NHTSA published a final rule on April 6, 2006, (applicable only to light trucks) and a final rule on March 30, 2009, (applicable to passenger cars and light trucks). The revised CAFE requirements specify that vehicle manufacturers must begin to derive target average fuel economy standards for each vehicle model type based upon the vehicle attribute known as, “footprint.” Footprint is defined as the product of the vehicle measurements for wheelbase and average track width. In the notices, NHTSA also required that

vehicle manufacturers report wheelbase, track width and footprint measurements for each vehicle configuration in their annual CAFE reports starting in model year (MY) 2008 for light trucks and MY 2011 for passenger cars.

To validate manufacturer's reported vehicle wheelbase, track width and footprint information, NHTSA issued a TP indicating the methods that will be used to physically measure these corresponding dimensions.

Workshops: To enable interested parties and NHTSA personnel to discuss the questions concerning TP-216a and TP-537, NHTSA believes that it would be desirable to hold two technical workshops and demonstrations on these test procedures. The scope of these workshops is strictly limited to issues surrounding implementation of OVSC Laboratory Test Procedure TP-216a and TP-537. TP-216a and 537 are posted on the NHTSA Web site at <http://www.dot.gov> (under "Test Procedures" on the "Vehicles and Equipment" page).

Agenda for the workshops and demonstrations: The workshops will be held one or two days during the week of June 22, 2009. The agenda includes technical discussions about the execution of the compliance tests, lunch (to be paid for by each participant), and physical test demonstrations. The following is a preliminary agenda for the workshops.

FMVSS No. 216a Workshop and Demonstration

- I. Check-In
- II. Welcome and Introductory Remarks
- III. FMVSS No. 216a Final Rule Highlights
- IV. OVSC Test Procedure TP-216a Content
- V. Discussion of Technical Issues With Test Procedure
- VI. Physical Demonstration of Roof Crush Test
- VII. Questions & Answers

Part 537 Workshop and Demonstration

- I. Check-In
- II. Welcome and Introductory Remarks
- III. CAFE Program Highlights
- IV. OVSC Test Procedure TP-537 Content
- V. Discussion of Technical Issues With Test Procedure
- VI. Physical Demonstration of Foot Print Determination
- VII. Questions & Answers

Submission of Agenda Items: Written suggestions regarding test procedure technical issues to be included in the agenda(s) should be submitted to the address below and must be received by the agency on or before June 8, 2009. You may submit comments identified

by DOT DMS Docket Number NHTSA 2009-0068 by any of the following methods:

- **Web site:** <http://www.regulations.gov>. Follow the instructions for submitting comments on the DOT electronic docket site.
- **Fax:** 1-202-493-2251.
- **Mail:** Docket Management Facility; U.S. Department of Transportation, 1200 New Jersey Ave., SE., West Building, Room W12-140, Washington, DC 20590-0001.
- **Hand Delivery:** Room W12-140 on the Ground Level of the West Building, 1200 New Jersey Ave., SE., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.
- **Federal eRulemaking Portal:** <http://www.regulations.gov>. Follow the Online instructions for submitting comments.

Instructions: All submissions must include the agency name and docket number for this technical workshop notice. Note that all comments received will be posted without change to <http://www.regulations.gov>, including any personal information provided.

Docket: For access to the docket to read comments received, go to <http://www.regulations.gov> at any time or to Room W12-140 on the ground level of the West Building, 1200 New Jersey Ave., SE., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

To Register for this Workshop: Each person wishing to participate in one or both of the workshops must register with NHTSA by June 8, 2009. You can register by contacting Mr. Rae Tyson (for media representatives), Will Otero (for Congressional members), Ms. Maritza Marshall or Ms. Elena Sonsev (for all other interested parties) on or before June 8, 2009; contact information for Mr. Rae Tyson, Mr. Otero, Ms. Marshall and Ms. Sonsev is listed above. To register, you must provide NHTSA with the name, title, organizational affiliation (if applicable), contact information (mailing address, phone numbers (Voice and fax), and email address), and specify if available lunch will be purchased. Food options on site are limited. Participants may purchase lunch in cash upon check-in each day. Ms. Marshall or Ms. Sonsev will have information about the lunch options and associated costs at time of registration. Due to space limitations, NHTSA may have to limit the number of participants per organization.

You will be contacted only if this meeting is postponed or cancelled.

Issued: May 15, 2009.

Harry Thompson,

Acting Director, Office of Vehicle Safety Compliance.

[FR Doc. E9-11839 Filed 5-20-09; 8:45 am]

BILLING CODE 4910-59-P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Notice of Availability of the Final Environmental Impact Statement (Final EIS) and the ANILCA Section 810 Analysis of Impacts to Subsistence Resources for Proposed Improvement Activities at the Sitka Rocky Gutierrez Airport, Sitka, AK

AGENCY: Federal Aviation Administration (FAA), Department of Transportation (DOT). The Bureau of Land Management (BLM), U.S. Army Corps of Engineers (USACE), and National Marine Fisheries Services (NMFS) are cooperating agencies, by virtue of their jurisdictional authority and/or resource management responsibilities.

ACTION: Notice of availability.

SUMMARY: In accordance with the National Environmental Policy Act of 1969 (NEPA, 42 U.S.C. 4321 *et seq.*) and Council on Environmental Quality regulations (40 CFR part 1500-1508) the Federal Aviation Administration is issuing this notice to advise the public that the Final EIS for Proposed Improvement Activities at the Sitka Rocky Gutierrez Airport (SIT) has been prepared and is available for public review. Written requests for copies of the Final EIS can be submitted to the individual listed in the section, **FOR FURTHER INFORMATION CONTACT.**

Final EIS Availability and Review

Copies of the Final EIS may be viewed during regular business hours at the following locations:

1. Federal Aviation Administration, Airports Division, 222 W. 7th Avenue #14, Anchorage, AK 99513-7504. (907) 271-5454 or (907) 271-5438.
2. Kettleon Memorial Library, 320 Harbor Drive, Sitka, AK 99835. (907) 747-8708.
3. Alaska Department of Transportation and Public Facilities, 6860 Glacier Highway, Juneau, AK 99811.
4. Downtown Juneau Public Library, 292 Marine Way, Juneau, AK 99801. (907) 586-5249.

The Federal Aviation Administration, Airports Division has a limited number of CDs of the entire Final EIS and the Executive Summary available for public

distribution. Please contact the Federal Aviation Administration at (907) 271-5438 for a copy.

SUPPLEMENTARY INFORMATION: The Sitka Rocky Gutierrez Airport Master Plan outlined development goals and projects that are anticipated to be necessary over the next 20 or more years at the Airport. This Final EIS discusses the proposed improvements recommended at the Airport over the next five years, which have the potential to result in significant adverse environmental impacts. The FAA and the State of Alaska Department of Transportation and Public Facilities (DOT & PF) propose the following projects recommended over the next five years at the Airport to meet the identified needs. The major actions assessed in this Final EIS include:

- Improvements to the Runway Safety Area.
- Extension of the Parallel Taxiway.
- Relocation of the Airport Seaplane Pullout.
- Installation of an Approach Lighting System.
- Repairs and Improvements to the Airport Seawall.
- Acquisition of Sufficient Property Rights to Lands Needed for Existing and Future Aviation and Airport Uses.

The proposed Airport improvements would be completed during the 2010-2015 time period and, depending on the alternatives implemented, may result in temporary or long-term impacts to the coastal resources, marine environment and wildlife (including species protected under the Endangered Species Act), water quality, wetlands, historical, architectural, archaeological, and cultural resources, terrestrial wildlife and vegetation, and subsistence.

Section 810 of the Alaska National Lands Conservation Act (ANILCA) requires an evaluation on the effects of alternatives presented in this Final EIS on subsistence activities occurring on public lands in the planning area. The evaluation in the Final EIS indicates that none of the alternatives significantly restrict subsistence activities.

If the transfer of title option is selected for the acquisition of property rights, the lands would change from Federal to State ownership. This would result in the loss of Federal subsistence regulations applying on those lands and the irreversible loss of opportunities for a subsistence priority for rural residents from loss of Federal public lands. A long-term lease or easement would preserve opportunities for a subsistence priority for rural residents by retaining Federal ownership of public lands.

The FAA conducted a public hearing on the Draft EIS October 2, 2008 and

received comments on the Draft EIS through October 14, 2008. The FAA has reviewed and responded to the comments received during the Draft EIS comment period and made revisions to the EIS as appropriate.

FOR FURTHER INFORMATION CONTACT: Patricia Sullivan, Environmental Specialist, Federal Aviation Administration, Alaskan Region, Airports Division, 222 W. 7th Avenue #14, Anchorage, AK 99513-7504. Ms. Sullivan may be contacted during business hours at (907) 271-5454 (phone) and (907) 271-2851 (facsimile).

Issued in Anchorage, Alaska on May 14, 2009.

Byron K. Huffman,

Manager, Airports Division, Alaskan Region.

[FR Doc. E9-11764 Filed 5-20-09; 8:45 am]

BILLING CODE 4910-13-M

DEPARTMENT OF TRANSPORTATION

Pipeline and Hazardous Materials Safety Administration

[Docket No. PHMSA-2009-0148]

Pipeline Safety: Potential Low and Variable Yield and Tensile Strength and Chemical Composition Properties in High Strength Line Pipe

AGENCY: Pipeline and Hazardous Materials Safety Administration (PHMSA); DOT.

ACTION: Notice; Issuance of Advisory Bulletin.

SUMMARY: PHMSA is issuing an advisory bulletin to owners and operators of natural gas pipeline and hazardous liquid pipeline systems. This bulletin advises pipeline system owners and operators of the potential for high grade line pipe installed on projects to exhibit inconsistent chemical and mechanical properties. Yield strength and tensile strength properties that do not meet the line pipe specification minimums have been reported. This advisory bulletin pertains to microalloyed high strength line pipe grades, generally Grade X-70 and above. PHMSA recently reviewed metallurgical testing results from several recent projects indicating pipe joints produced from plate or coil from the same heat may exhibit variable chemical and mechanical properties by as much as 15% lower than the strength values specified by the pipe manufacturer.

FOR FURTHER INFORMATION CONTACT: Alan Mayberry by phone at (202) 366-5124 or by e-mail at alan.mayberry@dot.gov.

SUPPLEMENTARY INFORMATION:

I. Background

The Federal pipeline safety regulations in 49 CFR Parts 192 and 195 require operators of natural gas transmission, distribution pipeline systems, and hazardous liquids pipeline systems to use pipe manufactured by a listed specification in the design of pipelines in accordance with §§ 192.7, 192.55(a), 192.105, and §§ 195.3, 195.106, and 195.112.

During pipeline construction in the late-fall of 2008, several recently installed natural gas transmission pipeline systems experienced field hydrostatic test failures or excessively expanded pipe joints of large diameter, microalloyed high grade line pipe. Metallurgical, mechanical and chemical composition tests of the line pipe in these cases have shown pipe to have yield strengths, tensile strengths and/or chemical compositions that did not meet the requirements of the American Petroleum Institute, Specification for Line Pipe—5L, (API 5L), 43rd edition for the specified pipe grade. API 5L, product specification level (PSL 2), specifies material requirements in Section 6 and inspection and testing standards in Section 9. Even though the pipe supplier provided the pipeline owner or operator with documentation that the pipe that was delivered to the owner met these minimum standards, substandard pipe properties were found in some pipe joints. Specifically, PHMSA was made aware that some of the line pipe that was installed in these projects had yield strengths that were up to 15% below the listed API 5L specification requirements for the specific pipe grade.

Pipeline owners and operators should closely review the manufacturing procedure specifications for the production and rolling of the steel plate or coil that is to be used in the production of new microalloyed high strength line pipe to ensure that pipe steel was properly rolled into steel plate or coil prior to the pipe mill rolling process. Pipeline owners and operators should request detailed manufacturing procedure specifications (MPS) from the pipe manufacturer as a basis for ensuring critical steel processing parameters such as the detailed rolling schedule, including, but not limited to rolling temperature, heating temperature and temperature uniformity, are controlled throughout the steel rolling process.

Mechanical property and chemical composition tests should be conducted throughout the steel making, steel rolling and pipe manufacturing process to ensure uniformity of chemical and

mechanical properties of the pipe prior to being shipped from the steel and pipe rolling mills. Low yield and tensile strength test results are defined as any test results below the minimum specified yield strength ordered, and tensile strengths below those specified for the specified grade. An example of pipe standard and grades includes API 5L, PSL 2, X70 and X80; where X-70 corresponds to steel achieving a specified minimum yield strength of 70,000 psi; and so on.

II. Advisory Bulletin ADB-09-01

To: Owners and Operators of Hazardous Liquid and Natural Gas Pipeline Systems.

Subject: Potential Low and Variable Yield and Tensile Strength and Chemical Composition Properties in High Strength Line Pipe.

Advisory: The Federal pipeline safety regulations in 49 CFR Parts 192 and 195 require operators of natural gas transmission, gas distribution, and hazardous liquids pipeline systems to use pipe manufactured by a listed specification in the design of pipelines in accordance with §§ 192.7, 192.55 (a), 192.105, and §§ 195.3, 195.106, and 195.112.

PHMSA has identified an integrity issue with respect to microalloyed high grade line pipe. Tests that have been conducted on line pipe that has been installed in pipeline systems have shown that some of the pipe material has yield strengths, tensile strengths, and/or chemical compositions that do not meet the requirements of the American Petroleum Institute, Specification for Line Pipe—5L, (API 5L), for PSL 2 and the specified pipe grade. Pipe joints produced from plate or coil from the same heat may exhibit variable chemical and mechanical properties. Yield strengths below the minimum specified yield strength have been reported and yield strengths up to 15% lower than the strength values on the pipe manufacturer produced mill test report have also been reported. In some cases, the affected pipe may successfully pass strength testing methods contained in current specifications but may lead to a future pipeline integrity issue. The presence of low yield strength line pipe installed in a pipeline system may result in increased susceptibility to excessive pipe expansion or rupture during the pre in-service field hydrostatic strength test.

PHMSA wants to ensure that owners and operators of recently constructed pipeline systems are aware of the need to investigate whether their pipelines contain joints of pipe that do not meet

minimum specification requirements. Pipeline owners and operators should review all MPS mill test reports and other appropriate documentation with their pipe suppliers to determine if all specification requirements have been met. Pipeline owners and operators should be aware that small deviations in steel rolling schedule parameters can have a pronounced effect on final mechanical properties. The MPS should provide adequate information concerning process details and inspection methods to ensure that the materials are uniform and will meet all specification requirements.

PHMSA advises pipeline owners and operators of in service pipelines to review their pipe specifications, pipe steel making and rolling MPS, pipe mill test reports, deformation tool results and all hydrostatic test failure results for both mill and in place hydrostatic tests to ensure that inconsistent mechanical and chemical properties are not inherent in microalloyed line pipe grades on all API 5L—PSL 2, X70 and X80 line pipe installed during recent construction projects.

Pipeline owners and operators should conduct technical document reviews on all high strength microalloyed line pipe installed during this period, review hydrostatic test failures that occurred on pipelines installed during this period and consider using methods to detect pipe expansion such as running deformation tools that detect expanded pipe in these systems if they have any knowledge, findings or pipe history that lead them to believe their newly constructed high grade line pipe systems contain line pipe joints that do not meet specification requirements. Should a pipeline owner or operator have knowledge of other high grade pipe vintages supplied at early dates that are in their operating systems that may have this problem, they should consider conducting reviews as described above with these operating pipelines to ensure that operating pressures and anomaly repair procedures are not being conducted outside of their 49 CFR Parts 192 and 195 Code parameters.

Authority: 49 U.S.C. chapter 601 and 49 CFR 1.53.

Issued in Washington, DC, on May 14, 2009.

Jeffrey D. Wiese,

Associate Administrator for Pipeline Safety.

[FR Doc. E9-11815 Filed 5-20-09; 8:45 am]

BILLING CODE 4910-60-P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

[AC 187-1C]

Schedule of Charges Outside the United States

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of availability.

SUMMARY: The Federal Aviation Administration (FAA) is announcing the availability of Advisory Circular (AC) 187-1C which transmits an updated schedule of charges for services of FAA Flight Standards Aviation Safety Inspectors outside the United States. The advisory circular has been updated in accordance with the procedures listed in 14 CFR Part 187, Appendix A.

DATES: This AC is effective on June 1, 2009.

ADDRESSES: *How to obtain copies:* A copy of this publication may be downloaded from: [http://rgl.faa.gov/Regulatory_and_Guidance_Library/rgAdvisoryCircular.nsf/0/b38e4a75d8e55cae862575b6004e937a/\\$FILE/AC%20187-1C.pdf](http://rgl.faa.gov/Regulatory_and_Guidance_Library/rgAdvisoryCircular.nsf/0/b38e4a75d8e55cae862575b6004e937a/$FILE/AC%20187-1C.pdf).

FOR FURTHER INFORMATION CONTACT: Dr. Geoff McIntyre, Flight Standards Service, AFS-51, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591, telephone (202) 385-8139.

Issued in Washington, DC, on May 14, 2009.

John W. McGraw,

Deputy Director, Flight Standards Service.

[FR Doc. E9-11926 Filed 5-20-09; 8:45 am]

BILLING CODE 4910-13-P

DEPARTMENT OF VETERANS AFFAIRS

Advisory Committee on Structural Safety of Department of Veterans Affairs Facilities; Notice of Meeting

The Department of Veterans Affairs (VA) gives notice under Public Law 92-463 (Federal Advisory Committee Act) that a meeting of the Advisory Committee on Structural Safety of Department of Veterans Affairs Facilities will be held on June 18-19, 2009, in Room 442, Export Import Bank, 811 Vermont Avenue, NW., Washington, DC. The June 18 session will be from 9 a.m. until 5 p.m., and the June 19 session will be from 8:30 a.m. until 12:30 p.m. The meeting is open to the public.

The purpose of the Committee is to advise the Secretary of Veterans Affairs

on matters of structural safety in the construction and remodeling of VA facilities and to recommend standards for use by VA in the construction and alteration of its facilities.

On June 18, the Committee will review developments in the fields of fire safety issues and structural design as they relate to seismic and other natural hazards impact on the safety of buildings. On June 19, the Committee will receive briefings and presentations on current seismic, natural hazards, and fire safety issues that are particularly relevant to facilities owned and leased by the Department. The Committee will also discuss appropriate structural and fire safety recommendations for inclusion in VA's standards.

No time will be allocated for receiving oral presentations from the public. However, the Committee will accept written comments. Comments should be sent to Krishna K. Banga, Senior Structural Engineer, Facilities Quality Service, Office of Construction & Facilities Management (00CFM1A), Department of Veterans Affairs, 810 Vermont Avenue, NW., Washington, DC 20420. Those wishing to attend should contact Mr. Banga at (202) 461-8219.

Dated: May 14, 2009.

By Direction of the Secretary.

E. Philip Riggin,

Committee Management Officer.

[FR Doc. E9-11842 Filed 5-20-09; 8:45 am]

BILLING CODE 8320-01-P

DEPARTMENT OF VETERANS AFFAIRS

Advisory Committee on Women Veterans; Notice of Meeting

The Department of Veterans Affairs (VA) gives notice under Public Law 92-463 (Federal Advisory Committee Act) that the Advisory Committee on Women Veterans will conduct a site visit on June 8-12, 2009, at the VA North Texas Health Care System (VANTHCS), 4500 South Lancaster Road, Dallas, Texas. Several sessions during the site visit will be held at the Dallas-Fort Worth National Cemetery, Sam Rayburn Memorial Veterans Center in Bonham, and the Clyde W. Coper State Veterans Home in Bonham. Sessions each day during the site visit will be open to the public, will begin at 8:30 a.m. and will end at 4:30 p.m.

The purpose of the Committee is to advise the Secretary of Veterans Affairs regarding the needs of women Veterans with respect to health care, rehabilitation, compensation, outreach, and other programs and activities administered by VA designed to meet such needs. The Committee makes recommendations to the Secretary regarding such programs and activities.

On June 8, the agenda will include briefings from VA Heart of Texas Health Care Network (VISN 17) leadership, VISN 17 women Veterans program managers, VANTHCS leadership, and the director of the Waco Regional Office. On June 9, the Committee will receive briefings from VANTHCS program offices (primary care, women's health clinic, medical services, surgical

services, long term care/hospice, radiology, mental health services and OEF/OIF services). The Committee will also be briefed by the National Cemetery Administration leadership, and will tour the Dallas-Fort Worth National Cemetery. On June 10, the Committee will meet at the Sam Rayburn Memorial Veterans Center (SRMVC) in Bonham, receive briefings from SRMVC leadership and officials of the Clyde W. Coper State Veterans Home, along with tours of the SRMVC facilities and the Clyde W. Coper State Veterans Home. On June 11, the Committee will receive briefings from local vet centers and will tour the VANTHCS hospital. On June 12, the Committee will meet with Dallas-Fort Worth area Veterans service organizations and other stakeholders, and conduct a town hall meeting with the women Veterans community.

Any member of the public wishing to attend should contact Ms. Shannon L. Middleton at the Department of Veterans Affairs, Center for Women Veterans (00W), 810 Vermont Avenue, NW., Washington, DC 20420, by phone at (202) 461-6193, fax at (202) 273-7092, or e-mail at 00W@mail.va.gov. Interested persons may attend, appear before, or file statements with the Committee. Written statements must be filed before the meeting, or within 10 days after the meeting.

Dated: May 14, 2009.

By Direction of the Secretary.

E. Philip Riggin,

Committee Management Officer.

[FR Doc. E9-11844 Filed 5-20-09; 8:45 am]

BILLING CODE 8320-01-P



Federal Register

**Thursday,
May 21, 2009**

Part II

The President

**Notice of May 19, 2009—Continuation of
the National Emergency With Respect To
the Stabilization of Iraq**

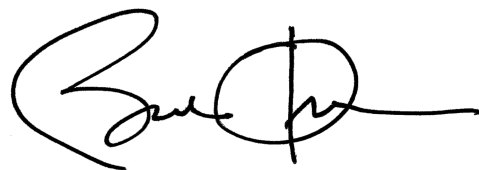
Title 3—**Notice of May 19, 2009****The President****Continuation of the National Emergency With Respect To the Stabilization of Iraq**

On May 22, 2003, by Executive Order 13303, the President declared a national emergency protecting the Development Fund for Iraq and certain other property in which Iraq has an interest, pursuant to the International Emergency Economic Powers Act (50 U.S.C. 1701–1706). The President took this action to deal with the unusual and extraordinary threat to the national security and foreign policy of the United States posed by obstacles to the orderly reconstruction of Iraq, the restoration and maintenance of peace and security in the country, and the development of political, administrative, and economic institutions in Iraq.

In Executive Order 13315 of August 28, 2003, Executive Order 13350 of July 29, 2004, Executive Order 13364 of November 29, 2004, and Executive Order 13438 of July 17, 2007, the President modified the scope of the national emergency declared in Executive Order 13303 and amended the steps taken pursuant to it.

Because the obstacles to the orderly reconstruction of Iraq, the restoration and maintenance of peace and security in the country, and the development of political, administrative, and economic institutions in Iraq continue to pose an unusual and extraordinary threat to the national security and foreign policy of the United States, the national emergency declared on May 22, 2003, and the measures adopted on that date, August 28, 2003, July 29, 2004, November 29, 2004, and July 17, 2007, to deal with that emergency must continue in effect beyond May 22, 2009. Therefore, in accordance with section 202(d) of the National Emergencies Act (50 U.S.C. 1622(d)), I am continuing for 1 year the national emergency with respect to the stabilization of Iraq.

This notice shall be published in the *Federal Register* and transmitted to the Congress.

A handwritten signature in black ink, appearing to be Barack Obama's signature, consisting of a large 'B', a cursive 'O', and a vertical line through the 'O'.

THE WHITE HOUSE,
May 19, 2009.

[FR Doc. E9-12100
Filed 5-20-09; 12:00 pm]
Billing code 3195-W9-P

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Reminders. Effective January 1, 2009, the Reminders, including Rules Going Into Effect and Comments Due Next Week, no longer appear in the Reader Aids section of the Federal Register. This information can be found online at <http://www.regulations.gov>.

CFR Checklist. Effective January 1, 2009, the CFR Checklist no longer appears in the Federal Register. This information can be found online at <http://bookstore.gpo.gov/>.

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Protecting Incentives for the Adoption of Children with Special Needs Act of 2009 (May 15, 2009; 123 Stat. 1616)
Last List May 13, 2009

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