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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, February 24, 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.

FEDERAL RESERVE SYSTEM

12 CFR Parts 208 and 225

[Regulations H and Y; Docket No. 1332]

Risk-Based Capital Guidelines; Leverage Capital Guidelines

AGENCY: Board of Governors of the Federal Reserve System.

ACTION: Final rule.

SUMMARY: To reduce liquidity and other strains being experienced by money market mutual funds, the Federal Reserve System adopted on September 19, 2008, the Asset-Backed Commercial Paper Money Market Mutual Fund Lending Facility (AMLF) that enables depository institutions and bank holding companies to borrow from the Federal Reserve Bank of Boston on a nonrecourse basis if they use the proceeds of the loan to purchase certain types of asset-backed commercial paper (ABCP) from money market mutual funds. To facilitate this Federal Reserve lending program, the Board of Governors of the Federal Reserve System (Board) also adopted an exemption from its leverage and risk-based capital rules for ABCP held by a state member bank or bank holding company as a result of its participation in this program.

DATES: Effective January 30, 2009.

FOR FURTHER INFORMATION CONTACT:

Mark E. Van Der Weide, Assistant General Counsel, (202) 452-2263, or Andrea R. Tokheim, Counsel, (202) 452-2300, Legal Division; Barbara J. Bouchard, Associate Director, (202) 452-3072, or Juan C. Climent, Senior Supervisory Financial Analyst, (202) 872-7526, Division of Banking Supervision and Regulation. For the hearing impaired *only*, Telecommunication Device for the Deaf (TDD), (202) 263-4869.

SUPPLEMENTARY INFORMATION:

In light of the ongoing dislocations in the financial markets, and the impact of such dislocations on the functioning of the markets for ABCP and on the operations of money market mutual funds, the Board adopted the AMLF on September 19, 2008. Under the AMLF, depository institutions and bank holding companies (banking organizations) are able to borrow from the Federal Reserve Bank of Boston on a nonrecourse basis on condition that the organizations use the proceeds of the Federal Reserve credit to purchase, at amortized cost, certain highly rated U.S. dollar-denominated ABCP from money market mutual funds. The ABCP purchased must be used to secure the borrowing from the Reserve Bank. The purpose of the AMLF is to assist money market mutual funds to obtain liquidity by enabling them to sell some of their high-credit-quality secured assets at amortized cost. The AMLF, which was initially scheduled to expire on January 31, 2009, has been extended to April 30, 2009.¹

Banking organizations that participate in the AMLF must acquire and hold ABCP on their balance sheet. These ABCP holdings attract leverage and risk-based capital charges under the Board's regulatory capital rules for state member banks and bank holding companies. To facilitate the AMLF, and for the reasons discussed below, on September 19, 2008, the Board adopted, on an interim final basis, and requested public comment on, an exemption from its leverage and risk-based capital rules for ABCP purchased by a state member bank or bank holding company as a result of its participation in the facility.² Specifically, the interim final rule (i) amended the Board's risk-based capital rules for state member banks and bank holding companies to assign a zero percent risk weight to ABCP purchased by the banking organization as a result of its participation in the facility; and (ii) amended the Board's leverage capital rules for state member banks and bank holding companies to permit banking organizations to exclude from average total consolidated assets—the denominator of the leverage ratio—ABCP purchased by the banking

organization as a result of its participation in the facility.

After considering the comments, the Board has adopted a final rule that is largely identical to the interim final rule but includes minor changes to reflect the extended duration of the AMLF. The interim final rule provided that the exemptions applied only to ABCP purchased between September 19, 2008, and January 30, 2009 from an affiliated SEC-registered open-end investment company that holds itself out as a money market mutual fund under SEC Rule 2a-7 (17 CFR 270.2a-7). This timeframe coincided with the dates of the AMLF. In the final rule, the date range for eligible ABCP purchases has been eliminated, but the rule continues to provide that the exemptions are available only for ABCP that are purchased in order to secure borrowing from the AMLF. As a result, the exemptions effectively will no longer be available once the AMLF expires.

The Board has determined that the current leverage and risk-based capital requirements for ABCP acquired by a banking organization pursuant to the AMLF do not reflect the substantial protections provided to the organization by the Federal Reserve in connection with the facility. Because of the non-recourse nature of the Federal Reserve's credit extension to the banking organization, the organization is not exposed to the credit or market risk of the ABCP purchased by the organization and pledged to the Federal Reserve. Therefore, the Board believes that it is appropriate—and consistent with the economic substance of the transactions—not to impose regulatory capital requirements on the ABCP purchased by a banking organization in connection with its service as an intermediary in the AMLF.

Administrative Procedure Act

Pursuant to sections 553(d) of the Administrative Procedure Act (5 U.S.C. § 553(d)), the Board finds that there is good cause for making the rule effective immediately on January 30, 2009. The Board has adopted the rule in light of, and to help address, the continuing unusual and exigent circumstances in the financial markets. The rule will provide immediate relief to depository institutions that elect to participate in the AMLF.

¹ Board of Governors of the Federal Reserve System (2008), "Federal Reserve announces the extension of three liquidity facilities through April 30, 2009," press release, December 2.

² 73 FR 55706 (2008).

Regulatory Flexibility Act

The Regulatory Flexibility Act requires an agency that is issuing a final rule to prepare and make available a regulatory flexibility analysis that describes the impact of the final rule on small entities. 5 U.S.C. 603(a). The Regulatory Flexibility Act provides that an agency is not required to prepare and publish a regulatory flexibility analysis if the agency certifies that the final rule will not have a significant economic impact on a substantial number of small entities. 5 U.S.C. 605(b).

Pursuant to section 605(b), the Board certifies that this final rule will not have a significant economic impact on a substantial number of small entities. The rule reduces regulatory burden on large and small state member banks and bank holding companies by granting an exemption from the leverage and risk-based capital rules for state member banks and bank holding companies that purchase ABCP from money market mutual funds pursuant to the Federal Reserve's ABCP lending program.

Paperwork Reduction Act

In accordance with the Paperwork Reduction Act (44 U.S.C. 3506; 5 CFR 1320 Appendix A.1), the Board has reviewed the final rule under authority delegated to the Board by the Office of Management and Budget. The rule contains no collections of information pursuant to the Paperwork Reduction Act.

Plain Language

Section 722 of the Gramm-Leach-Bliley Act requires the Board to use "plain language" in all proposed and final rules. In light of this requirement, the Board has sought to present the final rule in a simple and straightforward manner. The Board invited comment on whether it could take additional steps to make the rule easier to understand. The Board received no comments on this subject.

List of Subjects

12 CFR Part 208

Confidential business information, Crime, Currency, Federal Reserve System, Mortgages, Reporting and recordkeeping requirements, Securities.

12 CFR Part 225

Administrative practice and procedure, Banks, banking, Federal Reserve System, Holding companies, Reporting and recordkeeping requirements, Securities.

Authority and Issuance

■ For the reasons stated in the preamble, the Board of Governors of the Federal Reserve System amends parts 208 and 225 of chapter II of title 12 of the Code of Federal Regulations as follows:

PART 208—MEMBERSHIP OF STATE BANKING INSTITUTIONS IN THE FEDERAL RESERVE SYSTEM (REGULATION H)

■ 1. The authority citation for part 208 continues to read as follows:

Authority: 12 U.S.C. 24, 36, 92a, 93a, 248(a), 248(c), 321–338a, 371d, 461, 481–486, 601, 611, 1814, 1816, 1818, 1820(d)(9), 1823(j), 1828(o), 1831, 1831o, 1831p–1, 1831r–1, 1835a, 1882, 2901–2907, 3105, 3310, 3331–3351, and 3906–3909; 15 U.S.C. 78b, 78l(b), 78l(g), 78l(i), 78o–4(c)(5), 78q, 78q–1, and 78w, 6801, and 6805; 31 U.S.C. 5318; 42 U.S.C. 4012a, 4104a, 4104b, 4106, and 4128.

■ 2. In appendix A to part 208, amend section III.C.1. by revising the last undesignated paragraph to read as follows:

Appendix A to Part 208—Capital Adequacy Guidelines for State Member Banks: Risk-Based Measure

* * * * *
III. * * *
C. * * *
1. * * *

This category also includes ABCP (i) purchased on or after September 19, 2008, by a bank from an SEC-registered open-end investment company that holds itself out as a money market mutual fund under SEC Rule 2a–7 (17 CFR 270.2a–7) and (ii) pledged by the bank to a Federal Reserve Bank to secure financing from the ABCP lending facility (AMLF) established by the Board on September 19, 2008.

■ 3. In appendix B to part 208, amend section II. by revising paragraph h. to read as follows:

Appendix B to Part 208—Capital Adequacy Guidelines for State Member Banks: Tier 1 Leverage Measure

* * * * *

h. Notwithstanding anything in this appendix to the contrary, a bank may deduct from its average total consolidated assets the amount of any asset-backed commercial paper (i) purchased by the bank on or after September 19, 2008, from an SEC-registered open-end investment company that holds itself out as a money market mutual fund under SEC Rule 2a–7 (17 CFR 270.2a–7) and (ii)

pledged by the bank to a Federal Reserve Bank to secure financing from the ABCP lending facility (AMLF) established by the Board on September 19, 2008.

PART 225—BANK HOLDING COMPANIES AND CHANGE IN BANK CONTROL (REGULATION Y)

■ 1. The authority citation for part 225 continues to read as follows:

Authority: 12 U.S.C. 1817(j)(13), 1818, 1828(o), 1831i, 1831p–1, 1843(c)(8), 1844(b), 1972(1), 3106, 3108, 3310, 3331–3351, 3907, and 3909; 15 U.S.C. 6801 and 6805.

■ 2. In appendix A to part 225, amend section III.C.1. by revising the last undesignated paragraph to read as follows:

Appendix A to Part 225—Capital Adequacy Guidelines for Bank Holding Companies: Risk-Based Measure

* * * * *
III. * * *
C. * * *
1. * * *

This category also includes ABCP (i) purchased by a bank holding company on or after September 19, 2008, from an SEC-registered open-end investment company that holds itself out as a money market mutual fund under SEC Rule 2a–7 (17 CFR 270.2a–7) and (ii) pledged by the bank holding company to a Federal Reserve Bank to secure financing from the ABCP lending facility (AMLF) established by the Board on September 19, 2008.

* * * * *

■ 3. In appendix D to part 225, amend section II. by revising paragraph d. to read as follows:

Appendix D to Part 225—Capital Adequacy Guidelines for Bank Holding Companies: Tier 1 Leverage Measure

* * * * *

d. Notwithstanding anything in this appendix to the contrary, a bank holding company may deduct from its average total consolidated assets the amount of any asset-backed commercial paper (i) purchased by the bank holding company on or after September 19, 2008, from an SEC-registered open-end investment company that holds itself out as a money market mutual fund under SEC Rule 2a–7 (17 CFR 270.2a–7) and (ii) pledged by the bank holding company to a Federal Reserve Bank to secure financing from the ABCP lending facility (AMLF) established by the Board on September 19, 2008.

By order of the Board of Governors of the Federal Reserve System, January 28, 2009.

Jennifer J. Johnson,

Secretary of the Board.

[FR Doc. E9-2336 Filed 2-5-09; 8:45 am]

BILLING CODE 6210-01-P

FEDERAL RESERVE SYSTEM

12 CFR Part 223

[Regulation W; Docket No. R-1330]

Transactions Between Member Banks and Their Affiliates: Exemption for Certain Securities Financing Transactions Between a Member Bank and an Affiliate

AGENCY: Board of Governors of the Federal Reserve System (Board).

ACTION: Final rule.

SUMMARY: In light of the continuing unusual and exigent circumstances in the financial markets, the Board has adopted a regulatory exemption for member banks from certain provisions of section 23A of the Federal Reserve Act and the Board's Regulation W. The exemption increases the capacity of member banks, subject to certain conditions designed to help ensure the safety and soundness of the banks, to enter into securities financing transactions with affiliates.

DATES: Effective January 30, 2009.

FOR FURTHER INFORMATION CONTACT:

Mark E. Van Der Weide, Assistant General Counsel, (202) 452-2263 or Andrea R. Tokheim, (202) 452-2300, Legal Division, or Norah M. Barger, Deputy Director, (202) 452-2402, Division of Banking Supervision and Regulation, Board of Governors of the Federal Reserve System, 20th Street and Constitution Avenue, NW., Washington, DC 20551. For the deaf, hard of hearing, and speech impaired only, teletypewriter (TTY), (202) 263-4869.

SUPPLEMENTARY INFORMATION:

In light of the ongoing dislocations in the financial markets, and the potential impact of such dislocations on the functioning of the U.S. tri-party repurchase agreement market, the Board adopted on September 14, 2008, on an interim basis with request for public comment, the following exemption from section 23A of the Federal Reserve Act (12 U.S.C. 371c) and the Board's Regulation W (12 CFR part 223). The exemption is meant to facilitate the ability of an affiliate of a member bank (such as an SEC-registered broker-dealer) to obtain financing, if needed, for securities or other assets that the affiliate ordinarily would have financed

through the U.S. tri-party repurchase agreement market.

The exemption is subject to several conditions designed to protect the safety and soundness of the member bank. First, the member bank may use the exemption to finance only those asset types that the affiliate financed in the U.S. tri-party repurchase agreement market during the week of September 8-12, 2008.

Second, the transactions must be marked to market daily and subject to daily margin maintenance requirements, and the member bank must be at least as over-collateralized in its securities financing transactions with the affiliate as the affiliate's clearing bank was in its U.S. tri-party repurchase agreement transactions with the affiliate on September 12, 2008. The Board expects the member bank and its affiliate to use standard industry documentation for the exempt securities financing transactions (which would, among other things, qualify the transactions as securities contracts or repurchase agreements for purposes of U.S. bankruptcy law).

Third, to ensure that member banks use the exemption in a manner consistent with its purpose—that is, to help provide liquidity to the U.S. tri-party repurchase agreement market—the aggregate risk profile of the exempt securities financing transactions must be no greater than the aggregate risk profile of the affiliate's U.S. tri-party repurchase agreement transactions on September 12, 2008. The exemption, therefore, permits an affiliate to obtain financing from its affiliated member bank for securities positions that the affiliate did not own or finance in the U.S. tri-party repurchase agreement market on September 12, 2008, but only if the new positions in the aggregate do not increase the overall risk profile of the affiliate's portfolio.

Fourth, the member bank's top-tier holding company must guarantee the obligations of the affiliate under the securities financing transactions (or must provide other security to the bank that is acceptable to the Board). Any member bank that intends to use a form of credit enhancement other than a parent company guarantee must consult in advance with Board staff. An example of the type of other security arrangement that may be acceptable to the Board would be a pledge by the affiliate or parent holding company to the member bank of a sufficient amount of additional liquid, high-quality collateral.

Fifth, a member bank may use the exemption only if the bank has not been specifically informed by the Board, after consultation with the bank's appropriate

Federal banking agency, that the bank may not use this exemption. If the Board believes, after such consultation, that the exempt securities financing transactions pose an unacceptable level of risk to the bank, the Board may withdraw the exemption for the bank or may impose supplemental conditions on the bank's use of the exemption.

After considering the comments, the Board has adopted a final rule that is identical to the interim final rule, except that the expiration date has been extended. Consistent with its purpose to ameliorate potential temporary dislocations in the U.S. tri-party repurchase agreement market, the interim final rule provided that the exemption would expire on January 30, 2009, unless extended by the Board. Because of ongoing dislocation in the U.S. tri-party repurchase agreement market, the Board has extended the expiration date of this exemption to October 30, 2009.

The Board notes that any securities financing transactions between the member bank and an affiliate are subject to the market terms requirement of section 23B of the Federal Reserve Act (12 U.S.C. 371c-1). Section 23B requires that financial transactions between a bank and its affiliate be on terms and under circumstances (including credit standards) that are substantially the same, or at least as favorable to the bank, as those prevailing at the time for comparable transactions with or involving nonaffiliates. Among other things, section 23B would require the member bank to apply collateral haircuts to its affiliated securities financing transaction counterparty that are at least as strict as the bank would apply to comparable unaffiliated securities financing transaction counterparties.

Administrative Procedure Act

Pursuant to sections 553 (d) of the Administrative Procedure Act (5 U.S.C. 553(d)), the Board finds that there is good cause for making the rule effective immediately on January 30, 2009. The Board has adopted the rule in light of, and to help address, the continuing unusual and exigent circumstances in the financial markets. The rule will provide immediate relief to participants in the U.S. tri-party repurchase agreement market.

Regulatory Flexibility Act

The Regulatory Flexibility Act requires an agency that is issuing a final rule to prepare and make available a regulatory flexibility analysis that describes the impact of the final rule on small entities. 5 U.S.C. 603(a). The

Regulatory Flexibility Act provides that an agency is not required to prepare and publish a regulatory flexibility analysis if the agency certifies that the final rule will not have a significant economic impact on a substantial number of small entities. 5 U.S.C. 605(b).

Pursuant to section 605(b), the Board certifies that this final rule will not have a significant economic impact on a substantial number of small entities. The rule reduces regulatory burden on large and small insured depository institutions by granting an exemption from the Federal transactions with affiliates regime for insured depository institutions that engage in securities financing transactions with affiliates.

Paperwork Reduction Act

In accordance with the Paperwork Reduction Act (44 U.S.C. 3506; 5 CFR 1320 Appendix A.1), the Board has reviewed the final rule under authority delegated to the Board by the Office of Management and Budget. The rule contains no collections of information pursuant to the Paperwork Reduction Act.

Plain Language

Section 722 of the Gramm-Leach-Bliley Act requires the Board to use "plain language" in all proposed and final rules. In light of this requirement, the Board has sought to present the final rule in a simple and straightforward manner. The Board invited comment on whether the Board could take additional steps to make the rule easier to understand. The Board received no comments on this subject.

List of Subjects in 12 CFR Part 223

Banks, Banking, Federal Reserve System.

Authority and Issuance

■ For the reasons set forth in the preamble, Chapter II of Title 12 of the Code of Federal Regulations is amended as follows:

PART 223—TRANSACTIONS BETWEEN MEMBER BANKS AND THEIR AFFILIATES (REGULATION W)

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

Authority: 12 U.S.C. 371c and 371c-1.

■ 2. In § 223.42, revise paragraph (n) to read as follows:

§ 223.42 What covered transactions are exempt from the quantitative limits, collateral requirements, and low-quality asset prohibition?

* * * * *

(n) *Securities financing transactions.*

(1) From September 15, 2008, until October 30, 2009 (unless further extended by the Board), securities financing transactions with an affiliate, if:

(i) The security or other asset financed by the member bank in the transaction is of a type that the affiliate financed in the U.S. tri-party repurchase agreement market at any time during the week of September 8–12, 2008;

(ii) The transaction is marked to market daily and subject to daily margin-maintenance requirements, and the member bank is at least as over-collateralized in the transaction as the affiliate's clearing bank was over-collateralized in comparable transactions with the affiliate in the U.S. tri-party repurchase agreement market on September 12, 2008;

(iii) The aggregate risk profile of the securities financing transactions under this exemption is no greater than the aggregate risk profile of the securities financing transactions of the affiliate in the U.S. tri-party repurchase agreement market on September 12, 2008;

(iv) The member bank's top-tier holding company guarantees the obligations of the affiliate under the securities financing transactions (or provides other security to the bank that is acceptable to the Board); and

(v) The member bank has not been specifically informed by the Board, after consultation with the member bank's appropriate Federal banking agency, that the member bank may not use this exemption.

(2) For purposes of this exemption:

(i) *Securities financing transaction* means:

(A) A purchase by a member bank from an affiliate of a security or other asset, subject to an agreement by the affiliate to repurchase the asset from the member bank;

(B) A borrowing of a security by a member bank from an affiliate on a collateralized basis; or

(C) A secured extension of credit by a member bank to an affiliate.

(ii) *U.S. tri-party repurchase agreement market* means the U.S. market for securities financing transactions in which the counterparties use custodial arrangements provided by JPMorgan Chase Bank or Bank of New York or another financial institution approved by the Board.

* * * * *

By order of the Board of Governors of the Federal Reserve System, January 30, 2009.

Jennifer J. Johnson,

Secretary of the Board.

[FR Doc. E9-2337 Filed 2-5-09; 8:45 am]

BILLING CODE 6210-01-P

FEDERAL RESERVE SYSTEM

12 CFR Part 223

[Regulation W; Docket No. R-1331]

Transactions Between Member Banks and Their Affiliates: Exemption for Certain Purchases of Asset-Backed Commercial Paper by a Member Bank From an Affiliate

AGENCY: Board of Governors of the Federal Reserve System.

ACTION: Final rule.

SUMMARY: To reduce liquidity and other strains being experienced by money market mutual funds, the Board of Governors of the Federal Reserve System (Board) adopted on September 19, 2008, the Asset-Backed Commercial Paper Money Market Mutual Fund Lending Facility (AMLF), that enables depository institutions and bank holding companies to borrow from the Federal Reserve Bank of Boston on a non-recourse basis if they use the proceeds of the loan to purchase certain types of asset-backed commercial paper (ABCP) from money market mutual funds. To facilitate use of the AMLF by member banks, the Board also has adopted regulatory exemptions for member banks from certain provisions of sections 23A and 23B of the Federal Reserve Act and the Board's Regulation W. The exemptions increase the capacity of a member bank to purchase ABCP from affiliated money market mutual funds in connection with the AMLF.

DATES: Effective January 30, 2009.

FOR FURTHER INFORMATION CONTACT: Mark E. Van Der Weide, Assistant General Counsel, (202) 452-2263, or Andrea R. Tokheim, Counsel, (202) 452-2300, Legal Division; or Norah M. Barger, Deputy Director, (202) 452-2402, Division of Banking Supervision and Regulation. For the hearing impaired *only*, Telecommunication Device for the Deaf (TDD), (202) 263-4869.

SUPPLEMENTARY INFORMATION:

In light of the ongoing dislocations in the financial markets, and the impact of such dislocations on the functioning of the ABCP markets and on the operations of money market mutual funds, the Board adopted the AMLF on September

19, 2008. Under the facility, depository institutions and bank holding companies (banking organizations) are able to borrow from the Federal Reserve Bank of Boston on a non-recourse basis on condition that the organizations use the proceeds of the Federal Reserve credit to purchase, at amortized cost, certain highly rated U.S. dollar-denominated ABCP from money market mutual funds. The ABCP purchased must be used to secure the borrowing from the Reserve Bank. The purpose of the AMLF is to assist money market mutual funds to obtain liquidity by enabling them to sell some of their high-credit-quality secured assets at amortized cost. The AMLF, which was initially scheduled to expire on January 31, 2009, has been extended to April 30, 2009.¹

To facilitate usage of the AMLF, on September 19, 2008, the Board adopted on an interim basis, and requested public comment on, exemptions from sections 23A and 23B of the Federal Reserve Act (12 U.S.C. 371c, 371c-1) and the Board's Regulation W (12 CFR part 223).² The exemptions were designed to increase the capacity of a member bank to purchase ABCP from an affiliated money market mutual fund in connection with the AMLF. Under the final rule, a member bank may use the exemptions only if the bank has not been specifically informed by the Board, after consultation with the bank's appropriate Federal banking agency, that the bank may not use these exemptions. If the Board believes, after such consultation, that use of the exemptions would not be appropriate for the member bank, the Board may withdraw the exemptions for the bank or may impose supplemental conditions on the bank's use of the exemptions.

After considering the comments, the Board has adopted a final rule that is largely identical to the interim final rule but includes minor changes to reflect the extended duration of the AMLF. The interim final rule provided that the exemptions applied only to purchases of ABCP from an affiliated SEC-registered open-end investment company that holds itself out as a money market mutual fund under SEC Rule 2a-7 (17 CFR 270.2a-7) between September 19, 2008, and January 30, 2009. This timeframe coincided with the dates of the AMLF. In the final rule, the date range for eligible ABCP purchases has been eliminated, but the rule continues

to provide that the exemptions are available only for purchases of ABCP where the ABCP is used to secure borrowing from the AMLF. As a result, the exemptions effectively will no longer be available once the AMLF expires.

The Board has determined that these exemptions are in the public interest and consistent with the purposes of sections 23A and 23B. The substantial protections provided to intermediaries by the Federal Reserve in connection with the AMLF largely mitigate the safety-and-soundness concerns that sections 23A and 23B were designed to address. Because Federal Reserve extensions of credit to a member bank under the AMLF are on a non-recourse basis, the bank should bear no risk of loss from purchases of ABCP under the facility. Therefore, the Board believes that it is appropriate to exempt a member bank that serves as an intermediary in the AMLF from the requirements of sections 23A and 23B and Regulation W.

Administrative Procedure Act

Pursuant to sections 553(d) of the Administrative Procedure Act (5 U.S.C. 553(d)), the Board finds that there is good cause for making the rule effective immediately on January 30, 2009. The Board has adopted the rule in light of, and to help address, the continuing unusual and exigent circumstances in the financial markets. The rule will provide immediate relief to depository institutions that elect to participate in the ABCP Lending Facility.

Regulatory Flexibility Act

The Regulatory Flexibility Act requires an agency that is issuing a final rule to prepare and make available a regulatory flexibility analysis that describes the impact of the final rule on small entities. 5 U.S.C. 603(a). The Regulatory Flexibility Act provides that an agency is not required to prepare and publish a regulatory flexibility analysis if the agency certifies that the final rule will not have a significant economic impact on a substantial number of small entities. 5 U.S.C. 605(b).

Pursuant to section 605(b), the Board certifies that this final rule will not have a significant economic impact on a substantial number of small entities. The rule reduces regulatory burden on large and small insured depository institutions by granting exemptions from the Federal transactions with affiliates regime for insured depository institutions that purchase ABCP from affiliated money market mutual funds pursuant to the AMLF.

Paperwork Reduction Act

In accordance with the Paperwork Reduction Act (44 U.S.C. 3506; 5 CFR 1320 Appendix A.1), the Board has reviewed the final rule under authority delegated to the Board by the Office of Management and Budget. The rule contains no collections of information pursuant to the Paperwork Reduction Act.

Plain Language

Section 722 of the Gramm-Leach-Bliley Act requires the Board to use "plain language" in all proposed and final rules. In light of this requirement, the Board has sought to present the final rule in a simple and straightforward manner. The Board invited comment on whether it could take additional steps to make the rule easier to understand. The Board received no comments on this subject.

List of Subjects in 12 CFR Part 223

Banks, Banking, Federal Reserve System.

Authority and Issuance

■ For the reasons set forth in the preamble, the Board amends Chapter II of Title 12 of the Code of Federal Regulations as follows:

PART 223—TRANSACTIONS BETWEEN MEMBER BANKS AND THEIR AFFILIATES (REGULATION W)

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

Authority: 12 U.S.C. 371c and 371c-1.

■ 2. In § 223.42, revise paragraph (o) to read as follows:

§ 223.42 What covered transactions are exempt from the quantitative limits, collateral requirements, and low-quality asset prohibition?

* * * * *

(o) *Purchases of certain asset-backed commercial paper.* Purchases of asset-backed commercial paper from an affiliated SEC-registered open-end investment company that holds itself out as a money market mutual fund under SEC Rule 2a-7 (17 CFR 270.2a-7), if the member bank:

(1) Purchases the asset-backed commercial paper on or after September 19, 2008;

(2) Pledges the asset-backed commercial paper to a Federal Reserve Bank to secure financing from the asset-backed commercial paper lending facility (AMLF) established by the Board on September 19, 2008; and

(3) Has not been specifically informed by the Board, after consultation with the member bank's appropriate Federal

¹ Board of Governors of the Federal Reserve System (2008). "Federal Reserve announces the extension of three liquidity facilities through April 30, 2009," press release, December 2, 2008.

² 73 FR 55708.

banking agency, that the member bank may not use this exemption.

■ 3. Revise § 223.56 to read as follows:

§ 223.56 What transactions are exempt from the market-terms requirement of section 23B?

The following transactions are exempt from the market-terms requirement of § 223.51.

(a) *Purchases of certain asset-backed commercial paper.* Purchases of asset-backed commercial paper from an affiliated SEC-registered open-end investment company that holds itself out as a money market mutual fund under SEC Rule 2a-7 (17 CFR 270.2a-7), if the member bank:

(1) Purchases the asset-backed commercial paper on or after September 19, 2008;

(2) Pledges the asset-backed commercial paper to a Federal Reserve Bank to secure financing from the asset-backed commercial paper lending facility (AMLF) established by the Board on September 19, 2008; and

(3) Has not been specifically informed by the Board, after consultation with the member bank's appropriate Federal banking agency, that the member bank may not use this exemption.

(b) [Reserved].

By order of the Board of Governors of the Federal Reserve System, January 30, 2009.

Jennifer J. Johnson,
Secretary of the Board.

[FR Doc. E9-2338 Filed 2-5-09; 8:45 am]

BILLING CODE 6210-01-P

DEPARTMENT OF DEFENSE

Office of the Secretary

32 CFR Part 199

[DOD-2007-HA-0048]

RIN 0720-AB19

TRICARE; Hospital Outpatient Prospective Payment System (OPPS): Delay of Effective Date and Additional Opportunity for Public Comment

AGENCY: Office of the Secretary, Department of Defense.

ACTION: Final rule; delay of effective date and opportunity for public comment.

SUMMARY: On December 10, 2008, DoD published a final rule implementing the TRICARE Hospital Outpatient Prospective Payment System (OPPS), with an effective date of February 9, 2009 (73 FR 74945). Since that date, DoD has determined that in order for administrative claims processing

procedures to be fully in place to implement effectively the new OPPS payments, TRICARE's OPPS will begin to apply to health care services provided on or after May 1, 2009. In the meantime, a memorandum of January 20, 2009, from the Assistant to the President and Chief of Staff, entitled "Regulatory Review," published in the **Federal Register** on January 26, 2009, calls for agencies to consider delaying effective dates of rules not yet effective and inviting new public comment. In view of both of these developments, the Department is delaying the effective date of TRICARE's OPPS until May 1, 2009, and is inviting additional public comment on the final rule. Any timely public comments received will be considered and any changes to the final rule will be published in the **Federal Register**.

DATES: The effective date of the OPPS final rule published December 10, 2008 (73 FR 74945) is delayed until May 1, 2009. Comments must be received on or before March 9, 2009.

ADDRESSES: You may submit comments, identified by docket number and/or Regulatory Information Number (RIN) and title, by either of the following methods:

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

- *Mail:* Federal Docket Management System Office, 1160 Defense Pentagon, Washington, DC 20301-1160.

Instructions: All submissions received must include the agency name and docket number or RIN for this **Federal Register** document. The general policy for comments and other submissions from members of the public is to make these submissions available for public viewing on the Internet at <http://www.regulations.gov> as they are received without change, including any personal identifiers or contact information.

FOR FURTHER INFORMATION CONTACT: David E. Bennett or Martha M. Maxey, TRICARE Management Activity, Medical Benefits and Reimbursement Branch, telephone (303) 676-3494 or (303) 676-3627.

Dated: February 3, 2009.

Patricia L. Toppings,
OSD Federal Register Liaison Officer,
Department of Defense.

[FR Doc. E9-2562 Filed 2-5-09; 8:45 am]

BILLING CODE 5001-06-P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 117

[Docket No. USCG-2008-1263]

Drawbridge Operation Regulation; Bayou Lacarde, Mile 7.5, at Houma, Lafourche Parish, LA

AGENCY: Coast Guard, DHS.

ACTION: Notice of temporary deviation from regulations.

SUMMARY: The Commander, Eighth Coast Guard District, has issued a temporary deviation from the regulation governing the operation of the SR 661 Vertical Lift Bridge across Bayou Lacarde, mile 7.5, at Houma, Lafourche Parish, Louisiana. The deviation is necessary to replace all the wire ropes used to lift the movable span of the bridge. This deviation allows the bridge to remain closed during daytime hours and requires an advance notice for openings during the nighttime.

DATES: This deviation is effective from 9 a.m. on January 31, 2009 through 5 p.m. on February 14, 2009.

ADDRESSES: Documents indicated in this preamble as being available in the docket are part of docket USCG-2008-1263 and are available online at www.regulations.gov. They are also available for inspection or copying at two locations: the Docket Management Facility (M-30), U.S. Department of Transportation, West Building Ground Floor, Room W12-140, 1200 New Jersey Avenue, SE., Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays, and the Eighth Coast Guard District, Bridge Administration Branch, Hale Boggs Federal Building, Room 1313, 500 Poydras Street, New Orleans, Louisiana 70130-3310 between 7 a.m. and 3 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: Bart Marcules, Bridge Administration Branch, telephone (504) 671-2128.

SUPPLEMENTARY INFORMATION: Louisiana Department of Transportation and Development has requested a temporary deviation from the operating schedule of the State Route 661 Vertical Lift Bridge across Bayou Lacarde, mile 7.5, at Houma, Lafourche Parish, Louisiana. The vertical clearance in the closed position is 3 feet, thus most vessels will not be able to pass underneath this bridge in the closed-to-navigation position. There may be times, during the closure period, when the draw will not

be able to open for emergencies. The bridge normally operates in accordance with 33 CFR 117.460 on signal with at least a four hour advance notice except that it need not open on weekdays except holidays from 7 a.m. to 8:30 a.m. and 4:30 p.m. to 6 p.m. This deviation will allow the bridge to remain in the closed-to-navigation position from 9 a.m. to 6 p.m. and will open on signal if at least 24 hour notice is given from 6 p.m. to 9 a.m. starting January 31, 2009 through February 14, 2009. During the closure periods the wire ropes used for lifting the movable span will all be changed. Navigation on the waterway consists of tugs with tows, fishing vessels and recreational craft. Due to prior experience, as well as coordination with waterway users, and an alternate route, it has been determined that this closure will not have a significant effect on these vessels.

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

Dated: January 12, 2009.

David M. Frank,
Bridge Administrator.

[FR Doc. E9-2492 Filed 2-5-09; 8:45 am]

BILLING CODE 4910-15-P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 117

[Docket No. USCG-2009-0023]

Drawbridge Operation Regulations; Nanticoke River, Seaford, DE

AGENCY: Coast Guard, DHS.

ACTION: Notice of temporary deviation from regulations.

SUMMARY: The Commander, Fifth Coast Guard District, has approved a temporary deviation from the regulations governing the operation of the SR 13 Bridge, at mile 39.6, across Nanticoke River, in Seaford, Delaware. Under this temporary deviation, the drawbridge will be allowed to operate on an advance notice basis on particular dates and times. The deviation is necessary to perform inspections of the electrical and mechanical systems.

DATES: This deviation is effective from 8 a.m. on February 6, 2009, to 5 p.m. on May 1, 2009.

ADDRESSES: Documents indicated in this preamble as being available in the docket are part of docket USCG-2009-0023 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 Commander (dpb), Fifth Coast Guard District, Federal Building, 1st Floor, 431 Crawford Street, Portsmouth, VA 23704-5004 between 8 a.m. and 4 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: Mr. Waverly W. Gregory, Jr., Bridge Administrator, Fifth Coast Guard District, at (757) 398-6222.

SUPPLEMENTARY INFORMATION: Hardesty and Hanover LLP Engineering, on behalf of the Delaware Department of Transportation (who owns and operates this swing-type drawbridge) requested a temporary deviation from the current operating schedule to perform inspections of the electrical and mechanical systems.

The SR 13 Bridge, at mile 39.6, across Nanticoke River in Seaford, DE, has a vertical clearance of three feet, above mean high water in the closed-to-navigation position. The existing regulation is listed at 33 CFR 117.243(b).

Vessel openings will be provided each day from 8 a.m. to 5 p.m. on February 6, 2009, and from April 27 to May 1, 2009, if at least two hours notice is given.

The Coast Guard will inform the users of the waterway through our Local and Broadcast Notices to Mariners of the opening restrictions of the draw span to minimize transiting delays caused by the temporary deviation.

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

Dated: January 21, 2009.

Waverly W. Gregory, Jr.,
Chief, Bridge Administration Branch Fifth Coast Guard District.

[FR Doc. E9-2499 Filed 2-5-09; 8:45 am]

BILLING CODE 4910-15-P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 117

[Docket No. USCG-2009-0022]

Drawbridge Operation Regulations; Cedar Creek, Cedar Beach, DE

AGENCY: Coast Guard, DHS.

ACTION: Notice of temporary deviation from regulations.

SUMMARY: The Commander, Fifth Coast Guard District, has approved a temporary deviation from the regulations governing the operation of the SR 36 Bridge, at mile 0.5, across Cedar Creek, in Cedar Beach, Delaware. Under this temporary deviation, the drawbridge will be allowed to operate on an advance notice basis on particular dates and times. The deviation is necessary to perform inspections of the electrical and mechanical systems.

DATES: This deviation is effective from 8 a.m. on February 5, 2009, to 5 p.m. on April 3, 2009.

ADDRESSES: Documents indicated in this preamble as being available in the docket are part of docket USCG-2009-0022 and are available online at www.regulations.gov. They are also available for inspection or copying at two locations: The Docket Management Facility (M-30), U.S. Department of Transportation, West Building Ground Floor, Room W12-140, 1200 New Jersey Avenue, SE., Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays, and the Commander (dpb), Fifth Coast Guard District, Federal Building, 1st Floor, 431 Crawford Street, Portsmouth, VA 23704-5004 between 8 a.m. and 4 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: Mr. Waverly W. Gregory, Jr., Bridge Administrator, Fifth Coast Guard District, at (757) 398-6222.

SUPPLEMENTARY INFORMATION: Hardesty and Hanover LLP Engineering, on behalf of the Delaware Department of Transportation (who owns and operates this swing-type drawbridge) requested a temporary deviation from the current operating schedule to perform inspections of the electrical and mechanical systems.

The SR 36 Bridge, at mile 0.5, across Cedar Creek in Cedar Beach, DE, has a vertical clearance of two feet, above mean high water, in the closed-to-navigation position. The existing regulation is listed at 33 CFR 117.234.

Vessel openings will be provided each day from 8 a.m. to 5 p.m. on February 5, 2009, and from April 1 to April 3, 2009, if at least two hours' notice is given.

The Coast Guard will inform the users of the waterway through our Local and Broadcast Notices to Mariners of the opening restrictions of the draw span to minimize transiting delays caused by the temporary deviation.

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

Dated: January 21, 2009.

Waverly W. Gregory, Jr.,

Chief, Bridge Administration Branch, Fifth Coast Guard District.

[FR Doc. E9-2498 Filed 2-5-09; 8:45 am]

BILLING CODE 4910-15-P

POSTAL REGULATORY COMMISSION

39 CFR Part 3020

[Docket Nos. MC2009-15 and CP2009-21; Order No. 176]

New Domestic Mail Product

AGENCY: Postal Regulatory Commission.

ACTION: Final rule.

SUMMARY: The Commission is adding Express Mail Contract 3 to the Competitive Product List. This action is consistent with changes in a recent law governing postal operations and a recent Postal Service request. Republication of the lists of market dominant and competitive products is also consistent with new requirements in the law.

DATES: Effective February 6, 2009, and is applicable beginning January 27, 2009.

FOR FURTHER INFORMATION CONTACT: Stephen L. Sharfman, General Counsel, 202-789-6820 and stephen.sharfman@prc.gov.

SUPPLEMENTARY INFORMATION: *Regulatory History*, 74 FR 1262 (January 12, 2009).

The Postal Service seeks to add a new product identified as Express Mail Contract 3 to the Competitive Product List. For the reasons discussed below, the Commission approves the Request.

I. Background

On December 31, 2008, the Postal Service filed a formal request pursuant to 39 U.S.C. 3642 and 39 CFR 3020.30 *et seq.* to add Express Mail Contract 3

to the Competitive Product List.¹ The Postal Service asserts that the Express Mail Contract 3 product is a competitive product "not of general applicability" within the meaning of 39 U.S.C. 3632(b)(3). This Request has been assigned Docket No. MC2009-15.

The Postal Service contemporaneously filed a contract related to the proposed new product pursuant to 39 U.S.C. 3632(b)(3) and 39 CFR 3015.5. The contract has been assigned Docket No. CP2009-21.

In support of its Request, the Postal Service filed the following materials: (1) A redacted version of the Governors' Decision authorizing the new product which also includes an analysis of Express Mail Contract 3 and certification of the Governors' vote;² (2) a redacted version of the contract which, among other things, provides that the contract will expire 1 year from the effective date, which is proposed to be the day the Commission issues all regulatory approvals;³ (3) requested changes in the Mail Classification Schedule product list;⁴ (4) a Statement of Supporting Justification as required by 39 CFR 3020.32;⁵ and (5) certification of compliance with 39 U.S.C. 3633(a).⁶

In the Statement of Supporting Justification, Kim Parks, Manager, Sales and Communications, Expedited Shipping, asserts that the service to be provided under the contract will cover its attributable costs, make a positive contribution to coverage of institutional costs, and will increase contribution toward the requisite 5.5 percent of the Postal Service's total institutional costs. Request, Attachment D, at 1. W. Ashley Lyons, Manager, Corporate Financial Planning, Finance Department, certifies that the contract complies with 39 U.S.C. 3633(a). *See id.* Attachment E.

The Postal Service filed much of the supporting materials, including the unredacted Governors' Decision and the unredacted Express Mail Contract 3, under seal. In its Request, the Postal Service maintains that the contract and related financial information, including the customer's name and the accompanying analyses that provide prices, terms, conditions, and financial

¹ Request of the United States Postal Service to Add Express Mail Contract 3 to Competitive Product List and Notice of Establishment of Rates and Class Not of General Applicability, December 31, 2008 (Request).

² Attachment A to the Request. The analysis that accompanies the Governors' Decision notes, among other things, that the contract is not risk free, but concludes that the risks are manageable.

³ Attachment B to the Request.

⁴ Attachment C to the Request.

⁵ Attachment D to the Request.

⁶ Attachment E to the Request.

projections, should remain confidential. *Id.* at 2-3. It further believes that it would be inappropriate in this case to redact information through the "blackout" method since it could provide information or clues about the name of the customer, the length and breadth of price charts, the complexity of annual adjustment mechanisms, or other similar sensitive information. Accordingly, it redacts the sensitive information using ellipses. *Id.* at 3.

In Order No. 165, the Commission gave notice of the two dockets, appointed a public representative, and provided the public with an opportunity to comment.⁷

II. Comments

Comments were filed by the Public Representative.⁸ No filings were submitted by other interested parties. The Public Representative states that the Postal Service's filing complies with applicable Commission rules of practice and procedure, and concludes that the Express Mail Contract 3 agreement comports with the requirements of title 39. Public Representative Comments at 4. He further states that the agreement appears beneficial to the general public. *Id.* at 1. He notes that the Postal Service redacted information using ellipses rather than by the "blackout" method because the blackout method might provide information or clues regarding the name of the customer, the length and breadth of the price charts, the complexity of annual adjustment mechanisms, or other similar sensitive information. He believes that in this case the increased care might be warranted, but suggests that the Commission address this issue in its forthcoming rules regarding treatment of confidential information in Docket No. RM2008-1.

III. Commission Analysis

The Commission has reviewed the Request, the contract, the financial analysis provided under seal that accompanies it, and the comments filed by the Public Representative.

Statutory requirements. The Commission's statutory responsibilities in this instance entail assigning Express Mail Contract 3 to either the Market Dominant Product List or to the Competitive Product List. 39 U.S.C.

⁷ PRC Order No. 165, Notice and Order Concerning Express Mail Contract 3 Negotiated Service Agreement, January 5, 2009 (Order No. 165).

⁸ Public Representative Comments in Response to United States Postal Service Request to Add Express Mail Contract 3 to Competitive Product List, January 15, 2009 (Public Representative Comments).

3642. As part of this responsibility, the Commission also reviews the proposal for compliance with the Postal Accountability and Enhancement Act (PAEA) requirements. This includes, for proposed competitive products, a review of the provisions applicable to rates for competitive products. 39 U.S.C. 3633.

Product list assignment. In determining whether to assign Express Mail Contract 3 as a product to the Market Dominant Product List or the Competitive Product List, the Commission must consider whether the Postal Service exercises sufficient market power that it can effectively set the price of such product substantially above costs, raise prices significantly, decrease quality, or decrease output, without risk of losing a significant level of business to other firms offering similar products.

39 U.S.C. 3642(b)(1). If so, the product will be categorized as market dominant. The competitive category of products shall consist of all other products.

The Commission is further required to consider the availability and nature of enterprises in the private sector engaged in the delivery of the product, the views of those who use the product, and the likely impact on small business concerns. 39 U.S.C. 3642(b)(3).

The Postal Service asserts that its bargaining position is constrained by the existence of other shippers who can provide similar services, thus precluding it from taking unilateral action to increase prices without the risk of losing volume to private companies. Request, Attachment D, para. (d). The Postal Service also contends that it may not decrease quality or output without risking the loss of business to competitors that offer similar expedited delivery services. *Id.* It further states that the contract partner supports the addition of the contract to the Competitive Product List to effectuate the negotiated contractual terms. *Id.* at para. (g). Finally, the Postal Service states that the market for expedited delivery services is highly competitive and requires a substantial infrastructure to support a national network. It indicates that large carriers serve this market. Accordingly, the Postal Service states that it is unaware of any small business concerns that could offer comparable service for this customer. *Id.* at para. (h).

No commenter opposes the proposed classification of Express Mail Contract 3 as competitive. Having considered the statutory requirements and the support offered by the Postal Service, the Commission finds that Express Mail Contract 3 is appropriately classified as

a competitive product and should be added to the Competitive Product List.

Cost considerations. The Postal Service's financial analysis shows that Express Mail Contract 3 results in cost savings while ensuring that the contract covers its attributable costs, does not result in subsidization of competitive products by market dominant products, and increases contribution from competitive products. The contract is predicated on unit costs for major mail functions, e.g., window service, mail processing, and transportation, based on the shipper's mail characteristics.

The Commission notes that in evaluating costs under a prospective contract compared to the average, the Postal Service should take into account all departures from average cost that may be due to services provided under the contract. The failure to do so, while having no material effect on the underlying financial analysis of the contract in this instance, hampers the timely review of the Postal Service's financial analysis. See PRC Order No. 138, November 20, 2008, at 6–7.

Based on the data submitted, the Commission finds that Express Mail Contract 3 should cover its attributable costs (39 U.S.C. 3633(a)(2)), should not lead to the subsidization of competitive products by market dominant products (39 U.S.C. 3633(a)(1)), and should have a positive effect on competitive products' contribution to institutional costs (39 U.S.C. 3633(a)(3)). Thus, an initial review of the proposed Express Mail Contract 3 indicates that it comports with the provisions applicable to rates for competitive products.

Redactions. The Public Representative helpfully suggests that the Postal Service's method to redact certain sensitive information could be addressed in more detail in Docket No. RM2008–1. It is the Commission's understanding that the Postal Service now has the technology to use graphical, black box redaction methods. See Dockets No. MC2009–6 and CP2009–7, Public Representative Comments in Response to Order No. 125, November 10, 2008 at 10. Graphical redactions (as opposed to ellipses) are the most easily understandable form of redaction.

As a general matter, it is not apparent how graphical redaction methods could have resulted in harm to the Postal Service. If, nonetheless, the Postal Service chooses to use ellipses, it should more fully justify (under seal if necessary) the use of that method, including how graphical redactions compromise the confidentiality of the

information submitted and can cause harm to the Postal Service.⁹

Other considerations. The Postal Service shall promptly notify the Commission of the scheduled termination date of the agreement. If the agreement terminates earlier than anticipated, the Postal Service shall inform the Commission prior to the new termination date. The Commission will then remove the product from the Mail Classification Schedule at the earliest possible opportunity.

In conclusion, the Commission approves Express Mail Contract 3 as a new product. The revision to the Competitive Product List is shown below the signature of this Order and is effective upon issuance of this order.

IV. Ordering Paragraphs

It is Ordered:

1. Express Mail Contract 3 (MC2009–15 and CP2009–21) is added to the Competitive Product List as a new product under Negotiated Service Agreements, Domestic.

2. The Postal Service shall notify the Commission of the scheduled termination date, and update the Commission if the termination date changes for either contract as discussed in this order.

3. The Secretary shall arrange for the publication of this order in the **Federal Register**.

List of Subjects in 39 CFR Part 3020

Administrative practice and procedure, Postal Service.

Dated: January 27, 2009.

By the Commission.

Steven W. Williams,
Secretary.

■ For the reasons stated in the preamble, under the authority at 39 U.S.C. 503, the Postal Regulatory Commission amends 39 CFR part 3020 as follows:

PART 3020—PRODUCT LISTS

■ 1. The authority citation for part 3020 continues to read as follows:

Authority: 39 U.S.C. 503; 3622; 3631; 3642; 3682.

■ 2. Revise Appendix A to subpart A of part 3020—Mail Classification Schedule to read as follows:

⁹In this case, for example, the Postal Service states that the use of graphical redactions could provide information or clues on (1) the name of the customer; (2) the length and breadth of price charts; (3) the complexity of the annual adjustment mechanisms; and (4) other similar sensitive information. Request at 3. It offers no support for its position.

**APPENDIX A TO SUBPART A OF
SUBPART A OF PART 3020—MAIL
CLASSIFICATION SCHEDULE**

Part A—Market Dominant Products

1000 Market Dominant Product List

First-Class Mail

Single-Piece Letters/Postcards

Bulk Letters/Postcards

Flats

Parcels

Outbound Single-Piece First-Class Mail

International

Inbound Single-Piece First-Class Mail

International

Standard Mail (Regular and Nonprofit)

High Density and Saturation Letters

High Density and Saturation Flats/Parcels

Carrier Route

Letters

Flats

Not Flat-Machinables (NFM)/Parcels

Periodicals

Within County Periodicals

Outside County Periodicals

Package Services

Single-Piece Parcel Post

Inbound Surface Parcel Post (at UPU rates)

Bound Printed Matter Flats

Bound Printed Matter Parcels

Media Mail/Library Mail

Special Services

Ancillary Services

International Ancillary Services

Address List Services

Caller Service

Change-of-Address Credit Card

Authentication

Confirm

International Reply Coupon Service

International Business Reply Mail Service

Money Orders

Post Office Box Service

Negotiated Service Agreements

HSBC North America Holdings Inc.

Negotiated Service Agreement

Bookspan Negotiated Service Agreement

Bank of America Corporation Negotiated

Service Agreement

The Bradford Group Negotiated Service

Agreement

Inbound International

Canada Post—United States Postal Service

Contractual Bilateral Agreement for

Inbound

Market Dominant Services

Market Dominant Product Descriptions

First-Class Mail

[Reserved for Class Description]

Single-Piece Letters/Postcards

[Reserved for Product Description]

Bulk Letters/Postcards

[Reserved for Product Description]

Flats

[Reserved for Product Description]

Parcels

[Reserved for Product Description]

Outbound Single-Piece First-Class Mail

International

[Reserved for Product Description]

Inbound Single-Piece First-Class Mail

International

[Reserved for Product Description]

Standard Mail (Regular and Nonprofit)

[Reserved for Class Description]

High Density and Saturation Letters

[Reserved for Product Description]

High Density and Saturation Flats/Parcels

[Reserved for Product Description]

Carrier Route

[Reserved for Product Description]

Letters

[Reserved for Product Description]

Flats

[Reserved for Product Description]

Not Flat-Machinables (NFM)/Parcels

[Reserved for Product Description]

Periodicals

[Reserved for Class Description]

Within County Periodicals

[Reserved for Product Description]

Outside County Periodicals

[Reserved for Product Description]

Package Services

[Reserved for Class Description]

Single-Piece Parcel Post

[Reserved for Product Description]

Inbound Surface Parcel Post (at UPU rates)

[Reserved for Product Description]

Bound Printed Matter Flats

[Reserved for Product Description]

Bound Printed Matter Parcels

[Reserved for Product Description]

Media Mail/Library Mail

[Reserved for Product Description]

Special Services

[Reserved for Class Description]

Ancillary Services

[Reserved for Product Description]

Address Correction Service

[Reserved for Product Description]

Applications and Mailing Permits

[Reserved for Product Description]

Business Reply Mail

[Reserved for Product Description]

Bulk Parcel Return Service

[Reserved for Product Description]

Certified Mail

[Reserved for Product Description]

Certificate of Mailing

[Reserved for Product Description]

Collect on Delivery

[Reserved for Product Description]

Delivery Confirmation

[Reserved for Product Description]

Insurance

[Reserved for Product Description]

Merchandise Return Service

[Reserved for Product Description]

Parcel Airlift (PAL)

[Reserved for Product Description]

Registered Mail

[Reserved for Product Description]

Return Receipt

[Reserved for Product Description]

Return Receipt for Merchandise

[Reserved for Product Description]

Restricted Delivery

[Reserved for Product Description]

Shipper-Paid Forwarding

[Reserved for Product Description]

Signature Confirmation

[Reserved for Product Description]

Special Handling

[Reserved for Product Description]

Stamped Envelopes

[Reserved for Product Description]

Stamped Cards

[Reserved for Product Description]

Premium Stamped Stationery

[Reserved for Product Description]

Premium Stamped Cards

[Reserved for Product Description]

International Ancillary Services

[Reserved for Product Description]

International Certificate of Mailing

[Reserved for Product Description]

International Registered Mail

[Reserved for Product Description]

International Return Receipt

[Reserved for Product Description]

International Restricted Delivery

[Reserved for Product Description]

Address List Services

[Reserved for Product Description]

Caller Service

[Reserved for Product Description]

Change-of-Address Credit Card

Authentication

[Reserved for Product Description]

Confirm

[Reserved for Product Description]

International Reply Coupon Service

[Reserved for Product Description]

International Business Reply Mail Service

[Reserved for Product Description]

Money Orders

[Reserved for Product Description]

Post Office Box Service

[Reserved for Product Description]

Negotiated Service Agreements

[Reserved for Class Description]

HSBC North America Holdings Inc.

Negotiated Service Agreement

[Reserved for Product Description]

Bookspan Negotiated Service Agreement

[Reserved for Product Description]

Bank of America Corporation Negotiated

Service Agreement

The Bradford Group Negotiated Service

Agreement

Part B—Competitive Products

Competitive Product List

Express Mail

Express Mail

Outbound International Expedited Services

Inbound International Expedited Services

Inbound International Expedited Services 1
(CP2008–7)

Inbound International Expedited Services 2
(MC2009–10 and CP2009–12)

Priority Mail

Priority Mail

Outbound Priority Mail International

Inbound Air Parcel Post

Parcel Select

Parcel Return Service

International

International Priority Airlift (IPA)

International Surface Airlift (ISAL)

International Direct Sacks—M-Bags

Global Customized Shipping Services

Inbound Surface Parcel Post (at non-UPU
rates)

Canada Post—United States Postal Service

Contractual Bilateral Agreement for

Inbound Competitive Services (MC2009–
8 and CP2009–9)

International Money Transfer Service

International Ancillary Services

Special Services

Premium Forwarding Service

Negotiated Service Agreements

Domestic

Express Mail Contract 1 (MC2008–5)

Express Mail Contract 2 (MC2009–3 and
CP2009–4)

Express Mail Contract 3 (MC2009–15 and CP2009–21)
 Express Mail & Priority Mail Contract 1 (MC2009–6 and CP2009–7)
 Express Mail & Priority Mail Contract 2 (MC2009–12 and CP2009–14)
 Express Mail & Priority Mail Contract 3 (MC2009–13 and CP2009–17)
 Parcel Return Service Contract 1 (MC2009–1 and CP2009–2)
 Priority Mail Contract 1 (MC2008–8 and CP2008–26)
 Priority Mail Contract 2 (MC2009–2 and CP2009–3)
 Priority Mail Contract 3 (MC2009–4 and CP2009–5)
 Priority Mail Contract 4 (MC2009–5 and CP2009–6)
 Outbound International
 Global Direct Contracts (MC2009–9, CP2009–10, and CP2009–11)
 Global Expedited Package Services (GEPS) Contracts
 GEPS 1 (CP2008–5, CP2008–11, CP2008–12, and CP2008–13, CP2008–18, CP2008–19, CP2008–20, CP2008–21, CP2008–22, CP2008–23, and CP2008–24)
 Global Plus Contracts
 Global Plus 1 (CP2008–9 and CP2008–10)
 Global Plus 2 (MC2008–7, CP2008–16 and CP2008–17)
 Inbound Direct Entry Contracts with Foreign Postal Administrations (MC2008–6, CP2008–14 and CP2008–15)
 Competitive Product Descriptions
 Express Mail
 [Reserved for Group Description]
 Express Mail
 [Reserved for Product Description]
 Outbound International Expedited Services
 [Reserved for Product Description]
 Inbound International Expedited Services
 [Reserved for Product Description]
 Priority
 [Reserved for Product Description]
 Priority Mail
 [Reserved for Product Description]
 Outbound Priority Mail International
 [Reserved for Product Description]
 Inbound Air Parcel Post
 [Reserved for Product Description]
 Parcel Select
 [Reserved for Group Description]
 Parcel Return Service
 [Reserved for Group Description]
 International
 [Reserved for Group Description]
 International Priority Airlift (IPA)
 [Reserved for Product Description]
 International Surface Airlift (ISAL)
 [Reserved for Product Description]
 International Direct Sacks—M-Bags
 [Reserved for Product Description]
 Global Customized Shipping Services
 [Reserved for Product Description]
 International Money Transfer Service
 [Reserved for Product Description]
 Inbound Surface Parcel Post (at non-UPU rates)
 [Reserved for Product Description]
 International Ancillary Services
 [Reserved for Product Description]
 International Certificate of Mailing
 [Reserved for Product Description]
 International Registered Mail
 [Reserved for Product Description]

International Return Receipt
 [Reserved for Product Description]
 International Restricted Delivery
 [Reserved for Product Description]
 International Insurance
 [Reserved for Product Description]
 Negotiated Service Agreements
 [Reserved for Group Description]
 Domestic
 [Reserved for Product Description]
 Outbound International
 [Reserved for Group Description]
 Part C—Glossary of Terms and Conditions
 [Reserved]
 Part D—Country Price Lists for International Mail
 [Reserved]

[FR Doc. E9–2487 Filed 2–5–09; 8:45 am]

BILLING CODE 7710–FW–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 80

[EPA–HQ–OAR–2008–0558; FRL–8771–6]

RIN 2060–AP17

Regulation of Fuels and Fuel Additives: Gasoline and Diesel Fuel Test Methods

AGENCY: Environmental Protection Agency (EPA).

ACTION: Partial Withdrawal of Direct Final Rule.

SUMMARY: Because EPA received adverse comment, we are withdrawing the provision for the allowance of an alternative test method for olefins in gasoline of the direct final, published on December 8, 2008.

DATES: Effective February 6, 2009, EPA withdraws the amendments to 40 CFR 80.46(b)(2)(i) and 40 CFR 80.46(h)(1)(iii) published at 73 FR 74350 on December 8, 2008.

FOR FURTHER INFORMATION CONTACT: Joe Sopata, Transportation and Regional Programs Division, Office of Transportation and Air Quality (Mail Code: 6406J), Environmental Protection Agency, 1200 Pennsylvania Avenue, NW., 20460; telephone number: (202) 343–9034; fax number: (202) 343–2802; e-mail address: sopata.joe@epa.gov.

SUPPLEMENTARY INFORMATION: Because EPA received adverse comment, we are withdrawing the provision to allow ASTM D6550 as an alternative test method for measuring the olefin content of gasoline, published on December 8, 2008. We stated in that direct final rule that if we received adverse comment by January 7, 2008, the portions of the direct final rule on which adverse comments were received would not take effect, and we would publish a timely

withdrawal of such portions of the direct final rule in the **Federal Register**. We subsequently received an adverse comment on the following provision: The amendments to 40 CFR 80.46(b)(2)(i) to allow ASTM D6550 as an alternative test method for olefins in gasoline. Because EPA received an adverse comment, we are withdrawing this provision, as well as 40 CFR 80.46(h)(1)(iii) which incorporates ASTM D6550 by reference.

EPA published a parallel proposed rule on the same day as the direct final rule. The proposed rule invited comment on the substance of the direct final rule. We will address the comment received on the portions of the direct final rule being withdrawn today in a subsequent final action based on the parallel proposed rule also published on December 8, 2008 (73 FR 74403). The provisions for which we did not receive adverse comment will become effective on February 6, 2009, as provided in the December 8, 2008, direct final rule.

Dated: February 2, 2009.

Lisa P. Jackson,
Administrator.

■ Accordingly, the amendments to 40 CFR 80.46(b)(2)(i) and 40 CFR 80.46(h)(1)(iii) published at 73 FR 74350 on December 8, 2008 are withdrawn and reserved as of February 6, 2009.

[FR Doc. E9–2560 Filed 2–5–09; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[DA 09–172; MB Docket No. 08–230; RM–11504]

Television Broadcasting Services; Montgomery, AL

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: The Commission grants a petition for rulemaking filed by Woods Communications Corporation, the permittee of station WCOV–DT, to substitute DTV channel 20 for its assigned post-transition DTV channel 16 at Montgomery, Alabama.

DATES: This rule is effective February 6, 2009.

FOR FURTHER INFORMATION CONTACT: Adrienne Y. Denysyk, Media Bureau, (202) 418–1600.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's *Report and Order*, MB Docket No. 08–230,

adopted January 27, 2009, and released January 30, 2009. The full text of this document is available for public inspection and copying during normal business hours in the FCC's Reference Information Center at Portals II, CY-A257, 445 12th Street, SW., Washington, DC 20554. This document will also be available via ECFS (<http://www.fcc.gov/cgb/ecfs/>). (Documents will be available electronically in ASCII, Word 97, and/or Adobe Acrobat.) This document may be purchased from the Commission's duplicating contractor, Best Copy and Printing, Inc., 445 12th Street, SW., Room CY-B402, Washington, DC 20554, telephone 1-800-478-3160 or via e-mail <http://www.BCPIWEB.com>. To request this document in accessible formats (computer diskettes, large print, audio recording, and Braille), send an e-mail to fcc504@fcc.gov or call the Commission's Consumer and Governmental Affairs Bureau at (202) 418-0530 (voice), (202) 418-0432 (TTY). This document does not contain information collection requirements subject to the Paperwork Reduction Act of 1995, Public Law 104-13. In addition, therefore, it does not contain any 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). Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding.

The Commission will send a copy of this *Report and Order* 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).

List of Subjects in 47 CFR Part 73

Television, Television broadcasting.

■ For the reasons discussed in the preamble, the Federal Communications Commission amends 47 CFR part 73 as follows:

PART 73—RADIO BROADCAST SERVICES

■ 1. The authority citation for part 73 continues to read as follows:

Authority: 47 U.S.C. 154, 303, 334, 336.

§ 73.622 [Amended]

■ 2. Section 73.622(i), the Post-Transition Table of DTV Allotments under Alabama, is amended by adding DTV channel 20 and removing DTV channel 16 at Montgomery.

Federal Communications Commission.

Clay C. Pendarvis,

Associate Chief, Video Division, Media Bureau.

[FR Doc. E9-2573 Filed 2-5-09; 8:45 am]

BILLING CODE 6712-01-P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[DA 09-144; MB Docket No. 08-104; RM-11442]

Television Broadcasting Services; Danville, KY

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: The Commission grants a petition for rulemaking filed by WDKY Licensee, LLC, the licensee of station WDKY-DT, to substitute DTV channel 31 for its assigned post-transition DTV channel 4 at Danville, Kentucky.

DATES: This rule is effective March 9, 2009.

FOR FURTHER INFORMATION CONTACT:

Shaun A. Bernstein, Media Bureau, (202) 418-1600.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's *Report and Order*, MB Docket No. 08-104, adopted January 23, 2009, and released January 29, 2009. The full text of this document is available for public inspection and copying during normal business hours in the FCC's Reference Information Center at Portals II, CY-A257, 445 12th Street, SW., Washington, DC 20554. This document will also be available via ECFS (<http://www.fcc.gov/cgb/ecfs/>). (Documents will be available electronically in ASCII, Word 97, and/or Adobe Acrobat.) This document may be purchased from the Commission's duplicating contractor, Best Copy and Printing, Inc., 445 12th Street, SW., Room CY-B402, Washington, DC 20554, telephone 1-800-478-3160 or via e-mail <http://www.BCPIWEB.com>. To request this document in accessible formats (computer diskettes, large print, audio recording, and Braille), send an e-mail to fcc504@fcc.gov or call the Commission's Consumer and Governmental Affairs Bureau at (202) 418-0530 (voice), (202) 418-0432 (TTY). This document does not contain information collection requirements subject to the Paperwork Reduction Act of 1995, Public Law 104-13. In addition, therefore, it does not contain any 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). Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding.

The Commission will send a copy of this *Report and Order* 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).

List of Subjects in 47 CFR Part 73

Television, Television broadcasting.

■ For the reasons discussed in the preamble, the Federal Communications Commission amends 47 CFR part 73 as follows:

PART 73—RADIO BROADCAST SERVICES

■ 1. The authority citation for part 73 continues to read as follows:

Authority: 47 U.S.C. 154, 303, 334, 336.

§ 73.622 [Amended]

■ 2. Section 73.622(i), the Post-Transition Table of DTV Allotments under Kentucky, is amended by adding DTV channel 31 and removing DTV channel 4 at Danville.

Federal Communications Commission.

Clay C. Pendarvis,

Associate Chief, Video Division, Media Bureau.

[FR Doc. E9-2571 Filed 2-5-09; 8:45 am]

BILLING CODE 6712-01-P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[DA 09-145; MB Docket No. 08-132; RM-11464]

Television Broadcasting Services; Clovis, NM

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: The Commission grants a petition for rulemaking filed by Barrington Amarillo License LLC, the permittee of station KVIH-DT, to substitute DTV channel 12 for its assigned post-transition DTV channel 20 at Clovis, New Mexico.

DATES: This rule is effective February 6, 2009.

FOR FURTHER INFORMATION CONTACT:

Joyce L. Bernstein, Media Bureau, (202) 418-1600.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's *Report and Order*, MB Docket No. 08-132, adopted January 26, 2009, and released January 29, 2009. The full text of this document is available for public inspection and copying during normal business hours in the FCC's Reference Information Center at Portals II, CY-A257, 445 12th Street, SW., Washington, DC 20554. This document will also be available via ECFS (<http://www.fcc.gov/cgb/ecfs/>). (Documents will be available electronically in ASCII, Word 97, and/or Adobe Acrobat.) This document may be purchased from the Commission's duplicating contractor, Best Copy and Printing, Inc., 445 12th Street, SW., Room CY-B402, Washington, DC 20554, telephone 1-800-478-3160 or via e-mail <http://www.BCPIWEB.com>. To request this document in accessible formats (computer diskettes, large print, audio recording, and Braille), send an e-mail to fcc504@fcc.gov or call the Commission's Consumer and Governmental Affairs Bureau at (202) 418-0530 (voice), (202) 418-0432 (TTY). This document does not contain information collection requirements subject to the Paperwork Reduction Act of 1995, Public Law 104-13. In addition, therefore, it does not contain any 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). Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding.

The Commission will send a copy of this *Report and Order* 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).

List of Subjects in 47 CFR Part 73

Television, Television broadcasting.

■ For the reasons discussed in the preamble, the Federal Communications Commission amends 47 CFR part 73 as follows:

PART 73—RADIO BROADCAST SERVICES

■ 1. The authority citation for part 73 continues to read as follows:

Authority: 47 U.S.C. 154, 303, 334, 336.

§ 73.622 [Amended]

■ 2. Section 73.622(i), the Post-Transition Table of DTV Allotments under New Mexico, is amended by adding DTV channel 12 and removing DTV channel 20 at Clovis.

Federal Communications Commission.

Clay C. Pendarvis,

Associate Chief, Video Division, Media Bureau.

[FR Doc. E9-2572 Filed 2-5-09; 8:45 am]

BILLING CODE 6712-01-P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 90

[WT Docket No. 02-55; FCC 08-276]

Improving Public Safety Communications in the 800 MHz Band; County of Chester, PA and Sprint Nextel Corporation; City of Chesapeake, VA and Sprint Nextel Corporation

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: On December 23, 2008, the Commission addressed the June 25, 2008 request by Sprint Nextel Corporation (Sprint) to defer the 800 MHz rebanding financial "true-up" process until after rebanding is completed. The Commission concluded that the true-up should be deferred until additional progress in rebanding has occurred, and therefore postponed the true-up date from December 26, 2008 to July 1, 2009. The Commission also directed the 800 MHz Transition Administrator (TA) to file a report by May 1, 2009, with its recommendation on whether the true-up should be conducted on July 1, 2009 or postponed to a later date.

DATES: Effective February 6, 2009.

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

FOR FURTHER INFORMATION CONTACT: Joy Ragsdale, Policy Division, Public Safety and Homeland Security Bureau, (202) 418-0838; John Evanoff, Policy Division, Public Safety and Homeland Security Bureau.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's *Fourth Memorandum Opinion and Order*, FCC 08-276, released on December 23, 2008. The complete text of this document is available for inspection and copying during normal business hours in the FCC Reference Information Center, Portals II, 445 12th Street, SW., Room CY-A257, Washington, DC 20554. This document may also be purchased from the Commission's duplicating contractor, Best Copy and Printing, Inc., 445 12th Street, SW., Room CY-B402, Washington, DC 20554, telephone (800)

378-3160 or (202) 863-2893, facsimile (202) 863-2898, or via e-mail at <http://www.bcpweb.com>. It is also available on the Commission's Web site at <http://www.fcc.gov>.

In the *800 MHz Report and Order*, 69 FR 67823, November 22, 2004, the Commission ordered rebanding of the 800 MHz band to resolve interference between commercial and public safety systems in the band. The Commission required that band reconfiguration in non-border regions be completed in 36 months. The Commission further ordered the TA to perform a financial reconciliation or "true-up" six months after the 36-month transition period ended, *i.e.*, 42 months after the start of rebanding. The purpose of the true-up is to assess Sprint's total creditable rebanding costs for both 800 MHz rebanding and relocating of Broadcast Auxiliary Service (BAS) licensees in the 1.9 GHz band, and to compare these costs to the value of the 1.9 GHz spectrum that the Commission awarded to Sprint. If the value of the 1.9 GHz spectrum exceeds Sprint's creditable costs, Sprint must pay the difference to the U.S. Treasury as an "anti-windfall" payment. The 36-month rebanding period established by the *800 MHz Report and Order* expired on June 26, 2008. Accordingly, under the currently applicable timetable, the true-up must occur no later than six months after that date, or by December 26, 2008.

On December 23, 2008, the Commission addressed the June 25, 2008 request by Sprint Nextel Corporation (Sprint) to defer the 800 MHz rebanding financial "true-up" process until after rebanding is completed. The Commission concluded that the true-up should be deferred until additional progress in rebanding has occurred, and therefore postponed the true-up date from December 26, 2008 to July 1, 2009. The Commission also directed the 800 MHz Transition Administrator (TA) to file a report by May 1, 2009, with its recommendation on whether the true-up should be conducted on July 1, 2009 or postponed to a later date.

The Commission also addressed several pending petitions for reconsideration or review of prior rebanding orders and public notices. First, the Commission denied two petitions that seek reconsideration of its decision in the *Second Memorandum Opinion and Order*, 72 FR 39756, July 20, 2007, in this proceeding requiring parties to bear their own costs in rebanding-related litigation before the Commission. Second, the Commission exercised its discretion to treat two pending petitions for de novo review

filed by Sprint against Chesapeake, Virginia, and Chester County, Pennsylvania, as applications for review for purposes of resolving questions of law, and the Commission allowed the parties to file oppositions and replies as provided under the Commission's application for review procedures. Third, the Commission denied a petition for reconsideration that alleges that the Commission's *Public Notice* released on September 12, 2007, 72 FR 55208, September 28, 2007, to expedite the rebanding process imposed unreasonable new regulatory burdens on 800 MHz licensees. Finally, the Commission delegated authority to the Public Safety and Homeland Security Bureau (PSHSB or Bureau) to develop a rebanding plan for the U.S. Virgin Islands based on a proposal submitted by the TA.

Procedural Matters

A. Final Regulatory Flexibility Analysis

The Final Regulatory Flexibility Analysis required by section 604 of the Regulatory Flexibility Act, 5 U.S.C. 604, is included in Appendix A of the *Fourth Memorandum Opinion and Order*.

B. Final Paperwork Reduction Act of 1995 Analysis

The *Fourth Memorandum Opinion and Order* does not contain new or modified information collection requirements subject to the Paperwork Reduction Act of 1995 (PRA), Public Law 104-13. In addition, therefore it does not contain any new or modified "information burden for small business concerns with fewer than 25 employees," pursuant to the Small Business Paperwork Relief Act of 2002, Public Law 107-198.

Final Regulatory Flexibility Analysis

The Regulatory Flexibility Act of 1980, as amended (RFA), requires that a 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 which: (1) Is independently owned and operated; (2) is not dominant in its field of operation; and (3) satisfies any additional criteria

established by the Small Business Administration (SBA). Consistent with what we describe below, we certify that the actions in this *Fourth Memorandum Opinion and Order* will not have a significant economic impact on a substantial number of small entities.

Because the Commission's decision is limited to reporting requirements applicable to Sprint and the TA and affects no other entity, and because the Commission's decision concerning Sprint merely extends the status quo, the Commission certifies that its decision will not have a significant economic impact on a substantial number of small entities. All other issues do not raise regulatory flexibility issues because the Commission's actions deny petitions for reconsideration, defer action on certain petitions for de novo review and afford certain parties an opportunity to file oppositions and replies as provided under our application for review procedures, or internally delegate authority, and therefore do not raise any regulatory flexibility issues. The Commission will send a copy of the *Fourth Memorandum Opinion and Order*, including a copy of this Final Regulatory Flexibility Certification, to the Chief Counsel for Advocacy of the SBA, and will be published in the **Federal Register**.

Federal Communications Commission.

Marlene H. Dortch,

Secretary.

[FR Doc. E9-2568 Filed 2-5-09; 8:45 am]

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DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 216

[Docket No. 0808041027-9041-02]

RIN 0648-AX08

Taking and Importing Marine Mammals; Taking Marine Mammals Incidental to Space Vehicle and Test Flight Activities from Vandenberg Air Force Base (VAFB), California

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

ACTION: Final rule.

SUMMARY: NMFS, upon application from the U.S. Air Force (USAF), is issuing regulations to govern the unintentional taking of marine mammals, by harassment, incidental to launching

space launch vehicles, intercontinental ballistic and small missiles, and aircraft and helicopter operations at VAFB for the period February 2009 through February 2014. The USAF's activities are considered military readiness activities pursuant to the Marine Mammal Protection Act (MMPA), as amended by the National Defense Authorization Act of 2004 (NDAA). These regulations, which allow for the issuance of "Letters of Authorization" (LOAs) for the incidental take of marine mammals during the described activities and specified time frames, prescribe the permissible methods of taking and other means of effecting the least practicable adverse impact on marine mammal species and their habitat, as well as requirements pertaining to the monitoring and reporting of such taking.

DATES: Effective February 7, 2009, through February 7, 2014.

ADDRESSES: A copy of the USAF's application, which contains a list of references used in this document, and NMFS' Final Environmental Assessment (EA) and Finding of No Significant Impact (FONSI) may be obtained by writing to P. Michael Payne, Chief, Permits, Conservation and Education Division, Office of Protected Resource, National Marine Fisheries Service, 1315 East-West Highway, Silver Spring, MD 20910-3225, by telephoning the contact listed under **FOR FURTHER INFORMATION CONTACT**, or on the Internet at: <http://www.nmfs.noaa.gov/pr/permits/incidental.htm#applications>.

Documents cited in this final rule may also be viewed, by appointment, during regular business hours at the above address.

FOR FURTHER INFORMATION CONTACT: Candace Nachman, Office of Protected Resources, NMFS, (301) 713-2289, ext. 156, or Monica DeAngelis, Southwest Regional Office, NMFS, (562) 980-3232.

SUPPLEMENTARY INFORMATION:

Background

Sections 101(a)(5)(A) and (D) of the MMPA (16 U.S.C. 1361 *et seq.*) direct the Secretary of Commerce (Secretary) to allow, upon request, the incidental, but not intentional taking of small numbers of marine mammals by U.S. citizens who engage in a specified activity (other than commercial fishing) within a specified geographical region if certain findings are made and either regulations are issued or, if the taking is limited to harassment, notice of a proposed authorization is provided to the public for review.

Authorization for incidental takings may be granted if NMFS finds that the taking will have a negligible impact on

the species or stock(s), will not have an unmitigable adverse impact on the availability of the species or stock(s) for certain subsistence uses, and that the permissible methods of taking and requirements pertaining to the mitigation, monitoring and reporting of such taking are set forth.

NMFS has defined “negligible impact” in 50 CFR 216.103 as:

an impact resulting from the specified activity that cannot be reasonably expected to, and is not reasonably likely to, adversely affect the species or stock through effects on annual rates of recruitment or survival.

The NDAA (Public Law 108–136) removed the “small numbers” and “specified geographical region” limitations and amended the definition of “harassment” as it applies to a “military readiness activity” to read as follows (Section 3(18)(B) of the MMPA):

(i) any act that injures or has the significant potential to injure a marine mammal or marine mammal stock in the wild [Level A Harassment]; or (ii) any act that disturbs or is likely to disturb a marine mammal or marine mammal stock in the wild by causing disruption of natural behavioral patterns, including, but not limited to, migration, surfacing, nursing, breeding, feeding, or sheltering, to a point where such behavioral patterns are abandoned or significantly altered [Level B Harassment].

Summary of Request

On March 21, 2008, NMFS received an application from the USAF requesting authorization for the take of four species of marine mammals incidental to space vehicle and test flight activities from VAFB, which would impact pinnipeds on VAFB and the Northern Channel Islands (NCI). These training activities are classified as military readiness activities. Marine mammals may be exposed to continuous noise due mostly to combustion effects of aircraft and launch vehicles and impulsive noise due to sonic boom effects. The USAF requested authorization to take four pinniped species by Level B Harassment.

Description of the Specified Activity

VAFB (see Figure 1 in the USAF application) is headquarters to the 30th Space Wing (SW), the Air Force Space Command unit that operates VAFB and the Western Range. VAFB operates as a missile test base and aerospace center, supporting west coast space launch activities for the USAF, Department of Defense, National Aeronautics and Space Administration, and commercial contractors. VAFB is the main west coast launch facility for placing commercial, government, and military satellites into polar orbit on expendable (unmanned) launch vehicles, and for testing and evaluation of

intercontinental ballistic missiles (ICBM) and sub-orbital target and interceptor missiles. In addition to space vehicle and missile launch activities at VAFB, there are helicopter and aircraft operations for purposes such as search-and-rescue, delivery of space vehicle components, launch mission support, and security reconnaissance. The USAF expects to launch a maximum of 30 rockets and missiles per year from VAFB.

There are currently six active space launch vehicle (SLV) facilities at VAFB (VAFB, 2007), used to launch satellites into polar orbit. These facilities support the launch programs for space vehicles including the Atlas V, Delta II, Delta IV, Falcon, Minotaur, and Taurus. The Falcon has yet to launch from VAFB and is scheduled for its first launch in August, 2009 (30 SW, 2008a). A detailed description of the activities to be conducted by the USAF, including vehicle types and the sound exposure levels produced by each missile or rocket and aircraft operations, was included in the proposed rule (73 FR 77577, December 19, 2008) and may also be found in the USAF’s application (see ADDRESSES).

Description of Marine Mammals Potentially Affected by the Activity and Habitat

The four species of marine mammals most likely to be present in the action area are: Pacific harbor seals (*Phoca vitulina richardii*); California sea lions (*Zalophus californianus*); northern elephant seals (*Mirounga angustirostris*); and northern fur seals (*Callorhinus ursinus*). Guadalupe fur seals (*Arctocephalus townsendi*) and Steller sea lions (*Eumetopias jubatus*) have been bred in the past on San Miguel Island, but sightings have been rare since the mid-1980’s.

The USAF has compiled information on the abundance, status, and distribution of the species on VAFB and the NCI from surveys that they have conducted over the last decade and from NMFS Stock Assessment Reports (SARs). This information may be viewed in the USAF’s application (see ADDRESSES). Additional information is available in the NMFS SARs, which are available at: <http://www.nmfs.noaa.gov/pr/pdfs/sars/po2007.pdf>.

The proposed rule (73 FR 77577, December 19, 2008) contained a detailed description of the distribution of these species on VAFB and the NCI, as well as a description of their habitat.

Comments and Responses

On July 25, 2008, NMFS published a notice of receipt of application for an

LOA in the **Federal Register** (73 FR 43410) and requested comments and information from the public for 30 days. During that comment period, NMFS received comments from the Marine Mammal Commission (Commission) and one private citizen. Responses to those comments are addressed in the proposed rule **Federal Register** notice (73 FR 77577, December 19, 2008). On December 19, 2008, NMFS published a notice of proposed rulemaking (73 FR 77577) on the USAF’s request to take marine mammals incidental to space vehicle and test flight activities from VAFB and requested comments, information, and suggestions concerning the request. During the 15-day public comment period, NMFS received comments from the Commission and one private citizen. The comment from the private citizen opposed the issuance of an authorization without any specific substantiation for why such an authorization should not be issued. For the reasons set forth in this preamble, NMFS believes issuance of the authorization is appropriate. Following are the comments from the Commission and NMFS’ responses.

Comment 1: The Commission recommends that NMFS extend the public comment period on the proposed rule for at least an additional 15 days, or, alternatively, provide a post-promulgation comment period before the effective date of the rule.

Response: NMFS has been issuing MMPA authorizations to the USAF to conduct these activities from VAFB for more than 20 years, which has allowed NMFS to develop relatively standard mitigation and monitoring requirements for these activities, so rarely more than one or two public comments are received. The public was afforded a 30-day comment period to submit information and suggestions on the preparation of proposed regulations beginning on July 25, 2008 with the publication of the notice of receipt of application (73 FR 43410). NMFS received only two comment letters at that time. Similarly, the same two organizations or members of the public commented on the proposed rule. NMFS did not receive any other requests to extend the comment period.

The last time NMFS developed regulations for the USAF to conduct these same activities, NMFS published a notice of receipt of application (68 FR 54894, September 19, 2003), which allowed for a 30-day comment period and a notice of proposed rulemaking (68 FR 67629, December 3, 2003), which allowed for a 15-day comment period. With only slight changes to some of the launch vehicles or missiles to be used,

the activities to be authorized for the period of February 2009 to February 2014 and therefore the mitigation, monitoring, and reporting requirements are nearly identical to those required in the February 2004 to February 2009 regulations. In 2003, only the Commission submitted comments on the proposed rulemaking. There has not been a great deal of public interest in the MMPA authorization process for these activities currently or in the past. Therefore, NMFS does not believe it is necessary to extend the comment period for this action.

NMFS will not be able to provide a post-promulgation comment period. The current regulations are set to expire on February 6, 2009. The USAF currently has a launch planned for February 23, 2009. Since these launches are planned around certain meteorological, as well as other, conditions, it is not practical to have a post-promulgation comment period. These launches are important to national security.

Comment 2: The Commission recommends that NMFS issue the final rule as proposed, provided that the mitigation and monitoring activities described in the USAF application and the proposed rule **Federal Register** notice (73 FR 77577, December 19, 2008) are incorporated into the final rule.

Response: NMFS agrees with the Commission's recommendation. All measures contained in the proposed rulemaking **Federal Register** notice are included in the final rule.

Comment 3: The Commission also recommends that NMFS specify in the final rule that the authorized activities shall be suspended, pending review, if there is any indication that the activities covered by the rule are causing marine mammal mortalities or injuries or are affecting the distribution, size, or productivity of the potentially affected populations.

Response: The activities to be authorized are considered military readiness activities and are important to national security. The USAF launches several different types of vehicles and missiles from many different space launch complexes on VAFB, sometimes only a few days apart. Therefore, it would be impractical to suspend all activities. The proposed rule (73 FR 77577, December 19, 2008) contained a condition in the "Mitigation" section that, for the most part, addressed the Commission's recommendation. Language has been added to that condition to expand its coverage to include possible effects to distribution, size, and productivity of the potentially affected pinniped populations. Based on

the Commission's recommendation, NMFS has included the following condition in the final rule:

If post-launch surveys determine that an injurious or lethal take of a marine mammal has occurred or there is an indication that the distribution, size, or productivity of the potentially affected pinniped populations has been affected, the launch procedure and the monitoring methods must be reviewed, in cooperation with NMFS, and, if necessary, appropriate changes must be made through modification to an LOA, prior to conducting the next launch of the same vehicle under that LOA.

Comment 4: The Commission recommends that NMFS require additional acoustic and biological monitoring when new space vehicles or missiles are launched to verify that the actual sound levels and responses of animals are as predicted.

Response: Both the monitoring plan contained in the USAF's application and the "Monitoring" section in the proposed rule **Federal Register** notice (73 FR 77577, December 19, 2008) contained a requirement that acoustic and biological monitoring be conducted on new space and missile launch vehicles during at least the first launch, whether it occurs within the pupping season or not. This condition is included in the final rule.

Comment 5: Lastly, the Commission recommends that NMFS require additional public notice and opportunity for comment before authorizing the taking of marine mammals by any new space vehicles or missiles that produce sound levels or frequencies significantly different from those described in this authorization.

Response: As described in the USAF's application, the proposed rule, and NMFS' EA, the specific launch vehicles may change over the course of the five-year regulations (2009–2014) as NEPA analyses are completed. This **Federal Register** document and NMFS' EA evaluate the proposed level of activity and type of launches based on current and projected information. To the extent that specific launch vehicles may change, the USAF would be required to report such new vehicles to NMFS, and NMFS would evaluate a particular vehicle (e.g., missiles) to ensure that the vehicle fit within the parameters of the regulations. Thus, the transition of individual craft is not expected to change the impact assessment as set forth in NMFS' EA, and all activities would be required to fall within the general description of specified activities and estimates of marine mammal take described in this document and NMFS' EA. If it is determined that the new space vehicles or missiles will produce sound levels or

frequencies significantly different from those described in this authorization, then NMFS will make the information available to the public for comment.

Potential Effects of Specified Activities on Marine Mammals

The activities under these regulations create two types of noise: Continuous (but short-duration) noise, due mostly to combustion effects of aircraft and launch vehicles; and impulsive noise, due to sonic boom effects. Launch operations are the major source of noise on the marine environment from VAFB. The operation of launch vehicle engines produces significant sound levels. Generally, noise is generated from four sources during launches: (1) Combustion noise from launch vehicle chambers; (2) jet noise generated by the interaction of the exhaust jet and the atmosphere; (3) combustion noise from the post-burning of combustion products; and (4) sonic booms. Launch noise levels are highly dependent on the type of first-stage booster and the fuel used to propel the vehicle. Therefore, there is a great similarity in launch noise production within each class size of launch vehicles.

The noise generated by VAFB activities will result in the incidental harassment of pinnipeds, both behaviorally and in terms of physiological (auditory) impacts. The noise and visual disturbances from SLV and missile launches and aircraft and helicopter operations may cause the animals to lift their heads, move towards the water, or enter the water. Information on marine mammal responses to launch noise that has been gathered under previous LOAs for these activities, as well as a scientific research permit issued to VAFB by NMFS for a research program (Permit No. 859–1680–01) to determine the short and long-term effects of SLV noise and sonic booms on affected marine mammals is contained in the USAF's application and the proposed rulemaking **Federal Register** notice (73 FR 77577, December 19, 2008). The potential effects described in the proposed rule are the same as those that would occur under the final rule.

NMFS does not anticipate a significant impact on any of the species or stocks of marine mammals from launches from VAFB. For even the largest launch vehicles, such as Delta IV, the launch noises and sonic booms can be expected to cause a startle response and flight to water for those harbor seals, California sea lions and other pinnipeds that are hauled out on the coastline of VAFB and on the NCI. The noise may cause temporary

threshold shift (TTS) in hearing depending on exposure levels, but no permanent threshold shift is anticipated. NMFS does not expect these activities to result in the mortality of any marine mammals.

Numbers of Marine Mammals Estimated to be Taken by Harassment

The marine mammal species NMFS believes likely to be taken by Level B harassment incidental to launch and aircraft and helicopter operations at VAFB are harbor seals, California sea lions, northern elephant seals, and northern fur seals. All of these species are protected under the MMPA, and none are listed under the Endangered Species Act (ESA). Numbers of animals that may be taken by Level B harassment are expected to vary due to factors such as type of SLV, location of the sonic boom, weather conditions (which can influence the size of the sonic boom), the time of day, and the time of year. For this reason, ranges are given for the harassment estimates of marine mammals. Aircraft operations will occur frequently but will avoid pinniped haul-out areas and are unlikely to disturb pinnipeds.

As noted earlier and in the proposed rule (73 FR 77577, December 19, 2008), sightings of Steller sea lions and Guadalupe fur seals have been extremely rare the last few decades or low at VAFB and on the NCI. Therefore, no takes by harassment are anticipated for either of these species incidental to the USAF's activities.

Estimated Takes at VAFB

Harbor seals: As many as 600 harbor seals per launch may be taken. Depending on the type of rocket being launched, the time of day, time of the year, weather conditions, tide and swell conditions, the number of seals that may be taken will range between 0 and 600. Launches and aircraft operations may occur at any time of the year so any age classes and gender may be taken.

California sea lions: As many as 200 sea lions per launch may be taken. Sea lions at VAFB are usually juveniles of both sexes and sub-adult males that haul out in the fall during the post breeding dispersal. Births generally do not occur at VAFB, but five pups were observed at VAFB in 2003, an El Nino year, although all were abandoned by their mothers and died within several days of birth. Sick or emaciated weaned pups may also haul out briefly. The number of sea lions that may be taken will range between 0 and 200.

Northern elephant seals: As many as 200 elephant seals per launch may be taken. Weaned elephant seal pups,

juveniles, or young adults of both sexes, may occasionally haul out at VAFB for several days to rest or as long as 30 days to molt. Injured or sick seals may also haul out briefly. The number of northern elephant seals that may be taken will range between 0 and 200.

Northern fur seals: There are no reports of northern fur seals at VAFB. Therefore, it is unlikely that any fur seals will be taken.

Estimated Takes on the NCI

Sonic booms created by SLVs may impact marine mammals on the NCI, particularly SMI. Missile launches utilize westward trajectories so do not cause sonic boom impacts to the NCI. The PCBoom sonic boom modeling program will continue to be used to predict the area of sonic boom impact and magnitude of the sonic boom on the NCI based on the launch vehicle, speed, trajectory, and meteorological conditions. Prior to each SLV launch, a predictive sonic boom map of the impact area and magnitude of the sonic boom will be generated. Based on previous monitoring of sonic booms created by SLVs on SMI (Thorson *et al.*, 1999a; 1999b), it is estimated that as much as approximately 25 percent of the marine mammals may be disturbed on SMI (Thorson *et al.*, 1999a; 1999b). Most sonic booms that reach SMI are small (<1 pound per square foot [psf]), although larger sonic booms are possible, but rarely occur. A conservative take estimate of as much as 25 percent of the animals present is used for each species per launch.

Harbor seals: As many as 200 harbor seals of all age classes and sexes may be taken per launch on the NCI. The number of harbor seals that may be taken will range between 0 and 200.

California sea lions: As many as 5,800 sea lion pups and 2,500 juvenile and adult sea lions of either sex may be taken on the NCI per launch. The number of sea lions that may be taken will range between 0 and 8,300.

Northern elephant seals: As many as 3,000 northern elephant seal pups and 10,000 northern elephant seals of all age classes and sexes may be taken per launch on the NCI. The number of elephant seals that may be taken will range between 0 and 13,000.

Northern fur seals: As many as 300 northern fur seal pups and 1,100 juvenile and adult northern fur seals of both sexes may be taken per launch at SMI. The number of fur seals that may be taken will range between 0 and 1,400.

With the incorporation of mitigation measures proposed later in this document, the USAF and NMFS expect

that only Level B incidental harassment may occur as a result of the proposed activities and that these events will result in no detectable impact on marine mammal species or stocks or on their habitats.

Potential Effects of Specified Activities on Marine Mammal Habitat

Impacts on marine mammal habitat are part of the consideration in making a finding of negligible impact on the species and stocks of marine mammals. Habitat includes, but is not necessarily limited to, rookeries, mating grounds, feeding areas, and areas of similar significance. Only short-term disturbance of marine mammals is expected as a result of the proposed activities. No impacts to marine mammal habitats are anticipated on VAFB or the NCI.

Potential Effects of Specified Activities on Subsistence Needs

NMFS has determined that the issuance of an LOA for USAF space vehicle and missile launches and aircraft and helicopter operations at VAFB would not have an unmitigable adverse impact on the availability of the affected species or stocks for subsistence use since there are no such uses for these pinniped species in California.

Mitigation

To minimize impacts on pinnipeds on beach haul-out sites and to avoid any possible sensitizing or predisposing of pinnipeds to greater responsiveness towards the sights and sounds of a launch, the USAF has prepared the following mitigation measures, which NMFS has incorporated into its regulations.

All aircraft and helicopter flight paths must maintain a minimum distance of 1,000 ft (305 m) from recognized seal haul-outs and rookeries (e.g., Point Sal, Purisima Point, Rocky Point), except in emergencies or for real-time security incidents (e.g., search-and-rescue, fire-fighting) which may require approaching pinniped haul-outs and rookeries closer than 1,000 ft (305 m). For missile and rocket launches, unless constrained by other factors including, but not limited to, human safety, national security concerns or launch trajectories, holders of LOAs must schedule launches to avoid, whenever possible, launches during the harbor seal pupping season of March through June. NMFS has expanded this requirement so that the USAF must avoid, whenever possible, launches which are predicted to produce a sonic boom on the NCI during harbor seal,

elephant seal, California sea lion, and northern fur seal pupping seasons.

If post-launch surveys determine that an injurious or lethal take of a marine mammal has occurred or there is an indication that the distribution, size, or productivity of the potentially affected pinniped populations has been affected, the launch procedure and the monitoring methods must be reviewed, in cooperation with NMFS, and, if necessary, appropriate changes must be made through modification to an LOA, prior to conducting the next launch of the same vehicle under that LOA.

Monitoring

As part of its application, the USAF provided a monitoring plan, similar to that in the regulations (50 CFR 216.125) set to expire on February 6, 2009, for assessing impacts to marine mammals from rocket and missile launches at VAFB. This monitoring plan is described, in detail, in their application (30 SW, 2008c). The USAF will conduct the following monitoring under the regulations.

The monitoring will be conducted by a NMFS-approved marine mammal biologist experienced in surveying large numbers of marine mammals. Monitoring at the haul-out site closest to the launch facility will commence at least 72 hours prior to the launch and continue until at least 48 hours after the launch.

Monitoring for VAFB

Biological monitoring at VAFB will be conducted for all launches during the harbor seal pupping season, 1 March to 30 June. Acoustic and biological monitoring will be conducted on new space and missile launch vehicles during at least the first launch, whether it occurs within the pupping season or not. Also, the third Delta IV launch will be monitored, and Auditory Brainstem Response (ABR) testing of seals in close proximity to the launch is planned. The testing will be authorized under a scientific research permit issued under Section 104 of the MMPA. Such work was most recently conducted under Permit No. 859-1680-01, which expired on January 1, 2009. The USAF has submitted an application to NMFS for issuance of a new scientific research permit to continue the ABR tests on harbor seals, as well as other research projects. NMFS is currently reviewing this application. If appropriate, NMFS will issue a new scientific research permit to the USAF in early spring 2009. NMFS estimates that the tests would be conducted during years 2-5 of the regulations.

Monitoring will include multiple surveys each day that record, when possible, the species, number of animals, general behavior, presence of pups, age class, gender, and reaction to launch noise, sonic booms, or other natural or human-caused disturbances. Environmental conditions such as tide, wind speed, air temperature, and swell will also be recorded. Time-lapse photography or video will be used during daylight launches to document the behavior of mother-pup pairs during launch activities. For launches during the harbor seal pupping season (March through June), follow-up surveys will be made within 2 weeks of the launch to ensure that there were no adverse effects on any marine mammals. A report detailing the species, number of animals observed, behavior, reaction to the launch noise, time to return to the haul-out site, any adverse behavior and environmental conditions will be submitted to NMFS within 90 days of the launch.

Monitoring for the NCI

Monitoring will be conducted on the NCI (San Miguel, Santa Cruz, and Santa Rosa Islands) whenever a sonic boom over 1 psf is predicted (using the most current sonic boom modeling programs) to impact one of the Islands. Monitoring will be conducted at the haul-out site closest to the predicted sonic boom impact area. Monitoring will be conducted by a NMFS-approved marine mammal biologist experienced in surveying large numbers of marine mammals. Monitoring will commence at least 72 hours prior to the launch and continue until at least 48 hours after the launch.

Monitoring will include multiple surveys each day that record the species, number of animals, general behavior, presence of pups, age class, gender, and reaction to launch noise, sonic booms, or other natural or human-caused disturbances. Environmental conditions such as tide, wind speed, air temperature, and swell will also be recorded. Due to the large numbers of pinnipeds found on some beaches of SMI, smaller focal groups should be monitored in detail rather than the entire beach population. A general estimate of the entire beach population should be made once a day and their reaction to the launch noise noted. Photography or video will be used during daylight launches to document the behavior of mother-pup pairs or dependent pups during launch activities. During the pupping season of any species affected by a launch, follow-up surveys will be made within 2 weeks of the launch to ensure that there were

no adverse effects on any marine mammals. A report detailing the species, number of animals observed, behavior, reaction to the launch noise, time to return to the haul-out site, any adverse behavior and environmental conditions will be submitted to NMFS within 90 days of the launch.

Reporting

A report containing the following information must be submitted to NMFS within 90 days after each launch: (1) Date(s) and time(s) of each launch; (2) date(s), location(s), and preliminary findings of any research activities related to monitoring the effects on launch noise and sonic booms on marine mammal populations; and (3) results of the monitoring programs, including but not necessarily limited to (a) numbers of pinnipeds present on the haul-out prior to commencement of the launch, (b) numbers of pinnipeds that may have been harassed as noted by the number of pinnipeds estimated to have entered the water as a result of launch noise, (c) the length of time(s) pinnipeds remained off the haul-out or rookery, (d) the numbers of pinniped adults or pups that may have been injured or killed as a result of the launch; and (4) any behavioral modifications by pinnipeds that likely were the result of launch noise or the sonic boom.

If a freshly dead or seriously injured pinniped is found during post-launch monitoring, the incident must be reported within 48 hours to the NMFS Office of Protected Resources and the NMFS Southwest Regional Office.

An annual report must be submitted to NMFS at the time of renewal of the LOA described in § 216.127, that describes any incidental takings under an LOA not reported in the 90-day launch reports, such as the aircraft test program and helicopter operations and any assessments made of their impacts on hauled-out pinnipeds.

A final report must be submitted to NMFS no later than 180 days prior to expiration of these regulations. This report must summarize the findings made in all previous reports and assess both the impacts at each of the major rookeries and the cumulative impact on pinnipeds and any other marine mammals from Vandenberg activities.

ESA

In December, 2003, NMFS determined that the USAF's activities and the promulgation of regulations and issuance of LOAs are not likely to adversely affect any species or their habitats that are listed as threatened or endangered under the ESA. The activities to be authorized under these

regulations are not substantially different from those described in the 2003 consultation. Therefore, there has not been a reinitiation of consultation under section 7 of the ESA since none of the reinitiation triggers have been met.

NEPA

The USAF prepared a Final EA and issued a FONSI in 1997 as part of its application for an incidental take authorization. On March 1, 1999 (64 FR 9925), NMFS adopted this EA as provided for by the Council on Environmental Quality regulations. In 2003, NMFS prepared its own EA and issued a FONSI for the final rule issued in February, 2004. NMFS prepared a Draft EA for issuance of regulations and annual LOAs to the USAF for the period 2009–2014 and made it available for public comment concurrently with the proposed rule. NMFS has finalized the EA and issued a FONSI for this action. Therefore, preparation of an Environmental Impact Statement is not necessary for this action. NMFS' EA and FONSI are available upon request (see **ADDRESSES**).

Coastal Zone Management Act Consistency

The USAF conducts separate consultations with the California Coastal Commission (CCC) for each launch activity, as each one is considered a separate Federal action. Past consultations between the USAF and the CCC have indicated that activities from VAFB similar to those described in this document are consistent to the maximum extent practicable with the enforceable policies of the California Coastal Act (CCA). The USAF is in consultation with the CCC for those launch activities that have not yet been found to be consistent with the CCA. Therefore, NMFS has determined that the activities described in this document are consistent to the maximum extent practicable with the enforceable policies of the CCA.

National Marine Sanctuaries Act

On December 8, 2008, NMFS contacted the National Ocean Service's Office of National Marine Sanctuaries (ONMS) regarding NMFS' action of promulgating regulations and issuing LOAs for the USAF activities described in the USAF's application and the proposed rule (73 FR 77577, December 19, 2008) to determine whether or not NMFS' action is likely to destroy, cause the loss of, or injure any national marine sanctuary resources. On December 12, 2008, the ONMS determined that no further consultation with NMFS was

required on its proposed action as this action is not likely to destroy, cause the loss of, or injure any national marine sanctuary resources.

Determinations

Based on the information provided in the USAF application, NMFS' EA, this document, the public comments submitted on the application and proposed rule, and the USAF's comprehensive reports of the activities through 2008, NMFS has determined that the launching of SLVs, ICBMs, and small missiles and aircraft and helicopter operations at VAFB, will result in no more than Level B harassment of harbor seals, California sea lions, northern elephant seals, and northern fur seals. The effects of these military readiness activities from VAFB will be limited to short term and localized changes in behavior, including temporarily vacating haul-outs, and possible TTS in the hearing of any pinnipeds that are in close proximity to a launch pad at the time of a launch. NMFS has also determined that any takes will have no more than a negligible impact on the affected species and stocks. No take by serious injury and/or death is anticipated, and the potential for permanent hearing impairment is unlikely. Harassment takes will be at the lowest level practicable due to incorporation of the mitigation measures mentioned previously in this document. NMFS' regulations for these exercises prescribe the means of affecting the least practicable adverse impact on marine mammals and their habitat and set forth requirements pertaining to the monitoring and reporting of that taking. Additionally, the launch activities and aircraft and helicopter operations will not have an unmitigable adverse impact on the availability of marine mammal stocks for subsistence use, as there are no subsistence uses of these four pinniped species in California waters.

Classification

The Office of Management and Budget has determined that this proposed rule is not significant for purposes of Executive Order 12866.

Good cause exists to waive the 30-day delay in effectiveness for this rule pursuant to 5 U.S.C. 553(d). The USAF has a Taurus (SLC 576–E) launch scheduled for February 23, 2009, which falls within 30 days of the publication of this final rule. A delay would cost up to hundreds of thousands of dollars per day, depending on various factors, including the cost of maintaining the vehicle and payload in ready condition and the number of personnel in the

launch crew. A launch delay would also lead to increased risk for personnel if there is increased handling time for hazardous materials or ordnance that has to be deactivated or offloaded, depending on the stage of launch preparations at the time of delay. In addition to the significant costs that would be borne by the government in the event of a delay to this mission, the mission requires a particular orbit for the payload, and getting into that orbit can be closely tied to the time of year and, in some instances, the time of day. Therefore, delaying this launch would mean that the USAF would certainly be impacted in its available launch opportunities. The costs of delaying this launch are greatly outweighed by the benefits of allowing it to go forward immediately. The mitigation and monitoring required by this final rule are for the benefit and protection of marine mammals, many of which will be more vulnerable after the 30 day period. Delaying this launch by a few weeks would cause it to occur during the harbor seal pupping season on VAFB. One of the mitigation requirements is to avoid, whenever possible, the launching of vehicles or missiles during the harbor seal pupping season. Additionally, the measures contained in this final rule are substantially similar to the measures contained in the 5-year rule that expires on February 6, 2009. The 30th SW, USAF is the only entity regulated by this rule. The USAF expressly requested that NMFS issue the rule and regulations and is both willing and able to comply with the requirements of NMFS' final regulations and LOA, as they were during the course of the previous rules and regulations issued to the USAF by NMFS to conduct these activities, within the 30-day window.

At the proposed rule stage, the Chief Counsel for Regulation of the Department of Commerce certified to the Chief Counsel for Advocacy of the Small Business Administration that this rule, if adopted, would not have a significant economic impact on a substantial number of small entities since it would apply only to the 30th SW, USAF, and would have no effect, directly or indirectly, on small businesses. Because of this certification, a regulatory flexibility analysis is not required, and none has been prepared.

List of Subjects in 50 CFR Part 216

Exports, Fish, Imports, Indians, Labeling, Marine mammals, Penalties, Reporting and recordkeeping requirements, Seafood, Transportation.

Dated: February 2, 2009.

James W. Balsiger,

Acting Assistant Administrator for Fisheries,
National Marine Fisheries Service.

■ For reasons set forth in the preamble, 50 CFR part 216 is amended as follows:

PART 216—REGULATIONS GOVERNING THE TAKE OF MARINE MAMMALS INCIDENTAL TO SPECIFIED ACTIVITIES

■ 1. The authority citation for part 216 continues to read as follows:

Authority: 16 U.S.C. 1361 *et seq.*

■ 2. Subpart K is added to part 216 to read as follows:

Subpart K—Taking Of Marine Mammals Incidental To Space Vehicle And Test Flight Activities

Sec.

- 216.120 Specified activity and specified geographical region.
- 216.121 Effective dates.
- 216.122 Permissible methods of taking.
- 216.123 Prohibitions.
- 216.124 Mitigation.
- 216.125 Requirements for monitoring and reporting.
- 216.126 Applications for Letters of Authorization.
- 216.127 Letters of Authorization.
- 216.128 Renewal of Letters of Authorization.
- 216.129 Modifications of Letters of Authorization.

Subpart K—Taking Of Marine Mammals Incidental To Space Vehicle And Test Flight Activities

§ 216.120 Specified activity and specified geographical region.

(a) Regulations in this subpart apply only to the incidental taking of those marine mammals specified in paragraph (b) of this section by the 30th Space Wing, United States Air Force, and those persons it authorizes to engage in:

(1) Launching up to 30 space and missiles vehicles each year from Vandenberg Air Force Base, for a total of up to 150 missiles and rockets over the 5-year period of the regulations in this subpart,

(2) Launching up to 20 rockets each year from Vandenberg Air Force Base, for a total of up to 100 rocket launches over the 5-year period of the regulations in this subpart,

(3) Aircraft flight test operations, and

(4) Helicopter operations from Vandenberg Air Force Base.

(b) The incidental take of marine mammals on Vandenberg Air Force Base and in waters off southern California, under the activity identified in paragraph (a) of this section, is limited to the following species: Harbor seals

(*Phoca vitulina*); California sea lions (*Zalophus californianus*); northern elephant seals (*Mirounga angustirostris*); and northern fur seals (*Callorhinus ursinus*).

§ 216.121 Effective dates.

Regulations in this subpart are effective from February 7, 2009, through February 6, 2014.

§ 216.122 Permissible methods of taking.

(a) Under Letters of Authorization issued pursuant to § 216.106 and 216.127, the 30th Space Wing, U.S. Air Force, its contractors, and clients, may incidentally, but not intentionally, take marine mammals by harassment, within the area described in § 216.120, provided the activity is in compliance with all terms, conditions, and requirements of the regulations in this subpart and the appropriate Letter of Authorization.

(b) The taking of marine mammals is authorized for the species listed in § 216.120(b) and is limited to Level B Harassment.

§ 216.123 Prohibitions.

Notwithstanding takings specified in § 216.120 and authorized by a Letter of Authorization issued under §§ 216.106 and 216.127, no person in connection with the activities described in § 216.120 may:

(a) Take any marine mammal not specified in § 216.120(b);

(b) Take any marine mammal specified in § 216.120(b) other than by incidental, unintentional harassment;

(c) Take a marine mammal specified in § 216.120(b) if such taking results in more than a negligible impact on the species or stocks of such marine mammal; or

(d) Violate, or fail to comply with, the terms, conditions, and requirements of this subpart or a Letter of Authorization issued under §§ 216.106 and 216.127.

§ 216.124 Mitigation.

(a) The activity identified in § 216.120(a) must be conducted in a manner that minimizes, to the greatest extent practicable, adverse impacts on marine mammals and their habitats. When conducting operations identified in § 216.120(a), the mitigation measures contained in the Letter of Authorization issued under §§ 216.106 and 216.127 must be implemented. These mitigation measures include (but are not limited to):

(1) All aircraft and helicopter flight paths must maintain a minimum distance of 1,000 ft (305 m) from recognized seal haul-outs and rookeries (e.g., Point Sal, Purisima Point, Rocky

Point), except in emergencies or for real-time security incidents (e.g., search-and-rescue, fire-fighting), which may require approaching pinniped haul-outs and rookeries closer than 1,000 ft (305 m).

(2) For missile and rocket launches, holders of Letters of Authorization must avoid, whenever possible, launches during the harbor seal pupping season of March through June, unless constrained by factors including, but not limited to, human safety, national security, or for space vehicle launch trajectory necessary to meet mission objectives.

(3) Vandenberg Air Force Base must avoid, whenever possible, launches which are predicted to produce a sonic boom on the Northern Channel Islands during harbor seal, elephant seal, California sea lion, and northern fur seal pupping seasons of March through June.

(4) If post-launch surveys determine that an injurious or lethal take of a marine mammal has occurred or there is an indication that the distribution, size, or productivity of the potentially affected pinniped populations has been affected, the launch procedure and the monitoring methods must be reviewed, in cooperation with NMFS, and, if necessary, appropriate changes must be made through modification to a Letter of Authorization, prior to conducting the next launch of the same vehicle under that Letter of Authorization.

(5) Additional mitigation measures as contained in a Letter of Authorization.

(b) [Reserved]

§ 216.125 Requirements for monitoring and reporting.

(a) Holders of Letters of Authorization issued pursuant to §§ 216.106 and 216.127 for activities described in § 216.120(a) are required to cooperate with NMFS, and any other Federal, state or local agency with authority to monitor the impacts of the activity on marine mammals. Unless specified otherwise in the Letter of Authorization, the Holder of the Letter of Authorization must notify the Administrator, Southwest Region, NMFS, by letter or telephone, at least 2 weeks prior to activities possibly involving the taking of marine mammals. If the authorized activity identified in § 216.120(a) is thought to have resulted in the mortality or injury of any marine mammals or in any take of marine mammals not identified in § 216.120(b), then the Holder of the Letter of Authorization must notify the Director, Office of Protected Resources, NMFS, or designee, by telephone (301-713-2289), within 48 hours of the discovery of the injured or dead animal.

(b) Holders of Letters of Authorization must designate qualified, on-site individuals approved in advance by NMFS, as specified in the Letter of Authorization, to:

(1) Conduct observations on harbor seal, elephant seal, and sea lion activity in the vicinity of the rookery nearest the launch platform or, in the absence of pinnipeds at that location, at another nearby haul-out, for at least 72 hours prior to any planned launch occurring during the harbor seal pupping season (1 March through 30 June) and continue for a period of time not less than 48 hours subsequent to launching.

(2) For launches during the harbor seal pupping season (March through June), conduct follow-up surveys within 2 weeks of the launch to ensure that there were no adverse effects on any marine mammals,

(3) Monitor haul-out sites on the Northern Channel Islands, if it is determined by modeling that a sonic boom of greater than 1 psf could occur in those areas (this determination will be made in consultation with NMFS),

(4) Investigate the potential for spontaneous abortion, disruption of effective female-neonate bonding, and other reproductive dysfunction,

(5) Supplement observations on Vandenberg and on the Northern Channel Islands with video-recording of mother-pup seal responses for daylight launches during the pupping season,

(6) Conduct acoustic measurements of those launch vehicles that have not had sound pressure level measurements made previously, and

(7) Include multiple surveys each day that surveys are required that record the species, number of animals, general behavior, presence of pups, age class, gender and reaction to launch noise, sonic booms or other natural or human caused disturbances, in addition to recording environmental conditions such as tide, wind speed, air temperature, and swell.

(c) Holders of Letters of Authorization must conduct additional monitoring as required under an annual Letter of Authorization.

(d) Holders of Letters of Authorization must submit a report to the Southwest Administrator, NMFS, within 90 days after each launch. This report must contain the following information:

(1) Date(s) and time(s) of the launch,

(2) Design of the monitoring program, and

(3) Results of the monitoring program, including, but not necessarily limited to:

(i) Numbers of pinnipeds present on the haul-out prior to commencement of the launch,

(ii) Numbers of pinnipeds that may have been harassed as noted by the number of pinnipeds estimated to have entered the water as a result of launch noise,

(iii) The length of time pinnipeds remained off the haul-out or rookery,

(iv) Numbers of pinniped adults, juveniles or pups that may have been injured or killed as a result of the launch, and

(v) Behavioral modifications by pinnipeds that were likely the result of launch noise or the sonic boom.

(e) An annual report must be submitted at the time of renewal of the Letter of Authorization.

(f) A final report must be submitted at least 180 days prior to expiration of these regulations. This report will:

(1) Summarize the activities undertaken and the results reported in all previous reports,

(2) Assess the impacts at each of the major rookeries,

(3) Assess the cumulative impacts on pinnipeds and other marine mammals from Vandenberg activities, and

(4) State the date(s), location(s), and findings of any research activities related to monitoring the effects on launch noise and sonic booms on marine mammal populations.

§ 216.126 Applications for Letters of Authorization.

(a) To incidentally take marine mammals pursuant to the regulations in this subpart, the U.S. citizen (as defined by § 216.103) conducting the activity identified in § 216.120(a) (30th Space Wing, U.S. Air Force) must apply for and obtain either an initial Letter of Authorization in accordance with § 216.127 or a renewal under § 216.128.

(b) The application must be submitted to NMFS at least 30 days before the activity is scheduled to begin.

(c) Applications for a Letter of Authorization and for renewals of Letters of Authorization must include the following:

(1) Name of the U.S. citizen requesting the authorization,

(2) A description of the activity, the dates of the activity, and the specific location of the activity, and

(3) Plans to monitor the behavior and effects of the activity on marine mammals.

(d) A copy of the Letter of Authorization must be in the possession of the persons conducting activities that may involve incidental takings of pinnipeds.

§ 216.127 Letters of Authorization.

(a) A Letter of Authorization, unless suspended or revoked, will be valid for

a period of time not to exceed the period of validity of this subpart, but must be renewed annually subject to annual renewal conditions in § 216.128.

(b) Each Letter of Authorization will set forth:

(1) Permissible methods of incidental taking;

(2) Means of effecting the least practicable adverse impact on the species, its habitat, and on the availability of the species for subsistence uses (i.e., mitigation); and

(3) Requirements for mitigation, monitoring and reporting.

(c) Issuance and renewal of the Letter of Authorization will be based on a determination that the total number of marine mammals taken by the activity as a whole will have no more than a negligible impact on the affected species or stock of marine mammal(s).

§ 216.128 Renewal of Letters of Authorization.

(a) A Letter of Authorization issued under § 216.106 and § 216.127 for the activity identified in § 216.120(a) will be renewed annually upon:

(1) Notification to NMFS that the activity described in the application submitted under § 216.126 will be undertaken and that there will not be a substantial modification to the described work, mitigation or monitoring undertaken during the upcoming 12 months;

(2) Timely receipt of the monitoring reports required under § 216.125(d) and (e), and the Letter of Authorization issued under § 216.127, which has been reviewed and accepted by NMFS; and

(3) A determination by NMFS that the mitigation, monitoring and reporting measures required under §§ 216.124 and 216.125 and the Letter of Authorization issued under §§ 216.106 and 216.127, were undertaken and will be undertaken during the upcoming annual period of validity of a renewed Letter of Authorization.

(b) If a request for a renewal of a Letter of Authorization issued under §§ 216.106 and 216.128 indicates that a substantial modification to the described work, mitigation or monitoring undertaken during the upcoming season will occur, NMFS will provide the public a period of 30 days for review and comment on the request. Review and comment on renewals of Letters of Authorization are restricted to:

(1) New cited information and data indicating that the determinations made in this document are in need of reconsideration, and

(2) Proposed changes to the mitigation and monitoring requirements contained

in these regulations or in the current Letter of Authorization.

(c) A notice of issuance or denial of a renewal of a Letter of Authorization will be published in the **Federal Register**.

§ 216.129 Modifications of Letters of Authorization.

(a) Except as provided in paragraph (b) of this section, no substantive modification (including withdrawal or suspension) to the Letter of Authorization by NMFS, issued pursuant to §§ 216.106 and 216.127 and subject to the provisions of this subpart shall be made until after notification and an opportunity for public comment has been provided. For purposes of this paragraph, a renewal of a Letter of Authorization under § 216.128, without modification (except for the period of validity), is not considered a substantive modification.

(b) If the Assistant Administrator determines that an emergency exists that poses a significant risk to the well-being of the species or stocks of marine mammals specified in § 216.120(b), a Letter of Authorization issued pursuant to §§ 216.106 and 216.127 may be substantively modified without prior notification and an opportunity for public comment. Notification will be published in the **Federal Register** within 30 days subsequent to the action.

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DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 648

[Docket No. 0808041043-9036-02]

RIN 0648-AX16

Fisheries of the Northeastern United States; Atlantic Mackerel, Squid, and Butterfish Fisheries; Specifications and Management Measures

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and

Atmospheric Administration (NOAA), Commerce.

ACTION: Final rule.

SUMMARY: This action implements 2009 specifications and management measures for Atlantic mackerel, squid, and butterfish (MSB), and modifies existing management measures. Specifically, this action maintains quotas for Atlantic mackerel (mackerel), *Illex* squid (*Illex*), and butterfish at the same levels as 2008, while increasing the quota for *Loligo* squid (*Loligo*). Additionally, this action increases the incidental possession limit for mackerel and allows for the possibility of an inseason adjustment to increase the mackerel quota, if landings approach harvest limits. These specifications and management measures promote the utilization and conservation of the MSB resource.

DATES: Effective March 9, 2009.

ADDRESSES: Copies of supporting documents used by the Mid-Atlantic Fishery Management Council (Council), including the Environmental Assessment (EA) and Regulatory Impact Review (RIR)/Initial Regulatory Flexibility Analysis (IRFA), are available from: Daniel Furlong, Executive Director, Mid-Atlantic Fishery Management Council, Room 2115, Federal Building, 300 South New Street, Dover, DE 19904-6790. The EA/RIR/IRFA is accessible via the Internet at <http://www.nero.nmfs.gov>. NMFS prepared a Final Regulatory Flexibility Analysis (FRFA), which is contained in the Classification section of this rule. Copies of the FRFA and the Small Entity Compliance Guide are available from the Regional Administrator, Northeast Regional Office, NMFS, 55 Great Republic Drive, Gloucester, MA 01930-2276, and are also available via the internet at <http://www.nero.nmfs.gov>.

FOR FURTHER INFORMATION CONTACT: Carrie Nordeen, Fishery Policy Analyst, 978-281-9272, fax 978-281-9135.

SUPPLEMENTARY INFORMATION:

Background

Regulations implementing the Fishery Management Plan for the Atlantic

Mackerel, Squid, and Butterfish Fisheries (FMP) appear at 50 CFR part 648, subpart B. Regulations governing foreign fishing appear at 50 CFR part 600, subpart F. The regulations at §§ 648.21 and 600.516(c) require that NMFS, based on the maximum optimum yield (Max OY) of each fishery as established by the regulations, annually publish a rule specifying the amounts of the initial optimum yield (IOY), allowable biological catch (ABC), domestic annual harvest (DAH), and domestic annual processing (DAP), as well as, where applicable, the amounts for total allowable level of foreign fishing (TALFF) and joint venture processing (JVP) for the affected species managed under the FMP. In addition, these regulations allow specifications to be specified for up to 3 years, subject to annual review. The regulations found in § 648.21 also specify that IOY for squid is equal to the combination of research quota (RQ) and DAH, with no TALFF specified for squid. For butterfish, the regulations specify that a butterfish bycatch TALFF will be specified only if TALFF is specified for mackerel.

The Council adopted 2009 MSB specifications and management measures at its June 2008 meeting and submitted them to NMFS for review and approval. Initial submission was on August 1, 2008, and final submission was on September 18, 2008. A proposed rule for the 2009 MSB specifications and management measures was published on November 17, 2008 (73 FR 67829), and the public comment period for the proposed rule ended on December 17, 2008. Details concerning the Council's development of these measures were presented in the preamble of the proposed rule and are not repeated here.

Final MSB Specifications and Management Measures for the 2009 Fishing Year

This action implements the following MSB specifications and management measures for the 2009 fishing year, which are described in detail below.

TABLE 1. FINAL SPECIFICATIONS, IN METRIC TONS (MT), FOR ATLANTIC MACKEREL, SQUID, AND BUTTERFISH FOR 2009 FISHING YEAR.

Specifications	<i>Loligo</i>	<i>Illex</i>	Mackerel	Butterfish
Max OY	32,000	24,000	N/A	12,175
ABC	19,000	24,000	156,000	1,500
IOY	18,874 ¹	24,000	115,000 ²	500
DAH	18,874	24,000	115,000 ³	500
DAP	18,874	24,000	100,000	500
JVP	0	0	0	0

TABLE 1. FINAL SPECIFICATIONS, IN METRIC TONS (MT), FOR ATLANTIC MACKEREL, SQUID, AND BUTTERFISH FOR 2009 FISHING YEAR.—Continued

Specifications	<i>Loligo</i>	<i>Illex</i>	Mackerel	Butterfish
TALFF	0	0	0	0

¹ Excludes 125.6 mt for RQ.

² IOY may be increased during the year, but the total ABC will not exceed 156,000 mt.

³ Includes a 15,000-mt catch of Atlantic mackerel by the recreational fishery.

Atlantic Mackerel

This action specifies the mackerel ABC at 156,000 mt, based on the formula $ABC = T - C$. T is the yield (211,000 mt) associated with a fishing mortality rate (F) that is equal to the target F ($F = 0.12$); C is the estimated catch of mackerel in Canadian waters (55,000 mt) for the upcoming fishing year. Thus, 211,000 mt minus 55,000 mt results in the 2009 mackerel ABC of 156,000 mt. This action also specifies the mackerel IOY at 115,000 mt, a level that can be fully harvested by the domestic fleet, thereby precluding the specification of TALFF, while allowing the U.S. mackerel industry to expand. The Council heard from the industry that the availability of mackerel to the fishery, not the industry's ability to harvest mackerel, has curtailed catch in recent years. If mackerel are available to the fishery in 2009, NMFS believes that it is reasonable to assume that the commercial fishery will be able to harvest 100,000 mt of mackerel. Therefore, this action specifies the mackerel DAH at 115,000 mt, which is the commercial harvest plus the 15,000 mt anticipated to be harvested by the recreational fishery. Because $IOY = DAH$, this specification is consistent with the Council's recommendation that the level of IOY should not provide for TALFF.

As recommended by the Council, this action specifies the mackerel DAP at 100,000 mt and the mackerel JVP at zero. In previous years, the Council recommended a JVP greater than zero because it believed U.S. processors lacked the capacity to process the total amount of mackerel that U.S. harvesters could land. However, for the past several years, the Council has recommended zero JVP because the surplus between DAH and DAP has been declining as U.S. shore-based processing capacity for mackerel has expanded. Again, the Council heard from the industry that the availability of mackerel to the fishery, rather than processing capacity, has curtailed catch in recent years. Based on this information, the Council concluded, and NMFS concurs, that processing capacity is no longer a limiting factor

relative to domestic production of mackerel. Consequently, if U.S. harvesters land mackerel in excess of 100,000 mt, should the IOY be adjusted upward, U.S. processors have the capacity and intent to process it.

Mackerel Incidental Possession Limit

Regulations at § 648.25(a) specify that, during closures of the directed mackerel fishery, the incidental possession limit for mackerel is 20,000 lb (9.08 mt). In response to a request from the industry, the Council recommended increasing the incidental mackerel possession limit to minimize the potential for regulatory discarding of mackerel by the Atlantic herring fleet when mackerel and Atlantic herring co-occur in the Gulf of Maine during summer months. When considering an incidental possession limit increase, NMFS recognized that, relative to the quota, few mackerel are landed after June 1, because they move offshore and are largely unavailable to U.S. pelagic fishing fleets. NMFS also concluded that a moderate incidental possession limit increase is not anticipated to result in a quota overage because it is unlikely that the buffer between the threshold at which the directed mackerel fishery closes (103,500 mt) and the IOY (115,000 mt) would be landed between June 1 and December 31. Therefore, this action modifies the incidental possession limit for mackerel to minimize the potential for regulatory discarding by the Atlantic herring fleet in the Gulf of Maine, without creating directed fishing for mackerel during a closure of the mackerel fishery. Consistent with the Council's recommendation, this action specifies the mackerel incidental possession limit at 20,000 lb (9.08 mt) if the directed mackerel fishery closes prior to June 1, and at 50,000 lb (22.7 mt) if the directed mackerel fishery closes on or after June 1.

Inseason Adjustment of the Mackerel IOY

Regulations at § 648.21(e) provide that specifications may be adjusted inseason during the fishing year by the Regional Administrator, in consultation with the Council, by publishing a notice in the **Federal Register** and providing a 30-day

public comment period. At the June 2008 Council meeting, both the mackerel industry and the Council reiterated interest in increasing the mackerel IOY if landings approach the IOY during the most active part of the fishing year (January-April). However, the mackerel fishing season is short and it would be difficult to implement a separate inseason action during the fishing season. To facilitate a timely inseason adjustment to the mackerel IOY, if necessary, public comment was solicited as part of the 2009 MSB specifications. In conjunction with this action, NMFS is adopting the same protocol used in 2008 to guide the exercise of its discretion to make in-season adjustments to annual specifications provided for in § 648.21(e). This protocol specifies that, if using landings projections and all other available information, the Regional Administrator determines that 70 percent of the Atlantic mackerel IOY will be landed during the 2009 fishing year, the Regional Administrator will make available additional quota for a total IOY of 156,000 mt of Atlantic mackerel for harvest during 2009. NMFS's Northeast Fishery Statistic Office will summarize mackerel landings from dealer reports on a weekly basis and post this information on the Northeast Regional Office website (<http://www.nero.noaa.gov>). NMFS staff will closely monitor these landings and industry trends to determine if an inseason adjustment is necessary. Additionally, if an inseason adjustment of the IOY is warranted, the Regional Administrator will notify the Council and the inseason adjustment will be published in the **Federal Register**.

Atlantic Squids

Loligo

Consistent with the revised biological reference points and the analytical advice provided by the most recent *Loligo* stock assessment review committee (SARC 34), this action specifies the *Loligo* Max OY at 32,000 mt and the ABC at 19,000 mt. One scientific research project proposal requesting 125.6 mt of *Loligo* RQ was recommended for approval and will be

forwarded to the NOAA Grants Office for award. Therefore, this action adjusts the *Loligo* IOY, DAH, and DAP to reflect the RQ, and specifies 2009 *Loligo* IOY, DAH, and DAP at 18,874 mt. The FMP does not authorize the specification of JVP and TALFF for the *Loligo* fishery because of the domestic industry's capacity to harvest and process the OY for this fishery; therefore, there will be no JVP or TALFF in 2009.

Distribution of the *Loligo* DAH

As was done in 2007 and 2008, this action allocates the 2009 *Loligo* DAH into trimesters, consistent with the Council's recommendation. The 2009 trimester allocations are as follows:

TABLE 2. TRIMESTER ALLOCATION OF *Loligo* QUOTA IN 2009

Trimester	Per-cent	Metric Tons ¹
I (Jan-Apr)	43	8,116
II (May-Aug)	17	3,208
III (Sep-Dec)	40	7,550
Total	100	18,874

¹ Trimester allocations after 125.6 mt RQ deduction.

Illex

This action specifies the *Illex* Max OY, IOY, ABC, and DAH at 24,000 mt. The FMP does not authorize the specification of JVP or TALFF for the *Illex* fishery because of the domestic fishing industry's capacity to harvest and to process the IOY from this fishery.

Butterfish

The status of the butterfish stock was most recently assessed in late 2004 and that assessment concluded that, while overfishing of the stock is not occurring, the stock is overfished. Based on this information, the Council was notified by NMFS on February 11, 2005, that the butterfish stock was designated as overfished, pursuant to the requirements of section 304(e) of the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act), and the Council developed a proposed rebuilding plan for the butterfish stock in Amendment 10 to the FMP (Amendment 10). While the rebuilding program was being developed in Amendment 10, the Council recommended restricting butterfish landings to recent landings levels to prevent an expansion of the fishery and to protect the stock. Therefore, for 2009, as in 2008, this action sets the Max OY at 12,175 mt; the ABC at 1,500 mt; and the IOY, DAH, and DAP at 500 mt. Harvest at these levels should prevent overfishing of the butterfish stock in 2009. Additionally, consistent with

MSB regulations, the Council recommended, and this action is specifying, zero TALFF for butterfish in 2009 because zero TALFF is specified for mackerel.

Comments and Responses

NMFS received one comment letter on the proposed 2009 MSB specifications and management measures, and the commenter indicated support for all proposed MSB specifications and management measures.

Changes From the Proposed Rule

The proposed rule contained an arithmetic error in the calculation of *Loligo* IOY, DAH, and DAP that must be corrected for the record. The Council recommended that 3 percent of the 2009 *Loligo*, *Illex*, butterfish, and mackerel quotas be set aside to fund projects selected under the 2009 Mid-Atlantic RSA Program. At the time of the proposed rule, the project selection and award process for the 2009 Mid-Atlantic RSA Program had not concluded. The proposed rule specified that 3 percent of the *Loligo* ABC was 5,700 mt, when it should have been 570 mt, and reduced the *Loligo* IOY, DAH, and DAP to 13,300 mt, rather than 18,430 mt.

Since the proposed rule was published, the selection process for the 2009 Mid-Atlantic RSA Program has progressed, and one project requesting 125.6 mt of *Loligo* RQ has been forwarded to the NOAA Grants Office for award. Therefore, this action reduces the 2009 *Loligo* ABC of 19,000 mt by 125.6 mt, resulting in a 2009 *Loligo* IOY, DAH, and DAP of 18,874 mt. If any portion of the RQ is not awarded, NMFS will return any un-awarded RQ to the commercial fishery through the publication of a separate notice in the **Federal Register**.

Classification

Pursuant to section 304(b)(1)(A) of the Magnuson-Stevens Act, the NMFS Acting Assistant Administrator has determined that this rule is consistent with the Atlantic Mackerel, Squid, and Butterfish FMP, other provisions of the Magnuson-Stevens Act, and other applicable law.

This action is authorized by 50 CFR part 648 and has been determined to be not significant for purposes of Executive Order 12866 (E.O. 12866).

NMFS, pursuant to section 604 of the Regulatory Flexibility Act, has prepared a final regulatory flexibility analysis (FRFA), included in this final rule, in support of the 2009 MSB specifications and management measures. The FRFA describes the economic impact that this

final rule, along with other non-preferred alternatives, will have on small entities.

The FRFA incorporates the economic impacts and analysis summarized in the IRFA, a summary of the significant issues raised by the public, and a summary of analyses prepared to support the action (i.e., the EA and the RIR). The contents of these documents are not repeated in detail here. A copy of the IRFA, the RIR, and the EA are available upon request (see **ADDRESSES**). A complete description of the reasons why this action is being considered, and the objectives of and legal basis for this action, is contained in the preamble to the proposed and final rules and is not repeated here.

Statement of Need for this Action

This action specifies 2009 specifications and management measures for MSB fisheries and modifies existing management measures to improve the management of MSB fisheries.

A Summary of the Significant Issues Raised by the Public Comments in Response to the IRFA, a Summary of the Assessment of the Agency of Such Issues, and a Statement of Any Changes Made in the Proposed Rule as a Result of Such Comments

NMFS received one comment letter in support of all proposed 2009 MSB specifications and management measures; therefore, there are no changes from the proposed rule as a result of that comment letter. No comments were received about the IRFA or the general economic effects of the proposed rule.

Description and Estimate of Number of Small Entities to Which the Rule Will Apply

Based on permit data for 2007, the number of potential fishing vessels in the 2009 fisheries are as follows: 383 for *Loligo*/butterfish, 78 for *Illex*, 2,462 for mackerel, and 2,108 vessels with incidental catch permits for squid/butterfish. There are no large entities participating in this fishery, as defined in section 601 of the RFA. Therefore, there are no disproportionate economic impacts on small entities. Many vessels participate in more than one of these fisheries; therefore, permit numbers are not additive.

Description of Projected Reporting, Recordkeeping, and Other Compliance Requirements

This action does not contain any new collection-of-information, reporting, recordkeeping, or other compliance

requirements. It does not duplicate, overlap, or conflict with any other Federal rules.

Description of the Steps the Agency has taken to Minimize the Significant Economic Impact on Small Entities Consistent with the Stated Objectives of Applicable Statutes, Including a Statement of the Factual, Policy, and Legal Reasons for Selecting the Alternative Adopted in the Final Rule and Why Each One of the Other Significant Alternatives to the Rule Considered by the Agency Which Affect the Impact on Small Entities was Rejected

Actions Implemented with the Final Rule

The mackerel IOY specified in this action (115,000 mt, with 15,000 mt allocated to recreational catch) represents status quo, as compared to 2008, and is no constraint to vessels relative to the landings in recent years. Landings were 55,528 mt in 2004, 43,246 mt in 2005, 58,279 mt in 2006, and 24,446 mt in 2007. This action allows for an inseason adjustment, if landings approach the IOY early in the fishing year, to increase the IOY up to the ABC (156,000 mt). Therefore, no reductions in revenues for the mackerel fishery are expected as a result of this action; in fact, an increase in revenues as a result of this action is possible. Based on 2007 data, the mackerel fishery could increase its landings by 90,554 mt in 2009, if it takes the entire IOY. In 2007, the last year for which complete financial data are available, the average value for mackerel was \$258 per mt. Using this value, the mackerel fishery could see an increase in revenues of \$23,362,932 as a result of the 2009 IOY (115,000 mt), and an additional increase in revenues of \$10,578,000 as a result of the adjustment to increase the IOY up to the ABC (156,000 mt).

The *Loligo* ABC (19,000 mt) specified in this action represents a potential for increased landings when compared to the 2008 ABC (17,000 mt). Landings were 15,447 in 2004, 16,984 mt in 2005, 15,880 mt in 2006, and 12,342 mt in 2007. No reductions in revenues for the *Loligo* fishery are expected as a result of this action; in fact, an increase in revenues as a result of this action is possible. Based on 2007 data, the *Loligo* fishery could increase its landings by 6,658 mt in 2009, if it takes the entire ABC. Using the average value for *Loligo* from 2007 (\$1,883 per mt), the *Loligo* fishery could see an increase in revenues of \$12,537,014 as a result of the 2009 ABC (19,000 mt).

The *Illex* IOY (24,000 mt) specified in this action represents status quo as compared to 2008. Landings were 26,098 mt in 2004, 12,032 mt in 2005, 13,944 mt in 2006, and 9,022 mt in 2007. Implementation of this action will not result in a reduction in revenue or a constraint on the fishery in 2009. Based on 2007 data, the *Illex* fishery could increase its landings by 14,978 mt in 2009, if it takes the entire IOY. Using the average value for *Illex* from 2007 (\$428 per mt), the *Illex* fishery could see an increase in revenues of \$6,410,584 as a result of the 2009 IOY (24,000 mt).

The butterfish IOY specified in this action (500 mt) represents status quo, as compared to 2008, and represents only a minimal constraint to vessels relative to the landings in recent years. Due to market conditions, there has been not been a directed butterfish fishery in recent years; therefore, recent landings have been low. Landings were 537 mt in 2004, 437 mt in 2005, 554 mt in 2006, and 673 mt in 2007. Given the lack of a directed butterfish fishery and low butterfish landings, this action is not expected to reduce revenues in this fishery more than minimally. Based on 2007 data, the value of butterfish was \$1,602 per mt, so a reduction from 2007 would represent a fishery-wide loss of only \$277,146.

Alternatives to the Actions in the Final Rule

The Council analysis evaluated three alternatives for mackerel, and all of them would have set the ABC at 156,000 mt, IOY at 115,000 mt, and maintained the status quo trigger for closing the directed fishery. This ABC and IOY do not represent a constraint on vessels in this fishery, so no negative impacts on revenues in this fishery are expected as a result of these alternatives. These alternatives only differed from this action with respect to incidental possession limits. This action specifies the incidental mackerel possession limit at 20,000 lb (9.08 mt) if the directed mackerel fishery closes prior to June 1, and at 50,000 lb (22.7 mt) if the directed mackerel fishery closes on or after June 1. The alternatives to this action would have specified incidental mackerel possession limits at 20,000 lb (9.08 mt)(status quo) and at 50,000 lb (22.7 mt)(least restrictive). These alternatives were not adopted by the Council because the status quo incidental possession limit could have resulted in the regulatory discarding of mackerel by the Atlantic herring fishery in the Gulf of Maine and, if mackerel are available to the fishery in 2009, the least restrictive incidental possession limit may have encouraged targeting on

mackerel during a fishery closure early in the year (January-April). Differences in incidental possession limits may affect behavior and effort during closures of the directed fishery; however, all alternatives are expected to result in the same total landings for 2009.

For *Loligo*, alternatives to this action would have set the Max OY at 26,000 mt and ABC, IOY, DAH, and DAP at 17,000 mt (status quo) or Max OY at 32,000 mt and ABC, IOY, DAH, and DAP at 23,000 mt (least restrictive). These alternatives were not adopted by the Council because they were either not consistent with the revised reference points from SARC 34 (status quo) or not consistent with the management recommendations from SARC 34 and did not consider the uncertainty associated with the *Loligo* stock assessment model (least restrictive).

For *Illex*, one alternative considered would have set Max OY, ABC, IOY, DAH, and DAP at 30,000 mt. This alternative would allow harvest far in excess of recent landings in this fishery. Therefore, there would be no constraints and, thus, no revenue reductions, associated with this alternative.

However, the Council considered this alternative unacceptable because an ABC specification of 30,000 mt may not prevent overfishing in years of moderate to low abundance of *Illex*. Another alternative considered would have set MAX OY at 24,000 mt and ABC, IOY, DAH, and DAP at 19,000 mt. The Council considered this alternative unacceptable because it was unnecessarily restrictive.

For butterfish, one alternative considered would have set the ABC at 4,525 mt, and IOY, DAH, and DAP at 1,861 mt; while another would have set ABC at 12,175 mt, and IOY, DAH, and DAP 9,131 mt. These amounts exceed the landings of this species in recent years. Therefore, neither alternative represents a constraint on vessels in this fishery or would reduce revenues in the fishery. However, neither of these alternatives were adopted by the Council because they would likely result in overfishing and the additional depletion of the spawning stock biomass of an overfished species.

Small Entity Compliance Guide

Section 212 of the Small Business Regulatory Enforcement Fairness Act of 1996 states that, for each rule or group of related rules for which an agency is required to prepare a FRFA, the agency shall publish one or more guides to assist small entities in complying with the rule, and shall designate such publications as "small entity

compliance guides.” The agency shall explain the actions a small entity is required to take to comply with a rule or group of rules. As part of this rulemaking process, a small entity compliance guide was prepared. The guide will be sent to all holders of permits issued for the MSB fisheries. In addition, copies of this final rule and guide (i.e., permit holder letter) are available from the Regional Administrator and are also available from NMFS, Northeast Region (see ADDRESSES).

List of Subjects in 50 CFR Part 648

Fisheries, Fishing, Recordkeeping and reporting requirements.

Dated: February 2, 2009.

James W. Balsiger,
*Acting Assistant Administrator For Fisheries,
National Marine Fisheries Service.*

■ For the reasons set out in the preamble, 50 CFR part 648 is amended as follows:

PART 648—FISHERIES OF THE NORTHEASTERN UNITED STATES

■ 1. The authority citation for part 648 continues to read as follows:

Authority: 16 U.S.C. 1801 *et seq.*

■ 2. In § 648.25, paragraph (a) is revised to read as follows:

§ 648.25 Possession restrictions.

(a) *Atlantic mackerel.* During a closure of the directed Atlantic

mackerel fishery that occurs prior to June 1, vessels may not fish for, possess, or land more than 20,000 lb (9.08 mt) of Atlantic mackerel per trip at any time, and may only land Atlantic mackerel once on any calendar day, which is defined as the 24-hr period beginning at 0001 hours and ending at 2400 hours. During a closure of the directed fishery for butterfish that occurs on or after June 1, vessels may not fish for, possess, or land more than 50,000 lb (22.7 mt) of Atlantic mackerel per trip at any time, and may only land Atlantic mackerel once on any calendar day.

* * * * *

[FR Doc. E9-2581 Filed 2-5-09; 8:45 am]

BILLING CODE 3510-22-S

Proposed Rules

Federal Register

Vol. 74, No. 24

Friday, February 6, 2009

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

DEPARTMENT OF TRANSPORTATION

Office of the Secretary

14 CFR Parts 234, 259, and 399

[Docket No. OST-2007-0022]

RIN 2105-AD72

Enhancing Airline Passenger Protections

AGENCY: Office of the Secretary (OST), U.S. Department of Transportation (DOT).

ACTION: Extension of comment period on proposed rule.

SUMMARY: The Department is extending through March 9, 2009, the period for interested persons to submit comments to its proposed rule on enhancing airline passenger protections.

DATES: Comments must be received by March 9, 2009. Comments received after this date will be considered to the extent practicable.

ADDRESSES: You may file comments identified by the docket number DOT-OST-2007-0022 by any of the following methods:

- *Federal eRulemaking Portal:* go to <http://www.regulations.gov> and follow the online instructions for submitting written comments. A standard form has been created for those who wish to use it in submitting comments.

- *Mail:* Docket Management Facility, U.S. Department of Transportation, 1200 New Jersey Ave., SE., Room W12-140, Washington, DC 20590-0001.

- *Hand Delivery or Courier:* West Building Ground Floor, Room W12-140, 1200 New Jersey Ave., SE., between 9 a.m. and 5 p.m. ET, Monday through Friday, except Federal Holidays

- *Fax:* (202) 493-2251.

We strongly encourage you to use the standard form to submit comments. To access the form, go to <http://www.regulations.gov> and use the SEARCH DOCUMENTS field provided to input the docket number for this rulemaking. You can then search the index for "Public comment standard

form." This form may then be moved to your computer desktop, where you can type in your comments. You may then attach the form when you submit your comments to the docket.

If you do not use the standard form, you must include the agency name and docket number DOT-OST-2007-0022 or the Regulatory Identification Number (RIN) for the rulemaking at the beginning of your comment. All comments received will be posted without change to <http://www.regulations.gov>, including any personal information provided.

FOR FURTHER INFORMATION CONTACT: Daeleen Chesley or Blane Workie, Office of Assistant General Counsel for Aviation Enforcement and Proceedings, 1200 New Jersey Ave., SW., W96-414, Washington, DC 29590. Phone: 202-366-9342. TTY: 202-366-0511. Fax: 202-366-7152. E-mail: daeleen.chesley@dot.gov or blane.workie@dot.gov.

SUPPLEMENTARY INFORMATION: On December 8, 2008, 73 FR 74586, Dec. 8, 2008, the Department of Transportation (DOT or Department) published in the **Federal Register** a notice of proposed rulemaking (NPRM) that proposed to enhance airline passenger protections in the following ways: By requiring air carriers to adopt contingency plans for lengthy tarmac delays and incorporate them in their contracts of carriage, by requiring air carriers to respond to consumer problems, by deeming the continued operation of a flight that is chronically late to be unfair and deceptive in violation of 49 U.S.C. 41712, by requiring air carriers to publish information on flight delays on their Web sites, and by requiring air carriers to adopt customer service plans, incorporate these into their contracts of carriage, and audit their own compliance with their plans. Comments on the matters proposed are due 60 days after publication of the NPRM, or by February 6, 2009.

On December 30, 2008, the Air Transport Association (ATA) requested an extension of 60 days time in the comment period for this rulemaking. According to ATA, the extension of time is needed in order for it to develop a more complete and accurate cost-benefit analysis of the proposed rule than is contained in the Initial Regulatory Evaluation. In support of its request, ATA states that the Initial Regulatory

Evaluation contains estimates on costs of the rule without input from affected carriers and that other estimates are vastly underestimated. In particular, ATA points to costs associated with litigation that it asserts will result if carriers are required to make contingency plans or customer service plans part of their contracts of carriage, costs of developing Web sites to contain information not currently required to be provided consumers, and costs on carriers and the public of any requirement dictating maximum tarmac delay times. ATA also points, in support of its request for additional time, to the coordination it claims will be necessary on the rule and notes that the comment period includes the end-of-year holiday. As of January 13, 2009, no comments were filed in response to ATA's request.

We have decided to grant an extension of 31 days time, or until March 9, 2009, for the public to comment on the NPRM. In doing so, we note that ATA and other interested parties already have had a significant amount of time to review and analyze the matters at issue in the NPRM, including providing the Department with the cost data it says is necessary. On November 18, 2008, 20 days prior to the December 8, 2008, publication of the NPRM in the **Federal Register**, which began the 60-day comment period, the Department published the proposal in its own public docket system and publicized that fact. Thus, all interested parties would have had 80 days to review and comment on the proposals, even without the additional 31 days we are now granting. Moreover, most of the issues encompassed by the NPRM are not by any means new to ATA and other interested parties, since they were first proposed for comment approximately 14 months ago in an Advance Notice of Proposed Rulemaking, issued November 15, 2007, on which ATA among others commented. Accordingly, the Department finds that good cause exists to extend the time for comments on the proposed rule from February 6, 2009, to March 9, 2009.

Issued in Washington, DC, this 29th day of January 2009, under authority assigned to me by 14 CFR 385.17 (c).

Neil R. Eisner,

Assistant General Counsel, Office of Regulation and Enforcement, U.S. Department of Transportation.

[FR Doc. E9-2548 Filed 2-5-09; 8:45 am]

BILLING CODE 4910-9X-P

DEPARTMENT OF AGRICULTURE

Forest Service

36 CFR Part 242

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 100

[FWS-R7-SM-2009-0001; 701 01-1 261-0000L6]

RIN 1018-AW30

Subsistence Management Regulations for Public Lands in Alaska—2010-11 and 2011-12 Subsistence Taking or Wildlife Regulations

AGENCIES: Forest Service, Agriculture; Fish and Wildlife Service, Interior.

ACTION: Proposed rule; withdrawal.

SUMMARY: In accordance with the January 20, 2009, memorandum "Regulatory Review," signed by Chief of Staff Rahm Emanuel, we, the U.S. Forest Service and U.S. Fish and Wildlife Service, withdraw our proposed rule published January 29, 2009, to establish regulations for hunting and trapping seasons, harvest limits, methods, and means related to taking of wildlife for subsistence uses in Alaska during the 2010-11 and 2011-12 regulatory years.

DATES: Effective February 4, 2009, the Forest Service and the Fish and Wildlife Service withdraw the joint proposed rule published January 29, 2009 (74 FR 5127).

FOR FURTHER INFORMATION CONTACT: For Fish and Wildlife Service questions, contact Peter 3. Probasco, Chair, Federal Subsistence Board, c/o U.S. Fish and Wildlife Service, Office of Subsistence Management, at (907) 786-3888 (telephone) or subsistence@fws.gov (e-mail). For National Forest System lands questions, contact Steve Kessler, Regional Subsistence Program Leader, USDA, Forest Service, Alaska Region, at (907) 743-9461 (telephone).

SUPPLEMENTARY INFORMATION:

Background

Under Title VIII of the Alaska National Interest Lands Conservation Act (ANILCA) (16 U.S.C. 3111-3126), the Secretary of the Interior and the Secretary of Agriculture (Secretaries) jointly implement the Federal Subsistence Management Program (program). This program grants a preference for subsistence uses of fish and wildlife resources on Federal public lands and waters in Alaska. The Secretaries originally published regulations to carry out the program in the **Federal Register** on May 29, 1992 (57 FR 22940), and the program has subsequently amended these regulations several times. Because this program is a joint effort between Interior and Agriculture, its regulations are located in two titles of the Code of Federal Regulations (CFR): Title 36, "Parks, Forests, and Public Property," and Title 50, "Wildlife and Fisheries," at 36 CFR 242.1-28 and 50 CFR 100.1-28, respectively.

Among other things, subpart D of these regulations set forth specific harvest seasons and limits. Subpart D regulations are subject to periodic review and revision. The Federal Subsistence Board completes the biennial process of revising subsistence hunting and trapping regulations for wildlife in even-numbered years and subsistence fishing and shellfish regulations in odd-numbered years; public proposal and review processes take place during the preceding year. The Board also addresses customary and traditional use determinations during the applicable biennial cycle.

On January 29, 2009 (74 FR 5127), we published a proposed rule in the **Federal Register** revising the subpart D regulations that set forth specific harvest seasons and limits for wildlife and the subpart C customary and traditional use determinations. The text of the 2008-10 subparts C and D final rule that published June 24, 2008 (73 FR 35726), serve as the text for our 2010-12 subparts C and D proposed rule (January 29, 2009, 74 FR 5127).

We are withdrawing this rule because publication did not follow the requirements set forth in a January 20, 2009, memorandum signed by the President's Chief of Staff. That memorandum requires Administration appointees to review rules prior to publication. This rule did not receive complete Administration review.

For more about the background and structure of the Federal Subsistence Program, Federal Subsistence Board, and Federal Subsistence Regional Advisory Councils; our Public Review

Process involving Comments, Proposals, and Public Meetings; Compliance with Statutory and Regulatory Authorities; and discussion of our original proposed rule, see 74 FR 5127.

Dated: January 29, 2009.

Rowan Gould,

Acting Director, U.S. Fish and Wildlife Service.

Dated: February 3, 2009.

Abigail Kimbell,

Chief of the U.S. Forest Service.

[FR Doc. E9-2608 Filed 2-4-09; 11:15 am]

BILLING CODES 3410-11-P; 4310-55-P

POSTAL SERVICE

39 CFR Part 111

New Standards for Domestic Mailing Services, Revised Proposal

AGENCY: Postal Service™.

ACTION: Proposed rule; supplemental.

SUMMARY: On January 29, 2009, the Postal Service published a proposed rule to provide mailing standards that would accompany new prices for mailing services in 2009 and 2010. Upon further review, the Postal Service has determined that it is appropriate to make certain changes in its initial proposal. In particular, language has been inserted to clarify that proposed new standards relating to static charge and coefficient of friction standards for automation and machinable letters would be recommended, not mandatory, and a proposal to revise the standards for window envelopes on letter-size envelopes has been removed. For purposes of clarity and convenience, the entire revised version of the proposed rule is being published for comment.

DATES: We must receive your comments on or before March 9, 2009.

ADDRESSES: Mail or deliver written comments to the Manager, Mailing Standards, U.S. Postal Service, 475 L'Enfant Plaza, SW., Room 3436, Washington, DC 20260-3436. You may inspect and photocopy all written comments at USPS Headquarters Library, 475 L'Enfant Plaza, SW., 11th Floor N, Washington, DC, between 9 a.m. and 4 p.m., Monday through Friday. E-mail comments, containing the name and address of the commenter, may be sent to:

MailingStandards@usps.gov, with a subject line of "Price-related Proposal Comments." Faxed comments are not accepted.

FOR FURTHER INFORMATION CONTACT: Bill Chatfield, 202-268-7278.

SUPPLEMENTARY INFORMATION: On January 29, 2009, the Postal Service published a proposed rule to provide mailing standards that would accompany new prices for mailing services in 2009 and 2010. **Federal Register** 74 FR 5130. This supplemental filing makes appropriate changes in the original proposed rule, as discussed below.

The Postal Service's proposed rule includes: Several mail classification changes, modifications to mailpiece characteristics, and changes in classification terminology. This proposed rule contains the revisions to *Mailing Standards of the United States Postal Service*, Domestic Mail Manual (DMM®) that we would adopt to implement the new prices. Additional changes will be included in a separate final rule to support prices established by the Governors.

We think it is vital to share proposed modifications to mailing standards as far in advance as possible; therefore, included are additional proposed revisions scheduled for implementation in May 2010. We summarize the revisions by shape for 2009 and 2010, and provide proposed changes to the mailing standards in the DMM. We invite your comments on the proposed standards.

Proposed Changes for Letters and Flats for May 2009

Letters

In May 2009, we propose alignment of standards for commercial machinable and automation letters so all machinable letters have the physical characteristics required of automation letters, with the exception of a qualifying barcode. Commercial letters that are not machinable are mailed as nonmachinable letters.

We propose a new minimum 0.009 inch thickness standard for automation and machinable letters.

If letter surfaces are too glossy, pieces may double-feed into processing machines, and it can be difficult to handle groups of letters when inducted or removed from machines. We propose new recommended static charge and coefficient of friction standards for automation and machinable letters to avoid excessive static charge and allow all letters to be handled efficiently when inducted and removed from processing equipment. We will continue to explore the development of testing methods and mailpiece design factors that impact static charge and coefficient of friction.

Our proposed rule revises the list of nonmachinable characteristics. We clarify that letters with nonpaper

surfaces, and letters with keys, coins or similar objects that are either loose or thick enough to make a letter nonuniform in thickness, render letters nonmachinable. Letters that do not meet the "automation-compatible" physical standards in DMM 201.3.0 would be considered nonmachinable letters.

We propose to allow optional sortation of First-Class Mail® and Standard Mail® automation letters and Standard Mail machinable letters to all applicable sort levels, with prices matching the level of sortation chosen.

Note: Language in the original version of this proposed rule which would have revised the standards for window envelopes on letter-size envelopes has been removed. Accordingly, this revised proposal no longer contains proposed changes to sections 202, 302, and 600 of *Mailing Standards of the United States Postal Service*, Domestic Mail Manual (DMM), which appeared in the previously published proposal.

Flats

Effective in May 2009, we plan to extend the eligibility for automation prices to certain flat-size mailpieces that are not able to meet the flexibility standards in DMM 301.1.3, but that are able to demonstrate flats machine compatibility through a Pricing and Classification Service Center (PCSC)—administered testing process. Some flat-size mailpieces containing rigid items process adequately on USPS® flats-sorting equipment when the surface of the mailpiece does not fit too tightly around the contents. Once inducted, those pieces with rigid contents, but with a surface that can be grasped at induction, may be processed efficiently. Because machine compatibility for these mailpieces may be defined by a number of characteristics, each type of mailpiece must be individually analyzed to ensure that it will process efficiently. We propose to allow mailers of flat-size pieces containing rigid items to mail at automation flats prices after they obtain PCSC approval. Those pieces that do not meet the published flexibility standards for flats, but were authorized to mail at flats prices by PCSC approval, would be required to be marked "Automation Flat."

We propose that the polywrap standards in DMM 301.3.3, currently applicable only to automation flats, be extended to all flat-size mailpieces using polywrap including saturation carrier route flats. The use of automation-compatible polywrap on all flat-size mailpieces improves mail processing efficiency and applies standardization and consistency for mailers of polywrapped flats. We also propose to redefine measurement of

height and length dimensions by including polywrap selvage when measuring for maximum dimensions because selvage that extends beyond the maximum height or length may interfere with efficient processing. We would not include selvage when measuring for minimum dimensions, however, because the selvage is not substantial enough for it to be considered part of a uniformly thick flat. Polywrap products approved for flats are available from a number of independent vendors and the approval process for these products is described in DMM 301 and on the USPS Rapid Information Bulletin Board (RIBBS™) Web site at <http://ribbs.usps.gov>.

Effective in May 2009, we propose to extend the deflection standards, currently applicable to automation flats, to all flat-size mailpieces, except those mailed at saturation carrier route prices. The deflection standards change to allow one inch less of vertical deflection (droop) than is currently allowed. We propose to eliminate the current exception for oblong flats (those with a bound edge on the shorter side) so all flats would be tested with the length placed perpendicular to the edge of a flat surface. The broader application and revision of deflection standards will improve processing efficiencies within USPS systems, assuring better machinability of flat-size mailpieces.

We propose to simplify mail preparation by eliminating the bundling requirements for First-Class Mail commercial flats. The new tray-based standards streamline mail preparation and processing and improve efficiency for this type of mail. Similar to the current tray-based preparation option for First-Class Mail flats, prices will be based on the sort level of the tray. Mailers may improve efficiency by eliminating bundling, and the minimum number of pieces per tray will be changed to 50 pieces within a tray, rather than the 90 pieces required today.

Parcels

We remove definitions of irregular parcels from the mail preparation standards in DMM 465, 475, and 485, and provide references to the current definition of irregular parcels in DMM 401.

Overview of Proposed Changes for 2010

These initial changes proposed for May 2010 include modifications that enhance processing and delivery efficiency while continuing to offer mailers choices.

Flats

We propose to merge standards for nonautomation and automation flats in May 2010; requiring all machinable flats, whether or not they are barcoded, to have the same physical characteristics. The terminology would likely change to machinable, barcoded machinable, and irregular flats.

We propose new flexibility standards for May 2010. Current standards in DMM 301.1.3 describe minimum flexibility as demonstrated by "tabletop" flexibility tests. Effective May 2009, we are proposing to extend automation prices to certain flat-size mailpieces not able to meet the flexibility standards in 301.1.3, but able to demonstrate flat machine compatibility through a PCSC-administered testing process. Delivery of rigid pieces is often more costly than delivery of foldable flats. For May 2010, we propose the flexibility standards noted above, be replaced with a single flexibility standard requiring all machinable flat-size mailpieces to be foldable, parallel to the length, to a height no greater than 5 inches. Flat-size pieces failing to meet this level of flexibility may be categorized as irregular flats.

We propose to modify standards in May 2010 for all flats, except those mailed as saturation carrier route, to prevent inserts from falling out of the host flat-size mailpiece during normal sortation and delivery. We propose that loose inserts less than 75% of the size of a host mailpiece be limited to singly unfolded cards, when the mailpiece is not enclosed in polywrap, an envelope, or other wrapper. Allowable loose inserts should be injected well into the body of the mailpiece.

Irregular Flats

For May 2010, we propose a new "irregular flats" category. This category encompasses two types of flat-size mailpieces. One example is a flat-size piece that is machinable, but with parcel-like characteristics that affect deliverability, such as pieces with rigid contents because the pieces cannot be folded. Another type of irregular flat would be one that is foldable with favorable delivery characteristics, but is not machinable, such as flimsy pieces that are difficult to process on automation equipment.

Not Flat-Machinable (NFM)s

In 2007, we created a NFM category for Standard Mail items that could not meet revised automation flats standards. In May 2010, we propose to discontinue or redefine the NFM category. Pieces

that would have been mailed as NFM's can likely qualify as Standard Mail parcels. Some NFM's, with modifications, might be mailable as machinable or irregular flats in 2010.

General

We encourage customers to comment on the May 2010 proposed changes and hope that this notice provides the opportunity for mailers to prepare for possible operation changes ahead of the proposed May 2010 effective date.

Although we are exempt from the notice and comment requirements of the Administrative Procedure Act [5 U.S.C. of 553(b), (c)] regarding proposed rulemaking by 39 U.S.C. 410(a), we invite public comments on the following proposed revisions to *Mailing Standards of the United States Postal Service*, Domestic Mail Manual (DMM), incorporated by reference in the *Code of Federal Regulations*. See 39 CFR Part 111.

List of Subjects in 39 CFR Part 111

Administrative practice and procedure, Postal Service.

Accordingly, 39 CFR part 111 is proposed to be amended as follows:

PART 111—[AMENDED]

1. The authority citation for 39 CFR part 111 continues to read as follows:

Authority: 5 U.S.C. 552(a); 39 U.S.C. 101, 401, 403, 404, 414, 416, 3001–3011, 3201–3219, 3403–3406, 3621, 3622, 3626, 3632, 3633, and 5001.

2. Revise the following sections of *Mailing Standards of the United States Postal Service*, Domestic Mail Manual (DMM), as follows:

100 Retail Mail Letters, Cards, Flats, and Parcels

101 Physical Standards

101.1 Physical Standards for Letters

* * * * *

1.2 Nonmachinable Criteria

A letter-size piece is nonmachinable (see 6.4) if it has one or more of the following characteristics (see 601.1.4 to determine the length, height, top, and bottom of a mailpiece):

* * * * *

[Revise item b to add that any nonpaper exterior surface is nonmachinable as follows:]

b. Is polybagged, polywrapped, enclosed in any plastic material, or has an exterior surface made of a material that is not paper. Paper envelopes with windows prepared under 202.5.8 and

601.6.3 do not make mailpieces nonmachinable.

* * * * *

[Revise item d to clarify that letters are nonmachinable when certain items are loose or when they cause the thickness to be uneven, as follows:]

d. Contains items such as pens, pencils, keys, or coins that cause the thickness of the mailpiece to be uneven; or loose keys or coins or similar objects not affixed to the contents within the mailpiece. Loose items may cause a letter to be nonmailable when mailed in paper envelopes; see 601.2.3, Odd-Shaped Items in Paper Envelopes.

* * * * *

[Revise item h by referring to sealing standards in 201.3.14.1 for all self-mailers as follows:]

h. Is a self-mailer that is not prepared according to 201.3.14.1.

[Revise item i by referring to sealing standards in 201.3.14.2 for all booklets as follows:]

i. Is a booklet that is not prepared according to 201.3.14.2.

* * * * *

200 Commercial Mail Letters and Cards

201 Physical Standards

1.0 Physical Standards for Machinable Letters and Cards

1.1 Physical Standards for Machinable Letters

1.1.1 Dimensional Standards for Letters

Letter-size mail is:

[Revise item a to increase minimum thickness to 0.009 inch as follows:]

a. Not less than 5 inches long, 3 1/2 inches high, and 0.009-inch thick.

* * * * *

1.1.3 All Machinable Letters

[Revise the first sentence of 1.1.3 as follows:]

All pieces of First-Class Mail and Standard Mail machinable letters must meet the standards for automation-compatible letters in 201.3.0. * * *

* * * * *

2.0 Physical Standards for Nonmachinable Letters

2.1 Criteria for Nonmachinable Letters

[Revise 2.1 by noting that letters not made of paper or that do not meet automation-compatibility standards are nonmachinable; that all letters over 3.3 ounces must have a barcode and claim an automation letter price to avoid a surcharge; and by removing the individual listed items as follows:]

A letter-size piece is nonmachinable if it has an exterior surface that is not made of paper or if it does not meet the standards in 201.3.0. In addition, a letter-size piece is nonmachinable if it weighs more than 3.3 ounces (up to 3.5 ounces) unless it has a barcode and is eligible for and claims automation letter prices or Standard Mail Enhanced Carrier Route letter prices.

* * * * *

3.0 Physical Standards for Automation Letters and Cards

* * * * *

3.2 Dimensions and Shape Standards for Automation Letters

Each letter-size piece must be rectangular (see 1.1.1) and:

* * * * *

[Revise item c to increase minimum thickness to 0.009 inch as follows:]

c. For thickness, no more than 0.25 inch, or less than 0.009 inch thick, except for cards mailed at First-Class Mail postcard prices. Cards eligible for and mailed at postcard prices may be no more than 0.016 inch thick or less than 0.007 inch thick.

[Renumber current 3.3 through 3.15 as new 3.4 through 3.16.]

[Add new 3.3 as follows:]

3.3 Static and Coefficient of Friction

The exterior surface of letter-sized machinable and automation mailpieces must be made of paper material, with the following recommended characteristics:

a. Static charge of less than 2 KV when tested using test method ASTM D4470.

b. Kinetic coefficient of friction between 0.26 and 0.34 when tested as paper to same paper using test method ASTM D4917.

* * * * *

230 First-Class Mail

* * * * *

235 Mail Preparation

* * * * *

[Revise heading of 6.0 as follows:]

6.0 Preparing Automation Letters

* * * * *

6.6 Tray Preparation

* * * Preparation sequence, tray size, and Line 1 labeling:

* * * * *

[Revise items b through d to allow optional preparation and modify grouping requirement as follows:]

b. 3-digit/scheme: Optional, but required for 3-digit price (150-piece minimum except no minimum for origin

or entry 3-digit/scheme); overflow allowed; for Line 1, use L002, Column B.

c. AADC: Optional, but required for AADC price (150-piece minimum); overflow allowed; group pieces by 3-digit (or 3-digit scheme) ZIP Code when overflow pieces from 3-digit trays are placed in AADC trays. For Line 1, use L801, Column B.

d. Mixed AADC: Required (no minimum); group pieces by AADC when overflow pieces from AADC trays are placed in mixed AADC trays. For Line 1 use L201; for mail originating in ZIP Code areas in Column A, use "MXD" followed by city, state, and 3-digit ZIP Code prefix in Column C (use "MXD" instead of "OMX" in the destination line and ignore Column B).

* * * * *

240 Standard Mail

* * * * *

245 Mail Preparation

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5.0 Preparing Nonautomation Letters

* * * * *

5.3 Machinable Preparation

* * * * *

5.3.2 Traying and Labeling

* * * Preparation sequence, tray size, and labeling:

* * * * *

[Revise first sentence of 5.3.2 b to allow optional preparation as follows:]

b. AADC (optional, but required for AADC price); 150-piece minimum (overflow allowed); labeling: * * *

* * * * *

[Revise heading of 7.0 as follows:]

7.0 Preparing Automation Letters

* * * * *

7.5 Tray Preparation

* * * Preparation sequence, tray size, and Line 1 labeling:

* * * * *

[Revise items b through d to allow optional preparation and modify grouping requirement as follows:]

b. 3-digit/scheme; optional, but required for 3-digit price (150-piece minimum, except no minimum for optional origin/entry 3-digit/scheme(s)); overflow allowed; for Line 1, use L002, Column B.

c. AADC: Optional, but required for AADC price (150-piece minimum); overflow allowed; group pieces by 3-digit (or 3-digit scheme) ZIP Code prefix when overflow pieces from 3-digit/scheme trays are placed in AADC trays. For Line 1, use L801, Column B.

d. Mixed AADC: Required (no minimum); group pieces by AADC when overflow pieces from AADC trays are placed in mixed AADC trays. For Line 1 labeling: use L011, Column B. Use L010, Column B if entered at an ASF or BMC or for mail placed on an ASF, BMC, or SCF pallet under the option in 705.8.10.3.

* * * * *

300 Commercial Mail Flats

301 Physical Standards

1.0 Physical Standards for Flats

* * * * *

1.2 Length and Height of Flats

[Revise the text of 1.2 by adding new third and fourth sentences about selvage as follows:]

* * * When determining the maximum height or length of a flat, include any selvage of polywrap material that may enclose the piece. When determining the minimum height or length of a flat, do not include the selvage of any polywrap material that may enclose the piece.

* * * * *

[Renumber current 1.5 as new 1.7.]

[Move 301.3.2.3 in its entirety, renumber as 1.5, revise heading and text to extend maximum deflection standards to all flat-size mailpieces, and delete item c as follows:]

1.5 Maximum Deflection for Flat-Size Mailpieces

Flat-size mailpieces must be flexible (see 1.3) and must meet maximum deflection standards. Flat-size pieces mailed at saturation carrier route prices are not required to meet these deflection standards. Test deflection as follows:

a. For pieces 10 inches or longer (see Exhibit 1.5a):

1. Place the piece on a flat surface with the length perpendicular to the edge of the surface and extend the piece 5 inches off the edge of the surface. Test square-shaped bound flats by placing the bound edge parallel to the edge. Turn the piece around and repeat the process.

2. The piece is mailable at flat prices if it does not droop more than 3 inches vertically at either end.

Exhibit 1.5a Deflection Test—Pieces 10 Inches or Longer

[Placeholder for new exhibit reflecting new standards.]

b. For pieces less than 10 inches long (see Exhibit 1.5b):

1. Place the piece on a flat surface with the length perpendicular to the edge of the surface and extend the piece one-half of its length off the edge of the

surface. Test square-shaped bound flats by placing the bound edge parallel to the edge. Turn the piece around and repeat the process.

2. The piece is mailable at flat prices if it does not droop more than 2 inches less than the extended length. For example, a piece 8 inches long would extend 4 inches off a flat surface. It must not droop more than 2 inches vertically at either end.

Exhibit 1.5b Deflection Test—Pieces Less Than 10 Inches Long

[Placeholder for new exhibit reflecting new standards.]

* * * * *

[Renumber 301.3.3 in its entirety as new 1.6 and revise text to extend polywrap standards to all flats as follows:]

1.6 Polywrap Coverings

1.6.1 Polywrap Films and Similar Coverings

[Revise renumbered 1.6.1 as follows:] Mailers using polywrap film or similar material to enclose or cover flat-size mailpieces must use a product meeting the standards in 1.6. Film approved for use under 1.6.5 must meet the specifications in Exhibit 1.6.1 as follows:

- a. Films or similar coverings must meet all six properties in Exhibit 1.6.1.
b. If the address label is affixed to the outside of the polywrap, the haze property (property 2) does not apply.
c. Only products listed as approved on the USPS RIBBS Web site (http://ribbs.usps.gov) may be used on flat-size mailpieces.

Exhibit 1.6.1 Polywrap Specifications

[Revise the introductory sentence of renumbered exhibit 1.6.1 as follows:]

Mailers who polywrap flats must use polywrap that meets all of the properties in this exhibit.

* * * * *

[Delete renumbered 1.6.4, Polywrap on Mailpieces, in its entirety and redesignate renumbered 1.6.5 to new 1.6.4.]

1.6.4 Polywrap Certification Process for Manufacturers

[Revise the first sentence of the introductory paragraph in 1.6.4 as follows:]

To ensure that all polywrap manufacturers use the same criteria, the Postal Service developed specification USPS-T-3204, Test Procedures for Polywrap Films. * * * Manufacturers should follow this procedure before submitting the letter certifying compliance with the specifications:

[Revise item a as follows:]

- a. Test each film according to procedures listed in USPS-T-3204, Test Procedures for Polywrap Films.

* * * * *

1.7 Flat-Size Pieces Not Eligible for Flat-Size Prices

[Revise text of renumbered 1.7 as follows:]

Mailpieces that do not meet the standards in 1.1 through 1.6 are not eligible for flat-size prices and must pay applicable prices as follows:

- a. First-Class Mail—parcel prices.
b. Standard Mail—Not Flat-Machinable or parcel prices.
c. Bound Printed Matter—parcel prices.

* * * * *

3.0 Physical Standards for Automation Flats

* * * * *

[Further renumber 3.3 through 3.7 as the new 3.5 through 3.9, and add new 3.3 and 3.4 as follows:]

3.3 Flats—Machine Compatibility

Flat-size mailpieces meeting the standards in 1.0 and 3.0, but unable to meet the minimum flexibility standards described in 1.3, are not eligible for automation prices unless the mailpieces demonstrate flats-machine compatibility. Until May 2010, rigid flat-size mailpieces in paper, polywrap or similar packaging that allows for the pieces to be grasped and inducted into USPS flat-sorting equipment may qualify for automation prices when meeting the following standards:

- a. Mailpieces must be enclosed in envelopes or similar packaging capable of withstanding normal processing on USPS flat-sorting equipment.
b. Mailpieces must be approved for automation flats prices by the USPS. Mailers seeking approval for mailpieces under this standard must contact the Pricing and Classification Service Center (PCSC) for instructions on submitting sample mailpieces for testing (see 608.8.0 for address). Mailpieces having a previous approval from the PCSC for automation flats prices, granted after May 2007, are not required to be resubmitted for a new approval. These and all other approvals granted under 3.3 expire in May 2010.

c. Mailpieces approved for automation flats pricing under this standard must print the endorsement "Automation Flat" directly under the postage imprint.

3.4 Additional Flexibility Standards for Automation Flats

It is recommended that all automation flats be foldable to a height no greater than 5 inches. Effective May 2010, flat-size automation mailpieces must be foldable, parallel to the length, to a height no greater than 5 inches (in addition to meeting the flexibility standards in 1.3). With a postal employee observing, customers may demonstrate the flexibility, according to these standards, of their own mailpieces. The employee does not then need to perform the test.

* * * * *

330 First-Class Mail Flats

333 Prices and Eligibility

* * * * *

[Revise the heading of 5.0 as follows:]

5.0 Additional Eligibility Standards for Automation First-Class Mail Flats

5.1 Basic Standards for Automation First-Class Mail

All pieces in a First-Class Mail automation mailing must:

* * * * *

[Revise item e to require an 11-digit barcode as follows:]

- e. Bear an accurate barcode meeting the standards in 708.4.0, a delivery point barcode (DPBC), or an Intelligent Mail barcode with a delivery point routing code, either on the piece or on an insert showing through a barcode window.

* * * * *

[Delete 5.2 and renumber current 5.3 through 5.5 as new 5.2 through 5.4.]

[Revise the heading and text of renumbered 5.2 as follows:]

5.2 Price Application

Automation prices apply to each piece that is sorted under 335.6.5, First-Class Mail Tray-Based Preparation, into the corresponding qualifying groups:

[Revise items a through c to change eligibility from 90 pieces or more to 50 pieces or more as follows:]

- a. Groups of 50 or more pieces in 5-digit trays qualify for the 5-digit price. Preparation to qualify for the 5-digit price is optional and need not be done for all 5-digit destinations.
b. Groups of 50 or more pieces in 3-digit trays qualify for the 3-digit price.
c. Pieces in origin 3-digit trays and groups of 50 or more pieces in ADC trays qualify for the ADC price.

* * * * *

335 Mail Preparation

1.0 General Definition of Terms

* * * * *

1.2 Definition of Mailings

Mailings are defined as:

* * * * *

[Revise item b as follows:]

b. The types of First-Class Mail listed below must not be part of the same mailing despite being in the same processing category (see 705.9.0, Combining Automation and Nonautomation Flats in Trays and Sacks for a preparation option for flat-size mail):

1. Automation and any other type of mail, except under 705.9.0.
2. Presorted and any other type of mail, except under 705.9.0.
3. Single-piece and any other type of mail.
4. Machinable and nonmachinable pieces.

* * * * *

1.4 Preparation Definitions and Instructions

For purposes of preparing mail:

* * * * *

[Revise item b to change the definition of an automation flats full tray as follows:]

b. For purposes of preparing automation flats, a full flat tray is one that contains at least 50 pieces of automation flats or one that is physically full. For nonautomation flats, a full flat tray is one that is physically full. A physically full tray contains at least a single stack of mail lying flat on the bottom of the tray and filling the tray to the bottom of the handholds. Before additional trays for the same destination are prepared, trays must be filled with additional available pieces (up to the reasonable capacity of the tray).

* * * * *

[Delete current items e through g and redesignate current items h through j as new e through g.]

[Revise redesignated item g as follows:]

g. An instruction to “group pieces” means the pieces are to be sorted as a unit (as if bundled) but not actually secured into a bundle.

[Delete current item k in its entirety.]

[Redesignate current item l as new item h and revise as follows:]

h. A “logical” presort destination represents the total number of pieces that are eligible for a specific presort level based on the required sortation, but which might not be contained in a single container due to applicable preparation requirements or the size of the individual pieces.

[Delete current item m in its entirety.]

* * * * *

[Delete 2.0 in its entirety.]

[Renumber current 3.0 through 6.0 as new 2.0 through 5.0.]

* * * * *

2.0 Flat Trays

* * * * *

2.4 Preparation for Flats in Flat Trays

All flat tray preparation is subject to these standards:

* * * * *

[Revise items f through h, to delete the “optional” phrasing, as follows:]

f. For automation mailings, one less-than-full overflow tray may be prepared for a presort destination when the total number of pieces for that destination meets the minimum for preparation of the tray level, and when one or more full trays for that destination are also prepared.

g. For automation mailings, if the total number of pieces for a presort destination meets or exceeds the minimum number of pieces required to prepare a tray for that destination, but the total volume does not physically fill a single tray, then the mail for that presort destination may be prepared in a less-than-full tray.

h. Pieces prepared as automation flats do not have to be grouped by 3-digit ZIP Code prefix in ADC trays or by ADC in mixed ADC trays if the mailing is prepared using an MLOCR/barcode sorter and standardized documentation is submitted.

* * * * *

2.5 Preparation for Flats in EMM Letter Trays

Mailers may prepare First-Class Mail flat-size pieces in EMM letter trays instead of flat trays if the following standards are met:

* * * * *

[Revise item c as follows:]

c. All mail must be prepared under 6.6, and must not be prepared in bundles.

* * * * *

4.0 Preparation of Nonautomation Flats**4.1 Basic Standards**

[Revise 4.1 to specifically prohibit bundling as follows:]

Each mailing of Presorted First-Class Mail must be prepared under 4.0 and 333.3.0, Eligibility Standards for First-Class Mail Flats. All pieces must be in the flat-size processing category. Flat-size pieces must be prepared loose (unbundled) in flat trays under 2.4 and 4.0. All pieces must be marked “Presorted” and “First-Class Mail.”

* * * * *

[Delete 4.4 and renumber 4.5 and 4.6 as new 4.4 and 4.5.]

[Revise the heading and text of renumbered 4.5 as follows:]

4.5 Cotraying With Automation Flats

If a single mailing job contains an automation mailing and a Presorted mailing, and both mailings are reported on the same postage statement, the mailing job must be presorted under the cotraying standards in 705.9.0.

[Revise the heading of renumbered 5.0 as follows:]

5.0 Preparation of Automation Flats**5.1 Basic Standards**

[Revise 5.1 to specifically prohibit bundling as follows:]

Automation First-Class Mail flats must be prepared under 5.0 and meet the eligibility standards for the price claimed; trays must bear the appropriate barcoded container labels under 708.6.0, Standards for Barcoded Tray Labels, Sack Labels, and Container Placards. Flat-size pieces must be prepared loose (unbundled) in flat trays under 2.4 and 5.0.

* * * * *

[Delete renumbered 5.4 and 5.5.]

[Renumber current 6.6 as new 5.4 and revise heading and text as follows:]

5.4 First-Class Mail Preparation

Tray size, preparation sequence, and Line 1 labeling:

a. 5-digit: Optional, but 5-digit trays required for price eligibility (50-piece minimum); one overflow tray allowed; for Line 1, use city, state, and 5-digit ZIP Code destination of pieces (for military mail see 3.3c). (Preparation to qualify for 5-digit price is optional and need not be done for all 5-digit destinations.)

b. 3-digit: Required (50-piece minimum); one overflow tray allowed; for Line 1, use L002, Column A for 3-digit destinations.

c. Origin 3-digit: Required for each 3-digit ZIP Code served by the SCF of the origin (verification) office; no minimum; for Line 1, use L002, Column A for 3-digit destinations.

d. ADC: Required (50-piece minimum); one overflow tray allowed; group pieces by 3-digit ZIP Code prefix, except under 2.4h; for Line 1, use L004 (ZIP Code prefixes in Column A must be combined and labeled to the corresponding ADC destination shown in Column B).

e. Mixed ADC (required); no minimum for price eligibility. Group pieces by ADC, except under 2.4h. For Line 1 use L201; for mail originating in ZIP Code areas in Column A, use “MXD” followed by city, state, and 3-

digit ZIP Code prefix in Column C (use "MXD" instead of "OMX" in the destination line and ignore Column B).

[Delete current 6.7.]

[ReNUMBER current 6.8 as new 5.5 and revise as follows:]

5.5 Cotraying With Presorted Mail

If the mailing job contains an automation mailing and a Presorted mailing, and both mailings are reported on the same postage statement, the mailing job must be prepared under the cotraying standards in 705.9.0.

* * * * *

400 Commercial Mail Parcels

401 Physical Standards

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2.0 Additional Physical Standards by Class of Mail

* * * * *

2.2 Standard Mail Parcels and Not Flat-Machinable Pieces

* * * * *

2.2.2 Not Flat-Machinable Pieces

[Revise introductory text of 2.2.2 to indicate ending date of NFM category as follows:]

Rectangular Standard Mail pieces with any of the following characteristics must be prepared as Not Flat-Machinable (NFM) pieces (until May 2010) or as parcels:

* * * * *

460 Bound Printed Matter

* * * * *

465 Mail Preparation

* * * * *

5.0 Preparing Presorted Parcels

5.1 Basic Standards

5.1.1 General Preparation Requirements

All mailings of Presorted Bound Printed Matter (BPM) are subject to these general standards:

* * * * *

[Revise item b as follows:]

b. All pieces in a mailing must be within the same processing category. See 401.1.0 for definitions of machinable and irregular parcels.

* * * * *

470 Media Mail

* * * * *

475 Mail Preparation

* * * * *

5.0 Preparing Media Mail Parcels

5.1 Basic Standards

All mailings of Presorted Media Mail are subject to the standards in 5.0 and to these general requirements:

* * * * *

[Revise item b as follows.]

b. All parcels in a mailing must be within the same processing category. See 401.1.0 for definitions of machinable and irregular parcels.

* * * * *

480 Library Mail

* * * * *

485 Mail Preparation

* * * * *

5.0 Preparing Library Mail Parcels

5.1 Basic Standards

All mailings of Presorted Library Mail are subject to the standards in 5.0, Preparing Library Mail Parcels, and to these general standards:

* * * * *

[Revise item b as follows:]

b. All pieces in a mailing must be within the same processing category. See 401.1.0 for definitions of machinable and irregular parcels.

* * * * *

700 Special Standards

* * * * *

705 Advanced Preparation and Special Postage Payment Systems

* * * * *

[Revise the heading of 9.0 as follows:]

9.0 Combining Automation and Nonautomation Flats in Trays and Sacks

9.1 First-Class Mail

9.1.1 Basic Standards

[Revise text of 9.1.1. to delete references to bundling as follows:]

Flats in an automation mailing prepared under 335.6.5 must be cotrayed with flats in a Presorted mailing under the following conditions:

a. The automation pieces and Presorted pieces are part of the same mailing job and reported on the same postage statement.

b. Pieces in the automation mailing must meet the criteria for a flat under 301.3.0. Pieces in the Presorted mailing must meet the criteria for a flat under 301.1.0.

c. The automation mailing must meet the eligibility criteria in 333.5.0, except that the traying criteria in 9.1.4 must be met rather than the traying criteria in 335.5.0.

d. The Presorted mailing must meet the eligibility criteria in 333.3.0, except that the traying and documentation criteria in 9.1.1 and 9.1.4 must be met rather than the traying and documentation criteria in 335.4.0.

[Delete item e and redesignate current items f through i as new items e through h.]

* * * * *

[Revise redesignated item f as follows:]

f. The pieces from the automation mailing and the pieces from the Presorted mailing must be sorted into the same trays as described in 9.1.2.

* * * * *

[Delete 9.1.2 and 9.1.3 in their entirety.]

[ReNUMBER current 9.1.4 as new 9.1.2 and revise as follows:]

9.1.2 Tray Preparation and Labeling

Presorted and automation pieces must be presorted together into trays (cotrayed) in the sequence listed below. Trays must be labeled using the following information for Lines 1 and 2 and 335.4.0 for other tray label criteria.

a. 5-digit, required, 50 piece minimum; one less-than-full or overflow tray allowed; labeling:

1. Line 1: Use city, state, and 5-digit ZIP Code destination (see 335.4.3 for military mail).

2. Line 2: "FCM FLTS 5D BC/NBC."

b. 3-digit, required, 50 piece minimum; one less-than-full or overflow tray allowed; labeling:

1. Line 1: Use L002, Column A.

2. Line 2: "FCM FLTS 3D BC/NBC."

c. Origin/entry 3-digit, required for each 3-digit ZIP Code served by the SCF of the origin (verification) office, optional for each 3-digit ZIP Code served by the SCF of an entry office other than the origin office, no minimum; labeling:

1. Line 1: Use L002, Column A.

2. Line 2: "FCM FLTS 3D BC/NBC."

d. ADC, required, 50 piece minimum; one less-than-full or overflow tray allowed; use L004 to determine ZIP Codes served by each ADC; labeling:

1. Line 1: Use L004, Column B.

2. Line 2: "FCM FLTS ADC BC/NBC."

e. Mixed ADC, required, no minimum; labeling:

1. Line 1: Use L201; for mail originating in ZIP Code areas in Column A, use "MXD" followed by the city, state, and 3-digit ZIP Code prefix in the corresponding row in Column C (use "MXD" instead of "OMX" in the destination line and ignore Column B).

2. Line 2: "FCM FLTS BC/NBC WKG."

* * * * *

[Revise heading of 11.0 as follows:]

11.0 Combining Automation and Nonautomation Flats in Bundles

[Delete 11.1 and renumber current 11.2 through 11.4 as new 11.1 through 11.3.]

* * * * *

We will publish an appropriate amendment to 39 CFR part 111 to reflect these changes if our proposal is adopted.

Stanley F. Mires,

Chief Counsel, Legislative.

[FR Doc. E9-2515 Filed 2-5-09; 8:45 am]

BILLING CODE 7710-12-P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Parts 253 and 600

[Docket No. 080228332-81199-01]

RIN 0648-AW38

Magnuson-Stevens Act Provisions; Interjurisdictional Fisheries Act; Disaster Assistance Programs; Fisheries Assistance Programs

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

ACTION: Proposed rule; extension of comment period.

SUMMARY: NMFS extends the public comment period on the proposed rule to govern the requests for determinations of fishery resource disasters as a basis for acquiring potential disaster assistance. NMFS has received requests to extend the comment period for the proposed rule beyond its current 30-day comment period. The extension of the comment period for another 2 months is intended to ensure that NMFS provides adequate time for various stakeholders and other members of the public to comment on the proposed regulations to govern initiating and responding to requests for fisheries disaster assistance. The comment period of the January 15, 2009 (74 FR 2467) rule is extended from February 17, 2009, to April 20, 2009.

DATES: Comments must be submitted in writing on or before April 20, 2009.

ADDRESSES: You may submit comments, identified by 0648-AW38, by any one of the following methods:

- Electronic Submissions: Submit all electronic public comments via the Federal eRulemaking Portal: <http://www.regulations.gov>;

- Fax: 301-713-1193, Attn: Robert Gorrell;

- Mail: Alan Risenhoover, Director, NMFS Office of Sustainable Fisheries, Attn: Disaster Assistance Program Guidance and Procedures, 1315 East-West Highway, SSMC3, Silver Spring, MD 20910.

Written comments regarding the burden-hour estimates or other aspects of the collection-of-information requirements contained in this proposed rule may be submitted to Alan Risenhoover at the above address and by email to David_Rostker@omb.eop.gov, or by fax to (202) 395-7285.

Instructions: All comments received are a part of the public record and will generally be posted to <http://www.regulations.gov> without change. All Personal Identifying Information (for example, name, address, etc.) voluntarily submitted by the commenter may be publicly accessible. Do not submit Confidential Business Information or otherwise sensitive or protected information.

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

FOR FURTHER INFORMATION CONTACT:

Robert Gorrell, at 301-713-2341 or via e-mail at robert.gorrell@noaa.gov.

SUPPLEMENTARY INFORMATION:

A proposed rule that sets forth NMFS' proposed regulations to govern requests for determinations of fishery resource disaster assistance was published in the **Federal Register** on January 15, 2009 (74 FR 2467), with a comment period ending date of February 17, 2009. The regulations would establish definitions, and characteristics of commercial fishery failures, fishery resource disasters, serious disruptions affecting future production, and harm incurred by fishermen, as well as requirements for initiating a review by NMFS, and the administrative process it will follow in processing such applications. The intended result of these procedures and requirements is to clarify and interpret the fishery disaster assistance provisions of the Magnuson-Stevens Fishery Conservation and Management Act and the Interjurisdictional Fisheries Act through rulemaking and thereby ensure consistency and facilitate the processing of requests.

After receiving requests to extend the comment period, NMFS has decided to extend it for another 62 days through April 20, 2009. This action extends the comment period for a proposed rule that

the Office of Management and Budget determined to be significant under Executive Order 12866.

Authority: 46 U.S.C. 1271-1279 and 16 U.S.C. 4101 *et seq.*

Dated: February 3, 2009.

James W. Balsiger

Acting Assistant Administrator for Fisheries, National Marine Fisheries Service.

[FR Doc. E9-2587 Filed 2-5-09; 8:45 am]

BILLING CODE 3510-22-S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 622

[Docket No. 0808041045-9006-01]

RIN 0648-AW64

Fisheries of the Caribbean, Gulf of Mexico, and South Atlantic; Snapper-Grouper Fishery off the Southern Atlantic States; Amendment 16

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

ACTION: Proposed rule; request for comments.

SUMMARY: NMFS issues this proposed rule to implement Amendment 16 to the Fishery Management Plan for the Snapper-Grouper Fishery of the South Atlantic Region (FMP)(Amendment 16), as prepared and submitted by the South Atlantic Fishery Management Council (Council). This proposed rule would establish a seasonal closure of the recreational and commercial fisheries for gag and associated grouper species; establish a seasonal closure of the recreational fishery for vermilion snapper; reduce the aggregate bag limit for grouper and tilefish; reduce the bag limit for gag or black grouper combined; reduce the bag limit for vermilion snapper; prohibit captain and crew of a vessel operating as a charter vessel or headboat from retaining any fish under the aggregate bag limit for grouper and tilefish or the vermilion snapper bag limit; establish semiannual quotas for the commercial vermilion snapper fishery; establish a quota for the commercial gag fishery; establish restrictions on the possession, sale, and purchase of gag and associated grouper species after the gag commercial quota is reached; and require possession of a venting tool and dehooking device on board a vessel when fishing for South Atlantic snapper-grouper and use of such tools as needed to accomplish

release of fish with minimum injury. In addition, Amendment 16 proposes, for both gag and vermilion snapper, to revise the definitions of maximum sustainable yield (MSY) and optimum yield (OY), specify total allowable catch (TAC), and establish interim allocations of TACs for the recreational and commercial sectors. Amendment 16 also proposes to specify a minimum stock size threshold (MSST) for gag and, for the new assessment, for vermilion snapper. The intended effects of this proposed rule are to end overfishing of gag and vermilion snapper, protect shallow-water grouper during their spawning season, and reduce bycatch of snapper-grouper species in the South Atlantic.

DATES: Written comments on this proposed rule must be received no later than 5 p.m., eastern time, on March 9, 2009.

ADDRESSES: You may submit comments, identified by "0648-AW64", by any of the following methods:

- Electronic Submissions: Submit all electronic public comments via the Federal e-Rulemaking Portal <http://www.regulations.gov>.
- Fax: 727-824-5308; Attention: Kate Michie.
- Mail: John McGovern, Southeast Regional Office, NMFS, 263 13th Avenue South, St. Petersburg, FL 33701.

Instructions: All comments received are a part of the public record and will generally be posted to <http://www.regulations.gov> without change. All Personal Identifying Information (for example, name, address, etc.) voluntarily submitted by the commenter may be publicly accessible. Do not submit Confidential Business Information or otherwise sensitive or protected information.

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

Copies of Amendment 16 may be obtained from the South Atlantic Fishery Management Council, 4055 Faber Place, Suite 201, North Charleston, SC 29405; phone: 843-571-4366 or 866-SAFMC-10 (toll free); fax: 843-769-4520; e-mail: safmc@safmc.net. Amendment 16 includes a Final Environmental Impact Statement (FEIS), a Biological Assessment, an Initial Regulatory Flexibility Analysis (IRFA), a Regulatory Impact Review, and a Social Impact Assessment/Fishery Impact Statement.

FOR FURTHER INFORMATION CONTACT: John McGovern, telephone: 727-824-5305, fax: 727-824-5308, e-mail: John.McGovern@noaa.gov.

SUPPLEMENTARY INFORMATION: The snapper-grouper fishery off the southern Atlantic states is managed under the FMP. The FMP was prepared by the Council and is implemented under the authority of the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act) by regulations at 50 CFR part 622.

Background

The Magnuson-Stevens Act requires NMFS and regional fishery management councils to prevent overfishing and achieve, on a continuing basis, optimum yield for federally managed fish stocks. These mandates are intended to ensure that fishery resources are managed for the greatest overall benefit to the nation, particularly with respect to providing food production and recreational opportunities, and protecting marine ecosystems. To further this goal, the Magnuson-Stevens Act requires fishery managers to specify their strategy to rebuild overfished stocks to a sustainable level within a certain time frame, and to minimize bycatch and bycatch mortality to the extent practicable.

NMFS notified the Council on June 12, 2007, that the South Atlantic stock of gag is undergoing overfishing and approaching an overfished condition. This determination was made based on the 2006 Southeast Data Assessment and Review (SEDAR) stock assessment. The Council was also notified on June 12, 2007, that vermilion snapper was experiencing overfishing. A new SEDAR stock assessment for vermilion snapper was recently completed and indicated the stock is not overfished but verified that the stock is undergoing overfishing. The Report to Congress on the Status of U.S. Fisheries indicates red grouper and black grouper have been experiencing overfishing since 1998. The Southeast Fisheries Science Center has determined the overfishing determinations are based on the best available scientific information.

The Magnuson-Stevens Act requires the Council prepare a plan amendment or proposed regulations to end overfishing within one year of receiving notification that overfishing is occurring. Amendment 16 is intended to end overfishing of gag and vermilion snapper and includes actions that address overfishing of red grouper and black grouper. In addition, Amendment 16 includes an action intended to

reduce bycatch mortality of snapper-grouper species.

Proposed Management Measures

The total allowable catch (TAC) levels for gag and for vermilion snapper are based on projections provided by the SEDAR assessment for these species. The TACs are based on a yield associated with 75 percent of the fishing mortality rate that will produce MSY, as recommended by the Council's Scientific and Statistical Committee.

The Council recommended reduced recreational harvest for both gag and vermilion snapper. Necessary reductions in harvest are expected to be achieved through the proposed seasonal closures and modifications to bag limits. The needed reduction in recreational gag harvest is determined by applying the Council's preferred allocation of 49 percent to the TAC identified in the SEDAR assessment. This would result in a harvest reduction of 37 percent when compared to average 2004-2006 landings.

The necessary reduction in recreational vermilion snapper harvest is determined by applying the Council's preferred allocation of 32 percent to the TAC identified in the SEDAR assessment. This would result in a harvest reduction of 47 percent when compared to average 2004-2006 landings.

Commercial Fishery Quotas

This proposed rule would reduce quotas for both gag and vermilion snapper. The proposed quota for gag is based on the Council's preferred interim allocation of 51 percent, which would be applied to the TAC specified in the SEDAR assessment. This would result in a harvest reduction of 35 percent when compared to average 2004-2006 landings and would result in a commercial quota of 352,940 lb (137,222 kg) gutted weight.

The proposed quota for vermilion snapper is based on the Council's preferred allocation of 68 percent, which would be applied to the TAC specified in the SEDAR assessment. The proposed rule would establish a vermilion snapper quota of 315,523 lb (143,119 kg) gutted weight from January-June and 302,523 lb (137,222 kg) gutted weight from July-December. This would result in a harvest reduction of 29 percent compared to average 2004-2006 landings.

Seasonal Closures

This proposed rule would establish a 4-month (January-April) spawning season closure of the recreational and commercial fisheries for gag, black

grouper, red grouper, scamp, rock hind, red hind, coney, graysby, yellowfin grouper, yellowmouth grouper, and tiger grouper. During this closure, no person may fish for, harvest, or possess these species in or from the South Atlantic exclusive economic zone (EEZ). In addition, for a person aboard a vessel for which a valid Federal commercial or charter vessel/headboat permit for South Atlantic snapper grouper has been issued, the provisions of this closure would apply regardless of where these species were harvested, i.e., in state or Federal waters. These species are particularly vulnerable to fishing pressure because they are long-lived, change sex, and some species form spawning aggregations where the largest and oldest individuals can be selectively removed by fishing gear. The Council concluded that a January through April spawning season closure could have positive biological effects including protecting spawning aggregations, increasing the percentage of males, enhancing reproductive success, and increasing the magnitude of recruitment.

This proposed rule would establish a recreational seasonal closure for vermilion snapper in or from the South Atlantic EEZ from November 1 through March 31, each year. During this closure, the bag and possession limit for vermilion snapper in or from the South Atlantic EEZ is zero. In addition, for a person on board a vessel for which a valid Federal charter vessel/headboat permit for South Atlantic snapper-grouper has been issued, the provisions of this closure would apply regardless of whether the fish are harvested in state or Federal waters.

Bag Limit Reductions

This proposed rule would reduce the recreational bag limits for the grouper aggregate, gag, black grouper, and vermilion snapper. The grouper aggregate, which contains misty grouper, red grouper, scamp, tiger grouper, yellowedge grouper, yellowfin grouper, yellowmouth grouper, blueline tilefish, sand tilefish, coney, graysby, rock hind, red hind, gag, black grouper, snowy grouper, golden tilefish, speckled hind, and warsaw grouper, would be reduced from five fish per person per day to three fish per person per day. The bag limit for gag and black grouper would be reduced from two gag or black grouper (combined) to one gag or black grouper (combined) within the grouper aggregate bag limit. The bag limit for vermilion snapper would be reduced from 10 fish to 5 fish per person per day. Under the proposed rule, charter/headboat captains and crew would be

prohibited from retaining vermilion snapper or species within the grouper aggregate (including tilefish species). Bag limit reductions are expected to contribute to an overall reduction in harvest and incidental catch of these species including those experiencing overfishing.

Reduction in Bycatch Mortality

This proposed rule includes an action intended to reduce recreational and commercial bycatch mortality by requiring the use of venting tools and dehooking devices for a person on board a vessel fishing for snapper-grouper species.

The Council intends for venting tools only to be used as required, i.e., when there is evidence of embolism. A venting tool can be any hollow, sharpened instrument that allows gases to escape. Ice picks and knives are not suitable and will likely contribute to mortality of released fish. Venting tools can be purchased from vendors or constructed by fishermen. For example, a venting tool could be constructed from a modified hypodermic needle or from a hollow, sharpened stainless steel cannula mounted on a hollow wooden dowel.

A dehooking device is a tool intended to remove a hook embedded in a fish and allows the fish to be released with minimal damage. Dehookers would not have to be used if it is safer for the fish and the angler to cut the line rather than remove a deeply embedded hook. Examples of dehooking devices would include tools with a long shaft and inverted "V", bluntnose pliers, alligator pliers, or dehooking forceps. The use of devices that can grab the fishing line, slide down the line, or remove the hook quickly are encouraged since these tools would require less handling of the fish.

Availability of Amendment 16

Additional background and rationale for the measures discussed above are contained in Amendment 16. The availability of Amendment 16 was announced in the **Federal Register** on December 24, 2008 (73 FR 79037). Written comments on Amendment 16 will be accepted through February 23, 2009. All comments received on Amendment 16 or on this proposed rule during their respective comment periods will be addressed in the preamble to the final rule.

Classification

Pursuant to section 304(b)(1)(A) of the Magnuson-Stevens Act, the NMFS Assistant Administrator has determined that this proposed rule is consistent with Amendment 16, the Magnuson-

Stevens Act, and other applicable law, subject to further consideration after public comment.

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

The Council prepared an FEIS for Amendment 16; a notice of availability was published on November 7, 2008 (73 FR 66242).

NMFS prepared an IRFA, as required by section 603 of the Regulatory Flexibility Act, for this proposed rule. The IRFA describes the economic impact this proposed rule, if adopted, would have on small entities. A description of the action, why it is being considered, and the objectives of, and legal basis for this action are contained at the beginning of this section in the preamble and in the SUMMARY section of the preamble. A copy of the full analysis is available from the Council (see **ADDRESSES**). A summary of the IRFA follows.

The proposed rule would introduce changes to the management of South Atlantic gag, other shallow-water grouper, and vermilion snapper. For gag and other shallow-water grouper, the proposed rule would set a gag TAC at 694,000 lb (314,793 kg) gutted weight for 2009 and subsequent fishing years; set a gag interim allocation at 51 percent for the commercial sector and 49 percent for the recreational sector; establish a gag January-April spawning season closure for both the commercial and recreational sectors together with no fishing or possession of black grouper, red grouper, scamp, red hind, rock hind, yellowmouth grouper, tiger grouper, yellowfin grouper, graysby, and coney during the closure; establish a gag commercial quota of 352,940 lb (160,091 kg) gutted weight after adjustment for post quota bycatch mortality (PQBM); reduce the grouper and tilefish recreational aggregate bag limit from five fish to three fish; reduce the gag or black grouper component of the grouper and tilefish aggregate bag limit from two fish to one fish; and, exclude the captain and crew on for-hire vessels from possessing a grouper bag limit.

For vermilion snapper, the proposed rule would set TAC at 960,360 lb (435,612 kg) gutted weight for 2009 and subsequent fishing years; set an interim allocation at 68 percent for the commercial sector and 32 percent for the recreational sector; establish a commercial quota of 653,045 lb (296,216 kg) gutted weight, with the quota split between the January 1–June 30 period (315,523 lb (143,119 kg) gutted weight taking into account PQBM) and the July 1–December 31 period (302,523 lb (137,222 kg) gutted weight taking into

account PQBM) and any remaining quota from the first period would be carried over to the second period of the same year; reduce the recreational bag limit from 10 fish to 5 fish; and establish a November-March spawning season closure for the recreational sector.

In addition to the measures directly affecting gag, other shallow-water grouper, and vermilion snapper, the proposed rule would also require a person on board a vessel to use venting and de-hooking tools when fishing for snapper-grouper species.

The Magnuson-Stevens Act provides the statutory basis for the proposed rule.

No duplicative, overlapping, or conflicting Federal rules have been identified. The proposed rule would not alter existing reporting, record-keeping, or other compliance requirements, except for the requirement to use venting and de-hooking tools when fishing for snapper-grouper species.

The proposed rule would be expected to directly affect vessels that operate in the South Atlantic commercial and for-hire snapper-grouper fisheries. The Small Business Administration (SBA) has established size criteria for all major industry sectors in the U.S. including fish harvesters and for-hire operations. A business involved in fish harvesting is classified as a small business if it is independently owned and operated, is not dominant in its field of operation (including its affiliates), and has combined annual receipts not in excess of \$4.0 million (NAICS code 114111, finfish fishing) for all affiliated operations worldwide. For for-hire operations, the other qualifiers apply and the annual receipts threshold is \$7 million (NAICS code 713990, recreational industries).

A commercial snapper-grouper permit is required to operate in the South Atlantic snapper-grouper fishery, and a two-tier license limitation program has been in effect since 1998. Logbook data from 2001–2006 were used in the analysis of the expected impacts of this action. Over this period, an average of 1,101 vessels per year were permitted to operate in the commercial snapper-grouper fishery. However, only an average of 922 vessels per year had recorded landings of snapper-grouper species. The total average annual dockside revenue from snapper-grouper species and all other species on trips that harvested snapper-grouper species over this period was approximately \$15.58 million (2005 dollars), resulting in a per vessel average of approximately \$16,900 for vessels that harvested snapper-grouper. The highest producers included an average of 27 vessels per year that harvested more than 50,000

pounds of snapper-grouper per year, valued at approximately \$100,000 per vessel. Vessels that operate in the snapper-grouper fishery may also operate in other fisheries that are not covered by the logbook program. As such, the revenues from these fisheries cannot be determined with these data and are not reflected in the totals provided above.

While a vessel that possesses a commercial snapper-grouper permit can harvest any snapper-grouper species, during the period 2001–2006, only 299 vessels per year had recorded harvests of gag and only 259 vessels had recorded harvests of vermilion snapper. These totals are not additive, because some vessels landed both species. Total dockside revenues from all snapper-grouper species and other species on trips that harvested gag averaged approximately \$5.74 million (2005 dollars) over this period, resulting in a per vessel average of approximately \$19,200. Total dockside revenues from all snapper-grouper species and all other species on trips that harvested vermilion snapper averaged approximately \$6.98 million (2005 dollars) over this period, resulting in a per vessel average of approximately \$26,950. Among the vessels with recorded gag harvests, an average of 12 vessels per year harvested more than 10,000 pounds of gag per year, generating dockside revenues of approximately \$29,300 per vessel. An average of 43 vessels per year harvested more than 10,000 lb (4,536 kg) of vermilion snapper, generating dockside revenues of approximately \$24,000 per vessel.

For the period 2001–2006, an average of 1,273 vessels were permitted to operate in the snapper-grouper for-hire fishery, of which 82 are estimated to have operated as headboats. Within this total of vessels, 235 vessels also possessed a commercial snapper-grouper permit and would be included in the summary information provided above on the commercial sector. The for-hire fleet is comprised of charterboats, which charge a fee on a vessel basis, and headboats, which charge a fee on an individual angler (head) basis. The charterboat annual average gross revenue (in 2005 dollars) is estimated to range from approximately \$62,000–\$84,000 for Florida vessels, \$73,000–\$89,000 for North Carolina vessels, \$68,000–\$83,000 for Georgia vessels, and \$32,000–\$39,000 for South Carolina vessels. For headboats, the appropriate estimates are \$170,000–\$362,000 for Florida vessels, and \$149,000–\$317,000 for vessels in the other states. Some fleet activity may

exist in both the commercial and for-hire snapper-grouper sectors, but the extent of such is unknown and all vessels are treated in this analysis as independent entities.

Based on the average revenue figures provided above, it is determined for the purpose of this analysis that all commercial and for-hire operations that would be affected by this proposed rule are small entities.

Because all entities that are expected to be affected by the proposed rule are considered small entities, the issue of disproportional impacts of the proposed rule on small and large entities does not arise. The measures in this amendment would reduce harvest and associated revenues and net profits of affected small entities.

The proposed gag and other shallow-water grouper management measures are expected to reduce annual net operating revenues by approximately \$848,000 for vessels that harvest at least 1.0 lb (0.45 kg) of snapper-grouper. Based on an average of 299 vessels per year with recorded gag landings and an average of 922 vessels per year with recorded snapper grouper landings, this reduction in net revenue results in an average of approximately \$2,800 per vessel with gag landings and approximately \$900 per vessel with snapper-grouper landings. While net revenues are not directly comparable to gross revenues, the average annual revenues from all species on trips that harvested gag is estimated to be approximately \$19,200 and the comparable revenue total for snapper-grouper vessels is approximately \$16,900. For the for-hire fishery, the proposed gag and other shallow-water grouper management measures are expected to reduce annual producer surplus for the entire fishery by approximately \$285,000. Although 1,456 vessels are permitted to operate in the snapper-grouper fishery, not all would be expected to harvest or be affected by the gag and other shallow-water grouper regulations. However, a meaningful method for determining how to apportion the expected reduction in producer surplus among the vessels in the fleet has not been identified.

The proposed vermilion snapper management measures are expected to reduce annual operating revenues to commercial vessels that harvest snapper-grouper by approximately \$1.62 million. Based on an average of 259 vessels per year with recorded vermilion snapper landings and 922 vessels per year with recorded snapper-grouper landings, this reduction in net revenue results in an average of

approximately \$7,300 per vessel with vermilion snapper landings and approximately \$1,800 per vessel with snapper-grouper landings. As stated above, while net revenues are not directly comparable to gross revenues, the average annual revenues from all species on trips that harvested vermilion snapper is estimated to be approximately \$26,950 and the comparable average revenue total for snapper-grouper vessels is approximately \$16,900. For the for-hire fishery, the proposed vermilion snapper management measures are expected to reduce annual producer surplus for the entire fishery by approximately \$58,000. Similar to the discussion on the gag and other shallow-water grouper management measures, a meaningful method for determining how to apportion the expected reduction in producer surplus among the 1,456 vessels in the fleet has not been identified.

The proposed requirement to use venting and de-hooking tools to reduce the bycatch of snapper-grouper is expected to increase gear costs by less than \$15 per vessel. Many fishermen would not be expected to incur any new gear costs since the possession and use of venting tools and de-hooking devices is already widespread.

Two alternatives, including the proposed action, were considered for the action to specify the gag TAC. The single alternative to the proposed TAC is the no action alternative, which would not set a TAC for gag. Because a TAC is required to make management determinations, the no action alternative would not achieve the Council's objective.

Four alternatives, including the proposed action, were considered for the action to specify an interim allocation for gag. The first alternative to the proposed action, the no action alternative, would not establish an allocation of gag between the commercial and recreational sectors. The absence of an allocation would hinder overall TAC management and the ability to take corrective action in the appropriate sector should TAC overages occur. This alternative, therefore, would not achieve the Council's objective. The other two alternatives to the proposed action would result in higher allocations to the commercial sector than the proposed action and, thus, would result in lower adverse economic impacts on the commercial small entities. However, these alternatives would increase the adverse impacts on the recreational sector (for-hire businesses). The overall net effects of the alternative allocations

cannot be estimated at this time due to the absence of appropriate data and comparable commercial and recreational models. The proposed allocation was selected because it best matches current harvest distributions and is, thus, expected to be the least disruptive to current harvest practices.

Seven alternatives (with sub-alternatives), including the proposed actions, were considered for the action to specify gag and other shallow-water grouper management measures. The proposed action encompasses three separate alternatives: one alternative to establish a spawning closure, one alternative to establish a directed commercial quota, and one alternative to establish recreational management measures. The first alternative to the proposed action is the no action alternative, which would apply to both the commercial and recreational sectors. The no action alternative would not achieve the Council's objective of ending overfishing of gag. Two alternatives to the proposed action would only apply to the commercial sector. The first of these alternatives would divide the commercial quota into North Carolina/South Carolina and Georgia/Florida regional sub-quotas. Although this alternative may result in a more even distribution of the economic effects of the proposed quota across participants in all South Atlantic states, the total reduction in economic value is expected to be greater than that of the proposed action. The second commercial alternative to the proposed action would establish a 1,000-lb (454-kg) trip limit. This alternative is expected to result in greater adverse economic effects than the proposed action. One alternative to the proposed action would only apply to the recreational sector and would extend the proposed spawning closure by an additional month. As a result, this alternative would increase the adverse economic effects on the recreational sector. A final alternative would apply to both the commercial and recreational sectors. This alternative would establish special management regulations for waters off Monroe County, Florida. This alternative is expected to result in greater adverse economic effects on entities in the commercial sector than the proposed action and have only minor economic effects on entities in the recreational sector.

Two alternatives, including the proposed action, were considered for the action to specify the vermilion snapper TAC. The single alternative to the proposed TAC is the no action alternative, which would not set a TAC for vermilion snapper. Because a TAC is

required to make management determinations, the no action alternative would not achieve the Council's objective.

Two alternatives, including the proposed action, were considered for the action to specify an interim allocation for vermilion snapper. The only alternative to the proposed action is the no action alternative, which would not establish an allocation for vermilion snapper. The absence of an allocation would hinder overall TAC management and the ability to take corrective action in the appropriate sector should TAC overages occur. This alternative, therefore, would not achieve the Council's objective.

Five alternatives (with multiple sub-alternatives), including the proposed action, were considered for the action to establish management measures for vermilion snapper. The proposed action encompasses three separate alternatives: one alternative to establish a directed commercial quota, one alternative to allocate the commercial quota to two periods, January through June and July through December, and one alternative to establish recreational management measures. The first alternative to the proposed action is the no action alternative, which would not change current management measures for vermilion snapper. The no action alternative would not achieve the Council's objective of ending overfishing of vermilion snapper. Two alternatives to the proposed action would only apply to the commercial sector. The first of these alternatives addresses the seasonal allocation of the commercial quota and contains two sub-alternatives. The first of these alternatives would allocate 40 percent of the quota to the first season and 60 percent to the second season instead of the proposed 50 percent allocation to each period (as adjusted for PQBM). This alternative is expected to have almost identical effects on commercial entities as the proposed action and is not expected to reduce the adverse economic effects of the proposed action. The second alternative to the proposed seasonal commercial quota allocation would maintain the equal 50 percent seasonal allocation (as adjusted for PQBM) but would lengthen the first season by two months, thereby establishing 8-month and 4-month seasons. This alternative is expected to result in greater adverse economic impacts on commercial entities than the proposed action. The second alternative to the proposed action that would apply only to the commercial sector would establish a 1,000-lb (454-kg) trip limit and a May 1st start to the fishing year

in lieu of seasonal quotas. Relative to the proposed action, this alternative is expected to result in slightly lower adverse economic effects for vessel trips landing at least 1.0 lb (0.45 kg) of vermilion snapper, but the Council did not choose this alternative because it would alter the distribution of harvests across the various areas. One alternative, which includes five sub-alternatives including the proposed action, would apply only to the recreational sector. Two of these sub-alternatives would maintain the zero bag limit for captain and crew, similar to the proposed action, but would impose higher minimum size limits and lower bag limits. As a result, these two sub-alternatives are expected to result in greater adverse economic impacts on recreational small entities than the proposed action. The remaining two alternatives would maintain the zero bag limit for captain and crew like the proposed action. The first of these two alternatives would also establish a higher minimum size limit and a higher bag limit but a shorter seasonal closure than the proposed action. As a result of the higher bag limit and shorter seasonal closure, this alternative would be expected to result in lower adverse economic effects than the proposed action. The Council believed, however, that this alternative would have lower probability of achieving the target reduction in recreational harvest than the proposed action. The second of these two alternatives would maintain the same size limit as the proposed action but would establish a lower bag limit and longer seasonal closure, resulting in greater adverse economic impacts than the proposed action. Overall, the Council believes that the proposed bag limit and seasonal closure, while maintaining the current size limit, will provide a higher probability of achieving the target reduction in recreational harvest at a reasonably acceptable economic cost to small entities.

Three alternatives (with one set of sub-alternatives), including the proposed action, were considered for the action to reduce the bycatch of snapper-grouper. The first alternative to the proposed action is the no action alternative, which would not require additional measures to reduce bycatch of snapper-grouper and would not achieve the Council's objective. In addition to the requirement of the proposed action for vessels fishing for snapper-grouper to possess de-hooking devices and venting tools, the second alternative to the proposed action would also require the use of circle hooks. This

alternative would be expected to adversely affect the harvest of certain target species because the morphology of their mouths and biting habits would not allow circle hooks to be an effective harvest gear. As a result, this alternative would be expected to reduce the harvest of target species and result in greater adverse economic effects than the proposed action. Additionally, within this rejected alternative, sub-alternatives considered the application of the requirements to just the commercial sector, just the recreational sector, or both sectors. The proposed action would apply to both sectors. Although the application of the new bycatch reduction requirements to a single sector would reduce the adverse economic effects for the exempted sector, the overall benefits of bycatch reduction would be lower. As a result, sector exemption would not achieve the Council's objective.

In addition to the actions discussed above, Amendment 16 considered alternatives to establish management reference points and stock status criteria for gag and vermilion snapper. These alternatives are discussed in the following paragraphs.

For both gag and vermilion snapper, the proposed management reference points are such that MSY would be equated to the yield produced at F_{MSY} , F_{OY} equated to the fishing mortality rate specified in the rebuilding plan when the stock is overfished or at 75 percent of F_{MSY} when the stock is rebuilt, and OY equated to the yield produced at F_{OY} . In terms of economic effects, these management reference points only have meaningful content when evaluated through the management measures proposed to restrict gag and vermilion snapper to the allowable harvest levels. Also, because they are reference points and would not directly place any harvest restrictions on the fishery, none of the alternatives would result in any direct effects on gag and vermilion snapper.

Two alternatives, including the proposed action, were considered for the action to specify gag and vermilion snapper management reference points. The first alternative to the proposed action, the no action alternative, would retain the current definitions of MSY and OY. These definitions are not consistent with the most recent scientific advice and would not achieve the Council's objective of basing management decisions on the best available scientific information. The second alternative contains three sub-alternatives for the specification of OY, one of which is the proposed OY specification. Each of the two

alternative specifications to the proposed OY are based on the same specification of MSY, but specify different levels of OY, one more than the proposed OY and one less. All OY levels, including the proposed action, would result in relatively restrictive management measures. However, the proposed OY is expected to provide the best balance between short-term adverse economic impacts and long-term protection to the stock.

List of Subjects in 50 CFR Part 622

Fisheries, Fishing, Puerto Rico, Reporting and recordkeeping requirements, Virgin Islands.

Dated: February 2, 2009

James W. Balsiger,

Acting Assistant Administrator for Fisheries, National Marine Fisheries Service.

For the reasons set out in the preamble, 50 CFR part 622 is proposed to be amended as follows:

PART 622—FISHERIES OF THE CARIBBEAN, GULF, AND SOUTH ATLANTIC

1. The authority citation for part 622 continues to read as follows:

Authority: 16 U.S.C. 1801 *et seq.*

2. In § 622.35, paragraphs (j) and (k) are added to read as follows:

§ 622.35 Atlantic EEZ seasonal and/or area closures.

* * * * *

(j) *Seasonal closure of the recreational and commercial fisheries for gag and associated grouper species.* During January through April each year, no person may fish for, harvest, or possess in or from the South Atlantic EEZ gag, black grouper, red grouper, scamp, red hind, rock hind, yellowmouth grouper, tiger grouper, yellowfin grouper, graysby, or coney. In addition, for a person on board a vessel for which a valid Federal commercial or charter vessel/headboat permit for South Atlantic snapper-grouper has been issued, the provisions of this closure apply in the South Atlantic, regardless of where such fish are harvested, i.e., in state or Federal waters.

(k) *Seasonal closure of the recreational fishery for vermilion snapper.* The recreational fishery for vermilion snapper in or from the South Atlantic EEZ is closed from November 1 through March 31, each year. In addition, for a person on board a vessel for which a valid Federal charter vessel/headboat permit for South Atlantic snapper-grouper has been issued, this closure applies in the South Atlantic, regardless of where the fish are

harvested, i.e., in state or Federal waters. During the closure, the bag and possession limit for vermilion snapper in or from the South Atlantic EEZ is zero.

§ 622.36 [Amended]

3. In § 622.36, paragraph (b)(4) is removed and reserved.

4. In § 622.39, paragraphs (d)(1)(ii) introductory text, (d)(1)(ii)(A), and (d)(1)(v) are revised to read as follows:

§ 622.39 Bag and possession limits.

* * * * *

(d) * * *

(1) * * *

(ii) Grouper and tilefish, combined—
3. However, no grouper or tilefish may be retained by the captain or crew of a vessel operating as a charter vessel or headboat. The bag limit for such captain and crew is zero. In addition, within the 3-fish aggregate bag limit:

(A) No more than one fish may be gag or black grouper, combined;

* * * * *

(v) Vermilion snapper—5. However, no vermilion snapper may be retained by the captain or crew of a vessel operating as a charter vessel or headboat. The bag limit for such captain and crew is zero.

* * * * *

5. In § 622.41, paragraph (n) is added to read as follows:

§ 622.41 Species specific limitations.

* * * * *

(n) *Required gear in the South Atlantic snapper-grouper fishery.* For a person on board a vessel to fish for South Atlantic snapper-grouper in the South Atlantic EEZ, the vessel must possess on board and such person must use the gear as specified in paragraphs (n)(1) and (n)(2) of this section.

(1) *Dehooking device.* At least one dehooking device is required and must be used as needed to remove hooks embedded in South Atlantic snapper-grouper with minimum damage. The hook removal device must be constructed to allow the hook to be secured and the barb shielded without re-engaging during the removal process. The dehooking end must be blunt, and all edges rounded. The device must be of a size appropriate to secure the range of hook sizes and styles used in the South Atlantic snapper-grouper fishery.

(2) *Venting tool.* At least one venting tool is required and must be used as needed to deflate the swim bladders of South Atlantic snapper-grouper to release the fish with minimum damage.

This tool must be a sharpened, hollow instrument, such as a hypodermic syringe with the plunger removed, or a 16-gauge needle fixed to a hollow wooden dowel. A tool such as a knife or an ice-pick may not be used. The venting tool must be inserted into the fish at a 45-degree angle in a forward direction approximately 1 to 2 inches (2.54 to 5.08 cm) from the base of the pectoral fin. The tool must be inserted just deep enough to release the gases, so that the fish may be released with minimum damage.

6. In § 622.42, paragraph (e)(4) is revised, and paragraph (e)(7) is added to read as follows:

§ 622.42 Quotas.

* * * * *

(e) * * *

(4) *Vermilion snapper.* (i) For the period January through June each year—315,523 lb (143,119 kg).

(ii) For the period July through December each year—302,523 lb (137,222 kg).

(iii) Any unused portion of the quota specified in paragraph (e)(4)(i) of this section will be added to the quota specified in paragraph (e)(4)(ii) of this section. Any unused portion of the quota specified in paragraph (e)(4)(ii) of this section, including any addition of quota specified in paragraph (e)(4)(i) that was unused, will become void and will not be added to any subsequent quota.

* * * * *

(7) Gag—352,940 lb (160,091 kg).

* * * * *

7. In § 622.43, paragraph (a)(5) is revised to read as follows:

§ 622.43 Closures.

* * * * *

(a) * * *

(5) *South Atlantic gag, greater amberjack, snowy grouper, golden tilefish, vermilion snapper, black sea bass, and red porgy.* (i) The appropriate bag limits specified in § 622.39(d)(1) and the possession limits specified in § 622.39(d)(2) apply to all harvest or possession of the applicable species in or from the South Atlantic EEZ, and the sale or purchase of the applicable species taken from or possessed in the EEZ is prohibited.

(ii) The bag and possession limits for the applicable species and the prohibition on sale/purchase apply in the South Atlantic on board a vessel for which a valid Federal commercial or charter vessel/headboat permit for South Atlantic snapper-grouper has

been issued, without regard to where such species were harvested, i.e., in state or Federal waters.

(iii) For gag only, when the commercial quota for gag is reached, the provisions of paragraphs (a)(5)(i) and (ii) of this section apply to gag and the following associated grouper species: black grouper, red grouper, scamp, red hind, rock hind, yellowmouth grouper, tiger grouper, yellowfin grouper, graysby, and coney.

* * * * *

8. In § 622.45, paragraph (d)(8) is revised to read as follows:

§ 622.45 Restrictions on sale/purchase.

* * * * *

(d) * * *

(8) During January through April, no person may sell or purchase a gag, black grouper, red grouper, scamp, red hind, rock hind, yellowmouth grouper, tiger grouper, yellowfin grouper, graysby, or coney harvested from or possessed in the South Atlantic EEZ or, if harvested or possessed by a vessel for which a valid Federal commercial or charter vessel/headboat permit for South Atlantic snapper-grouper has been issued, harvested from the South Atlantic, i.e., state or Federal waters. The prohibition on sale/purchase during January through April does not apply to such species that were harvested, landed ashore, and sold prior to January 1 and were held in cold storage by a dealer or processor. This prohibition also does not apply to a dealer's purchase or sale of such species harvested from an area other than the South Atlantic, provided such fish is accompanied by documentation of harvest outside the South Atlantic. Such documentation must contain:

(i) The information specified in 50 CFR part 300 subpart K for marking containers or packages of fish or wildlife that are imported, exported, or transported in interstate commerce;

(ii) The official number, name, and home port of the vessel harvesting such fish;

(iii) The port and date of offloading from the vessel harvesting such fish, and;

(iv) A statement signed by the dealer attesting that such fish was harvested from an area other than the South Atlantic.

* * * * *

Notices

Federal Register

Vol. 74, No. 24

Friday, February 6, 2009

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

AGENCY FOR INTERNATIONAL DEVELOPMENT

Notice of Public Information Collection Requirements Submitted to OMB for Review

SUMMARY: U.S. Agency for International Development (USAID) has submitted the following information collections to OMB for review and clearance under the Paperwork Reduction Act of 1995, Public Law 104-13. Comments regarding this information collection are best assured of having their full effect if received within 30 days of this notification. Comments should be sent via e-mail to kdaphnis@omb.eop.gov or fax to 202-395-3087. Copies of submission may be obtained by calling (202) 712-1365.

SUPPLEMENTARY INFORMATION:

OMB Number: OMB 0412-NEW.

Form Number: N/A.

Title: Offeror Information for Personal Services Contracts.

Type of Submission: New Information Collection.

Purpose: The purpose of this information collection is to obtain information from the offeror for personal service contract positions. This information will include administrative information, work experience, education and qualifications in addition to offerors certification.

Annual Reporting Burden:

Respondents: 5,000.

Total annual responses: 10,000.

Total annual hours requested: 5,000 hours.

Dated: January 29, 2009.

Joanne Paskar,

*Chief, Information and Records Division,
Office of Administrative Services, Bureau for
Management.*

[FR Doc. E9-2446 Filed 2-5-09; 8:45 am]

BILLING CODE 6116-01-M

BROADCASTING BOARD OF GOVERNORS

Sunshine Act Meeting

DATE AND TIME: Wednesday, February 11, 2009; 1 p.m.–2 p.m.

PLACE: Cohen Building, Room 3321, 330 Independence Ave., SW., Washington, DC 20237.

CLOSED MEETING: The members of the Broadcasting Board of Governors (BBG) will meet in closed session to review and discuss a number of issues relating to U.S. Government-funded non-military international broadcasting. They will address internal procedural, budgetary, and personnel issues, as well as sensitive foreign policy issues relating to potential options in the U.S. international broadcasting field. This meeting is closed because if open it likely would either disclose matters that would be properly classified to be kept secret in the interest of foreign policy under the appropriate executive order (5 U.S.C. 552b.(c)(1)) or would disclose information the premature disclosure of which would be likely to significantly frustrate implementation of a proposed agency action. (5 U.S.C. 552b.(c)(9)(B)) In addition, part of the discussion will relate solely to the internal personnel and organizational issues of the BBG or the International Broadcasting Bureau. (5 U.S.C. 552b.(c)(2) and (6))

FOR FURTHER INFORMATION CONTACT:

Persons interested in obtaining more information should contact Timi Nickerson Kenealy at (202) 203-4545.

Timi Nickerson Kenealy,

Acting Legal Counsel.

[FR Doc. E9-2627 Filed 2-4-09; 4:15 pm]

BILLING CODE 8610-01-P

COMMISSION ON CIVIL RIGHTS

**Wednesday, February 11, 2009;
Commisson Meeting; Via
Teleconference; Public Dial In—1-800-
597-7623; Conference Id# 83711892;
11 A.M. Est TDD: 202-376-8116**

For questions or additional assistance to persons with disabilities, please contact Pamela Dunston at 202-376-8105

Meeting Agenda

- I. Approval of Agenda
- II. Program Planning

- FY 2009 Statutory Report
- III. Agenda Items
- IV. Adjourn

FOR FURTHER INFORMATION CONTACT:

Lenore Ostrowsky, Acting Chief, Public Affairs Unit (202) 376-8582.

Dated: February 4, 2009.

Emma Monroig,

Solicitor.

[FR Doc. E9-2654 Filed 2-4-09; 8:45 am]

BILLING CODE 6335-01-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: Documentation of Fish Harvest.
OMB Control Number: 0648-0365.
Form Number(s): None.
Type of Request: Regular submission.
Burden Hours: 50.
Number of Respondents: 25.
Average Hours per Response: 30 minutes.

Needs and Uses: The Magnuson-Stevens Fishery Conservation and Management Act (16 U.S.C. 1801 *et seq.*) authorizes the development of regional Fishery Management Plans (FMP). The National Marine Fishery Service's (NMFS) FMP for the Snapper-Grouper Fishery of the South Atlantic Region requires that dealers possessing red porgy, gag, black grouper, or greater amberjack during seasonal closures must maintain documentation that such fish were harvested from areas other than the South Atlantic. This requirement is codified in 50 CFR 622.45. The documentation includes information on the vessel that harvested the fish and on where and when the fish were offloaded. This information is required for the enforcement of fishery regulations.

Affected Public: Business or other for-profit organizations.

Frequency: On occasion.

Respondent's Obligation: Mandatory.

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: February 3, 2009.

Gwellnar Banks,

Management Analyst, Office of the Chief Information Officer.

[FR Doc. E9-2534 Filed 2-5-09; 8:45 am]

BILLING CODE 3510-22-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: Pacific Islands Region Coral Reef Ecosystems Permit Form.

OMB Control Number: 0648-0463.

Form Number(s): None.

Type of Request: Regular submission.

Burden Hours: 30.

Number of Respondents: 12.

Average Hours per Response: Permit applications, 2 hours; and appeals, 3 hours.

Needs and Uses: Regulations (50 CFR 665) implementing the Fishery Management Plan for Coral Reef Ecosystems of the Western Pacific Region include the establishment of a permit requirement for any U.S. vessel fishing for coral reef management unit species in the designated low-use Marine Protected Areas and open areas, *i.e.*, waters seaward of the inner boundary of the U.S. Exclusive Economic Zone in the western Pacific region. The special permit is also required for at-sea transshipment of coral reef management unit species. The permit application form provides basic information about the permit applicant, vessel, fishing gear and method, target species, projected fishing effort, etc. for use by NOAA Fisheries Service and the Western Pacific Fishery Management

Council in determining eligibility for permit issuance. The information is important for understanding the nature of the fishery and provides a link to participants. It also aids in the enforcement of FMP management measures.

Affected Public: Business or other for-profit organizations.

Frequency: Annually and on occasion.

Respondent's Obligation: Mandatory.

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: February 3, 2009.

Gwellnar Banks,

Management Analyst, Office of the Chief Information Officer.

[FR Doc. E9-2535 Filed 2-5-09; 8:45 am]

BILLING CODE 3510-22-P

DEPARTMENT OF COMMERCE

Bureau of Industry and Security

**Action Affecting Export Privileges;
Islamic Republic of Iran Shipping
Lines; Tadbir Sanaat Sharif
Technology Development Center and
Icarus Marine (Pty) Ltd.**

In the Matter of: Islamic Republic of Iran Shipping Lines, No. 37, Aseman Tower, Sayyade Shirazee Square, Pasdaran Avenue, P.O. Box 19395-1311, Tehran, Iran; No. 37, Corner of 7th Narenjestan, Sayad Shirazi Square, After Noboyand Square, Pasdaran Avenue, Tehran, Iran; Tadbir Sanaat Sharif Technology Development Center, First Floor, No. 25, Shahid Siadat Boulevard, North Zanjan Street, Yadegar Emam Highway, Tehran, Iran; Icarus Marine (Pty) Ltd., 1 River Street, Rosebank, Cape Town, South Africa; Respondents.

Order Temporarily Denying Export Privileges

Pursuant to Section 766.24 of the Export Administration Regulations ("EAR" or "Regulations"),¹ the Bureau

¹ The EAR is currently codified at 15 CFR parts 730-774 (2008), as amended. The EAR issued under the Export Administration Act of 1979, as amended (50 U.S.C. app. 2401-2420 (2000)) ("EAA"). Since

of Industry and Security ("BIS"), U.S. Department of Commerce, through its Office of Export Enforcement ("OEE"), has requested that I issue an Order temporarily denying for 180 days the export privileges under the EAR of:

(1) Islamic Republic of Iran Shipping Lines, No. 37 Aseman Tower, Sayyade Shirazee Square, Pasdaran Avenue, P.O. Box 19395-1311, Tehran, Iran; No. 37, Corner of 7th Narenjestan, Sayad Shirazi Square, After Noboyand Square, Pasdaran Avenue, Tehran, Iran (hereinafter referred to as "IRISL").

(2) Tadbir Sanaat Sharif Technology Development Center, First Floor, No. 25, Shahid Siadat Boulevard, North Zanjan Street, Yadegar Emam Highway, Tehran, Iran (hereinafter referred to as "TSS").

(3) Icarus Marine (Pty) Ltd, 1 River Street, Rosebank, Cape Town, South Africa (hereinafter referred to as "Icarus Marine").

(IRISL, TSS, and Icarus Marine are hereinafter collectively referred to as "Respondents").

Pursuant to Section 766.24(b) of the EAR, the Assistant Secretary may issue a TDO upon a showing by BIS that the order is necessary in the public interest to prevent an "imminent violation" of the EAR. 15 CFR 766.24(b)(1). "A violation may be 'imminent' either in time or in degree of likelihood." 15 CFR 766.24(b)(3). BIS may show "either that a violation is about to occur, or that the general circumstances of the matter under investigation or case under criminal or administrative charges demonstrate a likelihood of future violations." *Id.* As to the likelihood of future violations, BIS may show that "the violation under investigation or charges is significant, deliberate, covert and/or likely to occur again, rather than technical and negligent[.]" *Id.* A "lack of information establishing the precise time a violation may occur does not preclude a finding that a violation is imminent, so long as there is sufficient reason to believe the likelihood of a violation." *Id.*

In its request, BIS has presented evidence that the Respondents are about to engage in conduct prohibited by the EAR by re-exporting U.S.-origin items, which are subject to the Regulations and classified as Export Control Classification Number ("ECCN") 8A992.f and .g, from South Africa to a Specially Designated National ("SDN")

August 21, 2001, the Act has been in lapse and the President, through Executive Order 13222 of August 17, 2001 (3 CFR, 2001 Comp. 783 (2002)), as extended most recently by the Notice of July 23, 2008 (73 FR 43,603 (July 25, 2008)), has continued the Regulations in effect under the International Emergency Economic Powers Act (50 U.S.C. 1701-1706 (2000)).

located in Iran using a specially designated blocked vessel, owned by a Specially Designated National, to complete the transaction. Specifically, BIS has reason to believe that TSS has been attempting to procure a Bladerunner 51 powerboat, a vessel known as the "Bradstone Challenger," for use by the Iranian Revolutionary Guard Corps ("IRGC"), specifically the IRGC Navy, to be transported to Iran on an IRISL vessel.

The Bradstone Challenger will imminently be re-exported from South Africa on an IRISL vessel called the M/V "Diplomat," also known as the "Iran Diplomat," with a vessel registration identification number IMO 8309701. IRISL and its entire fleet, including the Diplomat, is also listed in the Department of the Treasury, Office of Foreign Assets Control (OFAC) Specially Designated Nationals list as the IRGC, pursuant to Executive Order 13382 and as identified by OFAC in Appendix A to 31 CFR Chapter V. The designation identifies those parties determined to be weapons of mass destruction proliferators or their supporters as well as blocked vessels.

Under Section 744.8(a) of the Regulations,² no person may export or re-export an item subject to the Regulations to any person designated pursuant to that Executive Order without a license from BIS. The Bradstone Challenger is powered with two U.S.-origin Caterpillar C18 engines and two Arneson surface drives, items subject to the Regulations and classified under Export Control Classification Number (ECCN) 8A992.g. Because it contains greater than a 10 percent *de minimis* of U.S.-origin items, the Bradstone Challenger is also subject to the Regulations if proposed for export or re-export to Iran and is classified as ECCN 8A992.f. According to publicly available sources, the Bladerunner 51 has top speeds from 55 knots to in excess of 65 knots (or 74 miles per hour). No license was obtained from BIS for export or re-export of the U.S.-origin parts contained within the powerboat, nor the vessel itself.

Nonetheless, BIS has produced evidence that TSS is purchasing the powerboat, which is intended to be sent from Durban, South Africa. Icarus Marine is attempting to send the Bradstone Challenger to Iran. TSS is believed to be purchasing the Bradstone Challenger for use by the IRGC Navy. There is publicly available evidence of

prior dealings between the two entities. The TSS Web site, under its "About Us" section, lists an affiliate of Icarus Marine as a company with whom TSS has had "prosperous cooperation." In this transaction, Icarus Marine is attempting to send the Bradstone Challenger from the port in Durban to Iran on the IRISL vessel Diplomat, with the end-user to be the IRGC Navy.

Multiple public sources indicate that Iran and its military have invested substantially in developing its naval forces. The IRGC Navy has been involved in enhancing its asymmetric naval warfare capabilities. These capabilities include exploiting enemy vulnerabilities through the use of "swarming" tactics by well-armed small boats and fast-attack craft, to mount surprise attacks at unexpected times and places. Accordingly, BIS has a significant concern that the vessel will be utilized by the IRGC as a fast attack craft. According to published reports, similar vessels have been armed with torpedoes, rocket launchers, and anti-ship missiles.

I find that the evidence presented by BIS demonstrates that violation of the EAR is imminent in terms of proximity of time, as well as in degree of likelihood. The conduct here is, *inter alia*, significant, deliberate, and likely to occur again absent issuance of a TDO. As such, a TDO issued on an *ex parte* basis is necessary in the public interest to prevent imminent violation of the EAR, and needed to give persons and companies in the United States and abroad notice that they should cease dealing with the Respondents in export and re-export transactions involving items subject to the EAR.

Accordingly, I find that a TDO naming is necessary, in the public interest, to prevent an imminent violation of the EAR. This Order is issued on an *ex parte* basis without a hearing based upon BIS's showing of an imminent violation.

It is therefore ordered:

First, that the Respondents, Islamic Republic of Iran Shipping Lines, No. 37 Aseman Tower, Sayyade Shirazee Square, Pasdaran Avenue, P.O. Box 19395-1311, Tehran, Iran; No. 37, Corner of 7th Narenjestan, Sayad Shirazi Square, After Noboyand Square, Pasdaran Avenue, Tehran, Iran; Tadbir Sanaat Sharif Technology Development Center, First Floor, No. 25, Shahid Siadat Boulevard, North Zanjan Street, Yadegar Emam Highway, Tehran, Iran; and Icarus Marine (Pty) Ltd, 1 River Street, Rosebank, Cape Town, South Africa (each a "Denied Person" and collectively the "Denied Persons") may not, directly or indirectly, participate in

any way in any transaction involving any commodity, software or technology (hereinafter collectively referred to as "item") exported or to be exported from the United States that is subject to the Export Administration Regulations ("EAR"), or in any other activity subject to the EAR including, but not limited to:

A. Applying for, obtaining, or using any license, license exception, or export control document;

B. Carrying on negotiations concerning, or ordering, buying, receiving, using, selling, delivering, storing, disposing of, forwarding, transporting, financing, or otherwise servicing in any way, any transaction involving any item exported or to be exported from the United States that is subject to the EAR, or in any other activity subject to the EAR; or

C. Benefiting in any way from any transaction involving any item exported or to be exported from the United States that is subject to the EAR, or in any other activity subject to the EAR.

Second, that no person may, directly or indirectly, do any of the following:

A. Export or reexport to or on behalf of any Denied Person any item subject to the EAR;

B. Take any action that facilitates the acquisition or attempted acquisition by any Denied Person of the ownership, possession, or control of any item subject to the EAR that has been or will be exported from the United States, including financing or other support activities related to a transaction whereby any Denied Person acquires or attempts to acquire such ownership, possession or control;

C. Take any action to acquire from or to facilitate the acquisition or attempted acquisition from any Denied Person of any item subject to the EAR that has been exported from the United States;

D. Obtain from any Denied Person in the United States any item subject to the EAR with knowledge or reason to know that the item will be, or is intended to be, exported from the United States; or

E. Engage in any transaction to service any item subject to the EAR that has been or will be exported from the United States and which is owned, possessed or controlled by any Denied Person, or service any item, of whatever origin, that is owned, possessed or controlled by any Denied Person if such service involves the use of any item subject to the EAR that has been or will be exported from the United States. For purposes of this paragraph, servicing means installation, maintenance, repair, modification or testing.

Third, that after notice and opportunity for comment as provided in section 766.23 of the EAR, any other

² On January 15, 2009, Part 744 of the Regulations was amended to impose a license requirement on certain parties designated pursuant to Executive Order 13382 (June 28, 2005) as Specially Designated Nationals. 74 FR 2355 (Jan. 15, 2009).

person, firm, corporation, or business organization related to any of the Respondents by affiliation, ownership, control, or position of responsibility in the conduct of trade or related services may also be made subject to the provisions of this Order.

Fourth, that this Order does not prohibit any export, reexport, or other transaction subject to the EAR where the only items involved that are subject to the EAR are the foreign-produced direct product of U.S.-origin technology.

In accordance with the provisions of Section 766.24(e) of the EAR, the Respondents may, at any time, appeal this Order by filing a full written statement in support of the appeal with the Office of the Administrative Law Judge, U.S. Coast Guard ALJ Docketing Center, 40 South Gay Street, Baltimore, Maryland 21202-4022.

In accordance with the provisions of Section 766.24(d) of the EAR, BIS may seek renewal of this Order by filing a written request not later than 20 days before the expiration date. The Respondents may oppose a request to renew this Order by filing a written submission with the Assistant Secretary for Export Enforcement, which must be received not later than seven days before the expiration date of the Order.

A copy of this Order shall be served on the Respondents and shall be published in the **Federal Register**.

This Order is effective upon issuance and shall remain in effect for 180 days.

Entered this 22nd day of January 2009.

Kevin A. Delli-Colli,

Acting Assistant Secretary of Commerce for Export Enforcement.

[FR Doc. E9-2540 Filed 2-5-09; 8:45 am]

BILLING CODE 3510-DT-P

DEPARTMENT OF COMMERCE

International Trade Administration

Mission Statement; Commercial Service Trade Mission to Colombia; March 8-13, 2009

AGENCY: Department of Commerce.

ACTION: Notice.

Mission Description

The United States Department of Commerce, International Trade

Administration, U.S. and Foreign Commercial Service are organizing a Trade Mission to Bogota, Cartagena, and Barranquilla, Colombia from March 8 to March 13, 2009.

The mission will focus on helping U.S. companies launch or increase their export business in the Colombian market. The mission will help participating firms gain market information, make business and government contacts, solidify business strategies and advance specific projects, towards the goal of increasing U.S. exports to Colombia. The mission will include business-to-business matchmaking appointments with local companies, site visits and meetings with the Chambers of Commerce, including ColAmCham. The delegation will be comprised of U.S. firms representing a cross section of U.S. industries with growing potential in Colombia.

Commercial Setting

Colombia is the fifth largest market for U.S. exports in Latin America and is ranked 29th as a market for U.S. exports globally. Since the election of President Alvaro Uribe in May 2002, Colombia has become one of the most stable economies in the region. Improved security and government policies, steady growth, moderate inflation and a wide range of opportunities combined with a relatively stable political environment make it an excellent market for U.S. exporters. In recent years, Colombia has demonstrated its commitment to furthering economic growth and to increasing trade between the United States and Colombia.

The United States and Colombia signed the U.S.-Colombia Trade Promotion Agreement on November 22, 2006 and President Bush sent the implementing legislation to Congress on April 8, 2008. The Trade Promotion Agreement (TPA) will go into effect upon Congressional approval and once Colombia has taken the necessary steps to ensure implementation of its obligations. The TPA offers tremendous opportunities for exporters. When the Agreement enters into force, 80 percent of U.S. consumer and industrial exports to Colombia will be duty-free immediately. The remaining tariffs will be phased out over the next 10 years. Colombia's increasingly democratic and

transparent government and the impending Trade Promotion Agreement provide a solid foundation for U.S. businesses interested in exporting to Colombia.

Industry sectors currently representing best prospects for U.S. exporters are listed below. U.S. firms in other sectors may also apply to take part in the mission.

- Oil and Gas Machinery and Services.
- Plastic Materials and Resins.
- Automotive Parts and Accessories.
- Computers and Components.
- Telecommunications Equipment and Services.
- Travel and Tourism.
- Construction and Mining Equipment.
- Air Cargo Services.
- Electrical Power Systems.
- Pollution Control Equipment.
- Safety and Security.
- Building Materials.
- Beverage Processing & Packaging Equipment.

Mission Goals

The Commercial Service Trade Mission to Colombia will help U.S. firms initiate or expand their exports to Colombia by providing business-to-business introductions and market access information.

Mission Scenario

The mission will stop in Bogota, Barranquilla and Cartagena. A special site visit Santa Marta and the Drummond Mine, Las Lomas, in Cesar is being arranged. At each stop, except for Santa Marta and Las Lomas, delegation members will participate in one-on-one business meetings with potential buyers, agents, distributors, and partners. Delegates will also attend briefings in Bogota by U.S. Embassy officials on business opportunities in Colombia and the pending U.S.-Colombia Trade Promotion Agreement. They will attend networking events with the U.S. Ambassador to Colombia in Bogota and the American Chamber of Commerce in Barranquilla. These events will offer additional opportunities to speak with local business and government representatives.

Proposed Mission Timetable

Sunday, March 8, 2009	Mission begins in Bogota, Colombia; Welcome briefing.
Monday, March 9, 2009	Market and Security briefing; Business matchmaking.
Tuesday, March 10, 2009	Opportunity for follow-up and/or site visits; Networking reception.
Wednesday, March 11, 2009	Transfer by plane to Cartagena, Colombia; Business matchmaking; Networking reception (TBC).
Thursday, March 12, 2009	Opportunity for follow-up and/or site visits; Departure to Barranquilla, Colombia (by bus).
Friday, March 13, 2009	Business matchmaking; Networking luncheon; Departure to Santa Marta, Colombia (by bus); Overnight at Drummond Guest House.
Saturday, March 14, 2009	Travel to Las Lomas Mine; Briefing and tour of Las Lomas Mine; Return to Cartagena; Mission ends.

Participation Requirements

All parties interested in participating in the Commercial Service Trade Mission to Colombia must complete and submit an application package for consideration by the Department of Commerce. All applicants will be evaluated on their ability to meet certain conditions and best satisfy the selection criteria as outlined below. A minimum of 6 and maximum of 11 companies with up to two participants per company will be selected to participate in the mission from the applicant pool. U.S. companies already doing business with Colombia, as well as U.S. companies seeking to enter the Colombian market for the first time may apply.

Fees and Expenses

After a company has been selected to participate on the mission, a payment to the Department of Commerce in the form of a participation fee is required. The participation fee will be \$2,500 for a small- or medium-sized enterprise (SME) * and \$3,250 for large firms. The fee for the additional firm representative (large firm or SME) is \$450. This entitles the company to one appointment schedule. Expenses for travel to and from Colombia, airfare between Bogota and Cartagena, lodging, incidentals and most meals will be the responsibility of each mission participant. Bus transportation from Cartagena to Barranquilla is included in the above cost. Bus transportation to Santa Marta is not included in the cost and will be at the participant's expense. Participants have the option of returning to the United States from Barranquilla or, if they participate in the mine site visit, from Cartagena.

Conditions for Participation

- An applicant must submit a completed and signed mission application and supplemental application materials, including adequate information on the company's products and/or services, primary market objectives, and goals for participation. If the Department of Commerce receives an incomplete application, the Department may reject the application, request additional information, or take the lack of

* An SME is defined as a firm with 500 or fewer employees or that otherwise qualifies as a small business under SBA regulations (see http://www.sba.gov/services/contracting_opportunities/sizestandardsttopics/index.html). Parent companies, affiliates, and subsidiaries will be considered when determining business size. The dual pricing reflects the Commercial Service's user fee schedule that became effective May 1, 2008 (for additional information see <http://www.export.gov/newsletter/march2008/initiatives.html>).

information into account when evaluating the applications.

- Each applicant must also certify that the products and services it seeks to export through the mission are either produced in the United States, or, if not, marketed under the name of a U.S. firm and have at least 51 percent U.S. content of the value of the finished product or service.

Selection Criteria: Selection will be based on the following criteria:

- Suitability of the company's products or services to the Colombian market.
- Applicant's potential for business in Colombia, including likelihood of exports resulting from the mission.
- Consistency of the applicant's goals and objectives with the stated scope of the mission.

Referrals from political organizations and any documents containing references to partisan political activities (including political contributions) will be removed from an applicant's submission and not considered during the selection process.

Timeframe for Recruitment and Applications

Mission recruitment will be conducted in an open and public manner. Outreach will include posting on the Commerce Department trade mission calendar (<http://www.ita.doc.gov/doctm/tmcal.html>) and other Internet Web sites, press releases to general and trade media, direct mail, broadcast fax, notices by industry trade associations and other multiplier groups, and publicity at industry meetings, symposia, conferences, and trade shows. The International Trade Administration will explore and welcome outreach assistance from other interested organizations, including other U.S. Government agencies.

The mission is open on a first come first served basis. Recruitment for the mission will begin immediately and close as soon as 10 applicants have been selected and registered, and no later than February 16, 2009. Late applications will be considered only if space and scheduling constraints permit. Applications will be available from the New Orleans U.S. Export Assistance Center. They can also be obtained by contacting the mission contact listed below.

Contacts

Brie Knox, New Orleans Export Assistance Center, U.S. Department of

Commerce, Tel: 504-589-6703, E-mail: Brie.Knox@mail.doc.gov.

Sean Timmins,

Global Trade Programs, Commercial Service Trade Missions Program.

[FR Doc. E9-2489 Filed 2-5-09; 8:45 am]

BILLING CODE 3510-DS-P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

Proposed Information Collection; Comment Request; Alaska Rockfish Pilot Program

AGENCY: National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Notice.

SUMMARY: The Department of Commerce, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995.

DATES: Written comments must be submitted on or before April 7, 2009.

ADDRESSES: Direct all written comments to Diana Hynek, Departmental Paperwork Clearance Officer, Department of Commerce, Room 7845, 14th and Constitution Avenue, NW., Washington, DC 20230 (or via the Internet at dHynek@doc.gov).

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the information collection instrument and instructions should be directed to Patsy A. Bearden, (907) 586-7008 or patsy.bearden@noaa.gov.

SUPPLEMENTARY INFORMATION:

I. Abstract

In Section 802 of the Consolidated Appropriations Act of 2004, the United States (U.S.) Congress included a directive to the Secretary of Commerce to establish, in consultation with the North Pacific Fishery Management Council, a pilot program for management of three rockfish fisheries in the Central Gulf of Alaska (CGOA) in the exclusive economic zone off the coast of Alaska. The Rockfish Pilot Program provides exclusive harvesting and processing privileges for a specific set of rockfish species and associated species harvested incidentally to those CGOA rockfish; an area from 140° W. long. to 168° W. long.

II. Method of Collection

Paper reports are required from participants; these reports are transmitted by U.S. mail or facsimile.

III. Data

OMB Control Number: 0648-0545.

Form Number: None.

Type of Review: Regular submission.

Affected Public: Business or other for-profit organizations.

Estimated Number of Respondents: 1,142.

Estimated Time per Response: 2 hours each for: Application for Cooperative Quota, Application for Limited Access Fishery, Application for Entry-level Fishery, and Application for Opt-out; 2 hours for Application for Inter-Cooperative Transfer of Cooperative Quota and Application to Participate; 4 hours for Annual Rockfish Cooperative Report; 6 minutes for Rockfish Catch Report; 15 minutes for Cooperative Termination of Fishing Declaration; 30 minutes for Vessel Check-in and Check-out; and 4 hours for Appeals.

Estimated Total Annual Burden Hours: 3,270.

Estimated Total Annual Cost to Public: \$5,909.

IV. Request for Comments

Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden (including hours and cost) of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology.

Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval of this information collection; they also will become a matter of public record.

Dated: February 2, 2009.

Gwellnar Banks,

Management Analyst, Office of the Chief Information Officer.

[FR Doc. E9-2496 Filed 2-5-09; 8:45 am]

BILLING CODE 3510-22-P

DEPARTMENT OF COMMERCE

Patent and Trademark Office

Madrid Protocol

ACTION: Proposed collection; comment request.

SUMMARY: The United States Patent and Trademark Office (USPTO), as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on the revision of a continuing information collection, as required by the Paperwork Reduction Act of 1995, Public Law 104-13 (44 U.S.C. 3506(c)(2)(A)).

DATES: Written comments must be submitted on or before April 7, 2009.

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

- *E-mail:* Susan.Fawcett@uspto.gov. Include "0651-0051 comment" in the subject line of the message.
- *Fax:* 571-273-0112, marked to the attention of Susan K. Fawcett.
- *Mail:* Susan K. Fawcett, Records Officer, Office of the Chief Information Officer, Customer Information Services Group, Public Information Services Division, United States Patent and Trademark Office, P.O. Box 1450, Alexandria, VA 22313-1450.
- *Federal Rulemaking Portal:* <http://www.regulations.gov>.

FOR FURTHER INFORMATION CONTACT:

Requests for additional information should be directed to Jennifer Chicowski, Attorney Advisor, Office of the Commissioner for Trademarks, United States Patent and Trademark Office, P.O. Box 1451, Alexandria, VA 22313-1451; by telephone at 571-272-8943; or by e-mail to Jennifer.Chicowski@uspto.gov.

SUPPLEMENTARY INFORMATION:

I. Abstract

This collection of information is required by the Trademark Act of 1946, 15 U.S.C. 1051 *et seq.*, which provides for the Federal registration of trademarks, service marks, collective trademarks and service marks, collective membership marks, and certification marks. Individuals and businesses that use or intend to use such marks in commerce may file an application to register the marks with the United States Patent and Trademark Office (USPTO).

The Protocol Relating to the Madrid Agreement Concerning the International Registration of Marks ("Madrid Protocol") is an international treaty that

allows a trademark owner to seek registration in any of the participating countries by filing a single international application. The International Bureau ("IB") of the World Intellectual Property Organization ("WIPO") in Geneva, Switzerland, administers the international registration system. The Madrid Protocol Implementation Act of 2002 amended the Trademark Act to provide that: (1) The owner of a U.S. application or registration may seek protection of its mark in any of the participating countries by submitting a single international application to the IB through the USPTO, and (2) the holder of an international registration may request an extension of protection of the international registration to the United States. The Madrid Protocol became effective in the United States on November 2, 2003, and is implemented under 15 U.S.C. 1141 *et seq.* and 37 CFR Part 2 and Part 7.

An international application submitted through the USPTO must be based on an active U.S. application or registration and must be filed by the owner of the application or registration. The USPTO reviews the international application to certify that it corresponds to the data contained in the existing U.S. application or registration before forwarding the international application to the IB. The IB then reviews the international application to determine whether the Madrid filing requirements have been met and the required fees have been paid. If the international application is unacceptable, the IB will send a notice of irregularity to the USPTO and the applicant. The applicant must respond to the irregularities to avoid abandonment, unless a response from the USPTO is required. After any irregularities are corrected and the application is accepted, the IB registers the mark, publishes the registration in the *WIPO Gazette of International Marks*, and sends a certificate to the holder.

When the mark is registered, the IB notifies each country designated in the application of the request for extension of protection. Once an international registration has been issued, the holder may also file subsequent designations to request an extension of protection to additional countries.

Under Section 71 of the Trademark Act, a registered extension of protection to the United States will be cancelled unless the holder of the international registration periodically files affidavits of continued use in commerce or excusable nonuse. These affidavits cannot be filed until five years after the USPTO registers an extension of protection. Since the USPTO will not be

accepting these affidavits until February 1, 2010, the estimated burden for these affidavits will not be included in this collection at this time.

This collection includes the information necessary for the USPTO to process applications for international registration and related requests under the Madrid Protocol. The USPTO provides electronic forms for filing the Application for International Registration, Subsequent Designation, and Response to a Notice of Irregularity online through the USPTO Web site. An electronic form for the Request for Transformation is under development. Applicants may also submit the items in this collection on paper or by using the forms provided by the IB, which are available on the WIPO Web site. The IB requires Applications for International

Registration and Subsequent Designations that are filed on paper to be submitted on the official IB forms.

II. Method of Collection

By mail, hand delivery, or electronically to the USPTO.

III. Data

OMB Number: 0651-0051.
Form Number(s): PTO-2131, PTO-2132, PTO-2133.
Type of Review: Revision of a currently approved collection.
Affected Public: Individuals or households; businesses or other for-profits; and not-for-profit institutions.
Estimated Number of Respondents: 5,330 responses per year.
Estimated Time per Response: The USPTO estimates that it will take the

public approximately 15 minutes (0.25 hours) to one hour to complete the information in this collection, including the time to gather the necessary information, prepare the documents, and submit the completed request to the USPTO.

Estimated Total Annual Respondent Burden Hours: 1,347 hours per year.

Estimated Total Annual Respondent Cost Burden: \$417,570 per year. The USPTO expects that the information in this collection will be prepared by attorneys. Using the professional rate of \$310 per hour for attorneys in private firms, the USPTO estimates that the respondent cost burden for submitting the information in this collection will be approximately \$417,570 per year.

Item	Estimated time for response	Estimated annual responses	Estimated annual burden hours
Application for International Registration (PTO-2131)	15 minutes ..	3,900	975
Subsequent Designation (PTO-2132)	15 minutes ..	400	100
Response to Notice of Irregularity (PTO-2133)	15 minutes ..	1,000	250
Request that the USPTO Replace a U.S. Registration with a Subsequently Registered Extension of Protection to the United States.	30 minutes ..	4	2
Request to Record an Assignment or Restriction of a Holder's Right to Dispose of an International Registration.	30 minutes ..	5	3
Request that the USPTO Transform a Cancelled Extension of Protection into an Application for Registration under Section 1 or 44 of the Act.	15 minutes ..	6	2
Petition to Review Refusal to Certify an International Application	1 hour	15	15
Affidavit of Continued Use or Excusable Nonuse under Section 71 of the Act	15 minutes ..	(¹)	0
Total	5,330	1,347

¹ Not until Feb. 2010.

Estimated Total Annual Non-hour Respondent Cost Burden: \$529,701 per year. There are no capital start-up, maintenance, or recordkeeping costs associated with this information collection. However, this collection

does have annual (non-hour) costs in the form of filing fees and postage costs. The USPTO charges fees for processing international applications and related requests under the Madrid Protocol as set forth in 37 CFR 7.6. In addition to these USPTO fees, applicants must also pay international

filing fees to the IB as indicated in 37 CFR 7.7. The USPTO estimates that the total filing fees in the form of USPTO processing fees associated with this collection will be approximately \$529,650 per year as calculated in the accompanying table.

Item	Estimated annual responses	Fee amount	Estimated annual filing costs
Application for International Registration, for certifying an international application based on a single basic application or registration (per international class)	2,000	\$100.00	\$200,000.00
Application for International Registration, for certifying an international application based on more than one basic application or registration (per international class)	1,900	150.00	285,000.00
Subsequent Designation	400	100.00	40,000.00
Response to Notice of Irregularity	1,000	0.00	0.00
Request that the USPTO Replace a U.S. Registration with a Subsequently Registered Extension of Protection to the United States (per international class)	4	100.00	400.00
Request to Record an Assignment or Restriction of a Holder's Right to Dispose of an International Registration	5	100.00	500.00
Request that the USPTO Transform a Cancelled Extension of Protection into an Application for Registration under Section 1 or 44 of the Act	6	375.00	2,250.00
Petition to Review Refusal to Certify an International Application	15	100.00	1,500.00
Affidavit of Continued Use or Excusable Nonuse under Section 71 of the Act (per international class)	1	100.00	0.00

Item	Estimated annual responses	Fee amount	Estimated annual filing costs
Total	5,330	529,650.00

¹ Not until Feb. 2010.

The public may submit the items in this collection to the USPTO by mail through the United States Postal Service. The USPTO estimates that approximately 1% (53 out of 5,300) of the international applications, subsequent designations, and responses to notices of irregularities may be filed on paper, and that 15 of the 30 responses for the other items in this collection will also be filed on paper, for a total of approximately 68 of the 5,330 total responses per year being submitted by mail. The average first-class postage cost for a mailed submission will be 75 cents, for a total postage cost of approximately \$51 per year.

The total non-hour respondent cost burden for this collection in the form of filing fees and postage costs is estimated to be \$529,701 per year.

IV. Request for Comments

Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden (including hours and cost) of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, e.g., the use of automated collection techniques or other forms of information technology.

Comments submitted in response to this notice will be summarized or included in the request for OMB approval of this information collection; they also will become a matter of public record.

Dated: January 30, 2009.

Susan K. Fawcett,

Records Officer, USPTO, Office of the Chief Information Officer, Customer Information Services Group, Public Information Services Division.

[FR Doc. E9-2539 Filed 2-5-09; 8:45 am]

BILLING CODE 3510-16-P

DEPARTMENT OF DEFENSE

Office of the Secretary

Submission for OMB Review; Comment Request

ACTION: Notice.

The Department of Defense has submitted to OMB for clearance, the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35).

DATES: Consideration will be given to all comments received by March 9, 2009.

Title, Form, and OMB Number: Industry Cost Collection Report Survey; OMB Control Number 0704-TBD.

Type of Request: New.

Number of Respondents: 1,613.

Responses per Respondent: 1.

Annual Responses: 1,613.

Average Burden per Response: 30 minutes.

Annual Burden Hours: 807.

Needs and Uses: Executive Order 12829, "National Industrial Security Program" requires the Department of Defense to account each year for the costs associated with implementation of the National Industrial Security Program and report those costs to the Director of the Information Security Oversight Office (ISOO). In furtherance of this requirement, and pursuant with 32 CFR, Subpart F, section 2001.61(b); Classified National Security Information; Final Rule, the Secretary of Defense, acting as executive agent for the NISP, is obligated to collect cost estimates for classification-related activities of contractors, licensees, certificate holders, and grantees and report them to ISOO annually. The cost collection methodology employed since 1996 was validated with the ISOO in December 2007. Participation in the survey is strictly voluntary. Input is integrated into a total cost figure for the President and is never associated with a specific facility.

Frequency: Annually.

Respondent's Obligation: Voluntary.

OMB Desk Officer: Ms. Jasmeet Seehra.

Written comments and recommendations on the proposed information collection should be sent to Ms. Seehra at the Office of Management and Budget, Desk Officer for DoD, Room

10236, New Executive Office Building, Washington, DC 20503.

You may also submit comments, identified by docket number and title, by the following method:

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

Instructions: All submissions received must include the agency name, docket number and title for this **Federal Register** document. The general policy for comments and other submissions from members of the public is to make these submissions available for public viewing on the Internet at <http://www.regulations.gov> as they are received without change, including any personal identifiers or contact information.

DoD Clearance Officer: Ms. Patricia Toppings.

Written requests for copies of the information collection proposal should be sent to Ms. Toppings at WHS/ESD/Information Management Division, 1777 North Kent Street, RPN, Suite 11000, Arlington, VA 22209-2133.

Dated: January 30, 2009.

Patricia L. Toppings,

OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. E9-2491 Filed 2-5-09; 8:45 am]

BILLING CODE 5001-06-P

DEPARTMENT OF DEFENSE

Office of the Secretary

Defense Task Force on Sexual Assault in the Military Services

AGENCY: Office of the Under Secretary of Defense (Personnel and Readiness); DoD.

ACTION: Committee meeting.

SUMMARY: On January 29, 2009 (74 FR 5149), the Department of Defense announced a meeting of the Defense Task Force on Sexual Assault in the Military Services. This notice is published to provide the correct address of the meeting location. All other information remains the same.

ADDRESSES: Coronado Island Marriott, 2000 Second Street, Marius Room, Coronado, California 92118.

FOR FURTHER INFORMATION CONTACT: Colonel Jackson-Chandler, Designated

Federal Officer, Defense Task Force on Sexual Assault in the Military Services, 2850 Eisenhower Avenue, Suite 100, Alexandria, Virginia 22314; Telephone: (703) 325-6640; Fax: 703-325-6710/6711; DSN number 221-6640; cora.chandler@wso.whs.mil.

Dated: January 30, 2009.

Patrica Toppings,

*OSD Federal Register Liaison Officer,
Department of Defense.*

[FR Doc. E9-2490 Filed 2-5-09; 8:45 am]

BILLING CODE 5001-06-P

DEPARTMENT OF DEFENSE

Department of the Army

Notice of Availability of Government-Owned Inventions; Available for Licensing

AGENCY: Department of the Army, DoD.

ACTION: Notice.

SUMMARY: The inventions listed below are assigned to the United States Government as represented by the Secretary of the Army. The inventions collectively enable a Tactical Biological Detector (TAC-BIO), and are made available for licensing by the Department of the Army. United States Patent Number 6,967,338 entitled "Micro UV Particle Detector", United States Patent Number 7,375,348 entitled "Micro UV Detector", Army Case Numbers; DAM 656-06 entitled "Improved, Front-End Optics to the Micro UV Detector", DAM 668-07 entitled "Man Portable, Biological Aerosol Detector with High Level of Discrimination", and DAM 689-08 entitled "Photon Counting Based Particle Detection Algorithm."

ADDRESSES: Requests for data and inventor interviews should be directed to Eric McGill, *telephone:* 410-436-8467, *eric.s.mcgill@us.army.mil*, U.S. Army Edgewood Chemical Biological Center (ECBC), AMSRD-ECB-PI-BP-TT, Bldg E3330/Rm 241 5183 Blackhawk Road, APG, MD 21010-5424. Requests should be made prior to February 20, 2009.

FOR FURTHER INFORMATION CONTACT: Dhirajlal Parekh, Office of Research and Technology Applications, U.S. Army Edgewood Chemical Biological Center, AMSRD-ECB-PI-BP-TT, Bldg E3330/Rm 241 5183 Blackhawk Road, APG, MD 21010-5424, *telephone:* 410-436-8400, e-mail: *dhirajlal.parekh@us.army.mil*.

SUPPLEMENTARY INFORMATION: The U.S. Army intends to move expeditiously to commercialize these patents by

licensing to a cooperative research and development partner. Licensing application packages are available from ECBC and all applications and commercialization plans should be returned to ECBC by March 20, 2009. The Army intends to ensure that its licensed inventions are broadly commercialized throughout the United States.

Authority: 35 U.S.C. 207, 37 CFR part 404.

Brenda S. Bowen,

Army Federal Register Liaison Officer.

[FR Doc. E9-2537 Filed 2-5-09; 8:45 am]

BILLING CODE 3710-08-P

DEPARTMENT OF ENERGY

Biomass Research and Development Technical Advisory Committee

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

ACTION: Notice of open meeting.

SUMMARY: This notice announces an open meeting of the Biomass Research and Development Technical Advisory Committee under the Biomass Research and Development Act of 2000. The Federal Advisory Committee Act (Pub. L. 92-463, 86 Stat. 770) requires that agencies publish these notices in the **Federal Register** to allow for public participation. This notice announces the meeting of the Biomass Research and Development Technical Advisory Committee.

DATES AND TIMES:

February 25, 2009 at 1 p.m. to 2 p.m.

February 26, 2009 at 8:30 a.m. to 3:15 p.m.

ADDRESSES: Homewood Suites—Riverwalk—Alamo Room, 432 W. Market, San Antonio, TX 78205.

FOR FURTHER INFORMATION CONTACT:

Valri Lightner, Designated Federal Officer for the Committee, Office of Energy Efficiency and Renewable Energy, U.S. Department of Energy, 1000 Independence Avenue, SW., Washington, DC 20585; (202) 586-0937 or Carolyn Clark at (202) 586-8077; *E-mail:* *cclark@bcs-hq.com*.

SUPPLEMENTARY INFORMATION:

Purpose of Meeting: To provide advice and guidance that promotes research and development leading to the production of biobased fuels and biobased products.

Tentative Agenda: Agenda will include the following:

- Update on USDA Biofuels Activities
- Update on DOE Biofuels Activities
- Presentation from the European Bioethanol Fuel Association on the

European Perspective of the Biofuels Industry

- Subcommittee Report-Outs
- Presentation on Cellulosic Ethanol Commercialization from Range Fuels
- Presentation on Enzymatic Breakthroughs from Genencor

Public Participation: In keeping with procedures, members of the public are welcome to observe the business of the Biomass Research and Development Technical Advisory Committee. To attend the meeting and/or to make oral statements regarding any of the items on the agenda, you should contact Valri Lightner at 202-586-0937; *E-mail:* *valri.lightner@ee.doe.gov* or Carolyn Clark at (202) 586-8077; *E-mail:* *cclark@bcs-hq.com*. You must make your request for an oral statement at least 5 business days before the meeting. Members of the public will be heard in the order in which they sign up at the beginning of the meeting. Reasonable provision will be made to include the scheduled oral statements on the agenda. The Chair of the Committee will make every effort to hear the views of all interested parties. If you would like to file a written statement with the Committee, you may do so either before or after the meeting. The Chair will conduct the meeting to facilitate the orderly conduct of business.

Minutes: The minutes of the meeting will be available for public review and copying at <http://www.brdisolutions.com/publications/default.aspx#meetings>.

Issued at Washington, DC on February 3, 2009.

Rachel Samuel,

Deputy Committee Management Officer.

[FR Doc. E9-2549 Filed 2-5-09; 8:45 am]

BILLING CODE 6450-01-P

DEPARTMENT OF ENERGY

State Energy Advisory Board

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

ACTION: Notice of open teleconference.

SUMMARY: This notice announces a teleconference of the State Energy Advisory Board (STEAB). The Federal Advisory Committee Act (Pub. L. 92-463; 86 Stat. 770) requires that public notice of these teleconferences be announced in the **Federal Register**.

DATES: February 18, 2009 at 1-2 p.m. EDT.

FOR FURTHER INFORMATION CONTACT: Gary Burch, STEAB Designated Federal Officer, Division Director, Office of

Commercialization & Project Management, Golden Field Office, U.S. Department of Energy, 1617 Cole Boulevard, Golden, CO 80401, Telephone 303-275-4801.

SUPPLEMENTARY INFORMATION:

Purpose of the Board: To make recommendations to the Assistant Secretary for the Office of Energy Efficiency and Renewable Energy regarding goals and objectives of programs carried out in this sector, to make programmatic and administrative policy recommendations as appropriate, to encourage transfer of results of the EE and RE activities carried out by DOE to non-DOE users, and to otherwise carry out the Board's responsibilities as designated in the State Energy Efficiency Programs Improvement Act of 1990 (Pub. L. 101-440).

Tentative Agenda: Update members on routine business matters.

Public Participation: The teleconference is open to the public. Written statements may be filed with the Board either before or after the meeting. Members of the public who wish to make oral statements pertaining to agenda items should contact Gary Burch at the address or telephone number listed above. Requests to make oral comments must be received five days prior to the conference call; reasonable provision will be made to include requested topic(s) on the agenda. The Chair of the Board is empowered to conduct the call in a fashion that will facilitate the orderly conduct of business. This notice is being published less than 15 days before the date of the meeting due to programmatic issues.

Notes: The notes of the teleconference will be available for public review and copying within 60 days on the STEAB Web site, <http://www.steab.org>.

Issued at Washington, DC, on February 3, 2009.

Rachel Samuel,

Deputy Committee Management Officer.

[FR Doc. E9-2550 Filed 2-5-09; 8:45 am]

BILLING CODE 6450-01-P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. IC09-576-000]

Commission Information Collection Activities (FERC-576); Comment Request; Extension

January 29, 2009.

AGENCY: Federal Energy Regulatory Commission.

ACTION: Notice of proposed information collection and request for comments.

SUMMARY: In compliance with the requirements of section 3506(c)(2)(a) of the Paperwork Reduction Act of 1995 (Pub. L. 104-13), the Federal Energy Regulatory Commission (Commission) is soliciting public comment on the specific aspects of the information collection described below.

DATES: Comments in consideration of the collection of information are due April 9, 2009.

ADDRESSES: Comments may be filed either electronically or in paper format, and should refer to Docket No. IC09-576-000. Documents must be prepared in an acceptable filing format and in compliance with the Federal Energy Regulatory Commission submission guidelines at <http://www.ferc.gov/help/submission-guide.asp>.

Comments may be filed electronically via the eFiling link on the Commission's Web site at <http://www.ferc.gov>. First time users will have to establish a user name and password (<http://www.ferc.gov/docs-filing/eregistration.asp>) before eFiling. The Commission will send an automatic acknowledgement to the sender's e-mail address upon receipt of comments through eFiling.

Commenters filing electronically should not make a paper filing. Commenters that are not able to file electronically must send an original and 14 copies of their comments to: Federal Energy Regulatory Commission, Secretary of the Commission, 888 First Street, NE., Washington, DC 20426.

Users interested in receiving automatic notification of activity in this docket may do so through eSubscription (at <http://www.ferc.gov/docs-filing/esubscription.asp>). In addition, all comments and FERC issuances may be viewed, printed or downloaded remotely through FERC's Web site using the "eLibrary" link and searching on Docket Number IC09-576. For user assistance, contact FERC Online Support (e-mail at ferconlinesupport@ferc.gov, or call toll-free at (866) 208-3676, or for TTY, contact (202) 502-8659).

FOR FURTHER INFORMATION CONTACT:

Michael Miller may be reached by telephone at (202) 502-8415, by fax at (202) 273-0873, and by e-mail at michael.miller@ferc.gov.

SUPPLEMENTARY INFORMATION: Under the Natural Gas Act (NGA) (Pub. L. 75-688) (15 U.S.C. 717-717w), a natural gas company must obtain Commission authorization to engage in the transportation, sale or exchange of

natural gas in interstate commerce. The Commission is also empowered to oversee continuity of service in the transportation of natural gas in interstate commerce. The information collected under FERC-576 (Report of Service Interruptions; OMB Clearance No. 1902-0004) notifies the Commission of: (1) Damage to jurisdictional natural gas facilities as a result of a hurricane, earthquake, or other natural disaster, or terrorist activity, (2) serious interruptions to service, and (3) damage to jurisdictional natural gas facilities due to natural disaster or terrorist activity, that creates the potential for serious delivery problems on the pipeline's own system or the pipeline grid.

Filings in accordance with the provisions of section 4(d) of the Natural Gas Act (NGA) (15 U.S.C. 717c) are to contain information necessary to advise the Commission when a change in service has occurred. Under section 7(d) of the NGA (15 U.S.C. 717f), the Commission may issue a temporary certificate in cases of emergency to assure maintenance of adequate service or to serve particular customers, without notice or hearing.

The FERC-576 initial reports are submitted by e-mail to pipelineoutage@ferc.gov or by facsimile transmission. 18 CFR 260.9(b) requires that a report of service interruption or damage to natural gas facilities state: (1) The location of the service interruption or damage to natural gas pipeline or storage facilities; (2) The nature of any damage to pipeline or storage facilities; (3) Specific identification of the facilities damaged; (4) The time the service interruption or damage to the facilities occurred; (5) The customers affected by the service interruption or damage to the facilities; (6) Emergency actions taken to maintain service; and (7) Company contact and telephone number. (In response to these reports, the Commission may contact other pipelines to determine available supply, and if necessary, authorize transportation or construction of facilities to alleviate the problem.) The company also reports to the Commission when pipeline throughput or storage deliverability has been restored.

Failure by the Commission to collect this information would mean that it is unable to monitor and evaluate transactions, operations, and reliability of interstate pipelines and perform its regulatory functions.

In coordination with the U.S. Department of Transportation (DOT), FERC has reviewed the reporting requirements. FERC and DOT have

concluded that there is minimal duplication, the intent, timing, and the information collected serve different needs, and a common form is not appropriate.¹

Action: The Commission is requesting a three-year extension of the current expiration date, with no changes to the existing collection of data.

Burden Statement: Public reporting burden for this collection is estimated at:

FERC data collection—FERC-576	Number of respondents [events] annually (1)	Number of responses per respondent (2)	Average burden hours per response (3)	Total annual burden hours (1)×(2)×(3)
Submittal to FERC of the original e-mail and follow-up e-mail ²	40	2	1	80
Submittal of damage report to state commissions	40	1	0.25	10
Submittal to FERC of copy of DOT incident report	40	1	0.25	10

¹ FERC needs the information immediately, and DOT receives its detailed form after 30 days. DOT's immediate telephonic report is used to decide whether they need to send a field person on-site. In addition, some incidents are reportable only to FERC.

² This includes the original e-mail, plus the follow-up e-mail (sent when throughput or storage deliverability has been restored).

The estimated cost burden to respondents is \$6,076.15 (100 hours/2080 hours per year times \$126,384 per year average per employee = \$6,076.15).

The reporting burden includes the total time, effort, or financial resources expended to generate, maintain, retain, disclose, or provide the information including: (1) Reviewing instructions; (2) developing, acquiring, installing, and utilizing technology and systems for the purposes of collecting, validating, verifying, processing, maintaining, disclosing and providing information; (3) adjusting the existing ways to comply with any previously applicable instructions and requirements; (4) training personnel to respond to a collection of information; (5) searching data sources; (6) completing and reviewing the collection of information; and (7) transmitting, or otherwise disclosing the information.

The estimate of cost for respondents is based upon salaries for professional and clerical support, as well as direct and indirect overhead costs. Direct costs include all costs directly attributable to providing this information, such as administrative costs and the cost for information technology. Indirect or overhead costs are costs incurred by an organization in support of its mission. These costs apply to activities which benefit the whole organization rather than any one particular function or activity.

Comments are invited on: (1) Whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, 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, e.g., permitting electronic submission of responses.

Kimberly D. Bose,

Secretary.

[FR Doc. E9-2520 Filed 2-5-09; 8:45 am]

BILLING CODE 6717-01-P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 176-018]

City of Escondido and Vista Irrigation District; Notice of Settlement Agreement and Updated Application and Solicitation of Comments

January 29, 2009.

Take notice that the following hydroelectric application has been updated and filed with the Commission and is available for public inspection.

a. *Type of Application:* Settlement Agreement and Updated License Application for a New Major License.

b. *Project No.:* 176-018.

c. *Date Filed:* December 15, 2008.

d. *Applicant:* City of Escondido and Vista Irrigation District.

e. *Name of Project:* Escondido Hydroelectric Project.

f. *Location:* On the San Luis Rey River in San Diego County, near Escondido, California. The project occupies 290 acres of Federal lands under the jurisdiction of the U.S. Forest Service and the U.S. Bureau of Land Management. The project also occupies 66 acres of Indian Reservation lands

owned by the La Jolla, San Pasqual, and Rincon Indian tribes.

g. *Applicant Contacts:*

Lori Vereker, Utilities Director, City of Escondido, Civic Center Plaza, 210 North Broadway, Escondido, CA 92025;

Don A. Smith, Director of Water Resources, Vista Irrigation District, 1391 Engineer Street, Vista, CA 92081, (207) 945-5621.

h. *FERC Contact:* Emily Carter, (202) 502-6512 or Emily.Carter@ferc.gov.

i. *Deadline for filing comments:* March 2, 2009. Reply comments due: March 17, 2009.

All documents (original and eight copies) should be filed with: Kimberly D. Bose, Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

Additional study requests and requests for cooperating agency status may be filed electronically via the Internet, in lieu of paper. The Commission strongly encourages electronic filings. See 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site (<http://www.ferc.gov>) under the "e-Filing" link.

j. This updated application is not ready for environmental analysis at this time.

k. *The existing 1.5 MW Escondido project consists of:* (1) Two storage reservoirs (Lake Henshaw on San Luis Rey River and Lake Wohlford on Escondido Creek) with a combined storage capacity of approximately 58,000 acre-feet; (2) one well-field (Warner Ranch) that augments flow into Lake Henshaw; (3) one diversion dam on the San Luis Rey River; (3) four primary water conduits (Upper Escondido Canal—5.93 miles; Rincon Penstock—0.4 mile; Lower Escondido Canal—7.72 miles; and Wohlford Penstock—0.76 mile); (4) two powerhouses (Bear Valley powerhouse

and Rincon powerhouse; (5) public recreation facilities at Lake Henshaw and Lake Wohlford; and (6) appurtenant facilities and features. The Escondido project extends from Lake Henshaw at an elevation of about 2,700 feet to Bear Valley Powerhouse at an elevation of 750 feet. The Escondido canal currently consists of approximately 58,404 feet of gunite lined canal; 3,567 feet of tunnel; 670 feet of metal flume; 2,156 feet of inverted siphon; and 6,118 feet of pipeline.

In the revised application, the applicant proposes to remove the Warner Ranch well-field, the Rincon Penstock, and the Rincon powerhouse from the project.

l. A copy of the updated application is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at <http://www.ferc.gov> using the "eLibrary" link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, contact FERC Online Support at FERCOnlineSupport@ferc.gov or toll-free at 1-866-208-3676, or for TTY, (202) 502-8659. A copy is also available for inspection and reproduction at the address in item h above.

You may also register online at <http://www.ferc.gov/docs-filing/esubscription.asp> to be notified via e-mail of new filings and issuances related to this or other pending projects. For assistance, contact FERC Online Support.

m. With this notice, we are re-initiating consultation with the California State Historic Preservation Officer (SHPO), as required by section 106 of the National Historic Preservation Act, and the regulations of the Advisory Council on Historic Preservation, 36, CFR 800.4.

Kimberly D. Bose,

Secretary.

[FR Doc. E9-2519 Filed 2-5-09; 8:45 am]

BILLING CODE 6717-01-P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 13053-000]

Green Wave Energy Solutions, LLC; Notice Clarifying Deadline for Filing Comments, Motions To Intervene, and Competing Applications

January 29, 2009.

On December 9, 2008, the Commission issued notice that Green Wave Energy Solutions, LLC filed an application on October 19, 2007, proposing to study the feasibility of the Green Wave Mendocino Project, to be located on the Pacific Ocean in Mendocino County, California. Pursuant to that notice the deadline for filing comments, motions to intervene, or competing applications is 60 days from December 9, 2008.

The Commission has been requested to correct any confusion as to the deadline date. According to 18 CFR 385.2007, when the deadline falls on a Saturday or Sunday, the notice period ends at the close of business on the next business day. This notice clarifies that the deadline date for filing any documents is Monday, February 9, 2009.

Kimberly D. Bose,

Secretary.

[FR Doc. E9-2522 Filed 2-5-09; 8:45 am]

BILLING CODE 6717-01-P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 12718-002]

Natural Currents Energy Services, LLC; Notice of Preliminary Permit Application Accepted for Filing and Soliciting Comments, Motions To Intervene, and Competing Applications

January 29, 2009.

On November 6, 2008, and supplemented on December 15, 2008, Natural Currents Energy Services, LLC filed an application, pursuant to section 4(f) of the Federal Power Act, proposing to study the feasibility of the Wards Island Tidal Energy Project located in the East River, off the south point of Wards Island in Hell's Gate in New York County, New York. The project uses no dam or impoundment.

The proposed project would consist of a hybrid generating station using solar, wind, and tidal power generators. The preliminary permit for this project will

only deal the hydro portion of this project and would consist of: (1) A bridge approximately 60 feet-long leading to, (2) a barge-mounted power module equipped with, (3) four integrated 24 kilowatt vertical-axis helical turbines, for a total installed capacity of the tidal component of 96 kilowatts, and (4) interconnection transmission lines approximately 50 feet in length. The tidal component of the project is estimated to have a minimum annual generation of 420.5 megawatt-hours per year. Power generated by this project would contribute to the micro-loop utility grid to be developed on Wards Island for servicing the power needs of the public recreation and park facilities located there.

Applicant Contact: Mr. Roger Bason, Natural Currents Energy Services, LLC, 24 Roxanne Boulevard, Highland, New York 12561, phone: (845) 691-4008.

FERC Contact: Kelly T. Houff (202) 502-6393.

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-12718-002) in the docket number field to access the document. For assistance, call toll-free 1-866-208-3372.

Kimberly D. Bose,

Secretary.

[FR Doc. E9-2521 Filed 2-5-09; 8:45 am]

BILLING CODE 6717-01-P

DEPARTMENT OF ENERGY**Federal Energy Regulatory Commission****Combined Notice of Filings**

December 30, 2008.

Take notice that the Commission has received the following Natural Gas Pipeline Rate and Refund Report filings:

Docket Numbers: RP09–184–000.

Applicants: Sabine Pipe Line LLC.

Description: Sabine Pipe Line, LLC submits First Revised Sheet 273 to FERC Gas Tariff, Original Volume 1, to be effective 1/1/09.

Filed Date: 12/23/2008.

Accession Number: 20081229–0097.

Comment Date: 5 p.m. Eastern Time on Monday, January 5, 2009.

Docket Numbers: RP09–185–000.

Applicants: MoGas Pipeline LLC.

Description: MoGas Pipeline, LLC submits First Revised Sheet 11 *et al.* to FERC Gas Tariff, First Revised Volume 1.

Filed Date: 12/23/2008.

Accession Number: 20081229–0098.

Comment Date: 5 p.m. Eastern Time on Monday, January 5, 2009.

Docket Numbers: RP09–186–000.

Applicants: Questar Southern Trails Pipeline Company.

Description: Questar Southern Trails Pipeline Company submits Ninth Revised Sheet 4 *et al.* to FERC Gas Tariff, Original Volume 1, to be effective 1/26/09.

Filed Date: 12/24/2008.

Accession Number: 20081229–0197.

Comment Date: 5 p.m. Eastern Time on Monday, January 5, 2009.

Docket Numbers: RP09–187–000.

Applicants: Williston Basin Interstate Pipeline Company.

Description: Williston Basin Interstate Pipeline Company submits Seventeenth Revised Sheet 374 to FERC Gas Tariff, Second Revised Volume 1, to be effective 12/24/08.

Filed Date: 12/24/2008.

Accession Number: 20081229–0196.

Comment Date: 5 p.m. Eastern Time on Monday, January 5, 2009.

Docket Numbers: RP09–188–000.

Applicants: Iroquois Gas Transmission System, L.P.

Description: Report of Iroquois Gas Transmission System, L.P. under RP09–198. Iroquois Gas submits the schedules which reflect revised calculations supporting the Measurement Variance/Fuel Use Factors utilized during the period 07/01/08–12/31/08.

Filed Date: 12/29/2008.

Accession Number: 20081229–5049.

Comment Date: 5 p.m. Eastern Time on Monday, January 12, 2009.

Docket Numbers: RP09–189–000.

Applicants: Kern River Gas Transmission Company.

Description: Kern River Gas Transmission Company submits Original Sheet No. 306 *et al.* to FERC Gas Tariff, Second Revised Volume No. 1, to be effective 1/1/09.

Filed Date: 12/29/2008.

Accession Number: 20081230–0178.

Comment Date: 5 p.m. Eastern Time on Monday, January 12, 2009.

Docket Numbers: RP09–190–000.

Applicants: Sea Robin Pipeline Company, LLC.

Description: Sea Robin Pipeline Co., LLC submits the Annual Flowthrough Crediting Mechanism Filing pursuant to Section 22 of its FERC Gas Tariff, Second Revised Volume 1.

Filed Date: 12/29/2008.

Accession Number: 20081230–0177.

Comment Date: 5 p.m. Eastern Time on Monday, January 12, 2009.

Any person desiring to intervene or to protest in any of the above proceedings must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214) on or before 5 p.m. Eastern time on the specified comment date. It is not necessary to separately intervene again in a subdocket related to a compliance filing if you have previously intervened in the same docket. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Anyone filing a motion to intervene or protest must serve a copy of that document on the Applicant. In reference to filings initiating a new proceeding, interventions or protests submitted on or before the comment deadline need not be served on persons other than the Applicant.

The Commission encourages electronic submission of protests and interventions in lieu of paper, using the FERC Online links at <http://www.ferc.gov>. To facilitate electronic service, persons with Internet access who will eFile a document and/or be listed as a contact for an intervenor must create and validate an eRegistration account using the eRegistration link. Select the eFiling link to log on and submit the intervention or protests.

Persons unable to file electronically should submit an original and 14 copies of the intervention or protest to the Federal Energy Regulatory Commission, 888 First St., NE., Washington, DC 20426.

The filings in the above proceedings are accessible in the Commission's

eLibrary system by clicking on the appropriate link in the above list. They are also available for review in the Commission's Public Reference Room in Washington, DC. There is an eSubscription link on the Web site that enables subscribers to receive e-mail notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please e-mail FERCOnlineSupport@ferc.gov or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. E9–2563 Filed 2–5–09; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY**Federal Energy Regulatory Commission****Combined Notice of Filings**

January 2, 2009.

Take notice that the Commission has received the following Natural Gas Pipeline Rate and Refund Report filings:

Docket Numbers: RP05–422–032.

Applicants: El Paso Natural Gas Company.

Description: El Paso Natural Gas Company's Supplemental Refund Report.

Filed Date: 12/30/2008.

Accession Number: 20081230–5044.

Comment Date: 5 p.m. Eastern Time on Monday, January 12, 2009.

Docket Numbers: RP06–200–050.

Applicants: Rockies Express Pipeline LLC.

Description: Rockies Express Pipeline LLC submits Third Revised Sheet 8B and 8C to FERC Gas Tariff, Second Revised Volume 1, to be effective 1/1/09.

Filed Date: 12/30/2008.

Accession Number: 20081231–0111.

Comment Date: 5 p.m. Eastern Time on Monday, January 12, 2009.

Docket Numbers: RP08–426–004.

Applicants: El Paso Natural Gas Company.

Description: El Paso Natural Gas Company submits Thirty-Sixth Revised Sheet 1 *et al.* to FERC Gas Tariff, Second Revised Volume 1A, to be effective 1/1/09.

Filed Date: 12/30/2008.

Accession Number: 20081231–0277.

Comment Date: 5 p.m. Eastern Time on Monday, January 12, 2009.

Docket Numbers: RP96–272–086.

Applicants: Northern Natural Gas Company.

Description: Northern Natural Gas Company submits Second Revised Sheet

66B.01a *et al.* to FERC Electric Gas Tariff, Fifth Revised Volume 1, effective 1/1/09.

Filed Date: 12/30/2008.

Accession Number: 20081231-0109.

Comment Date: 5 p.m. Eastern Time on Monday, January 12, 2009.

Docket Numbers: RP96-331-020.

Applicants: National Fuel Gas Supply Corporation.

Description: National Fuel Gas Supply Corporation submits Substitute Eighth Revised Sheet 12 and Fifth Revised Sheet 13 to FERC Gas Tariff, Fourth Revised Volume 1, to be effective 12/1/08.

Filed Date: 12/30/2008.

Accession Number: 20081231-0108.

Comment Date: 5 p.m. Eastern Time on Monday, January 12, 2009.

Docket Numbers: RP96-383-090.

Applicants: Dominion Transmission, Inc.

Description: Dominion Transmission, Inc submits Fourteenth Revised Sheet 1405 to FERC Gas Tariff, Third Revised Volume 1, to be effective 1/1/09.

Filed Date: 12/30/2008.

Accession Number: 20081231-0110.

Comment Date: 5 p.m. Eastern Time on Monday, January 12, 2009.

Docket Numbers: RP08-436-002.

Applicants: Stingray Pipeline Company, L.L.C.

Description: Stingray Pipeline Company, LLC submits substitute Fifth Revised Sheet No 103 to remove the incorrect reference to Fahrenheit to be effective 11/1/08.

Filed Date: 12/30/2008.

Accession Number: 20081231-0107.

Comment Date: 5 p.m. Eastern Time on Monday, January 12, 2009.

Docket Numbers: RP09-191-000.

Applicants: Florida Gas Transmission Company, LLC.

Description: Florida Gas Transmission Company, LLC submits the Annual Accounting Report of Revenues and Costs-System Balancing for the period August 2007 through July 2008.

Filed Date: 12/30/2008.

Accession Number: 20081231-0278.

Comment Date: 5 p.m. Eastern Time on Monday, January 12, 2009.

Docket Numbers: RP09-192-000.

Applicants: Dominion Cove Point LNG, LP.

Description: Dominion Cove Point LNG, LP submits Second Revised Sheet 24 *et al.* to FERC Gas Tariff, Original Volume 1, to be effective 1/29/09.

Filed Date: 12/30/2008.

Accession Number: 20081231-0279.

Comment Date: 5 p.m. Eastern Time on Monday, January 12, 2009.

Any person desiring to intervene or to protest in any of the above proceedings

must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214) on or before 5 p.m. Eastern time on the specified comment date. It is not necessary to separately intervene again in a subdocket related to a compliance filing if you have previously intervened in the same docket. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Anyone filing a motion to intervene or protest must serve a copy of that document on the Applicant. In reference to filings initiating a new proceeding, interventions or protests submitted on or before the comment deadline need not be served on persons other than the Applicant.

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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.

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Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. E9-2564 Filed 2-5-09; 8:45 am]

BILLING CODE 6717-01-P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Combined Notice of Filings

January 15, 2009.

Take notice that the Commission has received the following Natural Gas Pipeline Rate and Refund Report filings:

Docket Numbers: RP09-133-001.

Applicants: Columbia Gas Transmission Corporation.

Description: Columbia Gas Transmission Corporation submits Sixth Revised Sheet 405 and Seventh Revised Sheet 406 to FERC Gas Tariff, Second Revised Volume 1.

Filed Date: 01/09/2009.

Accession Number: 20090112-0172.

Comment Date: 5 p.m. Eastern Time on Wednesday, January 21, 2009.

Docket Numbers: RP09-212-000.

Applicants: Southern Natural Gas Company.

Description: Southern Natural Gas Company submits Eighteenth Revised Sheet 2 *et al.* to FERC Gas Tariff, Seventh Revised Volume 1 in compliance with Order 717.

Filed Date: 01/13/2009.

Accession Number: 20090114-0190.

Comment Date: 5 p.m. Eastern Time on Monday, January 26, 2009.

Docket Numbers: RP09-213-000.

Applicants: Gas Transmission Northwest Corporation.

Description: Gas Transmission Northwest Corporation submits revised tariff sheets, listed in Appendix A, to reflect tariff modifications necessitated by Order 712.

Filed Date: 01/13/2009.

Accession Number: 20090114-0189.

Comment Date: 5 p.m. Eastern Time on Monday, January 26, 2009.

Docket Numbers: CP08-6-003.

Applicants: Midcontinent Express Pipeline LLC.

Description: Midcontinent Express Pipeline LLC submits an abbreviated application for limited amendment of certificate authority.

Filed Date: 01/09/2009.

Accession Number: 20090112-0181.

Comment Date: 5 p.m. Eastern Time on Monday, January 26, 2009.

Any person desiring to intervene or to protest in any of the above proceedings must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214) on or before 5 p.m. Eastern time on the specified comment date. It is not necessary to separately intervene again in a subdocket related to a compliance filing if you have previously intervened in the same docket. Protests

will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Anyone filing a motion to intervene or protest must serve a copy of that document on the Applicant. In reference to filings initiating a new proceeding, interventions or protests submitted on or before the comment deadline need not be served on persons other than the Applicant.

The Commission encourages electronic submission of protests and interventions in lieu of paper, using the FERC Online links at <http://www.ferc.gov>. To facilitate electronic service, persons with Internet access who will eFile a document and/or be listed as a contact for an intervenor must create and validate an eRegistration account using the eRegistration link. Select the eFiling link to log on and submit the intervention or protests.

Persons unable to file electronically should submit an original and 14 copies of the intervention or protest to the Federal Energy Regulatory Commission, 888 First St., NE., Washington, DC 20426.

The filings in the above proceedings are accessible in the Commission's eLibrary system by clicking on the appropriate link in the above list. They are also available for review in the Commission's Public Reference Room in Washington, DC. There is an eSubscription link on the Web site that enables subscribers to receive e-mail notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please e-mail FERCOnlineSupport@ferc.gov or call (866) 208-3676 (toll free). For TTY, call (202) 502-8659.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. E9-2565 Filed 2-5-09; 8:45 am]

BILLING CODE 6717-01-P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Combined Notice of Filings

February 3, 2009.

Take notice that the Commission has received the following Natural Gas Pipeline Rate and Refund Report filings:

Docket Numbers: RP96-320-097.

Applicants: Gulf South Pipeline Company, LP.

Description: Gulf South Pipeline Co submits a capacity release agreement

containing negotiated rate provisions executed with Texla Energy Management, Inc.

Filed Date: 01/29/2009.

Accession Number: 20090202-0478.

Comment Date: 5 p.m. Eastern Time on Tuesday, February 10, 2009.

Docket Numbers: RP96-320-098.

Applicants: Gulf South Pipeline Company, LP.

Description: Gulf South Pipeline Company submits Amendment to Negotiated Rate Letter Agreement re the East Texas to Mississippi Expansion Project.

Filed Date: 01/30/2009.

Accession Number: 20090203-0015.

Comment Date: 5 p.m. Eastern Time on Wednesday, February 11, 2009.

Docket Numbers: RP99-176-180.

Applicants: Natural Gas Pipeline Company of America.

Description: Natural Gas Pipeline Company of America, LLC submits an amendment to an existing negotiated rate Transportation Rate Schedule FTS Agreement with Tenaska Marketing Ventures.

Filed Date: 01/29/2009.

Accession Number: 20090202-0476.

Comment Date: 5 p.m. Eastern Time on Tuesday, February 10, 2009.

Docket Numbers: RP99-176-181.

Applicants: Natural Gas Pipeline Company of America.

Description: Natural Gas Pipeline Company of America, LLC submits the Storage Rate Schedule NSS Agreements etc.

Filed Date: 01/29/2009.

Accession Number: 20090202-0477.

Comment Date: 5 p.m. Eastern Time on Tuesday, February 10, 2009.

Docket Numbers: RP99-176-182.

Applicants: Natural Gas Pipeline Company of America.

Description: Natural Gas Pipeline Company of America, LLC submits amendments to the Transportation Rate Schedule FTS Agreement with Eagle Energy Partners I, LP.

Filed Date: 01/29/2009.

Accession Number: 20090202-0479.

Comment Date: 5 p.m. Eastern Time on Tuesday, February 10, 2009.

Docket Numbers: RP04-274-014.

Applicants: Kern River Gas Transmission Company.

Description: Kern River Gas Transmission Company submits 2nd Substitute 6th Revised 18th Revised Sheet 5 *et al.* to FERC Gas Tariff, Second Revised Volume 1.

Filed Date: 01/30/2009.

Accession Number: 20090203-0013.

Comment Date: 5 p.m. Eastern Time on Wednesday, February 11, 2009.

Docket Numbers: RP06-298-008.

Applicants: Public Service Commission of New York.

Description: National Fuel Gas Supply Corp. submits its Semi-annual Report of Operational Sales of Gas.

Filed Date: 01/30/2009.

Accession Number: 20090130-5046.

Comment Date: 5 p.m. Eastern Time on Wednesday, February 11, 2009.

Docket Numbers: RP09-42-001.

Applicants: Hardy Storage Company, LLC.

Description: Hardy Storage Company submits tariff sheets for inclusion in its tariff, proposed to be effective 3/1/09.

Filed Date: 01/30/2009.

Accession Number: 20090203-0014.

Comment Date: 5 p.m. Eastern Time on Wednesday, February 11, 2009.

Docket Numbers: RP96-272-087.

Applicants: Northern Natural Gas Company.

Description: Northern Natural Gas Co submits 15 Revised Sheet 66B.01 *et al.* to FERC Gas Tariff, Fifth Revised Volume 1, to be effective 2/1/09.

Filed Date: 01/30/2009.

Accession Number: 20090203-0035.

Comment Date: 5 p.m. Eastern Time on Wednesday, February 11, 2009.

Docket Numbers: RP09-309-000.

Applicants: Natural Gas Pipeline Company of America.

Description: Natural Gas Pipeline Company of America, LLC submits First Revised Sheet 27 *et al.* to FERC Gas Tariff, Seventh Revised Volume 1.

Filed Date: 01/29/2009.

Accession Number: 20090130-0126.

Comment Date: 5 p.m. Eastern Time on Tuesday, February 10, 2009.

Docket Numbers: RP09-310-000.

Applicants: Gulf Crossing Pipeline Company, LLC.

Description: Gulf South Pipeline Company, LLC submits a negotiated rate agreement under Rate Schedule FTS executed.

Filed Date: 01/29/2009.

Accession Number: 20090130-0127.

Comment Date: 5 p.m. Eastern Time on Tuesday, February 10, 2009.

Docket Numbers: RP09-311-000.

Applicants: Northern Border Pipeline Company.

Description: Northern Border Pipeline Company submits First Revised Sheet 272B *et al.* to FERC Gas Tariff, First Revised Volume 1, to be effective 3/3/09.

Filed Date: 01/29/2009.

Accession Number: 20090202-0544.

Comment Date: 5 p.m. Eastern Time on Tuesday, February 10, 2009.

Docket Numbers: RP09-312-000.

Applicants: Millennium Pipeline Company, LLC.

Description: Millennium Pipeline Company, LLC submits First Revised Sheet 6 to FERC Gas Tariff, Original Volume 1, to be effective 2/1/09.

Filed Date: 01/29/2009.

Accession Number: 20090202-0545.

Comment Date: 5 p.m. Eastern Time on Tuesday, February 10, 2009.

Docket Numbers: RP09-313-000.

Applicants: Gulf Crossing Pipeline Company LLC.

Description: Gulf Crossing Pipeline Company, LLC submits the Interim Negotiated Rate Agreement re the Gulf Crossing Project.

Filed Date: 01/30/2009.

Accession Number: 20090203-0021.

Comment Date: 5 p.m. Eastern Time on Wednesday, February 11, 2009.

Docket Numbers: RP09-315-000.

Applicants: East Tennessee Natural Gas, LLC.

Description: East Tennessee Natural Gas, LLC submits Fourth Revised Sheet 306 and 373 to its FERC Gas Tariff, Third Revised Volume 1, to be effective 4/1/09.

Filed Date: 01/30/2009.

Accession Number: 20090203-0019.

Comment Date: 5 p.m. Eastern Time on Wednesday, February 11, 2009.

Docket Numbers: RP09-317-000.

Applicants: Texas Gas Transmission, LLC.

Description: Texas Gas Transmission, LLC submits Second Revised Sheet 2200, and First Revised Sheet 3201 to FERC Gas Tariff, Third Revised Volume 1, to be effective 3/1/09.

Filed Date: 01/30/2009.

Accession Number: 20090203-0034.

Comment Date: 5 p.m. Eastern Time on Wednesday, February 11, 2009.

Docket Numbers: RP09-318-000.

Applicants: Northern Natural Gas Company.

Description: Northern Natural Gas Co submits 81 Revised Sheet 53 *et al.* to FERC Gas Tariff, Fifth Revised Volume 1, to be effective 4/1/09.

Filed Date: 01/30/2009.

Accession Number: 20090203-0033.

Comment Date: 5 p.m. Eastern Time on Wednesday, February 11, 2009.

Docket Numbers: RP09-319-000.

Applicants: Texas Gas Transmission, LLC.

Description: Texas Gas Transmission, LLC submits First Revised Sheet 5225 *et al.* to FERC Gas Tariff, Third Revised Volume 1, to be effective 3/1/09.

Filed Date: 01/30/2009.

Accession Number: 20090203-0032.

Comment Date: 5 p.m. Eastern Time on Wednesday, February 11, 2009.

Docket Numbers: RP09-320-000.

Applicants: Millennium Pipeline Company, L.L.C.

Description: Millennium Pipeline Co, LLC submits First Revised Sheet 178 *et al.* to FERC Gas Tariff, Original Volume 1, to be effective 3/1/09.

Filed Date: 01/30/2009.

Accession Number: 20090203-0031.

Comment Date: 5 p.m. Eastern Time on Wednesday, February 11, 2009.

Docket Numbers: RP09-321-000.

Applicants: MarkWest Pioneer, L.L.C.

Description: Markwest Pioneer, LLC submits its FERC Gas Tariff, Original Volume 1 for the Arkoma Connector Pipeline to be effective 4/1/09.

Filed Date: 01/30/2009.

Accession Number: 20090203-0030.

Comment Date: 5 p.m. Eastern Time on Wednesday, February 11, 2009.

Any person desiring to intervene or to protest in any of the above proceedings must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214) on or before 5 p.m. Eastern time on the specified comment date. It is not necessary to separately intervene again in a subdocket related to a compliance filing if you have previously intervened in the same docket. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Anyone filing a motion to intervene or protest must serve a copy of that document on the Applicant. In reference to filings initiating a new proceeding, interventions or protests submitted on or before the comment deadline need not be served on persons other than the Applicant.

The Commission encourages electronic submission of protests and interventions in lieu of paper, using the FERC Online links at <http://www.ferc.gov>. To facilitate electronic service, persons with Internet access who will eFile a document and/or be listed as a contact for an intervenor must create and validate an eRegistration account using the eRegistration link. Select the eFiling link to log on and submit the intervention or protests.

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Commission's Public Reference Room in Washington, DC. There is an eSubscription link on the Web site that enables subscribers to receive e-mail notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please e-mail FERCOnlineSupport@ferc.gov or call (866) 208-3676 (toll free). For TTY, call (202) 502-8659.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. E9-2567 Filed 2-5-09; 8:45 am]

BILLING CODE 6717-01-P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. PF09-4-000]

Fayetteville Express Pipeline, LLC; Notice of Intent To Prepare an Environmental Assessment for the Fayetteville Express Pipeline Project, Request for Comments on Environmental Issues, and Notice of Public Scoping Meetings

January 30, 2009.

The staff of the Federal Energy Regulatory Commission (FERC or Commission) will prepare an environmental assessment (EA) that will discuss the environmental impacts of the Fayetteville Express Pipeline Project (project) planned by Fayetteville Express Pipeline, LLC (FEP). The project consists of about 185 miles of 42-inch-diameter pipeline within the states of Arkansas and Mississippi.

This notice announces the opening of the scoping process used to gather input from the public and interested agencies on the project. Your input will help the Commission staff determine which issues need to be evaluated in the EA. The staff will also use the scoping process to determine whether preparation of an environmental impact statement is more appropriate for this project based on the anticipated level of impacts. Please note that the scoping period will close on March 2, 2009.

Comments regarding this project may be submitted in written form or verbally. Further details on how to submit written comments are provided in the Public Participation section of this notice. In lieu of or in addition to sending written comments, we invite you to attend the public scoping meetings we have scheduled as follows:

Date and time	Location
Tuesday, February 17, 2009; 7 p.m.	Carmichael Community Center, 801 S. Elm St., Searcy, AR 72143.
Wednesday, February 18, 2009; 7 p.m.	Forrest City Civic Center, 1335 N. Washington, Forrest City, AR 72335.
Thursday, February 19, 2009; 7 p.m.	Batesville Civic Center, 290 Civic Center Drive, Batesville, MS 38606.

Interested groups and individuals are encouraged to attend the meetings and to present comments on the environmental issues that they believe should be addressed in the EA. A transcript of the meetings will be generated so that your comments will be accurately recorded.

This Notice of Intent (NOI) is being sent to affected landowners; federal, state, and local government representatives and agencies; environmental and public interest groups; Native American tribes; other interested parties in this proceeding; and local libraries and newspapers. We¹ encourage government representatives to notify their constituents of this planned project and encourage them to comment on their areas of concern.

If you are a landowner receiving this notice, you may be contacted by a pipeline company representative about the acquisition of an easement to construct, operate, and maintain the planned facilities. The pipeline company would seek to negotiate a mutually acceptable agreement. However, if the project is approved by the Commission, that approval conveys with it the right of eminent domain. Therefore, if easement negotiations fail to produce an agreement, the pipeline company could initiate condemnation proceedings in accordance with state law.

A fact sheet prepared by the FERC, "An Interstate Natural Gas Facility on My Land? What Do I Need to Know?" is available for viewing on the FERC Web site (<http://www.ferc.gov>). This fact sheet addresses a number of typically asked questions, including those focusing on the use of eminent domain and how to participate in the FERC's proceedings.

Summary of the Planned Projects

The planned Fayetteville Express Pipeline Project would consist of the following facilities:

- About 185 miles of 42-inch-diameter pipeline in Conway, Faulkner, Cleburne, White, Woodruff, Saint Francis, Lee, and Phillips Counties in Arkansas; and Coahoma, Quitman, and Panola Counties in Mississippi;

¹ "We," "us," and "our" refer to the environmental staff of the FERC's Office of Energy Projects.

- A new 72,000 horsepower (hp) compressor station in White County, Arkansas;
- 18 metering and regulation (M&R) stations at planned interconnections in Conway, Faulkner, White, and Cleburne Counties, Arkansas; and Coahoma, Quitman, and Panola Counties, Mississippi;
- 18 mainline valves; and
- Up to two pig² launcher and receiver facilities at the beginning and end of the pipeline, and a pig launcher and receiver facility at the Natural Gas Pipeline Company of America (NGPL) interconnection site in White County, Arkansas.

The Fayetteville Express Pipeline Project would provide FEP with approximately 2,000,000 dekatherms per day of capacity to accommodate new natural gas production from the Fayetteville Shale in north-central Arkansas to markets served by NGPL, Texas Gas Transmission, LLC (TGT), ANR Pipeline Company (ANR), and Trunkline Gas Company, LLC (Trunkline).

A general location map of FEP's planned facilities is provided in Appendix 1.³

Land Requirements for Construction

Construction of FEP's planned facilities would require about 4,265 acres of land including aboveground facilities, pipeline, and access roads. Following construction, about 1,216 acres would be used for operation of the project's facilities. The remaining 3,049 acres of land would be restored or allowed to revert to former use along the pipeline right-of-way and aboveground facility sites.

The EA Process

The National Environmental Policy Act (NEPA) requires the Commission to take into account the environmental impacts that could result from an action

² A pig is an internal tool that can be used to clean and dry a pipeline and/or to inspect it for damage or corrosion.

³ The appendices referenced in this notice are not being printed in the **Federal Register**. Copies of all appendices, other than Appendix 1 (maps), are available on the Commission's Web site at the "eLibrary" link or from the Commission's Public Reference Room, 888 First Street, NE., Washington, DC 20426, or call (202) 502-8371. For instructions on connecting to eLibrary refer to the last page of this notice. Copies of the appendices were sent to all those receiving this notice in the mail.

whenever it considers the issuance of a Certificate of Public Convenience and Necessity. NEPA also requires us to discover and address concerns the public may have about proposals. This process is referred to as "scoping." The main goal of the scoping process is to focus the analysis in the EA on the important environmental issues. By this NOI, the Commission staff requests public comments on the scope of the issues to address in the EA. All comments received are considered during the preparation of the EA. State and local government representatives are encouraged to notify their constituents of this planned action and encourage them to comment on their areas of concern.

In the EA we will discuss impacts that could occur as a result of the construction and operation of the planned project under these general headings:

- Geology and soils.
- Land use.
- Water resources, fisheries, and wetlands.
- Cultural resources.
- Vegetation and wildlife.
- Air quality and noise.
- Endangered and threatened species.
- Safety and reliability.
- Alternatives.

We will also evaluate possible alternatives to the planned project or portions of the project, and make recommendations on how to lessen or avoid impacts on the various resource areas.

Although no formal application has been filed, we have already initiated our NEPA review under the Commission's Pre-filing Process. The purpose of the Pre-filing Process is to encourage early involvement of interested stakeholders and to identify and resolve issues before an application is filed with the FERC. As part of our Pre-filing Process review, we have begun to contact some federal and state agencies to discuss their involvement in the scoping process and the preparation of the EA. In addition, representatives from the FERC participated in public open houses sponsored by FEP in the project area on December 2-4 and December 9-10, 2008, to explain the environmental review process to interested stakeholders.

Our independent analysis of the issues will be in the EA. Depending on

the comments received during the scoping process, the EA may be published and mailed to federal, state, and local agencies, public interest groups, interested individuals, affected landowners, newspapers, libraries, and the Commission's official service list for this proceeding. A comment period will be allotted for review if the EA is published. We will consider all comments on the EA before we make our recommendations to the Commission. To ensure your comments are considered, please carefully follow the instructions in the public participation section below.

With this NOI, we are asking federal, state, and local agencies with jurisdiction and/or special expertise with respect to environmental issues to formally cooperate with us in the preparation of the EA. These agencies may choose to participate once they have evaluated the proposal relative to their responsibilities. Additional agencies that would like to request cooperating agency status should follow the instructions for filing comments provided under the Public Participation section of this NOI.

Currently Identified Environmental Issues

We have already identified several issues that we think deserve attention based on a preliminary review of the planned facilities and the environmental information provided by FEP. This preliminary list of issues may be changed based on your comments and our analysis.

- Potential impacts on National Wildlife Refuges in Arkansas;
- Construction methods at waterbody crossings; and
- Proximity to Texas Gas Transmission's Fayetteville-Greenville Expansion Project, currently completing construction.

Public Participation

You can make a difference by providing us with your specific comments or concerns about the Fayetteville Express Pipeline Project. Your comments should focus on the potential environmental effects, reasonable alternatives, and measures to avoid or lessen environmental impacts. The more specific your comments, the more useful they will be. To ensure that your comments are timely and properly recorded, please send in your comments so that they will be received in Washington, DC on or before March 2, 2009.

For your convenience, there are three methods in which you can use to submit your comments to the Commission. In

all instances please reference the project docket number PF09-4-000 with your submission. The docket numbers can be found on the front of this notice. The Commission encourages electronic filing of comments and has dedicated eFiling expert staff available to assist you at 202-502-8258 or efiling@ferc.gov.

(1) You may file your comments electronically by using the Quick Comment feature, which is located on the Commission's Internet Web site at <http://www.ferc.gov> under the link to *Documents and Filings*. A Quick Comment is an easy method for interested persons to submit text-only comments on a project;

(2) You may file your comments electronically by using the *eFiling* feature, which is located on the Commission's Internet Web site at <http://www.ferc.gov> under the link to *Documents and Filings*. *eFiling* involves preparing your submission in the same manner as you would if filing on paper, and then saving the file on your computer's hard drive. You will attach that file as your submission. New *eFiling* users must first create an account by clicking on "Sign up" or "eRegister." You will be asked to select the type of filing you are making. A comment on a particular project is considered a "Comment on a Filing;" or

(3) You may file your comments via mail to the Commission by sending an original and two copies of your letter to: Kimberly D. Bose, Secretary, Federal Energy Regulatory Commission, 888 First St., NE., Room 1A, Washington, DC 20426.

Label one copy of the comments for the attention of Gas Branch 1, PJ11.1.

Environmental Mailing List

An effort is being made to send this notice to all individuals, organizations, and government entities interested in and/or potentially affected by the planned project. This includes all landowners who are potential right-of-way grantors, whose property may be used temporarily for project purposes, or who own homes within distances defined in the Commission's regulations of certain aboveground facilities.

If you do not want to send comments at this time but still want to remain on our mailing list, please return the Information Request (Appendix 2). If you do not return the Information Request, you will be taken off the mailing list.

Becoming an Intervenor

Once FEP formally files its application with the Commission, you may want to become an "intervenor," which is an official party to the

proceeding. Intervenor play a more formal role in the process and are able to file briefs, appear at hearings, and be heard by the courts if they choose to appeal the Commission's final ruling. An intervenor formally participates in a Commission proceeding by filing a request to intervene. Instructions for becoming an intervenor are included in the User's Guide under the "eFiling" link on the Commission's Web site. Please note that you may not request intervenor status at this time. You must wait until a formal application is filed with the Commission.

Availability of Additional Information

Additional information about the project is available from the Commission's Office of External Affairs, at 1-866-208-FERC or on the FERC Internet Web site (<http://www.ferc.gov>) using the eLibrary link. Click on the eLibrary link, click on "General Search" and enter the docket number excluding the last three digits in the Docket Number field. Be sure you have selected an appropriate date range. For assistance, please contact FERC Online Support at FercOnlineSupport@ferc.gov or toll free at 1-866-208-3676, or for TTY, contact (202) 502-8659. The eLibrary link also provides access to the texts of formal documents issued by the Commission, such as orders, notices, and rulemakings.

In addition, the Commission now offers a free service called eSubscription which allows you to keep track of all formal issuances and submittals in specific dockets. This can reduce the amount of time you spend researching proceedings by automatically providing you with notification of these filings, document summaries and direct links to the documents. Go to <http://www.ferc.gov/esubscribenow.htm>.

Public meetings or site visits will be posted on the Commission's calendar located at <http://www.ferc.gov/EventCalendar/EventsList.aspx> along with other related information.

Finally, FEP has established an Internet Web site for its project at <http://www.fepipeline.com>. The site includes a project overview, contact information, regulatory overview, and construction procedures. FEP will continue to update its Web site with information about the project. You can also request additional information by calling FEP directly, at 1-501-268-7300 or e-mailing pipelineinfo@fepipeline.com.

Kimberly D. Bose,
Secretary.

[FR Doc. E9-2526 Filed 2-5-09; 8:45 am]

BILLING CODE 6717-01-P

DEPARTMENT OF ENERGY**Federal Energy Regulatory Commission**

[Docket No. AD09–3–000]

Compliance With Mandatory Reliability Standards; Guidance Order on Compliance Audits Conducted by the Electric Reliability Organization and Regional Entities

Issued January 15, 2009.

Before Commissioners: Joseph T. Kelliher, Chairman; Sudeen G. Kelly, Marc Spitzer, Philip D. Moeller, and Jon Wellinghoff

1. In this order, the Commission provides guidance on conducting compliance audits to the North American Electric Reliability Corporation (NERC), the certified Electric Reliability Organization (ERO), and the eight Regional Entities to which NERC has delegated responsibility for enforcing Commission-approved Reliability Standards within the United States.

2. NERC and Regional Entities conduct compliance audits of registered entities subject to mandatory Reliability Standards approved by the Commission. They conduct these audits pursuant to procedures approved by the Commission under FPA sections 215(c)(2)(C) (certification of the ERO) and 215(e)(4) (approval of delegation agreements), which, among other things, require that the ERO and Regional Entities provide fair and impartial procedures for enforcement of reliability standards.¹ This order provides guidance to the ERO and Regional Entities with respect to implementation of Section 3.1 of NERC's Compliance Monitoring and Enforcement Program (CMEP), which the Commission approved on April 19, 2007 pursuant to FPA sections 215(c)(2) and 215(e)(4).² This guidance stems from Commission staff observations of audits that NERC and the Regional Entities have conducted into whether particular users, owners and operators of the Bulk-Power System are complying with Reliability Standards.³

3. We require that NERC and Regional Entities "base their compliance audit processes in the U.S. on professional auditing standards recognized in the U.S., such as Generally Accepted Accounting Standards, Generally Accepted Government Auditing

Standards, and standards sanctioned by the Institute of Internal Auditors."⁴ We allow flexibility for NERC and the Regional Entities to implement their compliance audit programs in that they are to base their audit processes on these auditing standards.

4. Nevertheless, our staff has observed that additional consistency in compliance audit processes among NERC and the Regional Entities within the United States would be beneficial. We expect NERC and Regional Entities to implement the following guidance, as appropriate, in ongoing compliance audits and in all compliance audits that commence on or after the date of this order.

A. Audit Team Leadership and Training

5. In order to resolve possible perceptions that a Regional Entity's compliance staff is not sufficiently independent from the audited entity, such as the Regional Entity itself or its affiliate, NERC staff sometimes leads compliance audit teams in which Regional Entity staff participates. This is intended to assess compliance in an unbiased or professional manner.⁵ In these audits, Regional Entity staff should serve as subject matter experts, rather than lead the audit or advise on its conduct or scope. NERC staff should control the scope and conduct of a NERC-led audit and refrain from seeking advice from or involving Regional Entity staff on the direction or findings of the audit. NERC and Regional Entity staff should assume these roles from the beginning of the pre-audit stage of such a NERC-led audit until the completion of the final audit report.⁶

6. CMEP section 3.1.5 requires that for all compliance audits conducted after January 1, 2008, each audit team member must successfully complete all NERC or NERC-approved Regional Entity auditor training applicable to the audit. We suggest that NERC and Regional Entities ensure that this audit

training include skills in interviewing, choosing samples of matters to be audited, and evaluating evidence.

B. Pre-Audit Procedures

7. We suggest that NERC, in the context of developing, reviewing and updating its pre-audit questionnaires, ensure that audit team requests for information and documents about specific matters are as consistent as possible among the Regional Entities.⁷ For organizing requests for data and information, all compliance audit teams should use a database consisting of a spreadsheet that serves as a checklist for all requirements of Reliability Standards that are to be audited.

8. Compliance audit teams should request that registered entities: (1) organize responses to data requests and other audit evidence into the format that the audit team will use to match evidence to compliance with particular requirements; and (2) cross-reference the information provided to the audit team to specific requirements of the Reliability Standards being audited. Registered entities' responses should label all information that is responsive to a particular audit team request relating to specific requirements.

9. Each audit team should allot sufficient time to complete its review of responses to pre-audit data requests before beginning site visits or similar efforts. During pre-audit preparation, audit teams should identify and examine any mitigation plans and associated documentation pertaining to standard requirements to be audited, including assessing, as relevant, whether mitigation plan milestones have been met, mitigation plans have been completed in a timely manner and whether completion of a mitigation plan was sufficient to bring the registered entity into compliance with applicable requirements.⁸

C. Procedures During the Compliance Audit

10. A compliance audit should ascertain that the registered entity is in compliance with a requirement or that there is evidence that a violation of the

⁴ *North American Electric Reliability Corp.*, 122 FERC ¶ 61,245, at P 42 n.29 (2008). NERC currently so provides in CMEP section 3.1. The Commission further clarified the matter recently by requiring that in CMEP section 3.1, NERC substitute the term "Generally Accepted Auditing Standards" for "Generally Accepted Accounting Standards." *North American Electric Reliability Corp.*, 125 FERC ¶ 61,330, at P 14 n.11 (2008).

⁵ For example, NERC staff will lead any audit team conducting a compliance audit of the reliability coordinator function of the Western Electricity Coordinating Council (WECC), a Regional Entity. *North American Electric Reliability Corp.*, 119 FERC ¶ 61,059, at P 35, 39 (2007).

⁶ This guidance does not apply to compliance audits that NERC leads for other reasons, such as when NERC personnel have specialized technical knowledge of particular standards.

⁷ Cf. *Guidance on Filing Reliability Notices of Penalty*, 124 FERC ¶ 61,015, at P 21 (2008) (Notice of Penalty Guidance Order) (observing that the format and content of compliance staff forms and questionnaires directly influence the quality and relevance of the information and documentation elicited in response).

⁸ We recently highlighted the importance of ascertaining whether a mitigation plan has been completed on time, including adequate review of documentation or self-certifications submitted by a registered entity, so as to bring the registered entity into compliance with applicable requirements. Notice of Penalty Guidance Order at P 35–37.

¹ 16 U.S.C. 824o(c)(2)(C) and 824o(e)(4) (2006).

² *North American Electric Reliability Corp.*, 119 FERC ¶ 61,060, at P 41 (2007).

³ The Commission disclosed these observation audits in the *2008 Report on Enforcement* (Docket No. AD07–13–001) at 26 (issued October 31, 2008).

requirement has occurred. A compliance audit team should not consider or discuss whether a monetary penalty or some other sanction would be appropriate if the Regional Entity finds that the registered entity has violated the requirement. Nor should a compliance audit team base its decision regarding whether evidence of a violation exists upon the resources or time needed for litigation or settlement of a related notice of alleged violation.⁹ The Commission would look with disfavor on the conclusions of a compliance audit that is based in any way on these considerations.

11. We emphasize that NERC and Regional Entities need to be as consistent as possible about the level of evidence or documentation that is needed to demonstrate compliance for particular requirements.

12. A compliance audit conducted by NERC or a Regional Entity should include an assessment of the registered entity's Reliability Standards compliance program. We suggest that NERC and the Regional Entities discuss how NERC's audit guidelines and audit data requests and questionnaires could better elicit information on the factors discussed in our recent Policy Statement on Compliance.¹⁰

13. If an audit team learns about a situation that does not appear to involve a current or ongoing violation of a Reliability Standard requirement, but instead represents an area of concern that could become a violation, we expect the team to notify the registered entity of the situation, discuss it with the entity, and document such discussions in the compliance audit report. We remind audit teams that they are expected to fully test compliance with any non-actively monitored standard if the teams find evidence during the audit of non-compliance with such a standard.¹¹

14. We believe implementation of this guidance will improve the consistency of compliance audits relating to Reliability Standards and result in greater compliance with them.

By the Commission.

Kimberly D. Bose,
Secretary.

[FR Doc. E9-2527 Filed 2-5-09; 8:45 am]

BILLING CODE 6717-01-P

⁹ This separation of roles is consistent with our own staff's practice. See *2008 Report on Enforcement at 26-27*.

¹⁰ *Compliance with Statutes, Regulations, and Orders*, 125 FERC ¶ 61,058 (2008).

¹¹ See NERC Rule of Procedure 401.6 and CMEP section 3.1.4.

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP09-51-000]

Natural Gas Pipeline Company of America LLC; Notice of Request Under Blanket Authorization

January 29, 2009.

Take notice that on January 22, 2009, Natural Gas Pipeline Company of America LLC (Natural), 3250 Lacey Road, Suite 700, Downers Grove, Illinois 60515, filed in Docket No. CP09-51-000, an application pursuant to sections 157.205, 157.208, 157.211 and 157.212 of the Commission's Regulations under the Natural Gas Act (NGA) as amended, to construct, install, own, operate, and maintain facilities necessary to deliver natural gas to the Southwest Louisiana Lateral (Southwest Loop), which is partially owned by Transcontinental Gas Pipe Line Corporation (Transco), and to Bridgeline Holdings, L.P. (Bridgeline), both located in Johnson Bayou, Cameron Parish, Louisiana, under Natural's blanket certificate issued in Docket No. CP82-402-000,¹ all as more fully set forth in the application which is on file with the Commission and open to the public for inspection.

Natural proposes to construct, install, own, operate, and maintain a metering platform, dual metering facilities, taps, and such other appurtenant facilities required to effect the interconnects to deliver up to 200,000 Dth/day of natural gas to the Southwest Loop or to deliver up to 200,000 Dth/day of natural gas to Bridgeline. Natural states that it would cost an estimated \$11,900,000 to construct the proposed facilities.

Any questions concerning this application may be directed to Bruce H. Newsome, Vice President, Regulatory Products and Services, Natural Gas Pipeline Company of America LLC, 3250 Lacey Road, 7th Floor, Downers Grove, Illinois 60515-7918, or via telephone at (630) 725-3070, or by e-mail bruce_newsome@kindermorgan.com.

This filing is available for review at the Commission or may be viewed on the Commission's Web site at <http://www.ferc.gov>, using the "eLibrary" link. Enter the docket number excluding the last three digits in the docket number filed to access the document. For assistance, please contact FERC Online Support at FERC OnlineSupport@ferc.gov or call toll-free at (866) 206-3676, or, for TTY, contact

¹ 20 FERC ¶ 62,415 (1982).

(202) 502-8659. Comments, protests and interventions 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 intervenors to file electronically.

Any person or the Commission's staff may, within 60 days after issuance of the instant notice by the Commission, file pursuant to Rule 214 of the Commission's Procedural Rules (18 CFR 385.214) a motion to intervene or notice of intervention and pursuant to Section 157.205 of the regulations under the NGA (18 CFR 157.205), a protest to the request. If no protest is filed within the time allowed therefore, the proposed activity shall be deemed to be authorized effective the day after the time allowed for filing a protest. If a protest is filed and not withdrawn within 30 days after the allowed time for filing a protest, the instant request shall be treated as an application for authorization pursuant to Section 7 of the NGA.

Kimberly D. Bose,

Secretary.

[FR Doc. E9-2523 Filed 2-5-09; 8:45 am]

BILLING CODE 6717-01-P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. PR08-17-000]

Bay Gas Storage Company, Ltd.; Notice of Staff Panel

January 30, 2009.

Take notice that the Commission will convene a staff panel in the above-referenced proceeding on Thursday, February 26, 2009, at 9:30 a.m. (EDT), in a room to be designated at the offices of the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

This Staff Panel will review the factual basis for Bay Gas's 2008 annual adjustment to its Lost And Unaccounted For (LAUF) gas tracker/true-up mechanism. A previous Commission Order in this docket, 126 FERC ¶ 61,018 (January 12, 2009), ordered this Staff Panel to gather evidence in order to determine whether the updated LAUF recovery percentages reflected in Bay Gas's petition are fair and equitable.

FERC conferences are accessible under section 508 of the Rehabilitation Act of 1973. For accessibility accommodations please send an e-mail to accessibility@ferc.gov or call toll free

(866) 208-3372 (voice) or 202-502-8659 (TTY), or send a fax to 202-208-2106 with the required accommodations.

All interested persons are permitted to attend. For further information please contact Vince Mareino at (202) 502-6167 or e-mail Vince.Mareino@ferc.gov.

Kimberly D. Bose,
Secretary.

[FR Doc. E9-2525 Filed 2-5-09; 8:45 am]

BILLING CODE 6717-01-P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket Nos. RP08-591-000]

Equitrans, L.P.; Notice of Technical Conference

January 30, 2009.

Take notice that Commission Staff is rescheduling the technical conference in the above-referenced proceedings, which was previously set to take place on Wednesday, January 28, 2009, to Thursday, February 5, 2009 at 10 a.m. (EST), in a room to be designated at the offices of the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

FERC conferences are accessible under section 508 of the Rehabilitation Act of 1973. For accessibility accommodations please send an e-mail to accessibility@ferc.gov or call toll free (866) 208-3372 (voice) or (202) 502-8659 (TTY), or send a fax to (202) 208-2106 with the required accommodations.

All interested persons are permitted to attend. For further information please contact Anna Fernandez at (202) 502-6682 or e-mail Anna.Fernandez@ferc.gov.

Kimberly D. Bose,
Secretary.

[FR Doc. E9-2524 Filed 2-5-09; 8:45 am]

BILLING CODE 6717-01-P

DEPARTMENT OF ENERGY

Western Area Power Administration

Interconnection of the Proposed Deer Creek Station Energy Facility Project, South Dakota

AGENCY: Western Area Power Administration, U.S. Department of Energy.

ACTION: Notice of Intent to prepare an Environmental Impact Statement and to conduct scoping meetings; Notice of floodplain and wetlands involvement.

SUMMARY: The Western Area Power Administration (Western), an agency within the U.S. Department of Energy (DOE), intends to prepare an environmental impact statement (EIS) for the interconnection of the proposed Deer Creek Station Energy Facility (Project) in South Dakota, in accordance with the National Environmental Policy Act of 1969 (NEPA), as amended, DOE NEPA Implementing Procedures (10 CFR 1021), and the Council on Environmental Quality (CEQ) regulations for implementing NEPA (40 CFR 1500-1508). Basin Electric Power Cooperative (Basin Electric) has requested to interconnect the proposed Project to Western's power transmission system. The EIS will address Western's Federal action of whether to allow interconnection at its White Substation, and to make any necessary modifications to Western facilities to accommodate the interconnection. The EIS will also review the potential environmental impacts of constructing, operating, and maintaining Basin Electric's proposed Project, which includes a 300 megawatt (MW) combined-cycle natural gas generation facility and associated electric, natural gas, and water lines that would be constructed east of White in Brookings and Deuel counties, South Dakota. Portions of Basin Electric's proposed Project may affect floodplains and wetlands, so this Notice of Intent also serves as a notice of proposed floodplain or wetland action, in accordance with 10 CFR 1022.12 (a). Western will hold a public scoping meeting near the Project area to share information and receive comments and suggestions on the scope of the EIS.

DATES: An open-house public scoping meeting will be held on February 24, 2009, in White, South Dakota, from 6 p.m. to 9 p.m. CST. The public scoping period starts with the publication of this notice in the **Federal Register** and will continue through April 7, 2009. To be assured of consideration, all fax or e-mail comments or suggestions regarding the appropriate scope of the EIS must be received by the end of the scoping period. Mailed comments must be postmarked no later than midnight on the last day of the scoping period.

ADDRESSES: The open-house public scoping meeting will be held at the following location starting at 6 p.m. CST.: February 24, 2009, McKnight Community Hall, 228 West Main Street, White, SD 57276.

Written comments on the scope of the EIS should be addressed to the following: Mr. Matt Marsh, NEPA Document Manager, Western Area

Power Administration, Upper Great Plains Customer Service Region, P.O. Box 35800, Billings, MT 59107-5800, fax (406) 247-7408, or e-mail DeerCreekStationEIS@wapa.gov.

FOR FURTHER INFORMATION CONTACT: For information on the proposed Project, the EIS process, and general information about interconnections with Western's transmission system, contact Mr. Marsh at the address provided above. Parties wishing to be placed on the Project mailing list for future information, and to receive copies of the Draft and Final EIS when they are available, should also contact Mr. Marsh.

For general information on DOE NEPA review procedures or status of a NEPA review, contact Ms. Carol M. Borgstrom, Director of NEPA Policy and Compliance, GC-20, U.S. Department of Energy, 1000 Independence Avenue SW., Washington, DC 20585, telephone (202) 586-4600 or (800) 472-2756.

SUPPLEMENTARY INFORMATION: Western, an agency within DOE, markets Federal hydroelectric power to preference customers, as specified by law. These customers include municipalities, cooperatives, public utilities, irrigation districts, Federal and State agencies, and Native American Tribes in 15 western states, including South Dakota. Western owns and operates about 17,000 miles of transmission line.

Basin Electric is a regional wholesale electric generation and transmission cooperative owned and controlled by its member cooperatives. Basin Electric serves approximately 2.5 million customers covering 430,000 square miles in portions of nine states, including Colorado, Iowa, Minnesota, Montana, Nebraska, New Mexico, North Dakota, South Dakota, and Wyoming.

Project Description

Basin Electric has requested interconnection with Western's electric transmission system at White Substation, located in Brookings County, South Dakota. Western's Federal action is to consider Basin Electric's interconnection request under Western's Open Access Transmission Service Tariff and make a decision whether to approve or deny the interconnection request. If the decision is to approve the request, Western's action would include making necessary system modifications to accommodate the interconnection of Basin Electric's proposed Project.

Basin Electric's proposed Project is to construct, own, operate, and maintain the Deer Creek Station Energy Facility Project, a 300 MW combined-cycle natural gas generation facility, water

pipeline, transmission lines, transmission interconnection(s), and other associated facilities, all in Brookings and Deuel counties in eastern South Dakota. The purpose of the proposed Project is to help serve increased load demand for electric power in the eastern portion of Basin Electric's service area. Basin Electric's eastern service area comprises western Nebraska, northwestern and central Iowa, portions of southern Minnesota, all of South Dakota, portions of eastern Montana, and western and central North Dakota. The need for additional generating capacity is driven by the increasing electrical power usage of the Basin Electric membership consumers. Between 1999 and 2006, Basin Electric's total system peak demand increased 752 MW from 1,195 MW to 1,947 MW, or approximately 107 MW per year. In 2007 Basin Electric prepared a forecast showing load and capability surpluses/deficits through the year 2021. The forecast predicts that by 2014, there will be a deficit of 800-900 MW for the eastern portion of their service area. The proposed Project's addition of 300 MW of generation will help meet Basin Electric's future energy requirements.

Basin Electric's proposed Project is subject to the jurisdiction of the South Dakota Public Utilities Commission (SDPUC) which has regulatory authority for siting power plants and transmission lines within the State. Basin Electric will submit an application for an Energy Conversion Facility Permit and a Route Permit to the SDPUC. The SDPUC permits would authorize Basin Electric to construct the proposed Project under South Dakota rules and regulations.

Western intends to prepare an EIS to analyze the impacts of its Federal action and Basin Electric's proposed Project in accordance with the NEPA, as amended, DOE NEPA Implementing Procedures (10 CFR 1021), and the CEQ regulations for implementing NEPA (40 CFR 1500-1508). While Western's Federal action would be limited to the approval or denial of the interconnection request and any modifications to Western's power system necessary to accommodate the interconnection, the EIS will also identify and address the environmental impacts of Basin Electric's proposed Project. Basin Electric has identified two preliminary alternative generation sites and associated linear facilities, located approximately 20 miles east of Brookings and 60 miles northeast of Sioux Falls. The EIS will evaluate these alternatives, any other viable alternatives to Basin Electric's proposed Project identified during the public scoping process, and the No Action

Alternative in detail. The two preliminary alternative generation facility sites are:

- The White Site I (Brookings County, T111N R48W, Section 25 NE Quarter).
- The White Site II (Brookings County, T111N R48W, Section 2 NW Quarter).

Basin Electric's two alternative locations are in close proximity to the Northern Border Natural Gas Pipeline, water sources, and the existing transmission system for the delivery of power to its members. The proposed generation facility would require new infrastructure, including 10 to 14 miles of natural gas pipeline, up to a mile of 345-kilovolt (kV) transmission line, 3 to 4 miles of water pipeline, groundwater wells, a substation (on White Site II only), road access to the generation facility, and wastewater processing.

Selection of White Site I would require the construction of a 345-kV single circuit transmission line so that power generated could be transmitted to the existing Western White Substation. White Site II would include construction of an on-site substation. A short double circuit 345-kV transmission line would be needed to transmit power from the on-site substation to the existing 345-kV transmission line, located approximately 1/2 mile east of the White Site II.

For the 300 MW generation facility, Basin Electric proposes using a combined-cycle configuration where the exhaust from the combustion turbine generators passes through a heat recovery steam generator that extracts waste heat from the turbine exhaust. The recovery of the waste heat greatly increases the efficiency of the combined-cycle configuration. Most of the new base load fossil-fuel fired power plants built in the United States since the early 1990s have used combined-cycle technology. The generation facility would burn natural gas and would occupy approximately 40 acres.

Because Basin Electric's proposed Project may involve action in floodplains or wetlands, this Notice of Intent also serves as a notice of proposed floodplain or wetland action, in accordance with 10 CFR 1022.12 (a). The EIS will include a floodplain/wetland assessment and floodplain/wetland statement of findings following DOE regulations for compliance with floodplain and wetlands environmental review (10 CFR 1022).

Agency Responsibilities

Western is the lead Federal agency, as defined at 40 CFR 1501.5 for preparation of the NEPA analysis. The

Rural Utilities Service of the U.S. Department of Agriculture has been invited by Western to be a cooperating agency. With this notice, Native American Tribes and agencies with jurisdiction or special expertise are invited to be cooperating agencies. Such tribes or agencies may make a request to Western to be a cooperating agency by contacting Western's NEPA Document Manager. Designated cooperating agencies have certain responsibilities to support the NEPA process, as specified at 40 CFR 1501.6 (b).

Environmental Issues

This notice is to inform agencies and the public of Western's Federal action and Basin Electric's proposed Project, and to solicit comments and suggestions for consideration in preparing the EIS. To help the public frame its comments, this notice contains a list of potential environmental issues Western has tentatively identified for analysis. These issues include:

1. Impacts on protected, threatened, endangered, or sensitive species of animals or plants or their critical habitats;
2. Impacts on other biological resources;
3. Impacts on land use, recreation, and transportation;
4. Impacts on floodplains and wetlands;
5. Impacts on cultural or historic resources and tribal values;
6. Impacts on human health and safety;
7. Impacts on air, soil, and water resources (including air quality, surface water impacts, and ground water impacts);
8. Visual impacts; and
9. Socioeconomic impacts and disproportionately high and adverse impacts to minority and low-income populations.

This list is not intended to be all-inclusive or to imply any predetermination of impacts. Environmental issues associated with Western's action and Basin Electric's proposed Project will be addressed separately in the EIS. Western invites interested parties to suggest specific issues within these general categories, or other issues not included above, to be considered in the EIS.

Public Participation

Public participation and full disclosure are planned for the entire EIS process. The EIS process will include the public scoping open house meeting and a scoping comment period to solicit comments from interested parties; consultation and involvement with

appropriate Federal, State, local, and tribal governmental agencies; public review and a hearing on the draft EIS; publication of a final EIS; and publication of a Record of Decision expected in 2010. Additional informal public meetings may be held in the proposed Project area if public interest and issues indicate a need.

Western will hold an open-house public scoping meeting on February 24, 2009, in White, South Dakota, as noted above. The purpose of the scoping meeting is to provide information about Western's Federal action and Basin Electric's proposed Project, display maps, answer questions, and take written comments from interested parties. Attendees are welcome to come and go at their convenience and to speak one-on-one with Western and Basin Electric representatives. The public will have the opportunity to provide written comments at the meeting. In addition, attendees may provide written comments by fax, e-mail, or mail as discussed under **DATES** above.

Dated: January 30, 2009.

Timothy J. Meeks,

Administrator.

[FR Doc. E9-2552 Filed 2-5-09; 8:45 am]

BILLING CODE 6450-01-P

ENVIRONMENTAL PROTECTION AGENCY

[EPA-HQ-SFUND-2009-0078; FRL-8771-9]

Agency Information Collection Activities; Proposed Collection; Comment Request; Brownfields Program—Revitalization Grantee Reporting (Renewal); EPA ICR No. 2104.03, OMB Control No. 2050-0192

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (PRA) (44 U.S.C. 3501 *et seq.*), this document announces that EPA is planning to submit a request to renew an existing approved Information Collection Request (ICR) to the Office of Management and Budget (OMB). This ICR is scheduled to expire on July 31, 2009. Before submitting the ICR to OMB for review and approval, EPA is soliciting comments on specific aspects of the proposed information collection as described below.

DATES: Comments must be submitted on or before April 7, 2009.

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

SFUND-2009-0078, by one of the following methods:

- *www.regulations.gov:* Follow the on-line instructions for submitting comments.
- *E-mail:* docket.superfund@epa.gov.
- *Fax:* 202-566-0276.
- *Mail:* EPA Docket Center (EPA/DC), Environmental Protection Agency, Mailcode: 28221T, 1200 Pennsylvania Ave., NW., Washington, DC 20460.

• *Hand Delivery:* EPA Docket Center, Environmental Protection Agency, Room 3334, 1301 Constitution Ave., NW., 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-SFUND-2009-0078. EPA's policy is that all comments received will be included in the public docket without change and may be made available online at www.regulations.gov, including any personal information provided, unless the comment includes information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Do not submit information that you consider to be CBI or otherwise protected through www.regulations.gov or e-mail. The www.regulations.gov Web site is an "anonymous access" system, which means EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an e-mail comment directly to EPA without going through www.regulations.gov your e-mail address will be automatically captured and included as part of the comment that is placed in the public docket and made available on the Internet. If you submit an electronic comment, EPA recommends that you include your name and other contact information in the body of your comment and with any disk or CD-ROM you submit. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses. For additional information about EPA's public docket visit the EPA Docket Center homepage at <http://www.epa.gov/epahome/dockets.htm>.

FOR FURTHER INFORMATION CONTACT:

Rachel Lentz, Environmental Protection Agency, Office of Brownfields and Land Revitalization, (5105-T), Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460;

telephone number: 202-566-2745; fax number: 202-566-1476; e-mail address: lentz.rachel@epa.gov.

SUPPLEMENTARY INFORMATION:

How Can I Access the Docket and/or Submit Comments?

EPA has established a public docket for this ICR under Docket ID No. EPA-HQ-SFUND-2009-0078, which is available for online viewing at www.regulations.gov, or in person viewing at the EPA Docket Center (EPA/DC), EPA West, Room 3334, 1301 Constitution Ave., NW., Washington, DC. The EPA/DC Public Reading Room is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Reading Room is 202-566-1744, and the telephone number for the Superfund Docket is 202-566-9744.

Use www.regulations.gov to obtain a copy of the draft collection of information, submit or view public comments, access the index listing of the contents of the docket, and to access those documents in the public docket that are available electronically. Once in the system, select "search," then key in the docket ID number identified in this document.

What Information Is EPA Particularly Interested in?

Pursuant to section 3506(c)(2)(A) of the PRA, EPA specifically solicits comments and information to enable it to:

- (i) 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;
- (ii) 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;
- (iii) Enhance the quality, utility, and clarity of the information to be collected; and
- (iv) 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. In particular, EPA is requesting comments from very small businesses (those that employ less than 25) on examples of specific additional efforts that EPA could make to reduce the paperwork burden for very small businesses affected by this collection.

What Should I Consider When I Prepare My Comments for EPA?

You may find the following suggestions helpful for preparing your comments:

1. Explain your views as clearly as possible and provide specific examples.
2. Describe any assumptions that you used.
3. Provide copies of any technical information and/or data you used that support your views.
4. If you estimate potential burden or costs, explain how you arrived at the estimate that you provide.
5. Offer alternative ways to improve the collection activity.
6. Make sure to submit your comments by the deadline identified under **DATES**.
7. To ensure proper receipt by EPA, be sure to identify the docket ID number assigned to this action in the subject line on the first page of your response. You may also provide the name, date, and **Federal Register** citation.

What Information Collection Activity or ICR Does This Apply to?

Affected entities: Entities potentially affected by this action are: General purpose units of local government; land clearance authorities or other quasi-governmental entities that operate under the supervision and control of, or as an agent of, a general purpose unit of local government; government entities created by State legislature; regional councils or groups of general purpose units of local government; redevelopment agencies that are chartered or otherwise sanctioned by the State; States; Indian Tribes other than in Alaska; Alaska Native Regional Corporations, Alaska Native Village Corporations, and Metlakatla Indian Communities; and non-profit organizations.

Title: Brownfields Program—Revitalization Grantee Reporting (Renewal).

ICR numbers: EPA ICR No. 2104.03, OMB Control No. 2050-0192.

ICR status: This ICR is currently scheduled to expire on July 31, 2009. An Agency may not conduct or sponsor, and a person is not required to respond to, a collection of information, unless it displays a currently valid OMB control number. The OMB control numbers for EPA's regulations in title 40 of the CFR, after appearing in the **Federal Register** when approved, are listed in 40 CFR part 9, are displayed either by publication in the **Federal Register** or by other appropriate means, such as on the related collection instrument or form, if applicable. The display of OMB

control numbers in certain EPA regulations is consolidated in 40 CFR part 9.

Abstract: The Small Business Liability Relief and Brownfields Revitalization Act (Pub. L. 107-118) ("the Brownfields Amendments") was signed into law on January 11, 2002. The Act amends the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA), as amended, and authorizes EPA to award grants to States, tribes, local governments, and other eligible entities to assess and clean up brownfields sites. Under the Brownfields Amendments, a brownfields site means real property, the expansion, redevelopment, or reuse of which may be complicated by the presence or potential presence of a hazardous substance, pollutant, or contaminant. For grant funding purposes, EPA uses the term "brownfields property(ies)" synonymously with the term "brownfields sites." The Brownfields Amendments authorize EPA to award several types of grants to eligible entities on a competitive basis. Under subtitle A of the Small Business Liability Relief and Brownfields Revitalization Act, States, tribes, local governments, and other eligible entities can receive assessment grants to inventory, characterize, assess, and conduct planning and community involvement related to brownfields properties; cleanup grants to carry out cleanup activities at brownfields properties; grants to capitalize revolving loan funds and provide subgrants for cleanup activities; and job training grants to support the creation and implementation of environmental job training and placement programs. Under subtitle C of the Small Business Liability Relief and Brownfields Revitalization Act, States and tribes can receive grants to establish and enhance their response programs. The grants support activities necessary to establish or enhance four elements of state and tribal response programs and to meet the public record requirements under the statute. The four elements eligible for grant funding include: (a) Timely survey and inventory of brownfield sites in the State or in the tribal land; (b) oversight and enforcement authorities or other mechanisms and resources; (c) mechanisms and resources to provide meaningful opportunities for public participation; and (d) mechanisms for approval of a cleanup plan and verification and certification that cleanup is complete. States and tribes that receive funding under subtitle C must establish a public record system

during the grant funding period unless an adequate public record system is already established.

Grant recipients have general reporting and record keeping requirements as a condition of their grant that result in burden. A portion of this reporting and recordkeeping burden is authorized under 40 CFR Parts 30 and 31 and identified in the EPA's general grants ICR (OMB Control Number 2030-0020). EPA requires Brownfields program grant recipients to maintain and report additional information to EPA on the uses and accomplishments associated with the funded brownfields activities. EPA uses several forms to assist grantees in reporting the information and to ensure consistency of the information collected. EPA uses this information to meet Federal stewardship responsibilities to manage and track how program funds are being spent, to evaluate the performance of the Brownfields Cleanup and Redevelopment Program, to meet the Agency's reporting requirements under the Government Performance Results Act, and to report to Congress and other program stakeholders on the status and accomplishments of the grants program.

This ICR addresses the burden imposed on grant recipients that are associated with those reporting and recordkeeping requirements that are specific to grants awarded under the Small Business Liability Relief and Brownfields Revitalization Act. This ICR renewal modifies the annual reporting and recordkeeping burden under the previous ICR. The modified burden reflects an increase in the number of respondents subject to the reporting and recordkeeping requirements, and improvements to the reporting forms based on EPA's experience implementing the grant program. Specifically, subtitle C grant recipients are now subject to the reporting and recordkeeping requirements previously established for subtitle A grant recipients. By using the same form to report information on grant activities, EPA is adopting a streamlined approach that avoids potential confusion among grant recipients and allows the Agency to collect and report program information consistently across all brownfields grants. EPA is also modifying the reporting form to simplify and clarify the reporting requirements, which will improve the accuracy of information reported and minimize the burden to grant recipients.

Burden Statement: The annual public reporting and recordkeeping burden for this collection of information is estimated to average 1.25 hours per

response. Burden means the total time, effort, or financial resources expended by persons to generate, maintain, retain, or disclose or provide information to or for a Federal agency. This includes the time needed to review instructions; develop, acquire, install, and utilize technology and systems for the purposes of collecting, validating, and verifying information, processing and maintaining information, and disclosing and providing information; adjust the existing ways to comply with any previously applicable instructions and requirements which have subsequently changed; train personnel to be able to respond to a collection of information; search data sources; complete and review the collection of information; and transmit or otherwise disclose the information.

The ICR provides a detailed explanation of the Agency's estimate, which is only briefly summarized here:

Estimated total number of potential respondents: 294.

Frequency of response: Bi-annual for subtitle C grant recipients; quarterly for subtitle A grant recipients.

Estimated total average number of responses for each respondent: 20.

Estimated total annual burden hours: 8,683.

Estimated total annual costs: \$547,345. This includes an estimated burden cost of \$547,345 and an estimated cost of \$0 for capital investment or maintenance and operational costs.

Are There Changes in the Estimates From the Last Approval?

There is no change in hours in the total estimated respondent burden compared with that identified in the ICR currently approved by OMB.

What Is the Next Step in the Process for This ICR?

EPA will consider the comments received and amend the ICR as appropriate. The final ICR package will then be submitted to OMB for review and approval pursuant to 5 CFR 1320.12. At that time, EPA will issue another **Federal Register** notice pursuant to 5 CFR 1320.5(a)(1)(iv) to announce the submission of the ICR to OMB and the opportunity to submit additional comments to OMB. If you have any questions about this ICR or the approval process, please contact the technical person listed under **FOR FURTHER INFORMATION CONTACT.**

Dated: January 29, 2009.

David R. Lloyd,

Director, Office of Brownfields and Land Revitalization.

[FR Doc. E9-2558 Filed 2-5-09; 8:45 am]

BILLING CODE 6560-50-P

ENVIRONMENTAL PROTECTION AGENCY

[ER-FRL-8590-3]

Environmental Impact Statements and Regulations; Availability of EPA Comments

Availability of EPA comments prepared pursuant to the Environmental Review Process (ERP), under section 309 of the Clean Air Act and Section 102(2)(c) of the National Environmental Policy Act as amended. Requests for copies of EPA comments can be directed to the Office of Federal Activities at 202-564-7146.

An explanation of the ratings assigned to draft environmental impact statements (EISs) was published in FR dated April 6, 2008 (73 FR 19833).

Draft EISs

EIS No. 20080408, ERP No. D-COE-E15002-GA, Fort McPherson Project, Disposal and Reuse, Implementation, in City Limits of Atlanta, Fulton County, GA.

Summary: EPA expressed environmental concerns about potential impacts to air quality, as well as water supply and water quality; and requested that the Final EIS account for drought conditions and impaired stream impacts. EPA also requested that the DOA consider encumbrances that would be protective of water quality and encourage local community participation in the implementation of the proposed action. Rating EC1.

EIS No. 20080421, ERP No. D-NSA-D11045-MD, Fort George G. Meade Utilities Upgrade Project, Proposes to Construct and Operate (1) North Utility Plant (2) South Generator Facility and (3) Central Boiler Plant, Fort George M. Meade, MD.

Summary: EPA expressed environmental concerns about impacts to forested resources on the Forest Conservation Area. Rating EC2.

EIS No. 20080451, ERP No. D-COE-K80051-CA, University of California (UC) Merced Campus and University Community Project, Development of a Major Research University, To Allow for the Discharge of Fill Material into 76.7 Acres of Wetlands, U.S. Army COE Section 404 Permit, Merced County, CA.

Summary: EPA expressed environmental concerns about the potential impacts to wetlands, groundwater supply, and air quality. EPA also recommended measures to reduce greenhouse gas emissions, and recommended additional information on cumulative and growth inducing impacts be provided in the Final EIS. Rating EC2.

EIS No. 20080480, ERP No. D-USN-C11023-NJ, Laurelwood Housing Area, Access at Naval Weapons Station Earle, Lease Agreement, Monmouth County, NJ.

Summary: EPA does not object to the proposed project. Rating LO.

EIS No. 20080481, ERP No. D-NOA-K80052-CA, Southwest Fisheries Science Center Replacement, Construction and Operation, located on University of California, San Diego Scripps Institute of Oceanography Campus, La Jolla, CA.

Summary: EPA expressed environmental concerns about air quality construction impacts, and impacts to Diegan coastal sage scrub. Rating EC2.

EIS No. 20080506, ERP No. D-USA-E11069-GA, Maneuver Center of Excellence at Fort Benning, Georgia Project, Proposed Community Services, Personnel Support, Classroom Barracks, and Dining Facilities would be constructed in three of the four Cantonment Areas, Fort Benning, GA.

Summary: EPA expressed environmental concerns about impacts to aquatic habitats, water resources, and wetlands. Rating EC2.

EIS No. 20080440, ERP No. DA-COE-K39052-CA, Hamilton Wetland Restoration Project, Dredged Material Aquatic Transfer Facility, Implementation, Marin County, CA.

Summary: EPA expressed environmental concerns because of the lack of information regarding avoiding impacts to green sturgeon and long-fin smelt and recommended coordination with NOAA Fisheries. Additional concerns include water quality monitoring, reducing criteria pollutant emissions, and consistency with local dredge sediment disposal goals. Rating EC2.

Final EISs

EIS No. 20080456, ERP No. F-COE-D40340-PA, Southern Beltway Transportation Project, Transportation Improvement between I-79 to Mon/Fayette Expressway (PA Turnpike 43), Application for U.S. Army COE Section 404 Permit, Washington County, PA.

Summary: EPA expressed environmental concerns about potential impacts to wetlands, and recommended additional efforts to avoid, minimize, and mitigate those impacts. EPA also expressed concerns about the methodology used to identify and assess potential environmental justice issues.

EIS No. 20080522, ERP No. F-NRC-E06026-CA, GENERIC—License Renewal of Nuclear Plants, Supplement 34 to NUREG-1437, Regarding Vogtle Electric Generating Plant Units 1 and 2 (VEGP) near Waynesboro, GA.

Summary: EPA expressed environmental concerns about radiological monitoring of plant effluents, and requested appropriate storage and disposition of radioactive waste.

EIS No. 20080534, ERP No. F-IBR-L39041-WA, Yakima River Basin Water Storage Feasibility Study, Create Additional Water Storage, Benton, Yakima, Kittitas Counties, WA.

Summary: EPA does not object to the preferred alternative for the project.

EIS No. 20080478, ERP No. FS-COE-K32046-CA, Pacific Los Angeles Marine Terminal, Pier 400 Berth 408 Project, Construction and Operation of a new Marine Terminal, U.S. Army COE Section 10 and 404 Permits, Port of Los Angeles, Los Angeles County, CA.

Summary: EPA reiterated its environmental concerns about impacts to air quality, environmental justice communities, and aquatic resources. EPA recommended commitments to reduce and mitigate air quality impacts, implementation of a health impact assessment to identify appropriate mitigations for disproportionately affected neighboring communities, and mitigation for fill.

Dated: February 3, 2009.

Robert W. Hargrove,

Director, NEPA Compliance Division, Office of Federal Activities.

[FR Doc. E9-2555 Filed 2-5-09; 8:45 am]

BILLING CODE 6560-50-P

ENVIRONMENTAL PROTECTION AGENCY

[ER-FRL-8590-2]

Environmental Impact Statements; Notice of Availability

Responsible Agency: Office of Federal Activities, General Information (202) 564-1399 or <http://www.epa.gov/compliance/nea/>.

Weekly receipt of Environmental Impact Statements

Filed 01/26/2009 Through 01/30/2009 Pursuant to 40 CFR 1506.9

EIS No. 20090027, Final EIS, FHW, TX, Grand Parkway/State Highway 99 Improvement Project, Segment G, from Interstate Highway (IH) 45 to U.S. 59, Funding, Right-of-Way Grant, U.S. Army COE Section 404 Permit, Harris and Montgomery Counties, TX, Wait Period Ends: 03/16/2009, Contact: Justin Ham 512-536-5963

EIS No. 20090028, Draft EIS, NPS, IN, Indiana Dunes National Lakeshore, Draft White-Tailed Deer Management Plan, Implementation, Lake, Porter, LaPorte Counties, IN, Comment Period Ends: 04/06/2009, Contact: Nick Chevance 402-661-1844

EIS No. 20090029, Final EIS, NSA, MD, Fort George G. Meade Utilities Upgrade Project, Proposes to Construct and Operate (1) North Utility Plant (2) South Generator Facility and (3) Central Boiler Plant, Fort George M. Meade, MD, Wait Period Ends: 03/09/2009, Contact: Jeffrey D. Williams 301-688-2970

EIS No. 20090030, Final EIS, COE, CO, Fort Carson Grow the Army Stationing Decision, Constructing New Facilities to Support Additional Soldiers and their Families, Portions of El Paso, Pueblo and Fremont Counties, CO, Wait Period Ends: 03/09/2009, Contact: Mike Ackerman 410-436-2522

EIS No. 20090031, Second Draft EIS (Tiering), FHW, IN, I-69 Evansville to Indianapolis, Indiana Project, Section 2, Oakland City to Washington, (IN-64 to U.S. 50), Gibson, Pike and Daviess Counties, IN, Comment Period Ends: 06/08/2009, Contact: Janice Osadczyk 317-226-7486

EIS No. 20090032, Second Draft EIS (Tiering), FHW, IN, I-69 Evansville to Indianapolis, Indiana Project, Section 3, Washington to Crane NSWC (US 50 to U.S. 231), Daviess, Greene, Knox and Martin Counties, IN, Comment Period Ends: 06/08/2009, Contact: Janice Osadczyk 317-226-7486

Amended Notices

EIS No. 20080007, Final EIS, STA, 00, Keystone Oil Pipeline Project, Proposed Construction, Connection, Operation and Maintenance, Applicant for Presidential Permit, ND, SD, NE, KS, MO, IL and OK, Contact: Nicholas J. Stas, 406-247-7399

Amended Notice: The U.S.

Department of Energy's, Western Area Power Administration (DOE/WPA) has ADOPTED the U.S. Department of State's FEIS #2008007 filed on 01/04/

2008. DOE/WPA was a Cooperating Agency for the above project. Recirculation of the FEIS is not necessary under 40 CFR 1506.3(c).

Dated: February 3, 2009.

Robert W. Hargrove,

Director, NEPA Compliance Division, Office of Federal Activities

[FR Doc. E9-2556 Filed 2-5-09; 8:45 am]

BILLING CODE 6560-50-P

FEDERAL COMMUNICATIONS COMMISSION

Notice of Public Information Collection(s) Being Submitted for Review to the Office of Management and Budget

February 3, 2009.

SUMMARY: The Federal Communications Commission, as part of its continuing effort to reduce paperwork burden invites the general public and other Federal agencies to take this opportunity to comment on the following information collection(s), as required by the Paperwork Reduction Act (PRA) of 1995, 44 U.S.C. 3501-3520. An agency may not conduct or sponsor a collection of information unless it displays a currently valid control number. No person shall be subject to any penalty for failing to comply with a collection of information subject to the Paperwork Reduction Act (PRA) that does not display a valid control number. Comments are requested concerning (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; (b) the accuracy of the Commission's burden estimate; (c) ways to enhance the quality, utility, and clarity of the information collected; and (d) ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology.

DATES: Written Paperwork Reduction Act (PRA) comments should be submitted on or before April 7, 2009. If you anticipate that you will be submitting PRA comments, but find it difficult to do so within the period of time allowed by this notice, you should advise the FCC contact listed below as soon as possible.

ADDRESSES: Direct all PRA comments to Nicholas A. Fraser, Office of Management and Budget, (202) 395-5887, or via fax at 202-395-5167 or via Internet at Nicholas_A_Fraser@omb.eop.gov and

to Judith-B.Herman@fcc.gov, Federal Communications Commission, or an e-mail to PRA@fcc.gov.

FOR FURTHER INFORMATION CONTACT: For additional information, contact Judith B. Herman at 202-418-0214 or via the Internet at Judith-B.Herman@fcc.gov.

SUPPLEMENTARY INFORMATION: OMB Control Number: 3060-0636.

Title: Section 2.1075, Equipment Authorization—Declaration of Compliance.

Form No.: N/A.

Type of Review: Extension of a currently approved collection.

Respondents: Business or other for-profit entities.

Number of Respondents: 4,000 respondents; 4,000 responses.

Estimated Time per Response: 18 hours (avg.).

Frequency of Response:

Recordkeeping: One-time reporting requirement; Third party disclosure.

Obligation to Respond: Required to obtain or retain benefits.

Total Annual Burden: 76,000 hours.

Total Annual Cost: \$12,000,000.

Privacy Act Impact Assessment: N/A.

Nature and Extent of Confidentiality:

Applicants may request that information be withheld from public inspection pursuant to 47 CFR 0.457(d) for trade secrets which may be submitted to the Commission as part of the documentation of test results. No other assurances of confidentiality are provided to respondents.

Needs and Uses: The Commission will submit this information collection to the Office of Management and Budget (OMB) after this 60 day comment period in order to obtain the full three year clearance from them. The Commission is requesting an extension (no change in the on reporting, recordkeeping and/or third party disclosure requirements). No change in the burden hours and/or annual costs.

The equipment authorization procedure requires that equipment manufacturers or equipment suppliers test a product to ensure compliance with technical standards for limiting radio frequency emissions and include a declaration of compliance (DoC) with the standards in the literature furnished with the equipment. This statement of conformity and supporting technical data would be made available to the FCC by the responsible party, at the request of the FCC. Further, the FCC will permit personal computers to be authorized based on tests and approval of their individual components, without further testing of the completed assembly. Testing and documentation of compliance aids in controlling potential

interference to radio communications. The data may be used for investigating complaints of harmful interference; to determine that the equipment marketed complies with the applicable FCC Rules; and to insure that the operation of the equipment is consistent with the initially documented test results.

Federal Communications Commission.

Marlene H. Dortch,
Secretary.

[FR Doc. E9-2569 Filed 2-5-09; 8:45 am]

BILLING CODE 6712-01-P

FEDERAL COMMUNICATIONS COMMISSION

Radio Broadcasting Services; AM or FM Proposals To Change The Community of License

AGENCY: Federal Communications Commission.

ACTION: Notice.

SUMMARY: The following applicants filed AM or FM proposals to change the community of license: ALATRON CORPORATION, INC., Station WAOQ, Facility ID 825, BPH-20081216BKG, From BRANTLEY, AL, To GOSHEN, AL; BLUEBERRY BROADCASTING, LLC, Station NONE, Facility ID 165949, BMPH-20090107AED, From MACHIAS, ME, To GOULDSBORO, ME; BRANTLEY BROADCAST ASSOCIATES, LLC, Station WEZZ, Facility ID 40900, BP-20081216BKH, From MONROEVILLE, AL, To BRANTLEY, AL; CAPITOL BROADCASTING COMPANY, INC., Station WCMC-FM, Facility ID 51760, BPH-20081201AZD, From CREEDMOOR, NC, To HOLLY SPRINGS, NC; CAPSTAR TX LIMITED PARTNERSHIP, Station WRVA-FM, Facility ID 74125, BPH-20081201AOE, From ROCKY MOUNT, NC, To WAKE FOREST, NC; CHAPIN ENTERPRISES, LLC, Station KRKR, Facility ID 54707, BMPH-20081120AFR, From VALLEY, NE, To LINCOLN, NE; EL SOL BROADCASTING, LLC, Station WJTI, Facility ID 68759, BMP-20081119AHW, From RACINE, WI, To WEST ALLIS, WI; GEORGIA-CAROLINA WIRELESS, LLC, Station WESL, Facility ID 170949, BMPH-20081224AAT, From PENDLETON, SC, To LIBERTY, SC; GEOS COMMUNICATIONS, Station WGMF, Facility ID 19564, BPH-20081110AAH, From TUNKHANNOCK, PA, To DALLAS, PA; HRN BROADCASTING, INC., Station WOHS, Facility ID 26179, BP-20081224AAO, From SHELBY, NC, To CRAMERTON, NC; KANSAS CITY TRUST, LLC, TRUSTEE, Station KMAJ-FM, Facility

ID 42012, BMPH-20081124ALA, From TOPEKA, KS, To CARBONDALE, KS; LA KE MANDA BROADCASTING, Station KYZQ, Facility ID 166035, BMPH-20081208AAM, From SULPHUR BLUFF, TX, To MOUNT VERNON, TX; LARAMIE MOUNTAIN BROADCASTING, LLC, Station KUSZ, Facility ID 9761, BPH-20080312ADR, From LARAMIE, WY, To LOVELAND, CO; LEGEND COMMUNICATIONS OF WYOMING, LLC, Station KZMQ, Facility ID 5245, BP-20081209ACV, From GREYBULL, WY, To TEN SLEEP, WY; MATTHEW PROVENZANO, Station KHLT, Facility ID 67285, BP-20081222ACM, From HALLETTSVILLE, TX, To STOCKDALE, TX; NEW HAMPSHIRE GOSPEL RADIO, INC., Station WANH, Facility ID 122150, BMPED-20081126AFY, From LACONIA, NH, To MEREDITH, NH; ONTARIO BROADCASTING, INC., Station KSPA, Facility ID 13899, BP-20041115AFC, From ONTARIO, CA, To CHINO, CA; SAIDNEWSFOUNDATION, Station WJKZ, Facility ID 175750, BMPED-20081201DAJ, From HANOVER, MI, To HOMER, MI; SUNRISE BROADCASTING, LLC, Station WKXB, Facility ID 59481, BPH-20081201AZU, From BURGAW, NC, To BOILING SPRING LAKES, NC; THE SCRANTON TIMES, L.P., Station WJZI, Facility ID 165339, BMPH-20081222ACO, From LIVINGSTON MANOR, NY, To HANCOCK, NY; TRUTH BROADCASTING CORPORATION, Station WDRU, Facility ID 53104, BP-20081201AVL, From WAKE FOREST, NC, To CREEDMOOR, NC; VINEYARD CHRISTIAN FELLOWSHIP OF HONOLULU, INC., Station KPHL, Facility ID 91242, BPED-20081217AEH, From PAHALA, HI, To HAWAIIAN OCEAN VIEW, HI; YOUNGERS COLORADO BROADCASTING LLC, Station KEZZ, Facility ID 165959, BMPH-20080312ADS, From WALDEN, CO, To PHIPPSBURG, CO; YOUNGERS COLORADO BROADCASTING LLC, Station KEZZ, Facility ID 165959, BMPH-20081205AFD, From WALDEN, CO, To PHIPPSBURG, CO.

DATES: Comments may be filed through April 7, 2009.

ADDRESSES: Federal Communications Commission, 445 Twelfth Street, SW., Washington, DC 20554.

FOR FURTHER INFORMATION CONTACT: Tung Bui, 202-418-2700.

SUPPLEMENTARY INFORMATION: The full text of these applications is available for inspection and copying during normal business hours in the Commission's Reference Center, 445 12th Street, SW., Washington, DC 20554 or electronically

via the Media Bureau's Consolidated Data Base System, http://svartifoss2.fcc.gov/prod/cdbs/pubacc/prod/cdbs_pa.htm. A copy of this application may also be purchased from the Commission's duplicating contractor, Best Copy and Printing, Inc., 445 12th Street, SW., Room CY-B402, Washington, DC, 20554, telephone 1-800-378-3160 or <http://www.BCPIWEB.com>.

Federal Communications Commission.

James D. Bradshaw,

Deputy Chief, Audio Division, Media Bureau.

[FR Doc. E9-2574 Filed 2-5-09; 8:45 am]

BILLING CODE 6712-01-P

FEDERAL MARITIME COMMISSION

Meeting; Sunshine Act

AGENCY HOLDING THE MEETING: Federal Maritime Commission.

TIME AND DATE: February 11, 2009—10 a.m.

PLACE: 800 North Capitol Street, NW., First Floor Hearing Room, Washington, DC.

STATUS: A portion of the meeting will be in Open Session and the remainder of the meeting will be in Closed Session.

MATTERS TO BE CONSIDERED:

Open Session

1. Docket No. 02-15 Passenger Vessel Financial Responsibility—Request of Commissioner Brennan.

2. Foreign Travel Authorization for the 2009 Global Liner Shipping Conference.

3. 2008 Funding for Purchase and Installation of Media Equipment for Commission Offices.

4. 2008 Federal Human Capital Survey Results.

Closed Session

1. Docket No. 02-04: Anchor Shipping Co. v. Alianca Navegacao e Logistica Ltda *et al.*

2. FMC Agreement No. 201199: Port Fee Services Agreement.

3. Internal Administrative Practices and Personnel Matters.

FOR FURTHER INFORMATION CONTACT:

Karen V. Gregory, Assistant Secretary, (202) 523-5725.

Karen V. Gregory,
Secretary.

[FR Doc. E9-2638 Filed 2-4-09; 4:15 pm]

BILLING CODE 6730-01-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 February 23, 2009.

A. Federal Reserve Bank of Cleveland (Nadine Wallman, Vice President) 1455 East Sixth Street, Cleveland, Ohio 44101-2566:

1. *Earl F. Croushorn, II*, Baxter, Kentucky; Rayburn Doss, Cumberland, Kentucky; Mark David Goss, Lexington, Kentucky; Vesper Singleton, Lexington, Kentucky; Phillip M. Smith, Loyall, Kentucky; Ulam Wayne Greene, Middlesboro, Kentucky; Richard L. Fox, Harlan, Kentucky; D. Steve Tolliver, Harlan, Kentucky; Donald G. Parsons, Harlan, Kentucky; Frederick M. Busroe, Jr., Harlan, Kentucky; Gary W. Cupp, Harlan, Kentucky; James A. Emrich, College Grove, Kentucky; Julie E. Fredrick, Atlanta, Kentucky; and James E. F. Croushorn, Harlan, Kentucky (also individually); all acting in concert, to retain and acquire voting shares of Banco Harlan, Inc., and thereby indirectly retain and acquire voting shares Bank of Harlan, both of Harlan, Kentucky.

Board of Governors of the Federal Reserve System, February 3, 2009.

Robert deV. Frierson,

Deputy Secretary of the Board.

[FR Doc. E9-2561 Filed 2-5-09; 8:45 am]

BILLING CODE 6210-01-S

GENERAL SERVICES ADMINISTRATION

Federal Asset Sales (eFAS) Reporting Tool; Notice of GSA Bulletin FMR B-23

AGENCY: Office of Governmentwide Policy, General Services Administration (GSA).

ACTION: Notice of a bulletin.

SUMMARY: This notice announces GSA Federal Management Regulation (FMR) Bulletin B-23 which provides guidance to all agencies selling Federal personal and real property under the provisions of the eFAS program. GSA Bulletin FMR B-23 may be found at <http://www.gsa.gov/fmrbulletin>.

DATES: The bulletin announced in this notice became effective January 28, 2009.

FOR FURTHER INFORMATION CONTACT: For clarification of content, contact General Services Administration, Office of Governmentwide Policy, Office of Travel, Transportation and Asset Management, at (202) 501-1777. Please cite Bulletin FMR B-23.

SUPPLEMENTARY INFORMATION:

A. Background

The eFAS program features selected agencies facilitating the sale of Federal personal and real property. Agencies selling personal property are called Sales Centers (see FMR section 102-38.40). Agencies hosting sales Web sites for real property are called portal sponsors (see GSA Bulletin FMR 2008-B2). Collectively, these agencies are termed eFAS Sales Agencies.

Currently, eFAS Sales Agencies must manually report all sales they conduct to the eFAS Planning Office. When an eFAS Sales Agency sells property on behalf of another agency, the sales are reported as part of the eFAS Sales Agency performance measures. Agencies not designated as a personal property Sales Center but permitted to sell personal property under an eFAS Planning Office waiver may be required to report their performance measures, depending on the terms of their waiver.

The eFAS Planning Office has completed development of a reporting tool designed to assist eFAS Sales Agencies in reporting their personal property and real property sales.

This notice announces GSA Bulletin FMR B-23 which provides guidance to all agencies selling Federal personal and real property under the provisions of the eFAS program.

B. Procedures

Bulletins regarding asset management are located on the Internet at <http://www.gsa.gov/fmrbulletin> as Federal Management Regulation (FMR) bulletins.

Dated: February 2, 2009.

Robert Holcombe,

Director, Personal Property Management Policy.

[FR Doc. E9-2547 Filed 2-5-09; 8:45 am]

BILLING CODE 6820-14-P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institute for Occupational Safety and Health; Decision To Evaluate a Petition To Designate a Class of Employees for the Bliss & Laughlin Steel Facility, in Buffalo, NY, To Be Included in the Special Exposure Cohort

AGENCY: National Institute for Occupational Safety and Health (NIOSH), Department of Health and Human Services (HHS).

ACTION: Notice.

SUMMARY: HHS gives notice as required by 42 CFR 83.12(e) of a decision to evaluate a petition to designate a class of employees for the Bliss & Laughlin Steel facility, in Buffalo, NY, to be included in the Special Exposure Cohort under the Energy Employees Occupational Illness Compensation Program Act of 2000. The initial proposed definition for the class being evaluated, subject to revision as warranted by the evaluation, is as follows:

Facility: Bliss & Laughlin Steel facility.

Location: Buffalo, NY.

Job Titles and/or Job Duties: All employees.

Period of Employment: January 1, 1948 through December 31, 1998.

FOR FURTHER INFORMATION CONTACT:

Larry Elliott, Director, Office of Compensation Analysis and Support, National Institute for Occupational Safety and Health (NIOSH), 4676 Columbia Parkway, MS C-46, Cincinnati, OH 45226, Telephone 513-533-6800 (this is not a toll-free number). Information requests can also be submitted by e-mail to OCAS@CDC.GOV.

Dated: February 2, 2009.

Christine M. Branche,

Acting Director, National Institute for Occupational Safety and Health.

[FR Doc. E9-2559 Filed 2-5-09; 8:45 am]

BILLING CODE 4163-19-P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Center for Scientific Review; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: Center for Scientific Review Special Emphasis Panel Genes and Genetic Specials.

Date: February 17, 2009.

Time: 1 p.m. to 3 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892 (Telephone Conference Call).

Contact Person: Michael A. Marino, PhD, Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 2216, MSC 7890, Bethesda, MD 20892, (301) 435-0601, marinomi@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 Pain.

Date: February 24-25, 2009.

Time: 7 a.m. to 8 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892 (Virtual Meeting).

Contact Person: Bernard F. Driscoll, PhD, Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5184, MSC 7844, Bethesda, MD 20892, (301) 435-1242, driscolb@csr.nih.gov.

Name of Committee: Center for Scientific Review Special Emphasis Panel Cytoskeletal Signaling, Neurotoxicity and Hormonal Effects on Ischemia.

Date: February 25, 2009.

Time: 1 p.m. to 3 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892 (Telephone Conference Call).

Contact Person: Carole L. Jelsema, PhD, Chief and Scientific Review Officer, Center

for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4176, MSC 7850, Bethesda, MD 20892, (301) 435-1248, jelsemac@csr.nih.gov.

Name of Committee: Center for Scientific Review Special Emphasis Panel Sensory.

Date: February 26-27, 2009.

Time: 7 a.m. to 8 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892 (Virtual Meeting).

Contact Person: Bernard F. Driscoll, PhD, Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5184, MSC 7844, Bethesda, MD 20892, (301) 435-1242, driscolb@csr.nih.gov.

Name of Committee: Center for Scientific Review Special Emphasis Panel; PAR-07-379-380: Health Disparities.

Date: February 26-27, 2009.

Time: 8 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Pier 5 Hotel, 711 Eastern Avenue, Baltimore, MD 21202.

Contact Person: Gabriel B. Fosu, PhD, Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3215, MSC 7808, Bethesda, MD 20892, (301) 435-3562, fosug@csr.nih.gov.

Name of Committee: Center for Scientific Review Special Emphasis Panel; Member Conflict: Psychosocial Aspects of Parenting and Child Development.

Date: February 26-28, 2009.

Time: 8 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892 (Virtual Meeting).

Contact Person: Michael Micklin, PhD, Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3136, MSC 7759, Bethesda, MD 20892, (301) 435-1258, micklinm@csr.nih.gov.

Name of Committee: Center for Scientific Review Special Emphasis Panel; Oncology Fellowship.

Date: February 26-27, 2009.

Time: 8 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Churchill Hotel, 1914 Connecticut Avenue, NW., Washington, DC 20009.

Contact Person: Eun Ah Cho, PhD, Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 6202, MSC 7804, Bethesda, MD 20892, (301) 451-4467, choe@csr.nih.gov.

Name of Committee: Center for Scientific Review Special Emphasis Panel; Risk Prevention and Health Behavior Across the Lifespan.

Date: February 26-27, 2009.

Time: 8:30 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Sheraton Delfina Santa Monica Hotel, 530 West Pico Boulevard, Santa Monica, CA 90405.

Contact Person: Claire E. Gutkin, PhD, MPH, Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3138, MSC 7759, Bethesda, MD 20892, (301) 594-3139, gutkincl@csr.nih.gov.

Name of Committee: Center for Scientific Review Special Emphasis Panel; Cancer Biology and Therapy Pilot Studies.

Date: February 26–27, 2009.

Time: 9 a.m. to 9 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892 (Virtual Meeting).

Contact Person: Joanna M. Watson, PhD, Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 6208, MSC 7804, Bethesda, MD 20892, (301) 435-1048, watsonjo@csr.nih.gov.

Name of Committee: Center for Scientific Review Special Emphasis Panel; Cancer Drug Development and Therapeutics, SBIR/STTR.

Date: February 26–27, 2009.

Time: 11 a.m. to 7 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892 (Virtual Meeting).

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.

Name of Committee: Center for Scientific Review Special Emphasis Panel; Dissemination and Implementation Research in Health.

Date: February 27, 2009.

Time: 8 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: The Fairmont Washington, DC, 2401 M Street, NW., Washington, DC 20037.

Contact Person: Melinda Tinkle, PhD, Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3141, MSC 7770, Bethesda, MD 20892, (301) 594-6594, tinklem@csr.nih.gov.

Name of Committee: Center for Scientific Review Special Emphasis Panel; Bioengineering Research Partnerships and Imaging Member Conflicts.

Date: February 27, 2009.

Time: 8 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Hyatt Regency Bethesda, One Bethesda Metro Center, 7400 Wisconsin Avenue, Bethesda, MD 20814.

Contact Person: John Firrell, PhD, Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5213, MSC 7854, Bethesda, MD 20892, (301) 435-2598, firrellj@csr.nih.gov.

Name of Committee: Center for Scientific Review Special Emphasis Panel; Molecular and Cellular Neuroscience Small Business.

Date: February 27, 2009.

Time: 8 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: The Westin St. Francis, 335 Powell Street, San Francisco, CA 94102.

Contact Person: Eugene Carstea, PhD, Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5199, MSC 7846, Bethesda, MD 20892, (301) 435-0634.

Name of Committee: Center for Scientific Review Special Emphasis Panel; Neuropharmacology SBIR (ETTNC).

Date: February 27, 2009.

Time: 8 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: The Fairmont Washington, DC, 2401 M Street, NW., Washington, DC 20037.

Contact Person: Aidan Hampson, PhD, Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5199, MSC 7850, Bethesda, MD 20892, (301) 435-0634, hampsona@csr.nih.gov.

Name of Committee: Center for Scientific Review Special Emphasis Panel Small Business Grant Applications: Immunology.

Date: February 27, 2009.

Time: 8:30 a.m. to 6 p.m.

Agenda: To review and evaluate grant applications.

Place: The Catamaran Resort Hotel, 3999 Mission Boulevard, San Diego, CA 92109.

Contact Person: Stephen M. Nigida, PhD, Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4212, MSC 7812, Bethesda, MD 20892, (301) 435-1222, nigidas@csr.nih.gov.

Name of Committee: Center for Scientific Review Special Emphasis Panel; Member Conflict: Developmental Disabilities and Child Psychopathology.

Date: February 27, 2009.

Time: 9 a.m. to 7 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892 (Virtual Meeting).

Contact Person: Maribeth Champoux, PhD, Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3146, MSC 7759, Bethesda, MD 20892, (301) 594-3163, champoux@csr.nih.gov.

Name of Committee: Center for Scientific Review Special Emphasis Panel; Development Methods of In Vivo Imaging and Bioengineering Research.

Date: March 2–3, 2009.

Time: 8 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Bahia Resort Hotel, 998 W. Mission Bay Drive, San Diego, CA 92109.

Contact Person: Behrouz Shabestari, PhD, Scientific Review Officer, Center for Scientific Review, National Institutes of

Health, 6701 Rockledge Drive, Room 5106, MSC 7854, Bethesda, MD 20892, (301) 435-2409, shabestb@csr.nih.gov.

Name of Committee: Center for Scientific Review Special Emphasis Panel; Computational Modeling and Sciences for Biomedical and Clinical Applications.

Date: March 2, 2009.

Time: 8 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Hyatt Regency Bethesda, One Bethesda Metro Center, 7400 Wisconsin Avenue, Bethesda, MD 20814.

Contact Person: Guo Feng Xu, PhD, Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5122, MSC 7854, Bethesda, MD 20892, (301) 435-1032, xuguofen@csr.nih.gov.

Name of Committee: Center for Scientific Review Special Emphasis Panel; Cognition, Language and Perception Fellowship Study Section.

Date: March 2, 2009.

Time: 8 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: The Fairmont Washington, DC, 2401 M Street, NW., Washington, DC 20037.

Contact Person: Weijia Ni, PhD, Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3184, MSC 7848, Bethesda, MD 20892, (301) 435-1507, niw@csr.nih.gov.

Name of Committee: Center for Scientific Review Special Emphasis Panel; Drug and Discovery and Development Special Emphasis Panel.

Date: March 2–3, 2009.

Time: 8 a.m. to 6 p.m.

Agenda: To review and evaluate grant applications.

Place: Doubletree Hotel Bethesda, 8120 Wisconsin Avenue, Bethesda, MD 20814.

Contact Person: Mike Radtke, PhD, Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4176, MSC 7806, Bethesda, MD 20892, (301) 435-1728, rادتکem@csr.nih.gov.

Name of Committee: Center for Scientific Review Special Emphasis Panel; Cancer Diagnostic and Treatment SBIR/STTR.

Date: March 2–4, 2009.

Time: 11 a.m. to 9 a.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892 (Virtual Meeting).

Contact Person: Malaya Chatterjee, PhD, Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 6192, MSC 7804, Bethesda, MD 20892, (301) 451-0131, chatterm@csr.nih.gov.

Name of Committee: Center for Scientific Review Special Emphasis Panel; Neuropharmacology.

Date: March 4–6, 2009.

Time: 9 a.m. to 11 a.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892 (Virtual Meeting).

Contact Person: Toby Behar, PhD, Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4136, MSC 7850, Bethesda, MD 20892, (301) 435-4433, behart@csr.nih.gov.

Name of Committee: Center for Scientific Review Special Emphasis Panel; Cancer Therapeutics Discovery and Development SBIR/STTR.

Date: March 4-6, 2009.

Time: 10 a.m. to 11 a.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892 (Virtual Meeting).

Contact Person: Nywana Sizemore, PhD, Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 6204, MSC 7804, Bethesda, MD 20892, (301) 435-1718, sizemoren@csr.nih.gov.

Name of Committee: Center for Scientific Review Special Emphasis Panel; Genetics of Human Diseases.

Date: March 4, 2009.

Time: 1 p.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892 (Telephone Conference Call).

Contact Person: Richard Panniers, PhD, Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 2212, MSC 7890, Bethesda, MD 20892, (301) 435-1741, pannierr@csr.nih.gov.

Name of Committee: Center for Scientific Review Special Emphasis Panel; Probes and Instrumentation for Neuroplasticity.

Date: March 5, 2009.

Time: 8 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Hotel Lombardy, 2019 Pennsylvania Avenue, NW., Washington, DC 20006.

Contact Person: Paek-Gyu Lee, PhD, Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4201, MSC 7812, Bethesda, MD 20892, (301) 435-1277, leepg@csr.nih.gov.

Name of Committee: Center for Scientific Review Special Emphasis Panel; Chemical and Bioanalytical Sciences Fellowships.

Date: March 5, 2009.

Time: 8 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Hyatt Regency Bethesda, One Bethesda Metro Center, 7400 Wisconsin Avenue, Bethesda, MD 20814.

Contact Person: Sergei Ruvinov, PhD, Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4158, MSC 7806, Bethesda, MD 20892, (301) 435-1180, ruvinser@csr.nih.gov.

Name of Committee: Center for Scientific Review Special Emphasis Panel; Fellowship:

Neurodevelopment, Synaptic Plasticity and Neurodegeneration.

Date: March 5-6, 2009.

Time: 8 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: The Churchill Hotel, 1914 Connecticut Avenue, NW., Washington, DC 20009.

Contact Person: Vilen A. Movsesyan, PhD, Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4040M, MSC 7806, Bethesda, MD 20892, (301) 402-7278, movsesyanv@csr.nih.gov.

Name of Committee: Center for Scientific Review Special Emphasis Panel; Science Education, Communication and Childhood Disorders.

Date: March 6, 2009.

Time: 8 a.m. to 6 p.m.

Agenda: To review and evaluate grant applications.

Place: Renaissance Mayflower Hotel, 1127 Connecticut Avenue, NW., Washington, DC 20036.

Contact Person: Biao Tian, PhD, Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3089B, MSC 7848, Bethesda, MD 20892, (301) 402-4411, tianbi@csr.nih.gov.

Name of Committee: Center for Scientific Review Special Emphasis Panel; Chemistry and Biophysics SBIR/STTR Panel.

Date: March 6, 2009.

Time: 8:30 a.m. to 6 p.m.

Agenda: To review and evaluate grant applications.

Place: The Fairmont Washington, DC, 2401 M Street, NW., Washington, DC 20037.

Contact Person: Vonda K. Smith, PhD, Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4148, MSC 7806, Bethesda, MD 20892, (301) 435-1789, smithvo@csr.nih.gov.

Name of Committee: Center for Scientific Review Special Emphasis Panel; Chemistry and Biophysics SBIR/STTR Panel.

Date: March 6, 2009.

Time: 8:30 a.m. to 6:30 p.m.

Agenda: To review and evaluate grant applications.

Place: The Fairmont Washington, DC, 2401 M Street, NW., Washington, DC 20037.

Contact Person: Arnold Revzin, PhD, Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4146, MSC 7806, Bethesda, MD 20892, (301) 435-1153, revzina@csr.nih.gov.

(Catalogue of Federal Domestic Assistance Program Nos. 93.306, Comparative Medicine; 93.333, Clinical Research; 93.306, 93.333, 93.337, 93.393-93.396, 93.837-93.844, 93.846-93.878, 93.892, 93.893, National Institutes of Health, HHS)

Dated: January 29, 2009.

Jennifer Spaeth,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. E9-2384 Filed 2-5-09; 8:45 am]

BILLING CODE 4140-01-M

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

[Docket No. USCG-2009-0059]

Commercial Fishing Industry Vessel Safety Advisory Committee; Vacancies

AGENCY: Coast Guard, DHS.

ACTION: Request for applications.

SUMMARY: The Coast Guard seeks applications for membership on the Commercial Fishing Industry Vessel Safety Advisory Committee (CFIVSAC). The CFIVSAC provides advice and makes recommendations to the Coast Guard for improving commercial fishing industry safety practices.

DATES: Completed application forms should reach the Coast Guard at the address below on or before June 1, 2009.

ADDRESSES: You may request an application form by writing to Commandant (CG-5433), U.S. Coast Guard, 2100 Second Street, SW., Washington, DC 20593-0001; by calling 202-372-1249; or by faxing 202-372-1917. Send your application in written form to the above street address. This notice and the application form are available on the Internet at <http://www.FishSafe.info>.

FOR FURTHER INFORMATION CONTACT: Mr. Jack Kemerer of the CFIVSAC by telephone at 202-372-1249, fax 202-372-1917, e-mail: jack.a.kemerer@uscg.mil.

SUPPLEMENTARY INFORMATION: The CFIVSAC is a Federal advisory committee under 5 U.S.C. App. (Pub. L. 92-463). The Coast Guard chartered the CFIVSAC to provide advice on issues related to the safety of commercial fishing industry vessels regulated under Chapter 45 of Title 46, United States Code, which includes uninspected fishing vessels, fish processing vessels, and fish tender vessels. (See 46 U.S.C. 4508.)

The CFIVSAC meets at least once a year. It may also meet for other extraordinary purposes. Its subcommittees may gather throughout the year to prepare for meetings or develop proposals for the committee as a whole to address specific problems.

We will consider applications for six positions that expire or become vacant in October 2009 in the following categories: (a) Commercial Fishing Industry (four positions); (b) Naval Architects/Marine Surveyors (one position); and (c) General Public (one position).

The CFIVSAC consists of 17 members as follows: (a) Ten members from the

commercial fishing industry who reflect a regional and representational balance and have experience in the operation of vessels to which Chapter 45 of Title 46, United States Code applies, or as a crew member or processing line member on an uninspected fish processing vessel; (b) one member representing each of (1) naval architects or marine surveyors; (2) manufacturers of equipment for vessel to which Chapter 45 of Title 46, U.S.C. applies; (3) education or training professionals related to fishing vessel, fish processing vessel, fish tender vessel safety, or personnel qualifications; and (4) underwriters that insure vessels to which Chapter 45 of Title 46, U.S.C. applies; and (c) three members representing the general public including, whenever possible, an independent expert or consultant in maritime safety and a member of a national organization composed of persons representing owners of vessels to which Chapter 45 of Title 46, U.S.C. applies and persons representing the marine insurance industry.

Each member serves for a term of 3 years. Members may serve two consecutive terms. All members serve at their own expense and receive no salary from the Federal Government, although travel reimbursement and per diem may be provided.

In support of the policy of the Coast Guard on gender and ethnic diversity, we encourage qualified women and members of minority groups to apply.

If you are selected as a non-representative member, or as a member who represents the general public, you will be appointed and serve as a Special Government Employee (SGE) as defined in section 202(a) of title 18, United States Code. As a candidate for appointment as a SGE, applicants are required to complete a Confidential Financial Disclosure Report (OGE Form 450). A completed OGE Form 450 is not releasable to the public except under an order issued by a Federal court or as otherwise provided under the Privacy Act (5 U.S.C. 552a). Only the Designated Agency Ethics Official or the DAEO's designate may release a Confidential Disclosure Report.

Dated: January 30, 2009.

J.G. Lantz,

Director of Commercial Regulations and Standards.

[FR Doc. E9-2497 Filed 2-5-09; 8:45 am]

BILLING CODE 4910-15-P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[Docket ID: FEMA-2007-0008]

National Advisory Council

AGENCY: Federal Emergency Management Agency, DHS.

ACTION: Committee Management; Request for Applicants for Appointment to the National Advisory Council.

SUMMARY: The Federal Emergency Management Agency (FEMA) is requesting individuals who are interested in serving on the National Advisory Council (NAC) to apply for appointment. As provided for in the Department of Homeland Security Appropriations Act of 2007, the Secretary of Homeland Security established the NAC to ensure effective and ongoing coordination of Federal preparedness, protection, response, recovery, and mitigation for natural disasters, acts of terrorism, and other man-made disasters.

DATES: Applications for membership should reach FEMA at the address below on or before 5 p.m. e.s.t., on Friday, March 6, 2009.

ADDRESSES: If you wish to apply for membership, your application should be submitted by:

- *E-mail:* FEMA-NAC@dhs.gov
- *Fax:* (202) 646-4176
- *Mail:* Federal Emergency

Management Agency, Office of the National Advisory Council, 500 C Street, SW., Room 718, Washington, DC 20472.

FOR FURTHER INFORMATION CONTACT: The Designated Federal Officer, Alyson Price, Office of the National Advisory Council, telephone 202-646-3746; e-mail FEMA-NAC@dhs.gov. FEMA Ethics Office, Ebbonie Taylor, telephone 202-646-3664; e-mail *ebbonie.taylor@dhs.gov* and Paul Conrad, telephone 202-646-4025; e-mail *paul.conrad1@dhs.gov*.

SUPPLEMENTARY INFORMATION: The National Advisory Council (NAC) is an advisory committee established in accordance with the provisions of section 14(a)(2) of the Federal Advisory Committee Act (FACA) 5 U.S.C. App. (Pub. L. 92-463) and section 508 of the Homeland Security Act of 2002 (Pub. L. 107-296), as amended by section 611 of the Post-Katrina Emergency Management Reform Act of 2006, as set forth in the Department of Homeland Security Appropriations Act of 2007 (Pub. L. 109-295), directed the Secretary

of Homeland Security to establish the NAC to ensure effective and ongoing coordination of Federal preparedness, protection, response, recovery, and mitigation for natural disasters, acts of terrorism, and other man-made disasters.

The NAC consists of 35 members, representing certain stakeholder groups and some providing their personal expertise in FEMA related issues. Approximately one-third of the membership was appointed for a 2 year term expiring on June 15, 2009. Accordingly, the following discipline areas will be open for applications and nominations at this time: Emergency Management, Emergency Response (two representative positions total), In-Patient Medical Provider (Special Government Employee (SGE) appointment), Cyber Security (SGE appointment), State Elected Official (representative appointment), Local Elected Official (representative appointment), Homeland Security Advisory Council (*Ex Officio* appointment), and three appointments (either representative or SGE), which will be selected at the discretion of the FEMA Administrator. In addition to these new appointments whose terms will end on June 15, 2012, FEMA seeks applications to fill the remaining term of the Disability representative position, which ends on June 15, 2011, as the current representative will be retiring in May 2009.

There are specific membership types associated with the indicated disciplines open for new appointments at this time. Some members are appointed as SGEs as defined in section 202(a) of title 18, United States Code. These members are subject to Federal ethics laws and regulations and are required to complete a Confidential Financial Disclosure Report (OGE Form 450). Specifically, the following two discipline area vacancies will be filled by SGE appointments: In-Patient Medical Provider and Cyber Security. OGE Form 450s or the information contained therein may not be released to the public except under an order issued by a Federal court or as otherwise provided under the Privacy Act (5 U.S.C. 552a). Applicants can obtain this form by going to the Web site of the Office of Government Ethics (<http://www.oge.gov>), or by contacting the National Advisory Council Program Office, or by contacting the FEMA Ethics Office. This information is provided in the **FOR FURTHER INFORMATION CONTACT** caption. Additionally, the Homeland Security Advisory Council position will be filled by a current member of the Homeland

Security Advisory Council. All other discipline areas including: Emergency Management, Emergency Response, State Elected Official, Local Elected Official, Disability, and the three positions selected by the FEMA Administrator.

Qualified individuals interested in serving on the NAC are invited to apply for appointment. All ethnicities and genders are encouraged to apply.

The NAC assists FEMA in carrying out its missions by providing advice and recommendations in the development and revision of the national preparedness guidelines, the national preparedness system, the National Incident Management System, the National Response Framework, and other related plans and strategies. The members of the NAC are appointed by the Administrator of FEMA and are composed of Federal, State, local, tribal, and private-sector leaders and subject matter experts in law enforcement, fire, emergency medical services, hospital, public works, emergency management, State and local governments, public health, emergency response, standard setting and accrediting organizations, representatives of individuals with disabilities and other special needs, infrastructure protection, cyber security, communications, and homeland security communities.

Qualified individuals interested in serving on the NAC are invited to apply for appointment by submitting a resume or Curriculum Vitae (CV) along with letters of recommendation to the NAC's Designated Federal Officer. Applicants should state for which discipline area or areas they are applying. Current NAC members whose terms are ending should notify the Designated Federal Officer of their interest in reappointment in lieu of submitting a new application, and should provide an updated resume or CV and letters of recommendation for consideration. The NAC meets in a plenary session approximately once per quarter. With respect to quarterly meetings, the NAC also holds at least one teleconference meeting with public call-in lines. Members serve without compensation from the Federal Government; however, consistent with the charter, they do receive travel reimbursement and per diem under applicable Federal travel regulations. In support of the policy of the Department of Homeland Security on gender and ethnic diversity, qualified women and minorities are encouraged to apply for membership.

Dated: January 29, 2009.

Nancy Ward,

Acting Administrator, Federal Emergency Management Agency.

[FR Doc. E9-2295 Filed 2-3-09; 8:45 am]

BILLING CODE 9111-48-P

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., 2717 Maplewood Dr., Sulphur, LA 70663, 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, inquiries 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 September 23, 2008. The next triennial inspection date will be scheduled for September 2011.

FOR FURTHER INFORMATION CONTACT: Randall Breaux, Laboratories and Scientific Services, U.S. Customs and Border Protection, 1300 Pennsylvania Avenue, NW., Suite 1500N, Washington, DC 20229, 202-344-1060.

Dated: January 29, 2009.

Ira S. Reese,

Executive Director, Laboratories and Scientific Services.

[FR Doc. E9-2501 Filed 2-5-09; 8:45 am]

BILLING CODE 9111-14-P

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., 149 Pintail St., St. Rose, LA 70087, 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, inquiries 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 June 24, 2008. The next triennial inspection date will be scheduled for June 2011.

FOR FURTHER INFORMATION CONTACT: Randall Breaux, Laboratories and Scientific Services, U.S. Customs and Border Protection, 1300 Pennsylvania Avenue, NW., Suite 1500N, Washington, DC 20229, 202-344-1060.

Dated: January 29, 2009.

Ira S. Reese,

Executive Director, Laboratories and Scientific Services.

[FR Doc. E9-2511 Filed 2-5-09; 8:45 am]

BILLING CODE 9111-14-P

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., 2780 Highway 69 N, Nederland, TX 77627, 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 April 29, 2008. The next triennial inspection date will be scheduled for April 2011.

FOR FURTHER INFORMATION CONTACT: Randall Breaux, Laboratories and Scientific Services, U.S. Customs and Border Protection, 1300 Pennsylvania Avenue, NW., Suite 1500N, Washington, DC 20229, 202-344-1060.

Dated: January 29, 2009.

Ira S. Reese,

Executive Director, Laboratories and Scientific Services.

[FR Doc. E9-2512 Filed 2-5-09; 8:45 am]

BILLING CODE 9111-14-P

DEPARTMENT OF HOMELAND SECURITY

U.S. Customs and Border Protection

Accreditation and Approval of Saybolt LP, as a Commercial Gauger and Laboratory

AGENCY: U.S. Customs and Border Protection, Department of Homeland Security.

ACTION: Notice of accreditation and approval of Saybolt LP, as a commercial gauger and laboratory.

SUMMARY: Notice is hereby given that, pursuant to 19 CFR 151.12 and 19 CFR 151.13, Saybolt LP, 1809 Magnolia Ave., Port Neches, TX 77651, 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 Saybolt LP, as commercial gauger and laboratory became effective on April 29, 2008. The next triennial inspection date will be scheduled for April 2011.

FOR FURTHER INFORMATION CONTACT: Randall Breaux, Laboratories and Scientific Services, U.S. Customs and Border Protection, 1300 Pennsylvania Avenue, NW., Suite 1500N, Washington, DC 20229, 202-344-1060.

Dated: January 29, 2009.

Ira S. Reese,

Executive Director, Laboratories and Scientific Services.

[FR Doc. E9-2502 Filed 2-5-09; 8:45 am]

BILLING CODE 9111-14-P

DEPARTMENT OF HOMELAND SECURITY

U.S. Customs and Border Protection

Accreditation and Approval of Thionville Surveying Company, 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 Thionville Surveying Company, Inc., as a commercial gauger and laboratory.

SUMMARY: Notice is hereby given that, pursuant to 19 CFR 151.12 and 19 CFR 151.13, Thionville Surveying Company, Inc., 5440 Pepsi St, Harahan, LA 70123, 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, inquiries 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 Thionville Surveying Company, Inc., as commercial gauger and laboratory became effective on June 25, 2008. The next triennial inspection date will be scheduled for June 2011.

FOR FURTHER INFORMATION CONTACT: Randall Breaux, Laboratories and Scientific Services, U.S. Customs and Border Protection, 1300 Pennsylvania Avenue, NW., Suite 1500N, Washington, DC 20229, 202-344-1060.

Dated: January 29, 2009.

Ira S. Reese,

Executive Director, Laboratories and Scientific Services.

[FR Doc. E9-2505 Filed 2-5-09; 8:45 am]

BILLING CODE 9111-14-P

DEPARTMENT OF HOMELAND SECURITY

U.S. Customs and Border Protection

Accreditation of Intertek USA, Inc., as a Commercial Laboratory

AGENCY: U.S. Customs and Border Protection, Department of Homeland Security.

ACTION: Notice of accreditation of Intertek USA, Inc., as a commercial laboratory.

SUMMARY: Notice is hereby given that, pursuant to 19 CFR 151.12, Intertek USA, Inc., 15602 Jacintoport Blvd., Stolthaven Terminal, Houston, TX 77015, has been accredited to test petroleum, petroleum products, organic chemicals and vegetable oils for customs purposes, in accordance with the provisions of 19 CFR 151.12. Anyone wishing to employ this entity to conduct laboratory analyses should request and receive written assurances from the entity that it is accredited by the U.S. Customs and Border Protection to conduct the specific test requested. Alternatively, inquires regarding the specific test this entity is accredited 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 of Intertek USA, Inc., as commercial laboratory became effective on November 7, 2008. The next triennial inspection date will be scheduled for November 2011.

FOR FURTHER INFORMATION CONTACT: Randall Breaux, Laboratories and Scientific Services, U.S. Customs and Border Protection, 1300 Pennsylvania Avenue, NW., Suite 1500N, Washington, DC 20229, 202-344-1060.

Dated: January 29, 2009.

Ira S. Reese,

Executive Director, Laboratories and Scientific Services.

[FR Doc. E9-2506 Filed 2-5-09; 8:45 am]

BILLING CODE 9111-14-P

DEPARTMENT OF HOMELAND SECURITY

U.S. Customs and Border Protection

Agency Information Collection Activities: Declaration of a Person Abroad Who Receives and Is Returning Merchandise to the U.S.

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: 1651-0094.

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: Declaration of a Person Abroad Who Receives and Is Returning Merchandise to the U.S. 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** (73 FR 72501) on November 28, 2008, 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 March 9, 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: Declaration of a Person Abroad Who Receives and Is Returning Merchandise to the U.S.

OMB Number: 1651-0094.

Form Number: None.

Abstract: This declaration is used under conditions where articles are imported, and then exported and re-imported free of duty. The declaration is to insure that CBP can track and control duty-free merchandise.

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: 1,500.

Estimated Time per Respondent: 10 minutes.

Estimated Total Annual Burden Hours: 250.

If additional information is required contact: Tracey Denning, U.S. Customs and Border Protection, 1300 Pennsylvania Avenue, NW., Room 3.2.C, Washington, DC 20229, at 202-344-1429.

Dated: January 29, 2009.

Tracey Denning,

Agency Clearance Officer, Customs and Border Protection.

[FR Doc. E9-2507 Filed 2-5-09; 8:45 am]

BILLING CODE 9111-14-P

DEPARTMENT OF HOMELAND SECURITY

U.S. Customs and Border Protection

Agency Information Collection Activities: Application for Withdrawal of Bonded Stores for Fishing Vessels and Certification of Use

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: 1651-0092.

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 for Withdrawal of Bonded Stores for Fishing Vessels and Certification of Use. 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** (73 FR 72500) on November 28, 2008, 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 March 9, 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 for Withdrawal of Bonded Stores for Fishing Vessels and Certification of Use.

OMB Number: 1651-0092.

Form Number: CBP Form 5125.

Abstract: CBP Form 5125 is used for the withdrawal and lading of bonded merchandise (especially alcoholic beverages) for use on board fishing vessels. This form is also used to verify that the supplies on the vessel were either consumed or secured onboard for use on the next voyage.

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: 500.

Estimated Time per Respondent: 5 minutes.

Estimated Total Annual Burden Hours: 42.

If additional information is required contact: Tracey Denning, U.S. Customs and Border Protection, 1300 Pennsylvania Avenue, NW., Room 3.2.C, Washington, DC 20229, at 202-344-1429.

Dated: January 29, 2009.

Tracey Denning,

Agency Clearance Officer, Customs and Border Protection.

[FR Doc. E9-2508 Filed 2-5-09; 8:45 am]

BILLING CODE 9111-14-P

DEPARTMENT OF HOMELAND SECURITY

U.S. Customs and Border Protection

Agency Information Collection Activities: JADE Act

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: 1651-0133.

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: JADE Act. 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** (73 FR 72501) on November 28, 2008, 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 March 9, 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: JADE Act.

OMB Number: 1651-0133.

Form Numbers: None.

Abstract: The JADE Act amends previous Burmese sanctions by providing for import restrictions on

certain categories of goods. In order to enforce these sanctions, CBP will require a certification from the exporter as part of the entry package certifying that the goods were not mined in, or extracted from Burma. This certification is provided for by the Act.

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: 22,197.

Estimated Time per Response: 10 minutes.

Estimated Total Annual Burden Hours: 74,005

If additional information is required contact: Tracey Denning, U.S. Customs and Border Protection, 1300 Pennsylvania Avenue, NW., Room 3.2.C, Washington, DC 20229, at 202-344-1429.

Dated: January 29, 2009.

Tracey Denning,

Agency Clearance Officer, Customs and Border Protection.

[FR Doc. E9-2509 Filed 2-5-09; 8:45 am]

BILLING CODE 9111-14-P

DEPARTMENT OF HOMELAND SECURITY

U.S. Customs and Border Protection

Agency Information Collection Activities: Andean Trade Preferences

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: 1651-0091.

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: Andean Trade Preferences. 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** (73 FR 72500) on November 28, 2008, 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 March 9, 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: Andean Trade Preferences.

OMB Number: 1651-0091.

Form Number: None.

Abstract: This collection identifies the country of origin and related rules which apply for purposes of duty-free or reduced-duty treatment and specifies the documentary and other procedural requirements for preferential tariff treatment under the Andean Trade Preferences Act 19 U.S.C. 3201 through 3206.

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: 48,000.

Estimated Time per Respondent: 10 minutes.

Estimated Total Annual Burden Hours: 7,968.

If additional information is required contact: Tracey Denning, U.S. Customs and Border Protection, 1300 Pennsylvania Avenue, NW., Room 3.2.C, Washington, DC 20229, at 202-344-1429.

Dated: January 29, 2009.

Tracey Denning,

Agency Clearance Officer, Customs and Border Protection.

[FR Doc. E9-2510 Filed 2-5-09; 8:45 am]

BILLING CODE 9111-14-P

DEPARTMENT OF HOMELAND SECURITY

U.S. Customs and Border Protection

Approval of Intertek USA, Inc., as a Commercial Gauger

AGENCY: U.S. Customs and Border Protection, Department of Homeland Security.

ACTION: Notice of approval of Intertek USA, Inc., as a commercial gauger.

SUMMARY: Notice is hereby given that, pursuant to 19 CFR 151.13, Intertek USA, Inc., 3741 Red Bluff Road Suite 105, Pasadena, TX 77503, has been approved to gauge petroleum, petroleum products, organic chemicals and vegetable oils for customs purposes, in accordance with the provisions of 19 CFR 151.13. Anyone wishing to employ this entity to conduct gauger services should request and receive written assurances from the entity that it is approved by the U.S. Customs and Border Protection to conduct the specific gauger service requested. Alternatively, inquires regarding the specific gauger service this entity is 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 approval of Intertek USA, Inc., as commercial gauger became effective on November 07, 2008. The next triennial inspection date will be scheduled for November 2011.

FOR FURTHER INFORMATION CONTACT: Randall Breaux, Laboratories and Scientific Services, U.S. Customs and Border Protection, 1300 Pennsylvania

Avenue, NW., Suite 1500N,
Washington, DC 20229, 202-344-1060.

Dated: January 29, 2009.

Ira S. Reese,

*Executive Director, Laboratories and
Scientific Services.*

[FR Doc. E9-2500 Filed 2-5-09; 8:45 am]

BILLING CODE 9111-14-P

DEPARTMENT OF HOMELAND SECURITY

U.S. Customs and Border Protection

Approval of Saybolt LP, as a Commercial Gauger

AGENCY: U.S. Customs and Border
Protection, Department of Homeland
Security.

ACTION: Notice of approval of Saybolt
LP, as a commercial gauger.

SUMMARY: Notice is hereby given that, pursuant to 19 CFR 151.13, Saybolt LP, 4025 Oak Lane, Sulfur, LA 70665, has been approved to gauge petroleum, petroleum products, organic chemicals and vegetable oils for customs purposes, in accordance with the provisions of 19 CFR 151.13. Anyone wishing to employ this entity to conduct gauger services should request and receive written assurances from the entity that it is approved by the U.S. Customs and Border Protection to conduct the specific gauger service requested. Alternatively, inquires regarding the specific gauger service this entity is 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 approval of Saybolt LP, as commercial gauger became effective on June 11, 2008. The next triennial inspection date will be scheduled for June 2011.

FOR FURTHER INFORMATION CONTACT: Randall Breaux, Laboratories and Scientific Services, U.S. Customs and Border Protection, 1300 Pennsylvania Avenue, NW., Suite 1500N, Washington, DC 20229, 202-344-1060.

Dated: January 29, 2009.

Ira S. Reese,

*Executive Director, Laboratories and
Scientific Services.*

[FR Doc. E9-2503 Filed 2-5-09; 8:45 am]

BILLING CODE 9111-14-P

DEPARTMENT OF HOMELAND SECURITY

U.S. Customs and Border Protection

Approval of VIP Chemical, Inc., as a Commercial Gauger

AGENCY: U.S. Customs and Border
Protection, Department of Homeland
Security.

ACTION: Notice of approval of VIP
Chemical, Inc., as a commercial gauger.

SUMMARY: Notice is hereby given that, pursuant to 19 CFR 151.13, VIP Chemical, Inc., 4026 FM 1694, Robstown, TX 78310, has been approved to gauge petroleum, petroleum products, organic chemicals, and vegetable oils for customs purposes, in accordance with the provisions of 19 CFR 151.13. Anyone wishing to employ this entity to conduct gauger services should request and receive written assurances from the entity that it is approved by the U.S. Customs and Border Protection to conduct the specific gauger service requested. Alternatively, inquiries regarding the specific gauger service this entity is 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 approval of VIP Chemical, Inc., as commercial gauger became effective on May 22, 2008. The next triennial inspection date will be scheduled for May 2011.

FOR FURTHER INFORMATION CONTACT: Randall Breaux, Laboratories and Scientific Services, U.S. Customs and Border Protection, 1300 Pennsylvania Avenue, NW., Suite 1500N, Washington, DC 20229, 202-344-1060.

Dated: January 29, 2009.

Ira S. Reese,

*Executive Director, Laboratories and
Scientific Services.*

[FR Doc. E9-2504 Filed 2-5-09; 8:45 am]

BILLING CODE 9111-14-P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

[FWS-R8-R-2008-N0293; 80230-1265-0000-S3]

Humboldt Bay National Wildlife Refuge Complex, Humboldt and Del Norte Counties, CA

AGENCY: Fish and Wildlife Service,
Interior.

ACTION: Notice of availability; request
for comments: Draft comprehensive
conservation plan/environmental
assessment.

SUMMARY: We, the U.S. Fish and
Wildlife Service (Service), announce the
availability of the Draft Comprehensive
Conservation Plan/Environmental
Assessment (CCP/EA) for Humboldt Bay
National Wildlife Refuge Complex for
public review and comment. The
Humboldt Bay National Wildlife Refuge
Complex is composed of Humboldt Bay
National Wildlife Refuge (NWR) and
Castle Rock NWR. The CCP, prepared
under the National Wildlife Refuge
System Improvement Act of 1997, and
in accordance with the National
Environmental Policy Act of 1969,
describes how the Service will manage
the Refuges for the next 15 years. Draft
compatibility determinations for several
public uses are also available for review
and public comment in the Draft CCP/
EA.

DATES: Written comments must be
received at the address below on or
before March 23, 2009.

ADDRESSES: For more information on
obtaining documents and submitting
comments, see "Review and Comment"
under **SUPPLEMENTARY INFORMATION**. For
public meeting location see "Public
Meetings" under **SUPPLEMENTARY
INFORMATION**.

FOR FURTHER INFORMATION CONTACT: Eric
T. Nelson, Project Leader, U.S. Fish and
Wildlife Service, P.O. Box 576, Loleta,
CA 95551-9633, phone (707) 733-5406
or Sandy Osborn, Refuge Planner, U.S.
Fish and Wildlife Service, 2800 Cottage
Way, W-1832, Sacramento, CA 95825,
phone (916) 414-6503.

SUPPLEMENTARY INFORMATION: The
National Wildlife Refuge System
Improvement Act of 1997 (16 U.S.C.
668dd-668ee), which amended the
National Wildlife Refuge System
Administration Act of 1966, requires us
to develop a comprehensive
conservation plan (CCP) for each
national wildlife refuge. The purpose in
developing a CCP is to provide refuge
managers with a 15-year plan for
achieving refuge purposes and

contributing toward the mission of the National Wildlife Refuge System, consistent with sound principles of fish and wildlife management, conservation, legal mandates, and our policies. In addition to outlining broad management direction on conserving wildlife and their habitats, CCPs identify wildlife-dependent recreational opportunities available to the public, including opportunities for hunting, fishing, wildlife observation and photography, environmental education and interpretation.

The CCP for the Humboldt Bay National Wildlife Refuge Complex was initiated in January 2007. At that time and throughout the process, public comments were requested, considered, and incorporated in numerous ways. Public outreach has included public scoping meetings, planning updates, a CCP Web page, and **Federal Register** notices. We announced the notice of intent to prepare a Comprehensive Conservation Plan and Environmental Assessment in the **Federal Register** (72 FR 4020, January 29, 2007).

Background

Humboldt Bay NWR is located on Humboldt Bay on the northwest California coast near Eureka and Arcata. In 1971, the Humboldt Bay NWR was established to conserve coastal habitats for a great diversity of animals and plants, especially migratory birds. In later years the Service added the Lanphere and Ma-le'l Dunes Units, to help conserve the most pristine remaining dune ecosystem on the west coast of North America. The Refuge Complex also includes Castle Rock NWR, a 14-acre island located in Del Norte County, less than a mile northwest of Crescent City. This refuge hosts one of the largest and most diverse colonies of breeding seabirds on the Pacific coast and provides a roost for approximately 20,000 Aleutian cackling geese during their migration.

Alternatives

The Draft CCP/EA identifies and evaluates three alternatives for managing Humboldt Bay and Castle Rock Refuges for the next 15 years. One alternative for each Refuge has been identified as the preferred alternative. The preferred alternatives were identified based on the analysis presented in the Draft CCP/EA, which may be modified following the completion of the public comment period based on comments received from other agencies, tribal governments, non-governmental organizations, or individuals.

Alternatives for the Humboldt Bay NWR

Under Alternative A (the "No Action" Alternative), the Service would continue the current management of Humboldt Bay NWR at approximately the same level it has in the recent past. There would be continued work on the most substantive refuge issues including: Maintenance of facilities and existing programs, Salmon Creek and other habitat restoration, control of invasives (especially *Spartina*, or non-native cordgrass), habitat management for salmonids, Aleutian cackling geese management, and public use initiatives.

Under Alternative B, the Service would make a number of improvements to Humboldt Bay NWR management including substantial native habitat restoration, moderate enhancement of Aleutian cackling goose habitat, substantial restoration of Salmon Creek, substantial enhancements of other wetland and dune habitats, an increase in visitor services, a slight reduction in hunt opportunities, and proactive cultural resource management.

Alternative C, the preferred alternative, would include all of the features of Alternative B plus more native habitat restoration, more restoration of Salmon Creek, more enhancements of other wetland and dune habitats; and a slight increase in hunt opportunities compared to Alternative A.

Alternatives for the Castle Rock NWR

Under Alternative A (the "No Action" Alternative), the Service would continue to manage Castle Rock NWR as it has in the recent past.

Under Alternative B, the Service would make a number of changes to Castle Rock NWR management including: Restricting any monitoring and research to off-island; increasing educational outreach and interpretation; and increasing coordination with tribal entities.

Under Alternative C, the preferred alternative, the Service would improve management of Castle Rock NWR by: Expanding surveys for flora and fauna; improving research with remote controlled recording devices; increasing educational outreach and interpretation in collaboration with local entities; increasing coordination with tribal entities; and recommending Castle Rock NWR for wilderness designation and completing the associated legislative environmental impact statement.

Public Meetings

The locations, dates, and times of public meetings will be listed in a

planning update distributed to the project mailing list and posted on the Refuge Complex Web site at <http://www.fws.gov/humboldtby/ccp.html>.

Review and Comment

Copies of the Draft CCP/EA may be obtained by writing to the U.S. Fish and Wildlife Service, Attn: Sandy Osborn, Refuge Planner, 2800 Cottage Way, W-1832, Sacramento, CA 95825-1846. Copies of the Draft CCP/EA may be viewed at this address or at the Humboldt Bay National Wildlife Refuge Complex, 1020 Ranch Road, Loleta, CA 95551-9633. The Draft CCP/EA will also be available for viewing and downloading online at <http://www.fws.gov/humboldtby/ccp.html>. Printed documents will also be available for review in the Government Collection sections at the following libraries: Arcata Library, 500 7th Street, Arcata, CA 95521; College of the Redwoods Library, 7351 Tompkins Hill Road, Eureka, CA 95501; Del Norte County Library, 190 Price Mall, Crescent City, CA 95331; Fortuna Library, 753 14th Street, Fortuna, CA 95540; Humboldt County Library, 1313 3rd Street, Eureka, CA 95501; Humboldt State University Library, 1 Harpst Street, Arcata, CA 95521; and Conservation Library, USFWS-NCTC, 698 Conservation Way, Shepherdstown, WV 25443.

Comments on the Draft CCP/EA should be addressed to: Sandy Osborn, Refuge Planner, U.S. Fish and Wildlife Service, 2800 Cottage Way, W-1832, Sacramento, CA 95825-1846; or via electronic mail, sandy_osborn@fws.gov. Comments may also be faxed to (916) 414-6497.

At the end of the review and comment period for this Draft CCP/EA, we will analyze comments and address them in our Final CCP. Before including your address, phone number, e-mail address, or other personal identifying information in your comment, you should be aware that your entire comment—including your personal identifying information—may be made publicly available at any time. While you can ask us in your comment to withhold your personal identifying information from public review, we cannot guarantee that we will be able to do so.

Dated: October 31, 2008.

Toni M. Deery,

Acting Regional Director, California and Nevada Region, Sacramento, California.

Editorial Note: This document was received in the Office of the Federal Register on Tuesday, January 27, 2009.

[FR Doc. E9-2009 Filed 2-5-09; 8:45 am]

BILLING CODE 4310-55-P

DEPARTMENT OF THE INTERIOR**Fish and Wildlife Service**

[FWS-R6-R-2008-N0331; 60138-1265-6CCP-S3]

Final Comprehensive Conservation Plan for Nine Wetland Management Districts, North Dakota**AGENCY:** Fish and Wildlife Service, Interior.**ACTION:** Notice of Availability.

SUMMARY: The U.S. Fish and Wildlife Service (Service) announces that the Final Comprehensive Conservation Plan (CCP) for nine Wetland Management Districts (Districts) is available. This final CCP describes how the Service intends to manage the Districts for the next 15 years.

ADDRESSES: A copy of the CCP may be obtained by writing to U.S. Fish and Wildlife Service, Division of Refuge Planning, 134 Union Boulevard, Suite 300, Lakewood, Colorado 80228; or by download from <http://mountain-prairie.fws.gov/planning>.

FOR FURTHER INFORMATION CONTACT: John Esperance, 303-236-4369 (phone); 303-236-4792 (fax); or john_esperance@fws.gov (e-mail).

SUPPLEMENTARY INFORMATION: The nine Districts are Devils Lake, Arrowwood, Audubon, Chase Lake, Crosby, J. Clark Salyer, Kulm, Lostwood, and Valley City Wetland Management Districts.

The Districts are part of the National Wildlife Refuge System of the U.S. Fish and Wildlife Service. The Districts were started as part of the Small Wetlands Acquisition Program in the 1950s to save wetlands from various threats, particularly drainage. The passage of Public Law 85-585 in August, 1958, amended the Migratory Bird Hunting and Conservation Stamp Act of 1934, allowing for the acquisition of waterfowl production areas and easements for waterfowl production.

All nine of the Districts have a primary purpose to provide optimal habitat conditions for the needs of a suite of waterfowl and other migratory birds, and, to a lesser extent native, resident wildlife.

To achieve goals and objectives, aggressive wetland and upland habitat management must be conducted. Wetland and upland habitats need to be protected and enhanced through management. Habitat protection needs to be evaluated through a priority system so that different means of protection, either through fee title or easements, can be evaluated.

The draft CCP/EA was made available to the public for a 30-day review and

comment period following the announcement in the **Federal Register** on August 19, 2008 (73 FR 48388). The draft CCP/EA identified and evaluated three alternatives for managing the refuges for the next 15 years.

Alternative A, the No Action alternative, promotes a continuation of all aspects of the District's current management. Staff would conduct monitoring, inventory, and research activities at their current level (*i.e.*, limited, issue-driven research and limited avian and vegetative monitoring and inventory). Funding and staff levels would not change and programs would follow the same direction, emphasis, and intensity as they do at present. The current management of wildlife habitat and associated species on Districts Wetland Productions Areas (WPAs) are prioritized into high, medium, and low areas. Currently, only high priority Wetland Production Areas are receiving consistent management. All conservation easements are monitored by Service personnel; however, only the high priority easement violations are consistently enforced. Currently public use events and workshops with such groups as school districts, youth groups, and conservation groups are conducted on a multiyear rotation among Districts.

Alternative B is the Service's proposed action and basis for the CCP. This alternative will allow for enhanced wetland and upland management where warranted on District lands. Management objectives for various habitat types would be based on habitat preferences of groups of target species, such as waterfowl, migratory shore birds, grassland bird species and priority species. District staff will focus on high priority tracts and medium priority tracts. The District staff will implement compatible production enhancement techniques for targeted migratory bird populations. The District staff will maintain existing environmental education and public use programs, with additional waterfowl emphases. The Service proposes, at a future date, a new administration and visitor center for Audubon and Kulm WMD and additionally a new visitor contact station for Lostwood, Valley City, and Arrowwood Wetland Management District.

In Alternative C, management by the District staff would be more intensive and widespread that targets native prairie/wetland complexes. District staff would seek out where restoration projects were expanded and where returning native grasslands to quality native prairie was a priority. This alternative would have the potential to provide additional management options

to address habitat requirements and needs of specific groups of water-dependent birds (*e.g.*, waterfowl and shorebirds). The staff would develop new environmental education and public use programs. The Service proposes, at a future date, a new administration and visitor center for Audubon and Kulm WMD and additionally, a new visitor contact station for Lostwood, Valley City, and Arrowwood Wetland Management District.

The Service is furnishing this notice to advise other agencies and the public of the availability of the final CCP, to provide information on the desired conditions for the refuges, and to detail how the Service will implement management strategies. Based on the review and evaluation of the information contained in the EA, the Regional Director has determined that implementation of the final CCP does not constitute a major Federal action that would significantly affect the quality of the human environment within the meaning of Section 102(2)(c) of the National Environmental Policy Act. Therefore, an Environmental Impact Statement will not be prepared. Future site-specific proposals discussed in the final CCP will be addressed in separate planning efforts with full public involvement.

Dated: February 2, 2009.

Noreen E. Walsh,

Deputy Regional Director.

[FR Doc. E9-2542 Filed 2-5-09; 8:45 am]

BILLING CODE 4310-55-P

DEPARTMENT OF THE INTERIOR**Fish and Wildlife Service**

[FWS-R4-ES-2009-N0024; 40120-1112-0000-F2]

Receipt of Applications for the Amendment of Incidental Take Permits for Residential Construction in Charlotte County, FL**AGENCY:** Fish and Wildlife Service, Interior.**ACTION:** Notice of receipt of permit amendment application; request for comments.

SUMMARY: The U.S. Fish and Wildlife Service (Service) issued incidental take permits (permits) (TE136149-0, TE136150-0, TE136151-0, and TE136153-0), pursuant to section 10(a)(1)(B) of the Endangered Species Act of 1973, as amended, for incidental take of the threatened Florida scrub-jay (*Aphelocoma coerulescens*) (scrub-jay) in Charlotte County, Florida to Peter

Famulari (Applicant). The Applicant has requested an amendment to the permits that will change the mitigation option from payment to the Florida Scrub-jay Conservation Fund administered by The Nature Conservancy to providing the Charlotte County conservation lands program an option to purchase land that will result in acquisition of 79 acres of suitable scrub-jay habitat. The Applicant has agreed to follow all other existing habitat conservation plan (HCP) conditions. If amended, no additional take will be authorized.

DATES: We must receive your written comments on the permit amendments on or before March 9, 2009.

ADDRESSES: See the **SUPPLEMENTARY INFORMATION** section below for information on how to submit your comments on the permit amendments. You may obtain a copy of the permit amendment applications and the HCP by writing to the South Florida Ecological Services Office, Attn: Permit number TE136149-1/TE136153-1, U.S. Fish and Wildlife Service, 1339 20th Street, Vero Beach, FL 32960-3559. In addition, we will make the permit amendment applications and HCP available for public inspection by appointment during normal business hours at the above address.

FOR FURTHER INFORMATION CONTACT: Ms. Trish Adams, Fish and Wildlife Biologist, South Florida Ecological Services Office (see **ADDRESSES**); telephone: (772) 562-3909, ext. 232.

SUPPLEMENTARY INFORMATION: If you wish to comment on the permit amendments, you may submit comments by any one of the following methods. Please reference permit number TE136149-1/TE136153-1 in such comments.

1. Mail or hand-deliver comments to our South Florida Ecological Services Office address (see **ADDRESSES**).

2. E-mail comments to trish_adams@fws.gov. If you do not receive a confirmation that we have received your e-mail message, contact us directly at the telephone number listed under **FOR FURTHER INFORMATION CONTACT**.

Before including your address, phone number, e-mail address, or other personal identifying information in your comments, 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.

Residential construction will take place on six parcels in the vicinity of latitude 27.013 and longitude -82.015 in Punta Gorda Isles, Punta Gorda, Charlotte County, Florida. These parcels are within scrub-jay occupied habitat. The parcels encompass about 3.2 acres, and the footprint of the structure, infrastructure, and landscaping precludes retention of scrub-jay habitat on these parcels. More details on the specific parcel locations are available in the HCP (see **ADDRESSES**). The original permits became effective on February 28, 2007. Opportunity for public review of the original applications was provided in 71 FR 65125 (November 7, 2006).

The Service has made preliminary determinations that amendment of the permits is neither a major Federal action that will significantly affect the quality of the human environment within the meaning of section 102(2)(C) of the National Environmental Policy Act (NEPA), nor will they individually or cumulatively have more than a negligible effect on the species covered in the HCP. Therefore, the permit amendment qualifies as a categorical exclusion under NEPA as provided by the Department of Interior Manual (516 DM 2, Appendix 1 and 516 DM 8.5).

Authority: We provide this notice pursuant to Section 10 of the Endangered Species Act (16 U.S.C. 1531 *et seq.*) and NEPA regulations (40 CFR 1506.6).

Dated: January 16, 2009.

Paul Souza,

Field Supervisor, South Florida Ecological Services Field Office.

[FR Doc. E9-2554 Filed 2-5-09; 8:45 am]

BILLING CODE 4310-55-P

DEPARTMENT OF THE INTERIOR

U.S. Geological Survey

Agency Information Collection Activities: Comment Request

AGENCY: U.S. Geological Survey (USGS), Interior.

ACTION: Notice of an extension of an information collection (1028-0082).

SUMMARY: To comply with the Paperwork Reduction Act of 1995 (PRA), we are notifying the public that we will submit to OMB an information collection request (ICR) to renew approval of the paperwork requirements for "Bird Banding Lab (2 USGS forms)." This notice provides the public an opportunity to comment on the paperwork burden of this form.

DATES: You must submit comments on or before April 7, 2009.

ADDRESSES: Send your comments on this information collection directly to the Office of Management and Budget (OMB), Office of Information and Regulatory Affairs, Attention: Desk Officer for the Department of the Interior via OMB e-mail: (OIRA_DOCKET@omb.eop.gov); or by fax (202) 395-6566; and identify your submission with #1028-0082. Please submit a copy of your comments to the Phadrea Ponds, Information Collections, U.S. Geological Survey, 2150-C Center Avenue, Fort Collins, CO 80525 (mail); (970) 226-9230 (fax); or FAX: pponds@usgs.gov (e-mail). Use Information Collection Number 1028-0082 in the subject line.

FOR FURTHER INFORMATION CONTACT: To request additional information about this ICR, contact David Smith at davidasmith@usgs.gov.

SUPPLEMENTARY INFORMATION:

Title: Bird Banding Laboratory.
OMB Control Number: 1028-0082.

Type of Request: Extension of a currently approved collection.

Abstract: The USGS Bird Banding Laboratory is responsible for monitoring the trapping and marking of wild migratory birds by persons holding Federal permits. The Bird Banding laboratory collects information using two forms: (1) The Application for Federal Bird Marking and Salvage Permit; and (2) The Bird Banding Recovery Report. This request does not include the Bird Banding Schedule.

We will protect information from respondents considered proprietary under the Freedom of Information Act (5 U.S.C. 552) and its implementing regulations (43 CFR Part 2), and under regulations at 30 CFR 250.197, "Data and information to be made available to the public or for limited inspection." Responses are voluntary. No questions of a "sensitive" nature are asked.

Affected Public: General Public.
Respondent Obligation: Voluntary.
Frequency of Collection: On occasion.
Estimated Number and Description of Respondents: 85,550 Individuals encountering a banded bird and volunteer bird banders.

Annual Burden Hours: 4,525 hours.
Estimated Annual Reporting and Recordkeeping "Hour" Burden: The currently approved "hour" burden for this collection is 4,525 hours. We do not expect the burden for each form to change as a result of this request (30 minutes for Permit Application form; 3 minutes for Recovery Report form).

Estimated Reporting and Recordkeeping "Non-Hour Cost" Burden: We have not identified any "non-hour cost" burdens associated with this collection of information.

Public Disclosure Statement: The PRA (44 U.S.C. 3501, *et seq.*) provides that an agency may not conduct or sponsor and you are not required to respond to, a collection of information unless it displays a currently valid OMB control number. Until OMB approves a collection of information, you are not obligated to respond.

Comments: We are soliciting comments as to: (a) Whether the proposed collection of information is necessary for the agency to perform its duties, including whether the information is useful; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information; (c) how to enhance the quality, usefulness, and clarity of the information to be collected; and (d) how to minimize the burden on the respondents, including the use of automated collection techniques or other forms of information technology.

Please note that the comments submitted in response to this notice are a matter of public record. Before including your address, phone number, e-mail address, or other personal identifying information in your comment, you should be aware that your entire comment, including your personal identifying information, may be made publicly available at any time. While you can ask OMB in your comment to withhold your personal identifying information from public review, we cannot guarantee that it will be done. To comply with the public process, we publish this **Federal Register** notice announcing that we will submit this ICR to OMB for approval. The notice provided the required 60 day public comment period.

USGS Information Collection Clearance Officer: Phadrea Ponds, 970-226-9445.

Dated: January 28, 2009.

Susan D. Haseltine,

Associate Director for Biology, U.S. Geological Survey.

[FR Doc. E9-2544 Filed 2-5-09; 8:45 am]

BILLING CODE 4311-AM-P

DEPARTMENT OF THE INTERIOR

U.S. Geological Survey

Agency Information Collection: Comment Request

AGENCY: United States Geological Survey (USGS), Interior.

ACTION: Notice of a new collection.

SUMMARY: To comply with the Paperwork Reduction Act of 1995 (PRA), we are notifying the public that

we will submit to OMB a new information collection request (ICR) for review and approval. This notice provides the public an opportunity to comment on the paperwork burden of this collection.

DATES: You must submit comments on or before April 7, 2009.

ADDRESSES: Send your comments regarding this ICR to Phadrea Ponds, Information Collections Clearance Officer, at U.S. Geological Survey, 2150-C Center Avenue, Fort Collins, CO 80525 (mail); (970) 226-9230 (fax); or pponds@usgs.gov (e-mail). Please reference Information Collection 1028-NEW, NATSURV.

FOR FURTHER INFORMATION CONTACT: Lynne Koontz by mail at U.S. Geological Survey, 2150-C Center Avenue, Fort Collins, CO 80526, or by telephone at (970) 226-9384.

SUPPLEMENTARY INFORMATION:

Title: Visitor Satisfaction and Spending at Pompeys Pillar National Monument.

OMB Control Number: 1028-NEW.

Abstract: The USGS will conduct a survey of visitors to Pompeys Pillar National Monument and Shepherd Ah Nei Recreation Area near Billings, MT. The survey will be used to better understand visitor experiences and spending in the local community. Respondents will have the option to complete the survey on-site or return it by mail. We will use this survey to measure visitor satisfaction with current visitor services and facilities and their desire for future services and facilities. Information from this survey will provide BLM managers, planners, and visitor services professionals with scientifically sound data that can be used to prepare resource management planning documents and understand the economic impact of visitors to the local community.

We will protect information from respondents considered proprietary under the Freedom of Information Act (5 U.S.C. 552) and implementing regulations (43 CFR part 2), and under regulations at 30 CFR 250.197, "Data and information to be made available to the public or for limited inspection." Responses are voluntary. No questions of a "sensitive" nature are asked.

Frequency of Collection: This is a one-time survey.

Respondent's Obligation: Voluntary.

Estimated Number and Description of Respondents: Approximately 600 visitors of Pompeys Pillar National Monument and 600 visitors at Shepherd Ah Nei Recreation Area near Billings, MT.

Estimated Number of Responses: 1200 responses.

Annual Burden Hours: 200 hours.

Estimated Annual Reporting and Recordkeeping "Hour" Burden: We estimate the public reporting burden will average 10 minutes per response. This includes the time for reviewing instructions and completing the survey.

Estimated Annual Reporting and Recordkeeping "Non-Hour Cost": We have not identified any "non-hour cost" burdens associated with this collection of information.

Public Disclosure Statement: The PRA (44 U.S.C. 3501, *et seq.*) provides that an agency may not conduct or sponsor and you are not required to respond to, a collection of information unless it displays a currently valid OMB control number.

Comments: We are soliciting comments as to: (a) Whether the proposed collection of information is necessary for the agency to perform its duties, including whether the information is useful; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information; (c) how to enhance the quality, usefulness, and clarity of the information to be collected; and (d) how to minimize the burden on the respondents, including the use of automated collection techniques or other forms of information technology.

Please note that the comments submitted in response to this notice are a matter of public record. Before including your address, phone number, e-mail address, or other personal identifying information in your comment, you should be aware that your entire comment, including your personal identifying information, may be made publicly available at any time. While you can ask OMB in your comment to withhold your personal identifying information from public review, we cannot guarantee that it will be done. To comply with the public process, we publish this **Federal Register** notice announcing that we will submit this ICR to OMB for approval. The notice provided the required 60 day public comment period.

USGS Information Collection Clearance Officer: Phadrea Ponds, 970-226-9445.

Dated: January 28, 2009.

Sue Haseltine,

Associate Director for Biology.

[FR Doc. E9-2545 Filed 2-5-09; 8:45 am]

BILLING CODE 4311-AM-P

DEPARTMENT OF THE INTERIOR**National Park Service****National Register of Historic Places;
Notification of Pending Nominations
and Related Actions**

Nominations for the following properties being considered for listing or related actions in the National Register were received by the National Park Service before January 24, 2009.

Pursuant to section 60.13 of 36 CFR part 60 written comments concerning the significance of these properties under the National Register criteria for evaluation may be forwarded by United States Postal Service, to the National Register of Historic Places, National Park Service, 1849 C St., NW., 2280, Washington, DC 20240; by all other carriers, National Register of Historic Places, National Park Service, 1201 Eye St., NW., 8th floor, Washington, DC 20005; or by fax, 202-371-6447. Written or faxed comments should be submitted by February 23, 2009.

J. Paul Loether,

*Chief, National Register of Historic Places/
National Historic Landmarks Program.*

IOWA**Polk County**

Methodist Deaconess Institute—Esther Hall,
921 Pleasant St., Des Moines, 09000067

NEBRASKA**Burt County**

Burt County State Bank, 246 S. 13th St.,
Tekamah, 09000068

Douglas County

Nicholas Street Historic District, Bounded by
N. 11th St., Izard, N. 14th St. and a line
parallel to and roughly 450' N. of Nicholas
St., Omaha, 09000070

Parker, Frank, Archeological Site
(Archeological Resources of the Metro
Omaha Management Unit MPS), Address
Restricted, Florence, 09000069

Lincoln County

North Platte U.S. Post Office and Federal
Building, 416 N. Jeffers St., North Platte,
09000071

OKLAHOMA**Craig County**

Little Cabin Creek Bridge (Route 66 in
Oklahoma MPS), U.S. 60/69 over Little
Cabin Creek, SE of jct with U.S. 44, Vinita,
09000072

Kay County

Huston Elementary School, 304 Vinnedge,
Blackwell, 09000073
Northside Elementary School, 720 W. Doolin
Ave., Blackwell, 09000074
Parkside Elementary School, 502 E. College,
Blackwell, 09000075

Washington Elementary School, 723 W.
College, Blackwell, 09000076

Nowata County

Opossum Creek Bridge, Co. Rd. NS-413 over
Opossum Creek, South Coffeyville,
09000077

Payne County

Reifsnnyder, Josephine, Luston House
(Lustron Houses of Oklahoma), 2119
Sherwood, Stillwater, 09000078
Usher, Christian K., Luston House (Lustron
Houses of Oklahoma), 1135 E. Moses,
Cushing, 09000079

Washington County

House at 1554 SW Rogers (Lustron Houses of
Oklahoma), 1554 SW Rogers, Bartlesville,
09000080

[FR Doc. E9-2518 Filed 2-5-09; 8:45 am]

BILLING CODE 4310-70-P

DEPARTMENT OF THE INTERIOR**National Park Service****National Register of Historic Places;
Weekly Listing of Historic Properties**

Pursuant to (36 CFR 60.13(b,c)) and
(36 CFR 63.5), this notice, through
publication of the information included
herein, is to appraise the public as well
as governmental agencies, associations
and all other organizations and
individuals interested in historic
preservation, of the properties added to,
or determined eligible for listing in, the
National Register of Historic Places from
December 15 to December 24, 2008.

For further information, please
contact Edson Beall via: United States
Postal Service mail, at the National
Register of Historic Places, 2280,
National Park Service, 1849 C St., NW.,
Washington, DC 20240; in person (by
appointment), 1201 Eye St., NW., 8th
floor, Washington DC 20005; by fax,
202-371-2229; by phone, 202-354-
2255; or by e-mail,
Edson_Beall@nps.gov.

Dated: February 2, 2009.

J. Paul Loether,

*Chief, National Register of Historic Places/
National Historic Landmarks Program.*

KEY: State, County, Property Name, Address/
Boundary, City, Vicinity, Reference
Number, NHL, Action, Date, Multiple
Name

ARKANSAS**Nevada County**

Prescott Commercial Historic District,
Roughly bounded by E. 3rd St., Walnut St.,
W. 3rd St. and Pine St., Prescott, 08000818,
LISTED, 12/24/08

CONNECTICUT**New London County**

William Clark Company Thread Mill, 21
Pawcatuck Ave., 12 and 22 River Rd.,
Stonington, 08001190, LISTED, 12/16/08

DELAWARE**New Castle County**

West 9th Street Commercial Historic District,
111-320 W. 9th St., 901-909 N. Orange St.,
825-901 N. Tatnall St., Wilmington,
08001204, LISTED, 12/22/08

DISTRICT OF COLUMBIA**District of Columbia State Equivalent**

Randall Junior High School, 65 I St., SW.,
Washington, D.C., 08001205, LISTED,
12/22/08 (Public School Buildings of
Washington, DC MPS)
Shaw Junior High School, 7th St., and Rhode
Island Ave., NW, Washington, D.C.,
08001206, LISTED, 12/22/08 (Public
School Buildings of Washington, DC MPS)

FLORIDA**Dade County**

Fontainebleau Hotel, 4441 Collins Ave.,
Miami Beach, 08001318, LISTED, 12/22/08

Glades County

Red Barn, 3 mi. W of Co. Rd. 721 on Co. Rd.
721A, Okeechobee vicinity, 08001243,
LISTED, 12/24/08

ILLINOIS**Cook County**

Hohf, Dr. Robert, House, 303 Sheridan Rd.,
Kenilworth vicinity, 08001166, LISTED,
12/12/08

INDIANA**Hamilton County**

Castor Farm Site, Address Restricted,
Noblesville vicinity, 08001207, LISTED,
12/18/08

Hancock County

Barr, Charles, House, 25 W. Walnut St.,
Greenfield, 08001208, LISTED, 12/22/08

Howard County

Kokomo Courthouse Square Historic District,
Bounded by Taylor St. on the N., Market
St. on the E., Superior St. on the S.,
Washington St. on the W., Kokomo,
08001209, LISTED, 12/22/08

Old Silk Stocking Historic District, Bounded
by W. Jackson St. on the N., Washington
St. on the E., Wildcat Creek in the S.,
Phillips St. on the W., Kokomo, 08001210,
LISTED, 12/22/08

Lake County

Rumsey, J. Claude, House, 709 Michigan
Ave., Lowell, 08001211, LISTED, 12/22/08

Madison County

Madison County Bridge No. 149, Fall Creek
Pkwy and Huntsville Pk. over Fall Creek,
Pendleton, 08001212, LISTED, 12/22/08

Sullivan County

Sullivan County Courthouse, 100 Courthouse
Sq., Sullivan, 08001213, LISTED, 12/22/08

KENTUCKY**Warren County**

Adams—Kentucky District, 900–1200 blks. of Adams St. & 1000–1300 blks. of Kentucky St., Bowling Green, 08000012, LISTED, 12/18/08

LOUISIANA**Iberia Parish**

New Iberia (steamboat) shipwreck, Address Restricted, New Iberia, 08001214, LISTED, 12/24/08

MARYLAND**Allegany County**

Rolling Mill Historic District, Portions of Williams, Elm, Spring, Short, Baker, and Ascension Sts., Miltenberger Pl., Sheridan Pl., Maryland Ave, Cumberland, 08001215, LISTED, 12/24/08

Anne Arundel County

Skipworth's Addition, Address Restricted, Harwood, 08001216, LISTED, 12/22/08 (Quaker Sites in the West River Meeting, Anne Arundel County, Maryland c. 1650–1785, MPS)

Baltimore Independent City

Bellona-Gittings Historic District, Bounded by E. Lake, Melrose and Gittings Aves., York Rd., Charles Rd., Charlesbrooke and Overbrook Rds., Baltimore, 08001217, LISTED, 12/24/08

Washington County

Sharpsburg Historic District, E. and W., Chapline, Antietam, and High Sts., N. and S. Church, Mechanic, Hall, and Potomac Sts., Sharpsburg, 08001218, LISTED, 12/24/08

MASSACHUSETTS**Norfolk County**

Medway Village Historic District, Bounded by former New York and Boston railroad right of way, Oakland St., and Charles River, Medway, 08001191, LISTED, 12/17/08

MISSOURI**Callaway County**

Oakley Chapel African Methodist Episcopal Church, Co. Rd. 485 at jct. of Co. Rd. 486, Tebbetts vicinity, 08001192, LISTED, 12/17/08

Jackson County

Walnut Street Warehouse and Commercial Historic District (Boundary Increase II), 1526, 1524, 1520, 1516–18, 1512–14, and 1508 Grand Blvd., Kansas City, 08001193, LISTED, 12/17/08

MONTANA**Yellowstone County**

L and L Building, 2624 Minnesota Ave., Billings, 08001227, LISTED, 12/19/08
Oliver Building, 2702 Montana Ave., Billings, 08001228, LISTED, 12/19/08

NEW YORK**Chemung County**

Buildings at 104–116 West Water St., 104–116 W. Water St., Elmira, 08001230, LISTED, 12/17/08

OHIO**Clark County**

Masonic Temple, 125 W. High St., Springfield, 08001195, LISTED, 12/17/08

Fairfield County

Fairfield County Children's Home, 1743 E. Main St., Lancaster, 08001196, LISTED, 12/22/08

Hamilton County

Pinecroft, 2336 Kipling Ave., Cincinnati, 08001197, LISTED, 12/17/08

Montgomery County

Bull, Jonah, House, 2233 Wayne Ave., Dayton, 08001198, LISTED, 12/19/08

Warren County

King, Ahimaaz, House, 1720 E. King Ave., Kings Mills vicinity, 08001199, LISTED, 12/19/08

RHODE ISLAND**Washington County**

Rose, Benoni, House, 97 Lafayette Rd., North Kingstown, 08000717, LISTED, 12/24/08

WASHINGTON**Chelan County**

Downtown Wenatchee Historic District, Roughly bounded by Columbia St., Mission St., N. 1st St., and Kittitas St., Wenatchee, 08001200, LISTED, 12/17/08

Grant County

Reiman, Samuel and Katherine, House, 415 F. St. SW., Quincy, 08001201, LISTED, 12/17/08

WEST VIRGINIA**Cabell County**

Barboursville Historic District, Water, Main, Brady Sts., and Central Ave., Barboursville, 08001234, LISTED, 12/24/08
Wellington, Zachary Taylor, House, 415 Main St., Huntington, 08001235, LISTED, 12/24/08

Hardy County

Kotz, Francis, Farm, 27625 St. Rt. 55, Wardsville vicinity, 08001237, LISTED, 12/22/08

Switzer, Nicholas, House, Co. Rt. 5 and Waites Run, Wardsville vicinity, 08001238, LISTED, 12/24/08

Mineral County

Davis, Henry Glassaway, House, 15–17 Jones St., Piedmont, 08001239, LISTED, 12/19/08

Randolph County

Scott Hill, 2000 Livingston Ave., Elkins, 08001240, LISTED, 12/22/08

WISCONSIN**Columbia County**

Holborn, George and Tuve, House, 10507 WI 60, Lodi, 08001241, DETERMINED ELIGIBLE, 12/19/08

La Crosse County

Gund Brewing Company Bottling Works, 2130 S. Ave., La Crosse, 08001202, LISTED, 12/15/08

[FR Doc. E9–2517 Filed 2–5–09; 8:45 am]

BILLING CODE 4310–70–P

INTERNATIONAL TRADE COMMISSION

[Investigation No. 337–TA–533 (Remand)]

In the Matter of Certain Rubber Antidegradants, Components Thereof, and Products Containing Same; Notice of Commission Determination (1) To Review and Not Take a Position on Certain Issues in the Final Initial Determination of the Administrative Law Judge and (2) Not To Review the Remainder of the Final Initial Determination; Termination of the Investigation

AGENCY: U.S. International Trade Commission.

ACTION: Notice.

SUMMARY: Notice is hereby given that the U.S. International Trade Commission has determined (1) to review and not take a position on certain issues in the final initial determination (“ID”) of the presiding administrative law judge (“ALJ”) in the above-captioned investigation and (2) not to review the remainder of the ID finding no violation of section 337 of the Tariff Act of 1930, as amended, 19 U.S.C. 1337 (“section 337”). This action terminates the investigation with a finding of no violation of section 337.

FOR FURTHER INFORMATION CONTACT: James A. Worth, Office of the General Counsel, U.S. International Trade Commission, 500 E Street, SW., Washington, DC 20436, telephone (202) 205–3065. Copies of non-confidential documents filed in connection with this investigation are or will be available for inspection during official business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary, U.S. International Trade Commission, 500 E Street, SW., Washington, DC 20436, telephone (202) 205–2000. General information concerning the Commission may also be obtained by accessing its Internet server (<http://www.usitc.gov>). The public record for this investigation may be viewed on the Commission's electronic docket (EDIS) at <http://>

edis.usitc.gov. Hearing-impaired persons are advised that information on this matter can be obtained by contacting the Commission's TDD terminal on (202) 205-1810.

SUPPLEMENTARY INFORMATION: The Commission instituted this investigation on March 29, 2005, based on a complaint brought by Flexsys America L.P. ("Flexsys"), alleging a violation of section 337 in the importation, the sale for importation, or the sale after importation of certain rubber antidegradants, components thereof, or products containing same with respect to claims 30 or 61 of U.S. Patent No. 5,117,063 ("the '063 patent"), claims 7 or 11 of U.S. Patent No. 5,608,111 ("the '111 patent"), or claims 1, 32, or 40 of U.S. Patent No. 6,140,538 ("the '538 patent"). 70 FR 15,855 (Mar. 29, 2005).

The complaint named as respondents Sinorgchem Co. ("Sinorgchem") of Shandong, China, as well as Sovereign Chemical Company ("Sovereign"), Korea Kumho Petrochemical Co., Ltd. ("KKPC"), Vilax Corporation ("Vilax"), and Stolt-Nielson Transportation Group Ltd. ("Stolt-Nielson"). The investigation was terminated with regard to the '538 patent, and with regard to Vilax and Stolt-Nielson.

On February 16, 2006, the presiding administrative law judge issued his original final initial determination ("ID"), finding that Sinorgchem and Sovereign had violated section 337 with respect to the asserted claims of the '063 and '111 patents, but finding that KKPC had not. All parties petitioned for review of various parts of the final ID. The Commission reviewed the ALJ's final ID in its entirety. 71 FR 20131 (April 19, 2006). On review, the Commission found a violation of section 337 with respect to the asserted claims, and issued a limited exclusion order. The limited exclusion order barred the unauthorized importation into the United States by Sinorgchem and Sovereign of 4-ADPA made by a process covered by claim 30 of the '063 patent or claim 7 of the '111 patent, and 6-PPD made by a process covered by claim 61 of the '063 patent or claim 11 of the '111 patent.

Sinorgchem appealed the Commission's final determination to the U.S. Court of Appeals for the Federal Circuit ("Federal Circuit"). On December 21, 2007, the Federal Circuit issued its judgment vacating and remanding the Commission's final determination for further proceedings consistent with the Court's opinion. *Sinorgchem Co., Shandong v. International Trade Commission*, 511

F.3d 1132 (Fed. Cir. 2007) ("*Sinorgchem*").

On June 3, 2008, the Commission issued notice of its determination to rescind the limited exclusion order relating to the importation of rubber antidegradant products. The Commission also determined to remand the investigation to the presiding ALJ for proceedings consistent with *Sinorgchem*, including issuance of a final initial determination on violation and a recommended determination on remedy and bonding.

On August 29, 2008, the Commission issued notice of its determination not to review an ID terminating the investigation as to Sovereign on the basis of a settlement agreement and consent order.

On December 3, 2008, the presiding administrative law judge issued his final initial determination on remand ("IDR") finding no violation of section 337 in the above-identified investigation. In his IDR, the administrative law judge found no infringement of the asserted claims under the doctrine of equivalents. The administrative law judge further explained that under the remand instructions of the Federal Circuit, affirmative invalidity defenses need only be reached if the Commission finds infringement under the doctrine of equivalents. The administrative law judge nevertheless found that the asserted claims are not invalid by reason of alleged obviousness and that the complainant has satisfied the technical prong of the domestic industry requirement. All of the parties filed petitions for review.

Having examined the relevant portions of the record in this investigation, including the IDR, the petitions for review, and the responses thereto, the Commission has determined to (1) review and take no position on (a) the administrative law judge's finding of no infringement under the doctrine of equivalents to the extent it is based on argument-based prosecution history estoppel and (b) the administrative law judge's findings with respect to obviousness; and (2) not to review the remainder of the ID. Thus, the investigation is terminated with a finding of no violation of section 337.

This action is taken under the authority of section 337 of the Tariff Act of 1930, as amended (19 U.S.C. 1337), and of section 210.42(h) of the Commission's Rules of Practice and Procedure (19 CFR 210.42(h)).

By order of the Commission.

Issued: February 2, 2009.

Marilyn R. Abbott,

Secretary to the Commission.

[FR Doc. E9-2536 Filed 2-5-09; 8:45 am]

BILLING CODE 7020-02-P

DEPARTMENT OF JUSTICE

[OMB Number 1103-NEW]

Office of Community Oriented Policing Services; Agency Information Collection Activities: Proposed Collection; Comments Requested

ACTION: 60-Day Notice of Information Collection Under Review: Community Policing Self-Assessment (CP-SAT).

The Department of Justice (DOJ) Office of Community Oriented Policing Services (COPS) will be submitting the following information collection request to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995. The information collection is published to obtain comments from the public and affected agencies.

The purpose of this notice is to allow for 60 days for public comment until April 7, 2009. This process is conducted in accordance with 5 CFR 1320.10.

If you have comments especially on the estimated public burden or associated response time, suggestions, or need a copy of the proposed information collection instrument with instructions or additional information, please contact Rebekah Dorr, Department of Justice Office of Community Oriented Policing Services, 1100 Vermont Avenue, NW., Washington, DC 20530.

Written comments and suggestions from the public and affected agencies concerning the proposed collection of information are encouraged. Your comments should address one or more of the following four points:

- Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;
- Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
- Enhance the quality, utility, and clarity of the information to be collected; and
- Minimize the burden of the collection of information on those who are to respond, including through the use of

appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

Overview of This Information Collection

(1) *Type of Information Collection:* Proposed collection; comments requested.

(2) *Title of the Form/Collection:* Community Policing Self-Assessment (CP-SAT).

(3) *Agency form number, if any, and the applicable component of the Department sponsoring the collection:* None. U.S. Department of Justice Office of Community Oriented Policing Services.

(4) *Affected public who will be asked or required to respond, as well as a brief abstract:* Primary: Law Enforcement Agencies and community partners. The purpose of this project is to improve the practice of community policing throughout the United States by supporting the development of a series of tools that will allow law enforcement agencies to gain better insight into the depth and breadth of their community policing activities.

(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 approximately 800 respondents will respond with an average of 1 hour per response.

(6) *An estimate of the total public burden (in hours) associated with the collection:* The total estimated burden is 800 hours across 103 agencies.

If additional information is required contact: Lynn Bryant, Department Clearance Officer, United States Department of Justice, Justice Management Division, Policy and Planning Staff, Patrick Henry Building, Suite 1600, 601 D Street, NW., Washington, DC 20530.

Dated: February 3, 2009.

Lynn Bryant,

Department Clearance Officer, PRA, United States Department of Justice.

[FR Doc. E9-2585 Filed 2-5-09; 8:45 am]

BILLING CODE 4410-AT-P

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

Importer of Controlled Substances; Notice of Application

Pursuant to Title 21 Code of Federal Regulations 1301.34(a), this is notice that on December 19, 2008, Mallinckrodt Inc., 3600 North Second Street, St. Louis, Missouri 63147, made application by renewal to the Drug Enforcement Administration (DEA) for registration as an importer of the basic classes of controlled substances listed in schedule II:

Drug	Schedule
Phenylacetone (8501)	II
Coca Leaves (9040)	II
Opium, raw (9600)	II
Poppy Straw (9650)	II
Poppy Straw Concentrate (9670)	II

The company plans to import the listed controlled substances for the manufacture of controlled substances in bulk for distribution to its customers.

No comments, objections, or requests for any hearings will be accepted on any application for registration or re-registration to import crude opium, poppy straw, concentrate of poppy straw or coca leaves. As explained in the Correction to Notice of Application pertaining to Rhodes Technologies, 72 FR 3417 (2007), comments and requests for hearings on applications to import narcotic raw material are not appropriate.

Any bulk manufacturer who is presently, or is applying to be, registered with DEA to manufacture such basic classes of controlled substances listed in schedule I or II, which fall under the authority of section 1002(a)(2)(B) of the Act (21 U.S.C. 952(a)(2)(B)) may, in the circumstances set forth in 21 U.S.C. 958(i), file comments or objections to the issuance of the proposed registration and may, at the same time, file a written request for a hearing on such application pursuant to 21 CFR 1301.43 and in such form as prescribed by 21 CFR 1316.47.

Any such comments or objections should be addressed, in quintuplicate,

to the Drug Enforcement Administration, Office of Diversion Control, Federal Register Representative (ODL), 8701 Morrisette Drive, Springfield, VA 22152; and must be filed no later than March 9, 2009.

This procedure is to be conducted simultaneously with and independent of the procedures described in 21 CFR 1301.34(b), (c), (d), (e), and (f). As noted in a previous notice published in the **Federal Register** on September 23, 1975, (40 FR 43745), all applicants for registration to import a basic class of any controlled substances in schedule I or II are, and will continue to be, required to demonstrate to the Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration, that the requirements for such registration pursuant to 21 U.S.C. 958(a); 21 U.S.C. 823(a); and 21 CFR 1301.34(b), (c), (d), (e), and (f) are satisfied.

Dated: January 30, 2009.

Joseph T. Rannazzisi,

Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration.

[FR Doc. E9-2543 Filed 2-5-09; 8:45 am]

BILLING CODE 4410-09-P

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

Manufacturer of Controlled Substances; Notice of Registration

By Notice dated October 9, 2008 and published in the **Federal Register** on October 17, 2008 (73 FR 61909), Cerilliant Corporation, 811 Paloma Drive, Suite A, Round Rock, Texas 78665-2402, made application by renewal to the Drug Enforcement Administration (DEA) to be registered as a bulk manufacturer of the basic classes of controlled substances listed in schedules I and II:

Drug	Schedule
Cathinone (1235)	I
Methcathinone (1237)	I
N-Ethylamphetamine (1475)	I
N,N-Dimethylamphetamine (1480)	I
Aminorex (1585)	I
4-Methylaminorex (cis isomer) (1590)	I
Gamma-Hydroxybutyric acid (2010)	I
Methaqualone (2565)	I
Alpha-ethyltryptamine (7249)	I

Drug	Schedule
Lysergic acid diethylamide (7315)	I
Marihuana (7360)	I
Tetrahydrocannabinols (7370)	I
Mescaline (7381)	I
3,4,5-Trimethoxyamphetamine (7390)	I
4-Bromo-2,5-dimethoxyamphetamine (7391)	I
4-Bromo-2,5-dimethoxyphenethylamine (7392)	I
4-Methyl-2,5-dimethoxyamphetamine (7395)	I
2,5-Dimethoxyamphetamine (7396)	I
2,5-Dimethoxy-4-ethylamphetamine (7399)	I
3,4-Methylenedioxyamphetamine (7400)	I
5-Methoxy-3,4-methylenedioxyamphetamine (7401)	I
N-Hydroxy-3,4-methylenedioxyamphetamine (7402)	I
3,4-Methylenedioxy-N-ethylamphetamine (7404)	I
3,4-Methylenedioxymethamphetamine (7405)	I
4-Methoxyamphetamine (7411)	I
Alpha-methyltryptamine (7432)	I
Bufotenine (7433)	I
Diethyltryptamine (7434)	I
Dimethyltryptamine (7435)	I
Psilocybin (7437)	I
Psilocyn (7438)	I
N-Benzylpiperazine (7493)	I
Acetyldihydrocodeine (9051)	I
Benzylmorphine (9052)	I
Codeine-N-oxide (9053)	I
Dihydromorphine (9145)	I
Heroin (9200)	I
Hydromorphinol (9301)	I
Methyldihydromorphine (9304)	I
Morphine-N-oxide (9307)	I
Normorphine (9313)	I
Pholcodine (9314)	I
Acetylmethadol (9601)	I
Allylprodine (9602)	I
Alphacetylmethadol except levo-alphacetylmethadol (9603)	I
Alphameprodine (9604)	I
Alphamethadol (9605)	I
Betacetylmethadol (9607)	I
Betameprodine (9608)	I
Betamethadol (9609)	I
Betaprodine (9611)	I
Hydroxypethidine (9627)	I
Noracymethadol (9633)	I
Norlevorphanol (9634)	I
Normethadone (9635)	I
Trimeperidine (9646)	I
Phenomorphin (9647)	I
Para-Fluorofentanyl (9812)	I
3-Methylfentanyl (9813)	I
Alpha-Methylfentanyl (9814)	I
Acetyl-alpha-methylfentanyl (9815)	I
Beta-hydroxyfentanyl (9830)	I
Beta-hydroxy-3-methylfentanyl (9831)	I
Alpha-Methylthiofentanyl (9832)	I
3-Methylthiofentanyl (9833)	I
Thiofentanyl (9835)	I
Amphetamine (1100)	II
Methamphetamine (1105)	II
Phenmetrazine (1631)	II
Methylphenidate (1724)	II
Amobarbital (2125)	II
Pentobarbital (2270)	II
Secobarbital (2315)	II
Glutethimide (2550)	II
Nabilone (7379)	II
1-Phenylcyclohexylamine (7460)	II
Phencyclidine (7471)	II
1-Piperidinocyclohexanecarbonitrile (8603)	II
Alphaprodine (9010)	II
Cocaine (9041)	II
Codeine (9050)	II
Dihydrocodeine (9120)	II
Oxycodone (9143)	II

Drug	Schedule
Hydromorphone (9150)	II
Diphenoxylate (9170)	II
Benzoyllecgonine (9180)	II
Ethylmorphine (9190)	II
Hydrocodone (9193)	II
Levomethorphan (9210)	II
Levorphanol (9220)	II
Isomethadone (9226)	II
Meperidine (9230)	II
Meperidine intermediate-A (9232)	II
Meperidine intermediate-B (9233)	II
Meperidine intermediate-C (9234)	II
Methadone (9250)	II
Methadone intermediate (9254)	II
Dextropropoxyphene, bulk (non-dosage forms) (9273)	II
Morphine (9300)	II
Thebaine (9333)	II
Levo-alphaacetylmethadol (9648)	II
Oxymorphone (9652)	II
Noroxymorphone (9668)	II
Racemethorphan (9732)	II
Alfentanil (9737)	II
Sufentanil (9740)	II
Fentanyl (9801)	II

The company plans to manufacture small quantities of the listed controlled substances to make reference standards which will be distributed to their customers.

No comments or objections have been received. DEA has considered the factors in 21 U.S.C. 823(a) and determined that the registration of Cerilliant Corporation to manufacture the listed basic classes of controlled substances is consistent with the public interest at this time. DEA has investigated Cerilliant Corporation to ensure that the company's registration is consistent with the public interest. The investigation has included inspection and testing of the company's physical security systems, verification of the company's compliance with state and local laws, and a review of the company's background and history. Therefore, pursuant to 21 U.S.C. 823, and in accordance with 21 CFR 1301.33, the above named company is granted registration as a bulk manufacturer of the basic classes of controlled substances listed.

Dated: January 30, 2009.

Joseph T. Rannazzisi,

Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration.

[FR Doc. E9-2541 Filed 2-5-09; 8:45 am]

BILLING CODE 4410-09-P

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

Manufacturer of Controlled Substances; Notice of Registration

By Notice dated October 7, 2008 and published in the **Federal Register** on October 14, 2008, (73 FR 60719), Halo Pharmaceutical Inc., 30 North Jefferson Road, Whippany, New Jersey 07981, made application to the Drug Enforcement Administration (DEA) to be registered as a bulk manufacturer of the basic classes of controlled substances listed in schedules I and II:

Drug	Schedule
Dihydromorphone (9145)	I
Hydromorphone (9150)	II

Dihydromorphone is an intermediate in the manufacture of Hydromorphone and is not for commercial distribution. The company plans to manufacture Hydromorphone HCL for sale to other manufacturers and for the manufacture of other controlled substance dosage units for distribution to its customers.

No comments or objections have been received. DEA has considered the factors in 21 U.S.C. 823(a) and determined that the registration of Halo Pharmaceutical Inc. to manufacture the listed basic classes of controlled substances is consistent with the public interest at this time. DEA has investigated Halo Pharmaceutical Inc. to ensure that the company's registration is consistent with the public interest. The investigation has included inspection and testing of the company's physical

security systems, verification of the company's compliance with state and local laws, and a review of the company's background and history. Therefore, pursuant to 21 U.S.C. 823, and in accordance with 21 CFR 1301.33, the above named company is granted registration as a bulk manufacturer of the basic classes of controlled substances listed.

Dated: January 30, 2009.

Joseph T. Rannazzisi,

Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration.

[FR Doc. E9-2538 Filed 2-5-09; 8:45 am]

BILLING CODE 4410-09-P

DEPARTMENT OF LABOR

Employment and Training Administration

Employment and Training Administration Notice of Implementation of Supplemental Appropriations Act, 2008, Title IV—Emergency Unemployment Compensation, and the Unemployment Compensation Extension Act

AGENCY: Employment and Training Administration, Labor.

ACTION: Notice.

SUMMARY: The Employment and Training Administration (ETA) of the United States Department of Labor (the Department) is publishing, for public information, notice of the issuance and availability of the Unemployment Insurance Program Letters (UIPL) that

provide guidance to the states regarding the implementation of the Emergency Unemployment Compensation program (EUC08) pursuant to the Supplemental Appropriations Act, 2008, Title IV, Emergency Unemployment Compensation, Public Law 110–252, signed by the President on June 30, 2008, and, subsequently, the Unemployment Compensation Extension Act, Public Law 110–449, enacted November 21, 2008.

FOR FURTHER INFORMATION CONTACT: Stephanie C. Garcia, 202–693–3207.

SUPPLEMENTARY INFORMATION: The EUC08 is administered through voluntary agreements between states and the Department. The EUC08 benefits are payable in a state the week following the week in which an agreement is signed. The Department has provided the states guidance in the form of UIPLs for implementing and operating the EUC08 program, including fiscal and reporting instructions: UIPL 23–08 (published July 7, 2008), UIPL 23–08, Change 1 (published August 15, 2008), UIPL 23–08, Change 2 (published November 24, 2008), and UIPL 23–08 Change 3 (published December 24, 2008). These documents furnish information about the EUC08 program, provide the Department’s interpretation of Title IV of the Supplemental Appropriations Act, 2008, and contain the operating instructions to guide states in implementing and administering the EUC08 program.

The complete text of these guidance documents are provided in this notice. In addition, they are available on the ETA Advisory Web site: UIPL 23–08—http://wdr.doleta.gov/directives/corr_doc.cfm?DOCN=2649; UIPL 23–08, Change 1—http://wdr.doleta.gov/directives/corr_doc.cfm?DOCN=2657; UIPL 23–08, Change 2—http://wdr.doleta.gov/directives/corr_doc.cfm?DOCN=2684; and UIPL 23–08, Change 3—http://wdr.doleta.gov/directives/corr_doc.cfm?DOCN=2693.

Advisory: Unemployment Insurance Program Letter No. 23–08.

To: State Workforce Agencies.

From: Douglas F. Small, Deputy Assistant Secretary.

Subject: Supplemental Appropriation Act, 2008, Title IV—Emergency Unemployment Compensation.

1. *Purpose.* To provide states with instructions for implementing and operating the Emergency Unemployment Compensation, 2008 (EUC08) program, including fiscal and reporting instructions.

2. *References.* Supplemental Appropriation Act, 2008, Title IV—Emergency Unemployment

Compensation, Public Law 110–252, signed by the President on June 30, 2008; the Social Security Act (42 U.S.C.); the Federal Unemployment Tax Act (26 U.S.C. 3301 *et seq.*); Section 205 of the Federal-State Extended Unemployment Compensation Act of 1970, as amended; Section 233 of the Trade Act of 1974, as amended; 20 CFR Parts 603, 615, 616, and 650; Unemployment Insurance Program Letter (UIPL) 29–05; UIPL 12–87; UIPL 12–87, Change 1; and ET Handbooks 395, 401 and 410.

3. *Summary.* The EUC08 program provides up to 13 weeks of 100 percent federally-financed compensation to eligible individuals in all states.

EUC08 is payable to individuals who (1) have exhausted all rights to regular compensation with respect to a benefit year that ended on or after May 1, 2007; and (2) have no rights to regular compensation or extended benefits (EB); and (3) are not receiving compensation under the unemployment compensation law of Canada. However, the Governor of a state may elect to pay EUC08 prior to the payment of EB. To qualify for EUC, individuals must have had employment of 20 weeks of work, or the equivalent in wages, in their base periods. Continuing eligibility is determined under the requirements of the state law.

EUC08 is administered through voluntary agreements between states and the U.S. Department of Labor (the Department). EUC08 is payable in a state the week following the week in which an agreement is signed. In most states, where the week of unemployment ends on Saturday, the first week for which EUC08 may be paid is the week ending July 12, 2008. In these states, the last week for purposes of an initial determination of EUC08 eligibility is the week ending March 28, 2009. However, a claimant who has amounts remaining in his/her EUC08 account as of this week ending date may, if otherwise eligible, collect EUC08 through the week ending June 27, 2009. States are required to submit a separate financial status report (ETA 9130) for administrative grants and costs associated with the EUC08 program.

4. *Guidance.* This document furnishes information about the EUC08 program and provides the Department’s interpretation of Title IV of the Supplemental Appropriations Act, 2008. It also sets forth the operating instructions to guide states in implementing and administering the EUC08 program.

The instructions in this document are issued to states as guidance provided by the Department in its role as the

principal in the EUC08 program. As agents of the Department in administering the EUC08 program, states must follow the instructions as provided in the attached operating instructions.

5. *Action.* Administrators are to provide this information and instructions to the appropriate staff.

6. *Inquiries.* Direct questions to the appropriate Regional Office.

7. *Attachments.*

Attachment A—Implementing and Operating Instructions for EUC08.

Attachment B—General Provisions for Administering EUC08.

Attachment C—Title IV—Emergency Unemployment Compensation.

Attachment A—Implementing and Operating Instructions for EUC08

Introduction

On June 30, 2008, the President signed Public Law 110–252, the Supplemental Appropriations Act, 2008 (Act). Title IV created the Emergency Unemployment Compensation (EUC08) program. The EUC08 program is a federally funded benefit extension which provides up to 13 weeks of benefits to exhaustees, as defined, who otherwise meet the requirements of the Act. This document provides guidance to states in administering the provisions of the Act. This guidance explains the eligibility requirements, state procedures for determining who is eligible, how to establish valid EUC08 claims, and other administrative functions associated with the Act.

Definitions

This section contains the definitions of terms used throughout this document. To the extent possible, these definitions follow the extended benefit regulations found at 20 CFR 615.2, as required by Section 4006 of the Act regarding these terms. References to 5 U.S.C. Chapter 85 relate to Unemployment Compensation for Federal Employees (UCFE) and Unemployment Compensation for Ex-Servicemembers (UCX).

1. “Act” means Title IV of the Supplemental Appropriations Act, 2008, which establishes the Emergency Unemployment Compensation program.

2. “Additional Compensation” (AC) means compensation totally financed by a state and payable under a state law by reason of conditions of high unemployment or by reason of other special factors.

3. “Agreement” means the agreement between a state and the Department of Labor (the Department) under which the state agency makes payments, as the

Department's agent, of EUC08 in accordance with the Act as interpreted by the Department as set forth in these instructions or any other instructions issued by the Department.

4. "Applicable Benefit Year" means, with respect to an individual, the current benefit year if, at the time an initial claim for EUC08 is filed, the individual has an unexpired benefit year only in the state against which claim is filed, or, in any other case, the individual's most recent benefit year ending on or after May 1, 2007. For this purpose, the most recent benefit year, for an individual who has unexpired benefit years in more than one state when an initial claim for EUC08 is filed, is the benefit year with the latest ending date or, if such benefit years have the same ending date, the benefit year in which the latest continued claim for regular compensation was filed.

Note. The Act requires individuals to "have exhausted all rights to regular compensation under the State law or under Federal law with respect to a benefit year (excluding any benefit year that ended before May 1, 2007)." (Section 4001(b)(1) of the Act. Emphasis added.) In the majority of states, where benefit years end on Saturday, the practical effect is that the Act applies to individuals with benefit years ending on or after Saturday, May 5, 2007.

5. "Applicable State" means the state with respect to which the individual is an exhaustee for EUC08 purposes, and, in the case of a combined wage claim for regular compensation, the term means the "paying state" for such claim as defined in 20 CFR 616.6(e).

6. "Applicable State Law" means the state law of the state which is the applicable state for an individual.

7. "Base Period" means the base period as determined under the applicable state law for the individual's applicable benefit year.

8. "Benefit Year" means the benefit year as defined in the applicable state law.

9. "Compensation" means cash benefits (including dependents' allowances) payable to individuals with respect to their unemployment, and includes regular compensation, additional compensation, extended compensation, and EUC08 as defined in this section.

10. "Department" means the U.S. Department of Labor.

11. "Emergency Unemployment Compensation" means the compensation payable under the Act, and which is referred to as EUC08.

12. "Extended compensation" means the extended unemployment compensation payable to an individual for weeks of unemployment which

begin in an extended benefit period, under those provisions of state law which satisfy the requirements of the Federal-State Extended Unemployment Compensation Act of 1970 (hereafter called the Federal-State EB law), and, when so payable, includes compensation payable pursuant to 5 U.S.C. Chapter 85, but does not include regular compensation or additional compensation. Extended compensation is referred to as Extended Benefits or EB.

13. "Regular compensation" means compensation payable to an individual under any state law, and, when so payable, includes compensation payable under 5 U.S.C. Chapter 85, but does not include extended compensation or additional compensation.

14. "Secretary" means the Secretary of Labor of the United States.

15. "State" means the states of the United States, the District of Columbia, the Commonwealth of Puerto Rico, and the Virgin Islands.

16. "State Agency" means the state unemployment compensation agency of the state administering the state law.

17. "State Law" means the unemployment compensation law of a state approved by the Secretary under Section 3304(a) of the Internal Revenue Code of 1986 (26 U.S.C. 3304(a)).

18. "Week" means a week as defined in the applicable state law.

19. "Week of Unemployment" means a week of total, part-total, or partial unemployment as defined in the applicable state law, which shall be applied in the same manner to the same extent to claims filed under the requirements of this Act.

Operating Instructions

1. Eligibility for EUC08.

a. *Basic Eligibility Requirements.* To be eligible for a week of EUC08, in addition to meeting the applicable state law provisions, individuals must:

(1) Have exhausted all rights to regular compensation under the applicable state law with respect to the applicable benefit year;

(2) Have no rights to regular or extended compensation with respect to the week under such law or any other state or Federal unemployment compensation (UC) law;

(3) Not be receiving compensation with respect to such week under the UC law of Canada;

(4) Be legally authorized to work in the United States. In determining work authorization, states will follow the procedures provided in section 1137(d) of the Social Security Act (42 U.S.C. 1230b-7(d)) and as explained in UIPL 12-87 and UIPL 12-87, Change 1; and

(5) Have had 20 weeks of full-time insured employment or the equivalent in insured wages, as determined under the provisions of the state law implementing section 202(a)(5) of the Federal-State EB law.

b. Determining Exhaustees.

(1) Under Section 4001(c) of the Act, for an individual to be considered to have exhausted benefit rights to regular compensation in an applicable benefit year (for purposes of meeting the first EUC08 eligibility criterion), the individual must have either:

(A) Received all regular compensation payable based on employment and/or wages during the applicable base period; or

(B) Had rights to regular compensation terminated by reason of the expiration of the applicable benefit year in which these rights existed.

(2) Exhaustees cease to be exhaustees when they can establish a valid new benefit year; therefore, at each quarter change, the state must check to see if an individual meets the state's requirements to establish a new benefit year. If the individual can establish a new benefit year, s/he would no longer qualify for the EUC08 claim. In these cases, the claimant should be advised that s/he no longer qualifies for the EUC08 claim and that s/he can file a regular UI claim. Once the claimant qualifies for a new claim, the payments on the EUC08 claim must end, even if the Weekly Benefit Amount (WBA) for the new claim is lower than what the claimant was receiving on the EUC08 claim.

Note. The requirement to check eligibility for regular compensation at each quarterly change was not explicitly stated in the guidance implementing the Temporary Extended Unemployment Compensation Act of 2002. However, the Department has determined that it is a method of administration necessary for assuring that individuals have, in fact, exhausted regular compensation as required by the Act.

2. Beginning and Ending of the EUC08 Program in a State.

Under Section 4007 of the Act, EUC08 is payable in a state beginning with the first week which begins after the date an Agreement is signed between the state and the Department. No new EUC08 determinations may be made for weeks of unemployment ending after March 31, 2009. In most states, where weeks of unemployment end on Saturday, this means no new EUC08 determinations may be made for weeks beginning after March 28, 2009. However, an individual having amounts remaining in his/her EUC08 account as of March 31, 2009, may collect the remaining balance in subsequent weeks, if otherwise eligible.

Any individual who qualifies for this phase-out is limited to the amount in the account as of this date. No EUC08 may be paid under this phase-out "for any week beginning after June 30, 2009." In states where weeks of unemployment end on Saturday, this means the last week of EUC08 payable during this phase-out is the week ending June 27, 2009.

3. *Termination of EUC08 Agreement.* The agreement provides that it may be amended by mutual consent and may be terminated by either party on thirty days' written notice. In the case of termination, the EUC08 period will end 30 days from the date the state notifies the Secretary of its election to terminate the EUC08 program. No EUC08 will be payable for weeks which begin after the date the termination of the agreement is effective. However, EUC08 is payable for weeks of unemployment up to such termination date.

4. *Notifications.*

a. *Identification and Notification of Potentially Eligible Claimants.* The state must identify individuals who are potentially eligible for EUC08 and provide them with appropriate written notification of their potential entitlement to EUC08, including filing instructions.

b. *Interstate Claims.* EUC08 is payable to individuals filing under the Interstate Benefit Payment Plan in the same manner and to the same extent that benefits are payable to intrastate claimants.

The liable state is responsible for identifying and notifying all potentially eligible interstate claimants of their potential eligibility, including filing instructions.

c. *Notification of Media.* To assure public knowledge of the status of the EUC08 program, the state must notify all appropriate news media having coverage throughout the state of the beginning of the EUC08 program.

5. *Relation of Extended Benefits to EUC08.* Section 4001(e) of the Act allows, if state law permits, the payment of EUC08 prior to EB to individuals who are otherwise eligible for EUC08. If a state elects to pay EUC08 prior to EB, the amount of the individual's EB entitlement is not otherwise affected; EB is deferred, not reduced. Therefore, if the state is in an EB period when the individual exhausts his or her EUC08 claim, s/he may receive any remaining EB entitlement, as long as s/he met the EB eligibility provisions. There is no provision in the Act that authorizes states to trigger "off" an EB period.

The following provisions from the Federal-State EB law do *not* apply to the EUC08 program:

a. The suitable work and work search requirements of Section 202(a)(3); and

b. The requirement of employment to purge certain disqualifications found in Section 202(a)(4).

Note, however, that the Federal-State EB law's 20-weeks of work requirement must be met. See item 10.c.(1) below.

6. *Effect of Additional Compensation Eligibility in a State.* Section 4001(b)(2) of the Act requires that an individual have no rights to regular compensation or EB in order to meet the eligibility requirements for EUC08. AC is not considered regular compensation or EB; therefore, EUC08 is payable regardless of an individual's AC eligibility. A state with an AC program in effect may pay AC following the payment of EUC08. AC does not affect the EUC08 maximum benefit amount (MBA).

7. *Applicability of State Law Provisions.* Under Section 4001(d)(2) of the Act, applicable state law provisions which apply to the payment and continuing eligibility for regular compensation also apply to the payment of EUC08. An individual is not entitled to receive EUC08 for a week for which the individual is disqualified under the applicable state law. For example, if the applicable state law requires, as a condition of eligibility for regular compensation, that an individual be able and available for work, this requirement applies to EUC08. If an individual is not able or available for work, the individual would be disqualified from receiving EUC08 until the individual became able and available again.

8. *Effect of Other UI-Related Programs on Eligibility for EUC08.*

a. *Trade Readjustment Allowances (TRA).* The maximum amount of EUC08 payable to an individual who is also entitled to TRA shall not be reduced by reason of TRA entitlement. However, under Section 233(a)(1) of the Trade Act of 1974, as amended, the individual's entitlement to EUC08 will reduce the individual's maximum amount of "basic" TRA payable if the EUC08 is payable during the UI benefit period established by or in effect at the time of the individual's first TRA qualifying separation under the applicable trade adjustment assistance certification issued by the Department. (For the definition of "benefit period," see 20 CFR 617.3(h).) If the EUC08 entitlement occurs during a UI benefit period subsequent to the one in which the individual's first TRA qualifying separation occurred, the maximum amount of "basic" TRA payable will not be reduced by the amount of EUC08 entitlement. In either case, however, the

individual is not eligible for TRA until EUC08 entitlement is exhausted.

The provisions of Section 233(d) of the Trade Act of 1974, as amended (relating to reduction of EB entitlement because of the receipt of TRA in the most recent benefit year), are not applicable to determinations of entitlement to EUC08.

b. *Disaster Unemployment Assistance (DUA).* An individual is not eligible for DUA with respect to a week of unemployment under Section 410 of the Robert T. Stafford Disaster Relief and Emergency Assistance Act, as amended (42 U.S.C. 5177), if the individual is eligible to receive EUC08 compensation for that week.

9. *Establishment of EUC08 Account.* Section 4002(a) of the Act requires the state to establish an EUC08 account for each eligible individual. The maximum benefit amount (MBA) in the individual's account will be equal to the lesser of 50 percent of the total amount of regular compensation or 13 times the average regular compensation WBA for a week of total unemployment (including dependents' allowances in either case) payable to the individual with respect to the "applicable benefit year."

If a redetermination or an appeal decision results in a determination that an individual is entitled to more or less regular compensation, the individual's status as an exhaustee must be redetermined, as appropriate, and an appropriate change shall be made in the individual's EUC08 account.

10. *EUC08 WBA and Other Information.*

a. *Total Unemployment.* The WBA payable to an individual for a week of total unemployment is equal to the individual's most recent weekly benefit amount (including any dependents' allowances) for the applicable benefit year.

b. *Partial and Part-Total Unemployment.* To determine the amount payable for a week of partial or part-total unemployment, the state will calculate the payment amount in accordance with the state law applicable to such a week of unemployment.

c. *Exceptions.* The terms and conditions of the state law which apply to claims for regular compensation and to the payment thereof shall apply to claims for EUC08 and the payment thereof, except:

(1) The individual must have 20 weeks of full-time insured employment or the "equivalent" in insured wages in the individual's applicable base period as determined under the provisions of the state law implementing section 202(a)(5) of the Federal-State EB law

and 20 CFR 615.4(b). The equivalent in insured wages equals 40 times the individual's most recent weekly benefit amount, or 1.5 times the individual's high quarter insured employment.

To determine which of these earnings requirements the state may use to determine if the claimant has a qualifying applicable benefit year for EUC08, the state must consult "the provisions of state law implementing Section 202(a)(5)." Thus, for example, if the state law authorized the use of just one of the three requirements, the state may only use that single requirement for EUC08 purposes. If the state law authorizes the use of two alternatives, then the state may use the two alternatives and if the state law authorizes the use of all three alternatives, then all three alternatives may be used; and

(2) Where otherwise inconsistent with the provisions of the Act or with the operating instructions promulgated to carry out the Act; and

(3) The maximum amount of EUC08 payable to any individual for whom a EUC08 account is established under Section 4002 shall not exceed the amount established in such account for such individual.

11. *Record Maintenance and Disposal of Records.* The state will maintain EUC08 claims and payment data (including data on eligibility, disqualification and appeals) as required by the Department.

a. *Record Maintenance.* Each state will maintain records on the administration of the EUC08 program, and will make all such records available for inspection, examination, and audit by such federal officials or employees as the Secretary or the Department may designate or as may be required by the law.

b. *Disposal of Records.* The electronic/paper records created in the administration of the EUC08 program must be maintained by the state for 3 years after final action (including appeals or court action) on the claim, or for less than the 3-year period if copied by microphotocopy or by an electronic imaging method. At the end of the 3 year period, the EUC08 records are transferred to state accountability under the conditions for the disposal of records that apply to UCFE and UCX records as explained in Chapter XXII of ET Handbook No. 391 (1992 Edition) and Chapter I, Page I-15, of ET Handbook No. 384 (1984 Edition).

12. *Disclosure of Information.* Information in records made and maintained by the state agency in administering the Act must be kept confidential, and information in such

records may be disclosed only in the same manner and to the same extent as information with respect to regular compensation, and the entitlement of individuals thereto, may be disclosed under provisions of the applicable state law meeting the requirements of 20 CFR part 603. This provision on the confidentiality of information obtained in the administration of the Act shall not apply, however, to information, reports and studies with no individual identifiers.

13. *Inviolate Rights to EUC08.* Except as specifically provided in these instructions, the rights of individuals to EUC08 shall be protected in the same manner and to the same extent as the rights of persons to regular compensation are protected under the applicable state law. Such measures must include protection of claimants for EUC08 from waiver, release, assignment, pledge, encumbrance, levy, execution, attachment, and garnishment, of their rights to EUC08. In the same manner and to the same extent, individuals shall be protected from discrimination and obstruction in regard to seeking, applying for and receiving EUC08.

Processing Claims for EUC08

1. *Applicability of State Law Provisions.* Under Section 4001(d)(2) of the Act, except where inconsistent with the Act or with the operating instructions promulgated to carry out the Act, all terms and conditions of the state unemployment compensation law applicable to claims for and payment of regular compensation, apply to claims for, and payment of, EUC08. The provisions of the applicable state law that apply to claims for EUC08 include but are not limited to:

- a. Claim Filing and Reporting;
- b. Information to individuals, as appropriate;
- c. Notices to individuals and employers, as appropriate, including notice to each individual of each determination and redetermination of eligibility for or entitlement to EUC08;
- d. Determinations, redeterminations, appeals, and hearings;
- e. Disqualification, including disqualifying income provisions;
- f. Ability to work and availability for work, including legal authorization to work in the United States;
- g. The Interstate Benefit Payment Plan; and
- h. The Interstate Arrangement for Combining Employment and Wages.

2. Claims for EUC08.

Note: In processing claims for EUC08, although states will need to verify that claimants have no regular UI entitlement,

there is no requirement that the claimant file a regular UI initial claim. Each application should result in only one initial claim; a claimant application will result in either a regular UI initial claim or an initial EUC08 claim (which could be a denied claim).

a. *Intrastate Initial Claims.* An initial claim for EUC08 will be filed by an individual according to the applicable state's manual, remote, or electronic filing procedures. As noted above, this shall not be counted as a regular UI claim.

b. *Interstate Initial Claims.* Interstate EUC08 claims will be filed on the same forms and in the same manner as all other interstate initial claims against the liable state. Before accepting an initial EUC08 claim, the agent or liable state, whichever is taking the claim, must review the individual's work history, examine potential entitlement and advise the individual of all filing options. If the individual has sufficient employment and wages to establish a new benefit year under any state or federal program, including the combined wage arrangement, there is no eligibility under the EUC08 program. When an initial EUC08 claim is filed through the agent state, the state will:

- (1) Complete an Initial Interstate Claim, Form IB-1, check claim type "other" and identify as EUC08;
- (2) Review the individual's work history and advise the individual of all filing options; and
- (3) Transmit a TC-IB1 to the liable state.

c. *Intrastate and Interstate Weeks Claimed.* Claims for payments of EUC08 for weeks of unemployment must be filed at the same times and in the same manner as claims for regular compensation are filed under the applicable state law, and on forms or electronic filing procedures as furnished to the individual by the state agency.

d. *Combined Wage Claims (CWC).* EUC08 is payable to individuals filing under the Interstate Arrangement for Combining Employment and Wages in the same manner and to the same extent that benefits are payable to other intrastate or interstate claimants.

Administrative, entitlement and eligibility requirements provided in these instructions also apply to claims filed under the CWC program, except where clearly inconsistent with combined wage (and interstate, when applicable) procedures, policies and rules.

When an EUC08 determination or redetermination is issued on a CWC claim, no Report of Determination of Combined-Wage Claim, TC-IB5, will be issued to the transferring state. The paying state will not bill transferring

states for EUC08. The paying state will charge all EUC08 compensation paid on CWC claims directly to the EUCA in accordance with the fiscal instructions provided in these instructions.

3. *Secretary's Standard.* The procedures for reporting and filing claims for EUC08 must be consistent with these instructions and the Secretary's "Standard for Claim Filing, Claimant Reporting, Job Finding and Employment Services" (*Employment Security Manual*, Part V, sections 5000 *et seq.*).

4. *Determination of Entitlement: Notices to Individuals.*

a. *Determination of Initial Claim.* When an individual files an initial claim for EUC08, the state agency must determine promptly the eligibility of the individual and, if eligible, the weekly and maximum amounts of EUC08 payable. If denied EUC08, the individual must be issued an appealable determination.

b. *Determination of Weekly Claims.* The state agency must promptly, upon the filing of a claim for a payment of EUC08 for a week of unemployment, determine whether the individual is entitled to a payment of EUC08 for such week, and, if entitled, the amount of EUC08 to which the individual is entitled to and issue a prompt payment.

c. *Redetermination.* An individual filing an EUC08 initial claim or weekly certification has the same rights to request a reconsideration of a determination as are provided for in the applicable state law for regular compensation.

d. *Notices to Individual.* The state agency must give written notice to the individual of any determination or redetermination of an initial claim and all weekly claims. Each notice must include such information regarding rights to reconsideration or appeal, or both, using the same process that is used for redeterminations of regular compensation. The state agency must also provide the following notice to all claimants filing an initial claim for EUC08:

Notice

Under 18 U.S.C. 1001, knowingly and willfully concealing a material fact by any trick, scheme, or device or knowingly making a false statement in connection with this claim is a Federal Offence, punishable by a fine or imprisonment for not more than five years, or both, under Title 18 of the United States Code.

e. *Promptness.* Full payment of EUC08 when due must be made with the greatest promptness that is administratively feasible.

f. *Secretary's Determination Standard.* The procedures for making determinations and redeterminations and furnishing written notices of determinations, redeterminations, and rights of appeal to individuals claiming EUC08 must be consistent with the Secretary's "Standard for Claim Determinations—Separation Information" (*Employment Security Manual*, Part V, sections 6010 *et seq.*).

5. *Appeal and Hearing.*

a. *Applicable State Law.* The applicable state law provisions concerning the right of appeal and fair hearing from a determination or redetermination of entitlement to regular compensation shall apply to determinations and redeterminations of eligibility for or entitlement to EUC08.

b. *Rights of Appeal and Fair Hearing.* The right of appeal and opportunity for a fair hearing to claims for EUC08 must be consistent with these instructions and with sections 303(a)(1) and 303(a)(3) of the Social Security Act (SSA) (42 U.S.C. 503(a)(1) and 503(a)(3)).

c. *Promptness of Appeals Decisions.*

(1) Decisions on appeals under the EUC08 Program must accord with the "Standard for Appeals Promptness—Unemployment Compensation" in 20 CFR Part 650.

(2) Any applicable state law provision allowing the advancement or priority of unemployment compensation cases on judicial calendars, or otherwise intended to provide for the prompt payment of unemployment compensation when due, must apply to proceedings involving entitlement to EUC08.

6. *Fraud and Overpayment, Section 4005 of the Act.* The Act contains specific provisions regarding fraud and overpayments of EUC08. Applicable state law provisions regarding the detection and prevention of fraudulent overpayments of EUC08 must be, as a minimum, the same as those applied by the state for regular compensation and must be consistent with the Secretary's "Standard for Fraud and Overpayment Detection" (*Employment Security Manual*, Part V, Sections 7510 *et seq.*).

a. *Fraudulent Claiming of EUC08.* Section 4005(a) of the Act provides for penalties for filing a fraudulent claim for EUC08. Specifically, if the individual knowingly makes or causes to be made by another, a false statement or fails to disclose or causes another to fail to disclose a material fact that would cause an overpayment of EUC08 benefits, the individual:

(1) Shall be ineligible for further EUC08 in accordance with the provisions of the applicable state

unemployment compensation law relating to fraud in connection with a claim for unemployment compensation, and

(2) Shall be subject to prosecution under Section 1001 of Title 18, U.S.C.

Applicable state law provisions relating to disqualification for fraudulently claiming or receiving a payment of compensation shall apply to claims for and payment of EUC08.

When a state has sufficient facts to make a prima facie case under 18 U.S.C. 1001, the state must consider referral to OIG for criminal prosecution in accordance with the provisions of the Memorandum of Understanding between the Department of Labor's Office of Inspector General and the Employment and Training Administration, which was transmitted as an attachment to UIPL No. 29-05.

States must pursue EUC08 fraud cases in the same way all other state and federal claims are handled.

b. *Overpayments.* Under Section 4005(b) of the Act, each state must require repayment from individuals who have received any overpayment of EUC08 (whether fraudulent or non-fraudulent), unless the state, under the optional language of Section 4005(b), elects to waive recovery. The option to waive recovery applies only to non-fraudulent overpayments.

(1) *Application of State Waiver Provision.* If the state has a state law waiver provision for regular compensation, the state provision may be applied to non-fraudulent EUC08 overpayments if the provision requires the state to determine that:

(A) The payment of such EUC08 was without fault on the part of the individual, and

(B) Such repayment would be contrary to equity and good conscience.

In making these determinations, the state must apply the same standards as are applied in making such determinations with respect to the waiver of overpayments of regular compensation.

(2) *Optional EUC08 Waiver.* Under Section 4005(c) of the Act, any state that does not have a state waiver provision or does not have a state waiver provision that meets both the "fault" and "equity and good conscience" requirements stated in paragraph (1) above may adopt this optional EUC08 waiver. If the state elects to implement the optional EUC08 waiver, it may not do so until it has issued agency operating instructions for staff to follow.

(A) The state may waive recovery of a non-fraudulent EUC08 overpayment if it determines that:

i. The payment of such EUC08 was without fault on the part of the individual, and

ii. Such repayment would be contrary to equity and good conscience.

(B) In determining whether fault exists, the following factors must be considered:

i. Was a material statement or representation made by the individual in connection with the application for EUC08 resulting in the overpayment, and did the individual know, or should the individual have known, that the statement or representation was inaccurate?

ii. Did the individual fail, or cause another to fail, to disclose a material fact in connection with an application for EUC08 resulting in the overpayment, and did the individual know or should the individual have known that the fact was material?

iii. Did the individual know, or would s/he have been expected to know, that s/he was not entitled to the EUC08 payment?

iv. Did the overpayment result directly or indirectly, and partially or totally, from any act or omission of the individual and which was erroneous, inaccurate or otherwise wrong and the individual knew or could have been expected to know that the act or omission was erroneous or inaccurate or otherwise wrong?

(C) In determining whether equity and good conscience exists, the following factors must be considered:

i. Was the overpayment the result of a decision on appeal?

ii. Had the state agency given notice to the individual that the individual may be required to repay the benefit payment in the event of a reversal of the eligibility determination on appeal?

iii. Will recovery of the overpayment cause financial hardship to the individual?

(3) *Recovery of Overpayments, Section 4005(c) of the Act.* The Act requires that no repayment of an EUC08 overpayment may be required, and no deduction may be made, until a determination has been issued and an opportunity for a fair hearing has been given to the individual concerned, and the determination has become final. When the determination requiring repayment is issued, the state shall restore the full amount of the recoverable overpayment to the individual's EUC08 available account balance.

(A) Unless an EUC08 overpayment is recovered, or is waived, the state may, during the three-year period after the date the individual received the payment of EUC08 to which the

individual was not entitled, recover the overpayment by deductions from any sums payable to the individual under any state or Federal UC law administered by the state or any other Federal law administered by the state which provides for the payment of any assistance or an allowance with respect to unemployment. Such recoveries may only be made as described in (F) and (G) below.

(B) To the extent permitted under state law, an EUC08 overpayment may be recovered by offset, except that:

i. No single offset may exceed 50 percent of the amount otherwise payable to the individual for the week; and

ii. Any offset of compensation payable is limited to the three-year period following the date that the claimant received the improper payment(s).

(C) At the end of the three-year period, the state may remove the overpayment from its accounting records. Although no further active collection efforts by the state are required, the state must maintain an administrative record during the subsequent three-year period to provide for possible collection. After the subsequent three-year period (a total of six years from the date the claimant received the improper payment(s)), the state may dispose of the overpayment record.

(D) EUC08 overpayment recovery shall be enforced by any action or proceeding which may be brought under state or Federal law, unless recovery of the overpayment is waived or prohibited in accordance with the Act and the instructions in this section.

(E) Overpayments of EUC08 recovered in any manner must be deposited into the fund from which payment was made.

(F) If a state has an agreement in effect with the Secretary to implement the cross-program offset provisions of Section 303(g)(2) of the SSA, EUC08 payments shall be used to offset state compensation overpayments, and state compensation payments shall be used to offset EUC08 overpayments.

If the state does not have an agreement with the Secretary under Section 303(g)(2), SSA, the state may not use EUC08 to offset a state compensation overpayment, but may under Section 303(g)(1), SSA, offset state compensation payments to recover EUC08 overpayments.

(G) If a state has the cross-program offset agreement and an Interstate Reciprocal Overpayment Recovery Arrangement in effect with the National Association of State Workforce Agencies, EUC08 payments may be used

to offset state compensation overpayments for other states that also have both agreements in effect.

If the other state does not have an agreement with the Secretary under Section 303(g)(2), SSA, EUC08 benefits may only be used to offset overpayments of Federal benefits for the other state.

Financial Information and Instructions

1. Payment to States.

a. Requesting EUC08 Benefit Funds. Under Section 4003 of the Act, each state that has entered into an agreement to pay EUC08 will be paid an amount equal to 100 percent of the amount of EUC08 paid to individuals by the state under the agreement and in full accordance with the Act and these instructions. States will request funds from the Emergency Unemployment Compensation Account (EUCA) to pay all EUC08 benefits attributable to all claim types (UI, UCFE, and UCX). All requests will go through the Automated Standard Application for Payments (ASAP) system. Drawdown requests must adhere to the funding mechanism stipulated in the Treasury-State Agreement executed under the Cash Management Improvement Act of 1990. Requests will be funded in the same manner as all ASAP transactions elected by the states (FEDWIRE or ACH to the state benefit payment account).

There will be one new line in the ASAP for making drawdowns to pay EUC08 benefits, refer to #3 below for drawdown instructions. The line will be clearly labeled EMERGENCY UNEMP COMP (EUC08). The Bureau of Public Debt, managers of the Unemployment Trust Fund (UTF), will immediately inform state users of the ASAP of any modifications to screens or drawdown instructions. EUC08 benefits paid to former employees of state and local governments, former Federal employees and former service members, "501(c)(3)" nonprofit organizations and federally recognized Indian tribes are funded from U.S. Treasury general revenues through the EUCA. This does not affect the process for requesting funds, but does affect the reporting of those benefits on the ETA 2112. States are to report all EUC08 payments, including reimbursable, UCFE/X on line 39, column F. (Note that it does not matter whether these employers have elected reimbursement status.) See Reporting Instructions, Paragraph 2.f for details.

b. *EUC08 Administrative Funds.* Section 4004(c) of the Act appropriates funds from the Employment Security Administration Account (ESAA) in the UTF, to pay costs related to the

administration of the EUC08 agreement. Section 4004(c) also authorizes the Secretary to determine the amount to be paid to states for processing EUC08 workloads. States will receive EUC08 administrative funds through the contingency entitlement process. See Reporting Instructions, Paragraph 2.h. The supplemental budget request process will be used for states to request funds for implementation.

2. EUC08 Accounting.

a. *Obligational Authority.* The Grant Officer will assign a separate line on the UI program notices of obligational authority for EUC08 administrative grant funds, and a separate sub-account for EUC08 will be set up in the Payment Management System for states to draw down EUC08 administrative funds.

b. *Administrative Fund Accounting.* Because of the separate appropriation for EUC08 administrative funds and the availability of these funds until expended, states must track and report EUC08 administrative expenditures and obligations separately from the regular UI program. Therefore, states must establish a separate fund ledger and must submit a separate ETA 9130 for the EUC08 program. States are to include any EUC08 administrative expenditures and obligations incurred in June 2008 in their September 30, 2008, EUC08 ETA 9130 report.

c. *Time Distribution.* To ensure that regular UI and EUC08 costs are tracked separately, states need to charge time used for all EUC08 activities to the appropriate UI functional activity codes as outlined in Appendix E to ET Handbook No. 410 under the separate EUC08 fund ledger; however, states should combine regular and EUC08 staff year usage data in Section A of the UI-3 worksheet.

d. Accounting for EUC08 Payments (Benefits).

(1) EUC08 advances to the states' UTF accounts and disbursements for EUC08 benefit payments will be reported on the monthly ETA 2112. Do *not* use a separate form for this report. (See Reporting Instructions.) Accurate reporting of advances, reimbursements and payments is important due to the monthly reconciliation of balances with Department of Labor records.

(2) Since EUC08 paid to UCFE and UCX claimants will be funded out of General Revenues, the Federal Employees Compensation (FEC) Account will not be used to pay EUC08 benefits. Therefore, Federal agencies will not be required to reimburse the Unemployment Trust Fund for EUC08 paid to ex-Federal civilian and military employees. The ETA 191 report and UCFE/UCX detailed claimant data

provided by states to Federal agencies must exclude EUC08.

3. *Processing Refunds.* There are two scenarios for returning funds to the program line for EUC08.

a. The most likely scenario will be when the state has funds in its state benefit payment account and needs to return those funds to the EUCA. This should be completed as a negative amount posted to the appropriate line in ASAP. To accomplish this, the total draw for the day in ASAP must be greater than the negative balance posted to the appropriate line.

b. The second scenario is when a state actually has the funds in its Federal UI account that are required to be returned to the appropriate program line. This should be accomplished by the state processing a book transfer transaction that accomplishes a transfer from its UI account to the appropriate program under the EUCA account.

Reporting Instructions

1. *General.* The EUC08 program reports, ETA 207, ETA 218, ETA 227, ETA 5130 and ETA 5159 must be submitted electronically by using separate EUC08 entry screens that are available through the UI Required Reports electronic reporting system. EUC08 activity should also be reported on the ETA 2112, ETA 539 and UI-3 as specified below in section 2. Unless otherwise noted, definitions of items will follow definitions in the regular program as specified in ETA Handbook 401, 4th Edition. Due dates will be the same as the regular versions of reports.

Reporting will begin with the first reporting period in which the effective date of the EUC08 program falls. Reporting for all reports except the ETA 2112 will continue for twelve full months or four full quarters after the last payable week of the EUC08 program. For those reporting periods in this post-EUC08 time frame, only reports with non-zero data need be submitted. Reporting on the ETA 2112 must continue for as long as there is activity.

2. Data Items to be Reported.

a. *ETA 207.* Report column 1, Total Determinations and Redeterminations, for lines 101 through 106. Report also lines 201 and 202, columns 7 through 10; and lines 301 and 302, columns 11, 12, 14, and 17.

b. *ETA 218.* Report line 100, columns 1 through 3.

c. *ETA 227.* Report Section A, Overpayments Established, lines 101 and 103, for columns 2 through 5. Also report all of Section C, Recovery/Reconciliation, excluding lines 303-307, columns 11-14.

d. *ETA 5130.* Report all data elements.

e. *ETA 5159.* For Section A, Claims Activities, report initial claims information for columns 2 through 5 and column 7 for lines 101 through 103. Report eligibility reviews and continued weeks claimed activity for columns 8 through 12 for lines 201 through 203. The claims information needed for column 11 for lines 201 through 203 will be identified as entitlement type "code 2" (Federal Benefit Extension) in field number 28 on the Interstate Liable-Agent Data Transactions (LADT). For Section B, Payment Activities, report columns 14, 15, 17, 18, and 19 for lines 301 through 302 and columns 21 and columns 24 through 28 for line 303.

(1) *First Payments.* Report the first payment under EUC08 program.

(2) *Final Payments.* A final payment is to be reported when a payment is issued that exhausts the benefit entitlement in the individual's EUC08 account.

f. *ETA 2112.* Regular activity must be reported in the aggregate on the electronic regular ETA 2112 report as usual. Information reflecting EUC08 activity must be reported as follows:

(1) Line 16. *Intra-Account Transfer.* Include in line 16F the amount of EUC08 funds transferred from the UTF to the state benefit payment account. *Line 16F must equal Line 47E.*

(2) Line 23. *Federal Extended Compensation.* Enter in columns C and E the amount of Federal funds received as advances or reimbursement for EUC08.

(3) Lines 33, 34, 35. Enter total benefits paid, attributable to state and local governments, section 501(c)(3) nonprofits, and federally recognized Indian tribes, as appropriate, on the appropriate line for the type of employer, excluding EUC08 benefits.

(4) Line 36. *UCX Net Payments.* Enter in columns C and F the net Federal portion of unemployment compensation paid to former members of the armed services, excluding EUC08. The total payments should be adjusted for refunds deposited during the month, credits and recharges, and cancellations and reissuances.

(5) Line 39. *EUC08 Activity.* Enter in columns C and F the net amount for which the Federal government is liable for EUC08, including for UCFE and UCX claimants. Break out *all disbursements by program* in the "Comments" section as follows:

(A) *FUTA Funded*—EUC08 benefits based on services for employers, except those listed in (B). For example, FUTA = \$XXX.

(B) *General Revenues (GR) Funded*—EUC08 benefits paid based on services performed for the Federal government

(UCFE and UCX), state and local government (contributory and non-contributory), section 501(c)(3) non-profit employers (contributory or non-contributory employers to which Section 3309(a)(1) of the Internal Revenue Code applies), and federally recognized Indian Tribes (contributory or non-contributory). For example, GR = \$YYY.

(6) Line 42. *Federal Emergency Compensation*. Enter in columns C and F the net Federal Emergency Compensation paid for which the Federal government is liable. Examples are past emergency or supplemental benefits programs authorized and financed entirely by the Federal government during periods of high unemployment, such as SUA—Special Unemployment Assistance, FSB—Federal Supplemental Benefits, or FSC—Federal Supplemental Compensation programs. (Note that payments under the Emergency Unemployment Compensation of 1991 and the Temporary Extended Unemployment Compensation Act of 2002 will continue to be reported on lines 40 and 41, respectively.) Identify the payment by program and amount in the “comments” section. Report all benefits paid, including the amounts transferred to the IRS for federal income tax withholding, regardless of whether paid from the state account in the UTF or the state benefit payment account.

(7) Line 46. *UCFE Net Payments*. Enter in columns C and F the net Federal portion of unemployment compensation paid to former Federal civilian (including postal) employees, excluding EUC08. The total payments should be adjusted for refunds deposited during the month, credits and recharges, and cancellations and reissuances.

(8) Line 50. *Withholding*. States are to report gross benefits in column F regardless of whether amounts of withholding transferred to the IRS go through the state benefit payment account. See ETA Handbook 401, 3rd Edition, for specific instructions.

g. *ETA 539*. Total weeks claimed for regular UC, UCFE, and UCX under the EUC08 program for the report period will be reported in the comments section and labeled as “EUC08” followed by the number. For example: “EUC08=239”. (The agent weeks claimed information needed for this report will be obtained from the LADT identified in field 28 as “code 2”, Federal Benefit Extension.)

h. *UI-3 Worksheet*. Report EUC08 claims activity/workload activity electronically on the lines for third tier programs on the regular UI-3 report.

i. *Benefit Accuracy Measurement (BAM)*. All paid and denied EUC08 claims will be *excluded* from the BAM Paid Claims Accuracy (PCA) and Denied Claims Accuracy (DCA) sampling frames. This is consistent with the policy followed for previous temporary programs. Per the instructions in ET Handbook 395, chapter III, the State UI Transactions File, Program Type (Data Element 11) must be coded “8” (Other) and Unemployment Duration Code (Data Element 12) must be coded “5” (Other federal extended benefits program).

If an EUC08 claim is selected for any PCA or DCA sample because it was not properly coded in the State UI Transactions File, it *must* be coded “8” in PCA data element c1 (Program Code) or DCA data element 22 (Program Code). These cases will not be investigated by BAM, and the BAM supervisor will not sign-off on these cases.

Denied State UI, UCFE, or UCX claims filed for the sole purpose of establishing eligibility for EUC08 should be considered “pro-forma” claims. These cases will be deleted from the sample and will be coded “9” in PCA data element c1 (Program Code) or DCA data element 22 (Program Code) using the Delete Cases application in the BAM Supervisor Case Management menu. These cases will not be investigated by BAM, and the BAM supervisor will not sign-off on these cases.

Because EUC08 and pro-forma UI, UCFE, and UCX cases will be excluded from the BAM PCA and DCA samples, BAM must sample additional cases in subsequent batches to compensate for the number of excluded PCA and DCA EUC08 and pro-forma cases.

3. *OMB Approval*. These instructions have been submitted to the Office of Management and Budget (OMB), but have not yet been approved. Therefore, they should be considered draft instructions of proposed data collections. ETA will notify states upon OMB approval and communicate any changes deemed necessary during the OMB approval process.

Attachment B—General Provisions for Administering EUC08

Certifications and Assurances

∩≈ Compliance with Federal Requirements. States must comply with the provisions contained in the states’ Agreements with the Department to administer EUC08 and with all applicable EUC08 funding instruments. States must perform such duties and functions in accordance with the Department’s administrative requirements for grants and cooperative

agreements at 29 CFR Parts 31, 32, 37, 96, 97, 98, and 99. Allowable costs shall be determined in accordance with the Office of Management and Budget Circular A–87 (Revised).

∥≈ Prohibition on Subsidization of Forced or Indentured Child Labor. States, consistent with Section 103 of the General Provisions of the Department of Labor Appropriation Act, 2008, and in accordance with Executive Order No. 13126, must not obligate or expend funds made available to administer EUC08 for the procurement of goods mined, produced, manufactured, or harvested or services rendered, whole or in part, by forced or indentured child labor in industries and host countries already identified by the United States Department of Labor prior to enactment of the Department’s 2008 appropriation.

Σ≈ Salary and Bonus Pay Limitations: States, in compliance with Section 103 of the General Provisions of the Department of Labor Appropriation Act, 2008, must not use funds provided for EUC08 administration to pay the salary and bonuses of an individual, either as direct costs or indirect costs, at a rate in excess of Executive Level II, except as provided for under section 101 of Public Law 109–149. This limitation shall not apply to vendors providing goods and services as defined in OMB Circular No. A–133. Where states are recipients of such funds, states may establish a lower limit for salaries and bonuses of those receiving salaries and bonuses from subrecipients of such funds, taking into account factors including the relative cost-of-living in the state, the compensation levels for comparable state or local government employees, and the size of the organizations that administer Federal programs involved including Employment and Training Administration programs. See TEGL number 5–06 for further clarification. The incurrence of costs and receiving reimbursement for these costs under this award certifies that the Grantee has read the above special condition and is in compliance.

∞≈ Veterans’ Priority Provisions: This program, funded by the U.S. Department of Labor, is subject to the provisions of the “Jobs for Veterans Act” (JVA), Public Law 107–288 (38 U.S.C. 4215). The JVA provides priority of service to veterans and spouses of certain veterans for the receipt of employment, training, and placement services. Please note that, to obtain priority service, a veteran must meet the program’s eligibility requirements. Training and Employment Guidance Letter (TEGL) No. 5–03 (September 16,

2003) provided general guidance on the scope of the veterans priority statute and its effect on current employment and training programs. In addition to TEGL No. 5-03, a series of questions and answers related to priority of service is posted at <http://www.doleta.gov/programs/VETs> for fifteen (15) programs administered by ETA. As made applicable by TEGL 13-06, the Department of Labor Planning Guidance on the Workforce Investment Act (WIA) of 1998 and the Wagner-Peyser Act (70 FR 19206 (Apr. 12, 2005)) and the revised Unified Planning Guidance (70 FR 19222 (April 12, 2005)) require states to describe the policies and strategies in place to ensure, pursuant to the JVA, that priority of service is provided to veterans (and certain spouses) who otherwise meet the eligibility requirements for all employment and training programs funded by the U.S. Department of Labor and administered by ETA. In addition, the states were required to provide assurances that they will comply with the Veterans' Priority Provisions established by the JVA. States must adhere to JVP requirements, as interpreted by the Department, in administering EUC08.

—≈ Certifications and Assurances. In administering EUC08, states must fully comply with the following State Quality Service Plan (SQSP) assurances, with two "exceptions/revisions" and one "expansion" annotated below. These SQSP assurances are detailed in Chapter 1, Part VII of the "Unemployment Insurance State Quality Service Plan (SQSP) Planning and Reporting Guidelines," ET Handbook No. 336 (18th Edition).

- A. Assurance of Equal Opportunity (EO).
- B. Assurance of Administrative Requirements and Allowable Cost Standards.
- C. Assurance of Management Systems, Reporting, and Recordkeeping.
- D. Assurance of Program Quality.
- E. Assurance on Use of Unobligated Funds.
- F. Assurance of Prohibition of Lobbying Costs (29 CFR Part 93).
- G. Drug-Free Workplace (29 CFR Part 98).
- H. Assurance of Disaster Recovery Capability.
- I. Assurance of Conformity and Compliance.
- J. Assurance of Automated Information Systems Security.
- K. Assurance of Confidentiality.

Additionally, the Office of Management and Budget (OMB), SF 424 B Assurances—Non-Construction Programs, signed and submitted by each state with the SQSP annual submission, also apply.

Attachment C—Title IV—Emergency Unemployment Compensation

Title IV—Emergency Unemployment Compensation

Federal-State Agreements

SEC. 4001. (a) In General.—Any State which desires to do so may enter into and participate in an agreement under this title with the Secretary of Labor (in this title referred to as the "Secretary"). Any State which is a party to an agreement under this title may, upon providing 30 days' written notice to the Secretary, terminate such agreement.

(b) Provisions of Agreement.—Any agreement under subsection (a) shall provide that the State agency of the State will make payments of emergency unemployment compensation to individuals who—

(1) Have exhausted all rights to regular compensation under the State law or under Federal law with respect to a benefit year (excluding any benefit year that ended before May 1, 2007);

(2) Have no rights to regular compensation or extended compensation with respect to a week under such law or any other State unemployment compensation law or to compensation under any other Federal law (except as provided under subsection (e)); and

(3) Are not receiving compensation with respect to such week under the unemployment compensation law of Canada.

(c) Exhaustion of Benefits.—For purposes of subsection (b)(1), an individual shall be deemed to have exhausted such individual's rights to regular compensation under a State law when—

(1) No payments of regular compensation can be made under such law because such individual has received all regular compensation available to such individual based on employment or wages during such individual's base period; or

(2) Such individual's rights to such compensation have been terminated by reason of the expiration of the benefit year with respect to which such rights existed.

(d) Weekly Benefit Amount, etc.—For purposes of any agreement under this title—

(1) The amount of emergency unemployment compensation which shall be payable to any individual for any week of total unemployment shall be equal to the amount of the regular compensation (including dependents' allowances) payable to such individual during such individual's benefit year under the State law for a week of total unemployment;

(2) The terms and conditions of the State law which apply to claims for regular compensation and to the payment thereof shall apply to claims for emergency unemployment compensation and the payment thereof, except—

(A) That an individual shall not be eligible for emergency unemployment compensation under this title unless, in the base period with respect to which the individual exhausted all rights to regular compensation under the State law, the individual had 20 weeks of full-time insured employment or the equivalent in insured wages, as determined under the provisions of the State law implementing section 202(a)(5) of the Federal-State Extended Unemployment Compensation Act of 1970 (26 U.S.C. 3304 note); and

(B) Where otherwise inconsistent with the provisions of this title or with the regulations or operating instructions of the Secretary promulgated to carry out this title; and

(3) The maximum amount of emergency unemployment compensation payable to any individual for whom an emergency unemployment compensation account is established under section 4002 shall not exceed the amount established in such account for such individual.

(e) Election by States.—Notwithstanding any other provision of Federal law (and if State law permits), the Governor of a State that is in an extended benefit period may provide for the payment of emergency unemployment compensation prior to extended compensation to individuals who otherwise meet the requirements of this section.

(f) Unauthorized Aliens Ineligible.—A State shall require as a condition of eligibility for emergency unemployment compensation under this Act that each alien who receives such compensation must be legally authorized to work in the United States, as defined for purposes of the Federal Unemployment Tax Act (26 U.S.C. 3301 *et seq.*). In determining whether an alien meets the requirements of this subsection, a State must follow the procedures provided in section 1137(d) of the Social Security Act (42 U.S.C. 1320b-7(d)).

Emergency Unemployment Compensation Account

SEC. 4002. (a) In General.—Any agreement under this title shall provide that the State will establish, for each eligible individual who files an application for emergency unemployment compensation, an emergency unemployment

compensation account with respect to such individual's benefit year.

(b) Amount In Account.—

(1) In General.—The amount established in an account under subsection (a) shall be equal to the lesser of—

(A) 50 percent of the total amount of regular compensation (including dependents' allowances) payable to the individual during the individual's benefit year under such law, or

(B) 13 times the individual's average weekly benefit amount for the benefit year.

(2) Weekly Benefit Amount.—For purposes of this subsection, an individual's weekly benefit amount for any week is the amount of regular compensation (including dependents' allowances) under the State law payable to such individual for such week for total unemployment.

Payments to States Having Agreements for the Payment of Emergency Unemployment Compensation

SEC. 4003. (a) General Rule.—There shall be paid to each State that has entered into an agreement under this title an amount equal to 100 percent of the emergency unemployment compensation paid to individuals by the State pursuant to such agreement.

(b) Treatment of Reimbursable Compensation.—No payment shall be made to any State under this section in respect of any compensation to the extent the State is entitled to reimbursement in respect of such compensation under the provisions of any Federal law other than this title or chapter 85 of title 5, United States Code. A State shall not be entitled to any reimbursement under such chapter 85 in respect of any compensation to the extent the State is entitled to reimbursement under this title in respect of such compensation.

(c) Determination of Amount.—Sums payable to any State by reason of such State having an agreement under this title shall be payable, either in advance or by way of reimbursement (as may be determined by the Secretary), in such amounts as the Secretary estimates the State will be entitled to receive under this title for each calendar month, reduced or increased, as the case may be, by any amount by which the Secretary finds that the Secretary's estimates for any prior calendar month were greater or less than the amounts which should have been paid to the State. Such estimates may be made on the basis of such statistical, sampling, or other method as may be agreed upon by the Secretary and the State agency of the State involved.

Financing Provisions

SEC. 4004. (a) In General.—Funds in the extended unemployment compensation account (as established by section 905(a) of the Social Security Act (42 U.S.C. 1105(a)) of the Unemployment Trust Fund (as established by section 904(a) of such Act (42 U.S.C. 1104(a)) shall be used for the making of payments to States having agreements entered into under this title.

(b) Certification.—The Secretary shall from time to time certify to the Secretary of the Treasury for payment to each State the sums payable to such State under this title. The Secretary of the Treasury, prior to audit or settlement by the Government Accountability Office, shall make payments to the State in accordance with such certification, by transfers from the extended unemployment compensation account (as so established) to the account of such State in the Unemployment Trust Fund (as so established).

(c) Assistance to States.—There are appropriated out of the employment security administration account (as established by section 901(a) of the Social Security Act (42 U.S.C. 1101(a)) of the Unemployment Trust Fund, without fiscal year limitation, such funds as may be necessary for purposes of assisting States (as provided in title III of the Social Security Act (42 U.S.C. 501 *et seq.*)) in meeting the costs of administration of agreements under this title.

(d) Appropriations for Certain Payments.—There are appropriated from the general fund of the Treasury, without fiscal year limitation, to the extended unemployment compensation account (as so established) of the Unemployment Trust Fund (as so established) such sums as the Secretary estimates to be necessary to make the payments under this section in respect of—

(1) Compensation payable under chapter 85 of title 5, United States Code; and

(2) Compensation payable on the basis of services to which section 3309(a)(1) of the Internal Revenue Code of 1986 applies. Amounts appropriated pursuant to the preceding sentence shall not be required to be repaid.

Fraud and Overpayments

SEC. 4005. (a) In General.—If an individual knowingly has made, or caused to be made by another, a false statement or representation of a material fact, or knowingly has failed, or caused another to fail, to disclose a material fact, and as a result of such false statement or representation or of such

nondisclosure such individual has received an amount of emergency unemployment compensation under this title to which such individual was not entitled, such individual—

(1) Shall be ineligible for further emergency unemployment compensation under this title in accordance with the provisions of the applicable State unemployment compensation law relating to fraud in connection with a claim for unemployment compensation; and

(2) Shall be subject to prosecution under section 1001 of title 18, United States Code.

(b) Repayment.—In the case of individuals who have received amounts of emergency unemployment compensation under this title to which they were not entitled, the State shall require such individuals to repay the amounts of such emergency unemployment compensation to the State agency, except that the State agency may waive such repayment if it determines that—

(1) The payment of such emergency unemployment compensation was without fault on the part of any such individual; and

(2) Such repayment would be contrary to equity and good conscience.

(c) Recovery by State Agency.—

(1) In General.—The State agency may recover the amount to be repaid, or any part thereof, by deductions from any emergency unemployment compensation payable to such individual under this title or from any unemployment compensation payable to such individual under any State or Federal unemployment compensation law administered by the State agency or under any other State or Federal law administered by the State agency which provides for the payment of any assistance or allowance with respect to any week of unemployment, during the 3-year period after the date such individuals received the payment of the emergency unemployment compensation to which they were not entitled, except that no single deduction may exceed 50 percent of the weekly benefit amount from which such deduction is made.

(2) Opportunity for Hearing.—No repayment shall be required, and no deduction shall be made, until a determination has been made, notice thereof and an opportunity for a fair hearing has been given to the individual, and the determination has become final.

(d) Review.—Any determination by a State agency under this section shall be subject to review in the same manner and to the same extent as

determinations under the State unemployment compensation law, and only in that manner and to that extent.

Definitions

SEC. 4006. In this title, the terms "compensation", "regular compensation", "extended compensation", "benefit year", "base period", "State", "State agency", "State law", and "week" have the respective meanings given such terms under section 205 of the Federal-State Extended Unemployment Compensation Act of 1970 (26 U.S.C. 3304 note).

Applicability

SEC. 4007. (a) In General—Except as provided in subsection (b), an agreement entered into under this title shall apply to weeks of unemployment—

(1) Beginning after the date on which such agreement is entered into; and

(2) Ending on or before March 31, 2009.

(b) Transition for Amount Remaining in Account.—

(1) In General.—Subject to paragraph (2), in the case of an individual who has amounts remaining in an account established under section 4002 as of the last day of the last week (as determined in accordance with the applicable State law) ending on or before March 31, 2009, emergency unemployment

compensation shall continue to be payable to such individual from such amounts for any week beginning after such last day for which the individual meets the eligibility requirements of this title.

(2) Limit on Compensation.—No compensation shall be payable by reason of paragraph (1) for any week beginning after June 30, 2009.

Advisory: Unemployment Insurance Program Letter No. 23–08, Change 1.

To: State Workforce Agencies.

From: Brent R. Orrell, Deputy Assistant Secretary.

Subject: Emergency Unemployment Compensation, 2008—Questions and Answers.

1. Purpose. To respond to questions regarding the Emergency Unemployment Compensation, 2008 (EUC08) program (included as Attachment A to this UIPL); to correct the ending date(s) during which an individual may receive a final payment for EUC08 during the phase-out period of the program; and to change the expiration date of Unemployment Insurance Program Letter (UIPL) No. 23–08 to "continuing."

2. References. UIPL 23–08; Supplemental Appropriations Act, 2008 (Act), Title IV—Emergency Unemployment Compensation, Public Law 110–252.

3. Background. The EUC08 program became effective in most states during the week beginning July 6, 2008 (week beginning July 7th in New York). The program provides up to 13 weeks of 100 percent federally-funded compensation to eligible individuals.

4. Correction to End Date for EUC08 Payments and to "Expiration Date" of UIPL 23–08. The legislation provides that no EUC08 is payable for weeks "beginning after June 30, 2009." In most states, where benefit weeks end on Saturdays, the practical effect is that the week ending July 4, 2009, is the last week for which benefits can be paid. UIPL No. 23–08 stated incorrectly that the week-ending June 27, 2009, was the final week for which benefits could be paid. In addition, the "Expiration Date" for UIPL No. 23–08 is changed to read "Continuing."

5. Action. State Administrators are requested to provide this guidance to appropriate staff.

6. Attachment. Emergency Unemployment Compensation, 2008—Questions and Answers

Emergency Unemployment Compensation, 2008

Questions and Answers

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A. Claims Processing for EUC08

∩≈ Question: What is the earliest effective date for EUC08 claims, and what is the first week payable?

Answer: In most states, where the week of unemployment begins on Sunday, the earliest effective date for a claim is July 6, 2008. In these states, the first week for which EUC08 may be paid is the week ending July 12, 2008.

∥≈ Question: If an individual is in continued claim status on a regular UC claim when s/he exhausts UC, may the claim be automatically switched to an EUC08 claim without an EUC08 initial claim?

Answer: No. An EUC08 initial claim must be filed that meets the state's requirements for claim filing. (See Attachment A to UIPL No. 23–08; page A–8, #2, Claims for EUC08).

Σ≈ Question: May a state backdate an EUC08 claim if an individual files a late claim and requests backdating?

Answer: Section 4001(d)(2) of the Act provides that state law will apply; the state must follow its own unemployment compensation (UC) law with respect to backdating of an EUC08 claim.

∞≈ Question: If state law requires a request for redetermination before

appeal of a monetary determination, is state law followed for EUC08 monetary appeals?

Answer: Yes. Section 4001(d)(2) of the Act provides that the provisions of state law will apply regarding EUC08 claim re-determinations and appeals.

→≈ Question: Section 4007(a)(2) of the Act provides that EUC08 shall apply to weeks of unemployment ending on or before March 31, 2009. How does this apply to weeks of unemployment that are not a calendar week, for example, the seven day period of March 25–March 31, 2009?

Answer: Where state laws permit “flexible weeks” of unemployment that follow, for example, an employer’s payroll week structure, weeks ending on or before (Tuesday) March 31, 2009, would be payable.

→≈ Question: Regarding the phase-out of the EUC08 program (when there are remaining amounts in an individual’s EUC08 account), Section 4007(b)(2) of the Act provides that no EUC08 shall be payable for any week beginning after June 30, 2009. Is EUC08 payable for the week of (Tuesday) June 30, 2009, that ends (Monday) July 6, 2009?

Answer: Yes. If state law permits weeks of unemployment to begin on (Tuesday) June 30, 2009, the week ending (Monday) July 6, 2009, would be the final week.

B. Individuals Potentially Eligible for EUC08

∩≈ Question: Is an individual potentially eligible for EUC08 if s/he filed a new claim and established a benefit year that ended on or after May 1, 2007, but received no payments before the benefit year ended?

Answer: Yes. The ending of the benefit year prevents the individual from receiving the regular UC balance that was available. The individual is an exhaustee for EUC08 purposes.

∥≈ Question: Is there a waiting week for EUC08 if the individual has never served a waiting week during the applicable benefit year?

Answer: No. There is no waiting period requirement for EUC08.

Σ≈ Question: If an individual files a new UC claim and is found monetarily ineligible (e.g., no wages or insufficient wages) for regular UC, does the agency need to check for any earlier/prior benefit year(s) to determine if the individual may qualify for EUC08?

Answer: Yes. To determine if the individual qualifies for EUC08, the state will need to check for any prior benefit year(s) that ended on or after May 1, 2007, and determine if the individual is an exhaustee. See Attachment A to UIPL

23–08, page A–1 *Definitions—#4* and page A–3, #1(b), *Determining Exhaustees*.

C. Applicable Benefit Year for EUC08 Purposes

∩≈ Question: May an individual choose the benefit year under which an EUC08 claim will be filed? For example, the individual has two different benefit years that ended on or after May 1, 2007, or the individual has one benefit year that ended on or after May 1, 2007 and another benefit year that has not ended but all UC benefits have been exhausted?

Answer: No. The applicable benefit year is the most recent benefit year. (See Attachment A to UIPL No. 23–08, page A–1, *Definitions—#4*.)

∥≈ Question: If, due to the receipt of severance pay, an individual’s eligibility for regular UC is postponed or reduced to zero and no regular UC is paid during the entire benefit year, which has ended, is the individual considered to be an “exhaustee?”

Answer: Yes. Once the individual’s benefit year ends, the individual is an exhaustee. (See Section 4001(c)(2) of the Act.) Note: Disqualifications, including those related to deductible income, that are imposed by state law will also apply to EUC08 claims.

Σ≈ Question: An individual has two different benefit years that ended on or after May 1, 2007. However, on the most recent benefit year, the individual does not meet the 20 weeks of work requirement. The individual’s prior benefit year does meet this requirement. Since the most recent benefit year does not meet the EUC08 monetary requirements, might the individual qualify for EUC08 based on the prior benefit year?

Answer: No. The applicable benefit year, which is used as the basis for an EUC08 claim, is the most recent benefit year.

D. Monetary Eligibility

∩≈ Question: Is there a uniform 13-week duration for all EUC08 claims?

Answer: No. The EUC08 maximum benefit amount (MBA) is computed as the lesser of 50 percent of the individual’s regular UC MBA, including dependents’ allowance(s), or 13 times the individual’s average weekly benefit amount (WBA). Fifty percent of the regular MBA may result in less than 13 weeks of benefits, for example, where an individual only qualifies for an MBA of 10 weeks of regular UC. (See Section 4002(b)(1) of the Act.)

∥≈ Question: If there has been a recent increase in the state’s WBA that applies to all benefit years on file with

a balance, what impact does it have on the EUC08 WBA and MBA?

Answer: The increase will affect the calculation of the EUC08 WBA and MBA if it increases the claimant’s WBA for regular compensation for the applicable benefit year. The individual’s EUC08 WBA is the most recent WBA of regular compensation for the applicable benefit year. The individual’s EUC08 MBA is also affected by the WBA increase for regular compensation because the EUC08 MBA is the lesser of 50 percent of the total regular UC for the benefit year (which would be increased by the WBA increase) or 13 times the average WBA paid during the benefit year (which also would be increased by the WBA increase). (See Section 4002(b)(1) of the Act.)

For example, if an individual received regular UC for 20 weeks at \$200 and the remaining 6 weeks at \$220, his/her EUC08 WBA will be \$220, and the EUC08 MBA will be \$2,660 which is the lesser of 50% of \$5320 (\$2,660) or 13 times \$210 (\$200 + \$220 divided by 2 (\$2,730), the average of both WBAs). State law rounding provisions will apply.

Σ≈ Question: If an individual receives a monetary penalty on his/her regular claim, is the EUC08 claim based on the regular amount before or after the penalty (e.g., wage cancellation or reduction of the MBA)?

Answer: The EUC08 claim is based on the amount determined before the penalty. Section 4002(b)(1) of the Act requires that the amount in the EUC08 account equal the lesser of 50 percent of the regular benefits payable or 13 times the average WBA. The Department has consistently held that the determination of the monetary award for federally financed extensions should be based on the regular UC amount prior to the application of a penalty because to base entitlement on the lesser re-determined amount would be tantamount to imposing a second penalty for the same disqualifying act. (See 20 CFR 615.5(a)(1)(i) and (b)(3), which applies the same principle in the extended benefits (EB) program in determining exhaustion.)

∞≈ Question: May individuals who have had their base period wage credits canceled or who have had their regular maximum benefit amount reduced to one week establish a EUC08 claim? If “yes,” how is the EUC08 monetary account calculated?

Answer: Yes. Consistent with the EB regulations (20 CFR 615.5(a)(1)(i) and (b)(3)) the individual is an exhaustee if no regular compensation is payable. Also, the individual’s EUC08 monetary account is calculated using the

monetary determination *before* wage cancellation or benefit reduction, as explained in #3 above.

→≈ Question: If the calculation of the individual's EUC08 MBA at 50 percent of the MBA for regular compensation results in a fraction that requires rounding, are state law rounding provisions followed?

Answer: Yes. States are to round up or down in accordance with their state law.

→≈ Question: A state's formula for determining the MBA for regular compensation is the lesser of 26 times the WBA or one-third of the base period wages credits. When an individual is unemployed due to a plant closing, the state pays up to 13 additional weeks of benefits as the lesser of 39 times the WBA or one-half of the base period wage credits. State law does not specifically define these benefits as additional compensation. Are the plant closing benefits considered additional compensation for EUC08 purposes?

Answer: Yes. These benefits meet the definition of "additional compensation" in Attachment A to UIPL No. 23-08, that is, "compensation totally financed by a state and payable under a state law by reason of high unemployment or *other special factors*." (Emphasis added.) The "special factor" here is that these benefits are paid for plant closings. As "additional compensation," these benefits are excluded from use in the calculation of EUC08 monetary entitlement. Further, EUC08 may be paid prior to these benefits, because Section 4001(b)(2) of the Act does not require, as a condition of EUC08 eligibility, exhaustion of additional compensation.

←≈ Question: May an individual have more than one EUC08 claim?

Answer: Yes. An individual may establish a claim for EUC08, qualify for a new UC benefit year, exhaust that benefit year, exhaust the first EUC08 claim and subsequently qualify for a second EUC08 claim based on the new (most recent) benefit year.

Example: An individual is determined eligible for EUC08 based on a UC benefit year that ended on May 12, 2007. S/he receives 10 weeks of EUC08 prior to the calendar quarter change, at which point s/he qualifies for a new UC benefit year. Because the individual qualifies for regular UC, EUC08 payments must stop.

The individual exhausts benefits based on his/her new UC benefit year; therefore, s/he is again an exhaustee for EUC08 purposes. S/he may collect the remaining entitlement on his/her existing (first) EUC08 claim and after exhausting these benefits s/he may file a new (second) EUC08 claim based on the new (most recent) UC benefit year. The new/most recent benefit year is the applicable benefit

year for a second EUC08 claim, if the initial claim for that second claim is for a week of unemployment ending on or before March 31, 2009.

E. Requalifying Requirements for Successive Benefit Years ("Double Dip") Provisions

∩≈ Question: State law requires an individual who received UC in a benefit year to have had work since the beginning of the benefit year to qualify for a new benefit year. How does this "double dip" requirement affect eligibility for EUC08?

Answer: Section 3304(a)(7) of the Federal Unemployment Tax Act (FUTA) requires, as a condition of a state's participation in the federal-state UC program, that the state law provide that "an individual who has received [UC] during his benefit year is required to have had work since the beginning of such year in order to qualify for [UC] in his next [second] benefit year."

Where an individual is unable to satisfy this "double dip" requirement, some states will nevertheless establish a second benefit year, although the individual will have no monetary entitlement on that benefit year until s/he satisfies the requirement. Whether or not the state establishes a new benefit year when the individual does not satisfy the double dip requirement, an individual is an exhaustee and will qualify for EUC08, if otherwise eligible. This follows the approach taken in the EB program. (See 20 CFR 615.2(c)(2))

F. Base Period Employment Requirement

∩≈ Question: An individual has covered employment and wages in two states and filed a combined wage claim (CWC). Although wages were transferred to State A from State B, the individual has established a benefit year based only on wages from State A because the base period wages from State B do not increase the weekly or maximum benefit amount. Therefore, a CWC was not established and State A returned wages to State B. May State A use the wage transfer record (TC-IB4) it received from State B as evidence of employment and wages in the base period of the claim, which will satisfy the 20-week work requirement or its equivalent for EUC08 entitlement?

Answer: Yes. Section 4001(d)(2)(A) of the Act requires an individual to have 20 weeks of full-time insured employment or the equivalent in insured wages under the provisions of applicable state law to qualify. It does not require all of the employment and wages to have been used in the

determination of monetary entitlement for the applicable benefit year.

∥≈ Question: How is full-time work determined for purposes of the 20-weeks-of-work requirement?

Answer: It is "determined under the provisions of the State law implementing section 202(a)(5) of the Federal-State Extended Unemployment Compensation Act of 1970." (Section 4002(d)(2)(A) of the Act.) This requires the state to follow the *monetary* qualifying requirements that the individual meets at least one of the following:

- One and one-half times the individual's high quarter wages;
- 40 times the most recent weekly benefit amount; or
- 20 weeks of full-time insured employment as provided by the state's law. Note: Full-time may not always be defined as 40 hours per week; states will refer to their state law for the definition of "full-time." See 20 CFR 615.4(b) regarding these options.

G. Seasonal Provisions/Between Terms Denial

1. Question: Are employees of educational institutions who are denied regular benefits because of the between-and-within terms denial provisions eligible for EUC08 during those between-and-within terms periods?

Answer: No. Section 3304(a)(6)(A) of the Federal Unemployment Tax Act (FUTA) requires, as a condition of participation in the federal-state UC program, that state law limit the eligibility of individuals based upon services performed for educational institutions between and within academic terms. With exceptions not relevant here, section 4001(d)(2) of the Act applies the terms and conditions of the state law to claims for EUC08. Therefore, the same between and within terms denial provisions of state law apply to EUC08 claims. *Note:* Employees of educational institutions who establish a benefit year based on non-school wages may qualify for EUC08 between-and-within terms after exhausting all UC that is based on their non-school wages. The WBA for the EUC08 claim must be based on the non-school wages.

2. Question: Under a state's seasonality provisions, benefits based on seasonal wages may be paid only during the normal seasonal period for which the seasonal wage credits were earned. Is a seasonal worker, whose monetary determination is based solely on seasonal wages and who is ineligible because of the seasonality provisions, considered an "exhaustee" for EUC08 purposes?

Answer: Yes. The EB exhaustion provisions (20 CFR 615.5(b)(2)) regarding seasonal workers make seasonal workers potentially eligible as exhaustees during the "off" season. The same rule is applicable for EUC08 claims.

H. Work Search/Job Service Registration Requirements

⊃≈ Question: Do EB work search requirements apply to EUC08?

Answer: No. The Act does not apply the EB work search requirements to EUC08. Rather, under section 4001(d)(2) of the Act, the work search requirements of state law apply to EUC08.

∥≈ Question: Do state law provisions requiring an individual to be able and available for work apply to EUC08?

Answer: Yes. See Section 4001(d)(2) of the Act.

Σ≈ Question: Is it inconsistent with federal law for a state to electronically reactivate prior work registrations and require the same number of job contacts for EUC08 as was required for regular UC?

Answer: No. Federal law requires this result. Under Section 4001(d)(2) of the Act, state law work search and employment service registration requirements apply to EUC08 eligibility.

I. Non-Monetary Issues

⊃≈ Question: Must states adjudicate any new separation issue(s) that occurred after the individual exhausted his or her UC claim?

Answer: Yes. State must adjudicate separation issues in accordance with state law for all EUC08 claims.

∥≈ Question: If state law provides for adjudication of all separations from the beginning of the base period to the time a claim is filed, does this provision of state law apply to EUC08 claims?

Answer: Yes. See Section 4001(d)(2) of the Act.

Σ≈ Question: If an individual has satisfied/purged a disqualification, for example, disqualifications related to fraud, separation, or refusal of suitable work, is s/he eligible for EUC08, if otherwise eligible?

Answer: Yes. The individual is eligible for EUC08, if all other requirements are met.

∞≈ Question: Our state assesses penalty weeks for making false statements. An otherwise eligible individual must certify for benefits to satisfy this penalty. May an individual who is otherwise eligible to file an EUC08 claim use EUC08 weeks to satisfy this penalty?

Answer: Yes, the individual may use EUC08 weeks to satisfy this penalty, but will be ineligible for EUC08 during those penalty weeks.

⊃≈ Question: Our state assesses penalty weeks for false statements and suitable work disqualifications. Our penalty is a set number of weeks and the individual does not have to certify or be eligible for benefits to "serve" these penalty weeks. Would individuals qualify for EUC08 payments during the period when they are "serving" these weeks?

Answer: No. As in the answer above, the individual is ineligible for EUC08 for the penalty weeks. Where an individual is disqualified for benefits under state law, s/he would not qualify for EUC08 until the time period for the disqualification has been satisfied/has passed.

J. EUC08 Benefit Intercept

⊃≈ Question: Are EUC08 payments subject to child support intercept and similar levies and attachments?

Answer: Yes, but only to the extent that doing so is consistent with federal and state law. As explained in UIPL No. 45-89, the Federal "withdrawal standard" limits deductions from UC to those authorized or required by Federal law. One of the required offsets pertains to child support. Further, the terms and conditions of state law apply to EUC08, including intercepts and offsets, except where inconsistent with the Act or operating instructions.

∥≈ Question: What is the order of priority for deductions of overpayment offset, child support, and income taxes?

Answer: The state will follow the same procedures that apply to regular compensation. (See UIPL 17-95, Change 1.)

K. Overpayments

⊃≈ Question: May EUC08 benefits be offset to recover state UC overpayments?

Answer: Yes, if the state has a Cross-Program Overpayment Offset Agreement with the Secretary. The state must follow the agreement in recovering overpayments.

∥≈ Question: Must all offsets from EUC08 be 50 percent even if state law requires a 100 percent offset of benefits?

Answer: No. The Act provides that the 50 percent limit applies only to offsets to recover EUC08. It does not apply to offsets of EUC08 to recover state UI overpayments.

Σ≈ Question: May a state apply its own state law waiver provisions to EUC08 overpayments?

Answer: A state law's waiver provision may be applied to non-fraudulent EUC08 overpayments if the provision requires the state to determine that (1) the payment of EUC08 was without fault on the part of the

individual and (2) repayment would be contrary to equity and good conscience. (See Attachment A to UIPL NO. 23-08, page A-11, #6(b)(1), Application of State Waiver Provision.)

∞≈ Question: How should states handle prosecutions of EUC08 fraud overpayments?

Answer: States must pursue EUC08 fraud cases in the same manner as all other Federal UC fraud cases are handled. For referrals of fraud cases to the U.S. Department of Labor's Office of Inspector General (OIG), see UIPL No 29-05.

⊃≈ Question: Are states required to use only benefit offsets to recover EUC08 overpayments?

Answer: No, Section 4004(c)(1) merely authorizes offset against EUC08 benefits as one method of recovery. "EUC08 overpayment recovery shall be enforced by any action or proceeding which may be brought under state or Federal law * * *" See Attachment A to UIPL No. 23-08; page A-13, #6(b)(3)(D), Recovery of Overpayments, Section 4005(c) of the Act.

→≈ Question: States are still recovering overpayments from the 2002 Temporary Extended Unemployment Compensation (TEUC) program. Is it necessary to separately report those 2002 overpayments recovered from any EUC08 overpayments recovered?

Answer: Yes. Transactions concerning the 2002 TEUC program should be reported separately from EUC08 transactions.

L. Short-Time Compensation (STC) Program

⊃≈ Question: May EUC08 be paid to individuals participating in a short-time compensation (STC or worksharing) program?

Answer: Yes. If an individual participating in an STC program is an exhaustee for EUC08 purposes and is otherwise eligible, EUC08 must be paid to an otherwise eligible individual on the same terms and conditions as apply to regular compensation. The payment of EUC08 to STC participants is unlikely to occur since STC participants rarely exhaust their UC benefits and an individual participating in an STC program whose benefit year has ended will have wages that must be used to establish, if possible, a new benefit year before any EUC08 is payable.

∥≈ Question: When a state law requires regular compensation to be paid to individuals participating in an STC program, the criteria for earnings deductions from the benefits is based on a percentage of the earnings instead of the rules that apply to regular claims. Do the provisions of the state law

governing STC deductions apply to EUC08? If “yes,” does the state law provision that limits the number of weeks payable to STC participants apply to an STC participant receiving EUC08?

Answer: Yes to both questions. EUC08 is to be paid to STC participants under the provisions of the state law governing STC.

M. Extensions for Approved Training

⊃ Question: If a state has a special extension for individuals who exhaust regular compensation and are participating in approved training, may EUC08 be paid to these individuals?

Answer: Yes. The benefits paid under this special extension are additional compensation. Section 4001(b)(2) of the Act does not require exhaustion of additional compensation to qualify for EUC08. Therefore, a state may pay additional compensation concurrent with, or after, EUC08. See Attachment A to UIPL No. 23–08; page A–5, #6, Effect of Additional Compensation Eligibility in a State.

N. Self-Employment Assistance

⊃ Question: May EUC08 be paid to individuals participating in a self-employment assistance (SEA) program?

Answer: No. Since SEA is paid to an individual “in lieu of” regular UC (Section 3306(t)(1) of the FUTA), the individual has not exhausted regular compensation, until s/he has exhausted SEA. This renders him/her ineligible for EUC08, until either SEA is exhausted or, if the individual has stopped participating in an SEA program, s/he has exhausted regular compensation.

O. EUC08 Effect on Trade Readjustment Allowances (TRA)

⊃ Question: The individual exhausted 26 weeks of regular UC on a first benefit year and began receiving TRA based on that benefit year. S/he qualified for a second benefit year and payment of TRA stopped. The individual has now exhausted all benefits available on the second benefit year and meets the requirements for EUC08 based on the second benefit year. After exhaustion of EUC08, are TRA benefits again payable based on the first benefit year?

Answer: Yes. If the individual continues to meet all the TRA eligibility requirements, TRA payments may resume based on the first benefit year.

⊃ Question: An individual has received 26 weeks of regular UC and 22 weeks of basic TRA prior to qualifying for 13 weeks of EUC08. What remaining TRA entitlement does the individual have?

Answer: Under 20 CFR 617.14(a), the TRA MBA is 52 times the TRA WBA, minus the total sum of UC to which the individual was entitled. Since EUC08 is UC, the 13 weeks of EUC08 is subtracted, along with the 26 weeks of regular UC and the 22 weeks of basic TRA already paid. At this point, basic TRA entitlement is exhausted; additional TRA may be available to the individual if s/he is in training and is otherwise eligible.

Σ Question: If an individual has received 26 weeks of UC and 26 weeks of basic TRA, is the individual entitled to EUC08, if otherwise eligible?

Answer: Yes. TRA does not reduce the amount of EUC08. Therefore, EUC08 is payable to the individual if all other eligibility requirements are met. See Attachment A to UIPL No. 23–08; page A–5, #8(a), Trade Readjustment Allowances (TRA).

∞ Question: An individual has been in training for the past year, received 26 weeks of regular UC, 26 weeks of basic TRA, and 13 weeks of EUC08. Is this individual entitled to any weeks of additional TRA?

Answer: If this individual meets the additional TRA eligibility requirements s/he is entitled to additional TRA for any weeks remaining in the fixed 52 consecutive-week eligibility period. (See 20 CFR 617.3(m) and Training and Employment Guidance Letter No. 11–02 page 22.)

Note: EUC08 is not deductible from additional TRA. However, although the benefit amount is not reduced, the length of time for which the individual may claim additional TRA is reduced if the s/he collects EUC08 during the fixed consecutive-week period for which additional TRA is payable.

P. Interstate Benefits/Combined Wage Claims (CWC)

⊃ Question: Under regular interstate and CWC procedures, when an individual is indefinitely disqualified under State A’s law and has sufficient employment and wages to qualify under State B’s law, the individual files against State B. Using this scenario, an individual has existing benefit years ending on or after May 1, 2007, in both State A and State B. If the second claim is indefinitely disqualified in State B, may the individual file for EUC08 using the claim in State A if, for example, the disqualification in State A could be purged/satisfied?

Answer: No. Only the claim in State B meets the definition of an “applicable benefit year” for EUC08 purposes. (See Attachment A to UIPL No. 23–08; page A–1, Definitions—#4.)

Q. Claims Filed by Aliens

⊃ Question: What requirements must an alien meet to qualify for EUC08?

Answer: To qualify for EUC08 for a week, the alien must be authorized to work in the United States for that week. The alien’s authorization to work must be verified through the System for Alien Verification of Eligibility at Social Security Act section 1137(d), which state agencies for regular UC. However, if the state has information obtained from the verification made in connection with the regular UC claim that the alien’s work authorization remains in effect, no additional verification is required until the expiration date of his/her qualified alien status is reached.

R. Application of Worker Profiling and Reemployment Services (WPRS)

⊃ Question: Are individuals filing for EUC08 subject to profiling and selection and referral to services under the WPRS program?

Answer: No. Only individuals filing new initial claims for regular UC must be profiled and, as appropriate, selected and referred to services under the WPRS program.

S. EUC08 Relation to Extended Benefits

⊃ Question: If a state in an EB period chooses to pay EB before EUC08, must the state pay EUC08 to individuals who have an applicable benefit year for EUC08, but not for EB?

Answer: Yes. The state must pay EUC08 to eligible exhaustees whether or not they previously received EB.

Advisory: Unemployment Insurance Program Letter No. 23–08, Change 2.

To: State Workforce Agencies.

From: Brent R. Orrell, Deputy Assistant Secretary.

Subject: Emergency Unemployment Compensation, 2008—Program Expansion.

1. *Purpose.* To advise states of an expansion of the Emergency Unemployment Compensation, 2008 (EUC08) program and to provide operating instructions for its implementation.

2. *References.* The Unemployment Compensation Extension Act, Public Law 110–449, enacted November 21, 2008; Supplemental Appropriations Act, 2008, Title IV—Emergency Unemployment Compensation, Public Law 110–252, enacted June 30, 2008; Unemployment Insurance Program Letter (UIPL) No. 23–08 and UIPL No. 23–08, Change 1.

3. *Background.* Public Law (Pub. L.) 110-449 expands the EUC08 program to provide up to 20 weeks of 100 percent federally-funded unemployment compensation to eligible individuals in all states. It also expands the EUC08 program by providing a second tier of benefits of up to 13 weeks for eligible individuals in those states with high unemployment.

These expanded EUC08 benefits are available only for weeks of unemployment beginning on or after the date of enactment, which is November 21, 2008. Although these amendments do not change the date for establishing initial eligibility for EUC08, they do extend the program's termination date. Under the new termination date, no EUC08 payments may be made for any week of unemployment beginning after August 27, 2009.

Detailed implementation guidance, including reporting instructions, is included in Attachment A. The text of the Unemployment Compensation Extension Act is included in Attachment B.

All states currently have agreements with the Secretary to administer the EUC08 program under provisions of the EUC08 Act. The existing agreements remain in effect, and no new agreements are necessary to implement these amendments.

4. *Interpretation.* The instructions in this document are issued to the states and cooperating state agencies as guidance provided by the Department of Labor in its role as the principal in the EUC08 program. As agents of the United States, the states and cooperating state agencies may not deviate from the operating instructions without the prior approval of the Department. To the extent that the guidance provided in UIPLs Nos. 23-08 and 23-08, Change 1, is inconsistent with this UIPL, such guidance is superseded.

5. *Action Requested.* Administrators are to provide this information and instructions to the appropriate staff.

6. *Inquiries.* Direct questions to the appropriate Regional Office.

7. *Attachments.* Attachment A—Operating Instructions for the EUC08 Program Expansion.

Attachment B—Text of the Unemployment Compensation Extension Act of 2008.

Attachment A to UIPL No. 23-08, Change 2

Operating Instructions for the EUC08 Program Expansion

Introduction

On Friday, November 21, 2008, the President signed Public Law 110-449,

the Unemployment Compensation Extension Act of 2008 (the Extension Act), which amended the Supplemental Appropriations Act, 2008, Title IV—Emergency Unemployment Compensation (EUC08) program by:

- Providing for up to 7 additional weeks of benefits to eligible individuals in all states. These benefits will be referred to as “basic EUC08” or “First-Tier EUC08”;
- Adding a Second-Tier of EUC08 benefits for eligible individuals in those states with “high unemployment.” These benefits are referred to as “Second-Tier EUC08”; and
- Extending the EUC08 program's termination date from the week that includes Tuesday, June 30, 2009, to the week that includes Thursday, August 27, 2009. In most states, where the week of unemployment ends on Saturday, this means the last week for which EUC08 may be paid is the week ending Saturday, August 29, 2009. In New York, where the week begins on Monday, this means that the last week for which EUC08 may be paid is the week ending Sunday, August 30, 2009. In states with variable start dates, this means the last week for which EUC08 may be paid is the week ending Wednesday, September 2, 2009.

Notifications

1. *Identification and Notification of Potentially Eligible Claimants.* The state must identify individuals who are potentially eligible for additional EUC08 due to the program's expansion. If the individual had previously exhausted an EUC08 claim, the state shall provide the individual with appropriate written notification of his/her potential entitlement to additional EUC08 benefits. If the individual has not exhausted his/her EUC08 claim prior to the enactment of the Extension Act, the state will recalculate the maximum benefit amount on the EUC08 claim and notify the individual of the increased amount added to his/her First-Tier EUC08 claim.

2. *Notification of Media.* To ensure public knowledge of the expansion of the EUC08 program, the state shall notify appropriate news media having coverage throughout the state. Should a state trigger “on” to Second-Tier EUC08, it must also notify the media of the availability of Second-Tier EUC08 benefits.

Operating Instructions

Except where inconsistent with these instructions, the operating instructions that were included as Attachment A to UIPL No. 23-08 are applicable.

1. *First-Tier Benefits.* Under the Extension Act, the maximum benefit amount in an individual's account is the lesser of 80 percent of the total amount of regular compensation (including dependents' allowances), or 20 times the individual's average regular compensation weekly benefit amount for a week of total unemployment (including dependents' allowances), payable to the individual with respect to the “applicable benefit year.”

This increase in First-Tier EUC08 eligibility applies to all newly-qualifying individuals as well as to all individuals who established their EUC08 entitlement prior to the date the Extension Act was enacted. However, the extra seven weeks of basic EUC08 payable under the Extension Act are only payable for weeks of unemployment beginning on or after Friday, November 21, 2008, the date of enactment of the extension.

2. *Second-Tier Benefits.* Under the Extension Act, if, at the time that the amount in an individual's EUC08 account is exhausted or at any time thereafter (except as explained below), the state is in an “extended benefit period” (EUC08 Second-Tier period) (as defined in the Extension Act), the individual's EUC08 account will be augmented by an amount equal to the lesser of 50 percent of the total amount of regular compensation (including dependents' allowances), or 13 times the individual's average weekly benefit amount for the benefit year (including dependents' allowances), payable to the individual with respect to the “applicable benefit year.” There is no Second-Tier augmentation of an individual's account if that individual exhausts his/her EUC08 account *after* an EUC08 Second-Tier period ends—unless a second EUC08 Second-Tier period occurs thereafter.

The Extension Act defines an EUC08 Second-Tier period as:

- An Extended Benefit (EB) period currently in effect for the state under the Federal-State Extended Unemployment Compensation Act of 1970 (FSEUCA).
- An EUC08 Second-Tier period that would be in effect under the FSEUCA using an insured unemployment rate (IUR) for the relevant 13-week period that is equal to or greater than 4 percent. (Unlike the “regular” EB program under the FSEUCA, the EUC08 EB period does not use a 5 percent IUR trigger or have a 120 percent “lookback” requirement.)
- An EUC08 Second-Tier period that would be in effect under the FSEUCA using a three-month seasonally adjusted total unemployment rate (TUR) that is equal to or greater than 6 percent. (Unlike the “regular” EB program under

the FSEUCA, the EUC08 Second-Tier program does not use a 6.5 percent TUR trigger or have a 110 percent “lookback” requirement.) This rate will be used in all states, whether or not the state uses it for the “regular” EB program.

The rules governing the timing of the triggering “on” and “off” an EUC08 Second-Tier period are the same as those governing the “regular” EB program under the FSEUCA, set forth at 20 CFR 615.11. The beginning date of a state’s EUC08 Second-Tier period will be based on when the state would have triggered “on” under the FSEUCA using the above triggers as well as the rules governing the timing of those periods under 20 CFR 615.11. Notwithstanding these regulations, however, no EUC08 Second-Tier period will begin earlier than June 30, 2008—the date on which the Extension Act made the Second-Tier amendment effective. Further, as provided by this regulation, each EUC08 Second-Tier period will last at least 13 weeks. For example, if a state triggers “on” to an EUC08 Second-Tier period for the week beginning Sunday, August 31, 2008, using the 6 percent TUR trigger, the state would remain “on” for an EUC08 Second-Tier period for at least 13 weeks from that date. After these 13 weeks, the EUC08 Second-Tier period would end, in accordance with this regulation, on the last day of the third week after the first week for which there is an “off” indicator in the state. The Department will notify each state of the beginning and ending dates of any EUC08 Second-Tier period applicable to that state in generally the same manner the states are notified of a “regular” EB period.

An individual may not have his/her EUC08 account augmented by these Second-Tier benefits more than once per EUC08 claim. Further, if the individual’s First-Tier EUC08 account is exhausted after Tuesday, March 31, 2009, there can be no Second-Tier benefit augmentation of the account. In most states, where the week of unemployment ends on a Saturday, this means that individuals who have a First-Tier EUC08 claim that exhausts on or after the week ending Saturday, April 4, 2009, do not qualify for a Second-Tier EUC08 claim. In states with variable claim start dates, this means the individuals who have a First-Tier EUC08 claim that exhausts after Tuesday, March 31, 2009, do not qualify for a Second-Tier EUC08 claim. However, if an individual’s EUC08 account is exhausted on or before Tuesday, March 31, 2009, the individual may qualify for a Second-Tier EUC08 claim if an EUC08 Second-Tier period is either then in effect or subsequently

triggers “on” (even if that period triggers “on” after Tuesday, March 31, 2009).

Two examples follow:

Example 1: An individual exhausts First-Tier EUC08 on Saturday, April 18, 2009. This individual will not qualify for a Second-Tier of EUC08, even if an EUC08 Second-Tier period is in effect, because the individual will have exhausted First-Tier EUC08 after Tuesday, March 31, 2009, and there can be no augmentation of his/her EUC08 account.

Example 2: An individual exhausts First-Tier EUC08 on Saturday, March 14, 2009. This individual may qualify for a Second-Tier of EUC08 (if otherwise eligible) if an EUC08 Second-Tier period is either in effect or the state subsequently triggers “on” (even if that period triggers “on” after March 31, 2009), because the First-Tier benefits were exhausted on or prior to Tuesday, March 31, 2009.

As with First-Tier EUC08, the state may provide for the payment of all EUC08 (including Second-Tier EUC08) prior to the payment of extended unemployment compensation payable under the FSEUCA.

3. *Effective Date of Amendments.* The expanded First-Tier EUC08, and the newly added Second-Tier EUC08 benefits, are payable only with respect to weeks of unemployment beginning on or after the enactment of Public Law 110–449. Thus, there is no provision for payment of these expanded EUC08 benefits for weeks of unemployment occurring prior to the enactment on Friday, November 21, 2008.

Example: An individual exhausts his/her original EUC08 entitlement on Saturday, September 6, 2008, and the Extension Act is enacted on Friday, November 21, 2008. The first potentially payable week for the expanded EUC08 benefits would be for the week beginning Sunday, November 23, 2008. In New York, where the week begins on Monday, the first potentially payable week is Monday, November 24, 2008. Those states with a variable start date, the first potentially payable week would begin no earlier than the week beginning Friday, November 21, 2008.

4. *Ending Date of the EUC08 Program.* Under the Extension Act, an individual having amounts remaining in his/her EUC08 account as of the last day of the last week of unemployment (as determined under state law) ending on or before Tuesday, March 31, 2009, may collect the remaining First-Tier or Second-Tier balance in subsequent weeks, if otherwise eligible, until the EUC08 program terminates. Under the Extension Act, no EUC08 is payable for any week beginning after Thursday, August 27, 2009.

Reporting Instructions

4. *General.* EUC08 reporting instructions are unchanged except as described below. States should continue

to report First Tier activity as they have done previously. The first report on Second Tier activity for December 2008 will be transmitted on the ETA 5159 by states in mid-January 2009.

5. *ETA 5159.* Claims and payment activities for the First-Tier, which now allows up to 20 weeks of benefits, will continue to be reported as they were previously, except as indicated below. Claims and payment activities for the Second-Tier, which allows up to 13 additional weeks in those states triggered “on” to an EUC08 Second Tier period, will be reported separately in a new section C of the report.

a. *First-Tier.* Report final payments on line 303 as the number of claimants issued a payment that exhausts the benefit entitlement in the First-Tier of their EUC08 account, including the additional entitlement provided in the new law. Reports submitted previously should be revised to reflect that claimants who have their accounts increased with the additional entitlement and were previously reported as receiving final payments did not, in fact, receive final payments.

b. *Second-Tier.* A new Section C, which mirrors Section B, has been added to the report. Only data for claimants who qualified for the Second-Tier should be included in this section. Weeks compensated will be reported in columns 23–27 of line 401; benefits paid in columns 23–27 of line 402, and first and final payments in columns 28–33 of line 403. First payments will represent the number of claimants who had their benefits augmented and received at least one Second-Tier payment. Report final payments as the number of claimants issued a payment that exhausts the benefit entitlement to the Second-Tier of their EUC08 account.

3. *ETA 539.* Total weeks claimed for regular UC, UCFE, and UCX for the two tiers of the EUC08 program for the report period will be reported separately in the comments section and labeled as “EUC08 First-Tier” and “EUC08 Second-Tier” followed by the number. For example: “EUC08 First-Tier = 239, EUC08 Second-Tier = 186”. (The agent weeks claimed information needed for this report will be obtained from the LADT identified in field 28 as “code 2”, Federal Benefit Extension.)

4. *UI-3 Worksheet.* States will report on line 12, labeled “Monetary Redeterminations,” the count of redeterminations conducted when a claimant’s account is increased for the additional First-Tier entitlement or augmented for the Second-Tier entitlement.

5. *OMB Approval.* These reports each bear their own OMB control numbers,

estimated burden hours and expiration dates indicating that they are valid collections. Modifications to the ETA 5159 have been submitted to OMB for expedited clearance and approval.

Attachment B to UIPL No. 23–08, Change 2

Text of the Unemployment Compensation Extension Act of 2008 An Act

To provide for additional emergency unemployment compensation.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

Section 1. Short Title

This Act may be cited as the “Unemployment Compensation Extension Act of 2008”.

Sec. 2. Additional First-Tier Benefits

Section 4002(b)(1) of the Supplemental Appropriations Act, 2008 (26 U.S.C. 3304 note) is amended—

- (1) In subparagraph (A), by striking “50” and inserting “80”; and
- (2) In subparagraph (B), by striking “13” and inserting “20”.

Sec. 3. Second-Tier Benefits

Section 4002 of the Supplemental Appropriations Act, 2008 (26 U.S.C. 3304 note) is amended by adding at the end the following:

(c) Special Rule—

(1) In General—If, at the time that the amount established in an individual’s account under subsection (b)(1) is exhausted or at any time thereafter, such individual’s State is in an extended benefit period (as determined under paragraph (2)), such account shall be augmented by an amount equal to the lesser of—

- (A) 50 percent of the total amount of regular compensation (including dependents’ allowances) payable to the individual during the individual’s benefit year under the State law, or
- (B) 13 times the individual’s average weekly benefit amount (as determined under subsection (b)(2)) for the benefit year.

(2) Extended Benefit Period—For purposes of paragraph (1), a State shall be considered to be in an extended benefit period, as of any given time, if—

(A) Such a period is then in effect for such State under the Federal-State Extended Unemployment Compensation Act of 1970;

(B) Such a period would then be in effect for such State under such Act if section 203(d) of such Act—

- (i) Were applied by substituting “4” for “5” each place it appears; and

(ii) Did not include the requirement under paragraph (1)(A) thereof; or

(C) Such a period would then be in effect for such State under such Act if—

(i) Section 203(f) of such Act were applied to such State (regardless of whether the State by law had provided for such application); and

(ii) Such section 203(f)—

(I) Were applied by substituting “6.0” for “6.5” in paragraph (1)(A)(i) thereof; and

(II) Did not include the requirement under paragraph (1)(A)(ii) thereof.

(3) Limitation—The account of an individual may be augmented not more than once under this subsection.

Sec. 4. Phaseout Provisions

Section 4007(b) of the Supplemental Appropriations Act, 2008 (26 U.S.C. 3304 note) is amended—

(1) In paragraph (1), by striking “paragraph (2),” and inserting “paragraphs (2) and (3),”; and

(2) By striking paragraph (2) and inserting the following:

(2) No Augmentation after March 31, 2009—If the amount established in an individual’s account under subsection (b)(1) is exhausted after March 31, 2009, then section 4002(c) shall not apply and such account shall not be augmented under such section, regardless of whether such individual’s State is in an extended benefit period (as determined under paragraph (2) of such section).

(3) Termination—No compensation under this title shall be payable for any week beginning after August 27, 2009.

Sec. 5. Temporary Federal Matching for the First Week of Extended Benefits for States With No Waiting Week

With respect to weeks of unemployment beginning after the date of the enactment of this Act and ending on or before December 8, 2009, subparagraph (B) of section 204(a)(2) of the Federal-State Extended Unemployment Compensation Act of 1970 (26 U.S.C. 3304 note) shall not apply.

Sec. 6. Effective Date

(a) In General—The amendments made by sections 2, 3, and 4 shall apply as if included in the enactment of the Supplemental Appropriations Act, 2008, subject to subsection (b).

(b) Additional Benefits—In applying the amendments made by sections 2 and 3, any additional emergency unemployment compensation made payable by such amendments (which would not otherwise have been payable if such amendments had not been enacted) shall be payable only with respect to any week of unemployment

beginning on or after the date of the enactment of this Act.

Emergency Unemployment Compensation, 2008—Questions and Answers

1. *Purpose.* To respond to questions from states about the expansion of the Emergency Unemployment Compensation, 2008 (EUC08) program.

2. *References.* The Unemployment Compensation Extension Act, Public Law 110–449, enacted November 21, 2008; Supplemental Appropriations Act, 2008, Title IV—Emergency Unemployment Compensation, Public Law 110–252, enacted June 30, 2008; Unemployment Insurance Program Letter (UIPL) No. 23–08, and Change 1 and Change 2.

3. *Background.* Public Law 110–449 (the Extension Act) amends Public Law 110–252 (the EUC08 Act) to provide up to 20 weeks of 100 percent federally-funded unemployment compensation to eligible individuals in all states. It also expands the EUC08 program by providing a Second-Tier of 100 percent federally-funded benefits of up to 13 weeks for eligible individuals in those states with “high unemployment” as defined in the Extension Act.

These expanded EUC08 benefits are available only for weeks of unemployment beginning on or after the date of enactment, which is November 21, 2008. Although these amendments do not change the date for establishing initial eligibility for EUC08, they do extend the program’s termination date. Under the new termination date, no EUC08 payments may be made for any week of unemployment beginning after August 27, 2009. Attached is “Questions and Answers on the EUC08 Extension Act.”

4. *Interpretation.* The information in this document is issued to the states and cooperating state agencies as guidance provided by the Department of Labor in its role as the principal in the EUC08 program. As agents of the United States, the states and cooperating state agencies may not deviate from this guidance without the prior approval of the Department. To the extent that the guidance provided in UIPL No. 23–08; and Change 1 and Change 2 is inconsistent with this UIPL, such guidance is superseded.

5. *Action Requested.* Administrators are to provide this information and instructions to the appropriate staff.

6. *Inquiries.* Direct questions to the appropriate Regional Office.

7. *Attachment.* Questions and Answers on the EUC08 Extension Act.

**Attachment to UIPL 23–08 Change 3
Questions and Answers on the EUC08
Extension Act**

*A. Notification of Potential Eligibility for
EUC08 and Recalculating Entitlement*

1. Question: What are the minimum requirements concerning notification and recalculation of First-Tier EUC08?

Answer: States must: (1) Notify both individuals who have exhausted their initial EUC08 entitlement (of up to 13 weeks) and those in a continued-claim filing status of the availability of expanded First-Tier EUC08 benefits; (2) recalculate First-Tier EUC08 entitlement when the individual next files a continued claim for EUC08; and (3) ensure public knowledge of the expansion of the EUC08 program, by notifying appropriate news media having coverage throughout the state.

2. Question: If states want to do more than the minimum requirements listed above, for example, recalculate all EUC08 claims at one time and notify all individuals of the new entitlement, is this allowable?

Answer: Yes.

B. First-Tier EUC08

1. Question: Are there instances when individuals may be paid expanded First-Tier EUC08 for weeks of unemployment prior to the effective date of the Extension Act?

Answer: No. EUC08 is payable only for weeks of unemployment beginning after the date of enactment of the Extension Act, which is November 21, 2008.

2. Question: A recalculated EUC08 entitlement results in an uneven dollar figure. How should these situations be handled?

Answer: When the calculation is not an even dollar figure, a state will round either up or down according to its law.

3. Question: A recalculated EUC08 entitlement results in a final payment less than the full average weekly benefit amount. How should these situations be handled?

Answer: When the available balance is less than the full weekly benefit amount (e.g., the available balance is \$200; the weekly benefit amount is \$275), the state will pay at most only the available balance (\$200), provided the state is not in a Second-Tier period (see Question #6 below under C. *Second-Tier EUC08*).

C. Second-Tier EUC08

1. Question: UIPL No. 23–08, Change 2, says that an individual qualifies for the “phase-out” only if the individual has an account balance as of March 31, 2009. The UIPL also provides that, if an

individual exhausts First-Tier EUC08 on or before March 31, 2009, the individual may establish eligibility for Second-Tier EUC08 if the state enters a Second-Tier period after March 31, 2009. Please clarify.

Answer: Paragraph (1) of Section 4007(b) of the amended EUC08 Act provides for the continued collection of an “unexhausted” EUC08 account after March 31, 2009. Thus, an individual having an account balance as of that date qualifies for the “phase-out” by being permitted to collect that balance after that date. Paragraph (2) of that Section extends paragraph (1) by further permitting an individual, who exhausted his/her EUC08 account on or before March 31, 2009, to receive a Second-Tier augmentation after that date.

2. Question: How is the individual’s EUC08 Second-Tier entitlement affected when the state triggers “off” an EUC08 Second-Tier period?

Answer: Triggering “off” does not affect the individual’s *remaining* Second Tier entitlement. The EUC08 Act, as amended, does not provide for reducing or terminating payment of the augmented amount because the state subsequently triggers “off.”

3. Question: Is it possible to trigger “on” an EUC08 Second-Tier period prior to the enactment of the Extension Act? If “yes,” what is the significance of this?

Answer: Yes, because the Extension Act provides that its amendments are to be treated “as if included in the enactment of” the original EUC08 Act. As a result, the “beginning” date of a Second-Tier period may be as early as the date the EUC08 program began. An EUC08 Second-Tier period must last at least 13 weeks. Thus, the date a Second-Tier period begins may affect the date it ends.

Note: Second-Tier EUC08 payments, however, shall *not* begin prior to enactment of the Extension Act, and the individual *must* have exhausted First-Tier EUC08 on the EUC08 account prior to augmentation.

4. Question: When does an individual qualify for EUC08 Second-Tier?

Answer: An individual will qualify for EUC08 Second Tier augmentation if the individual exhausts First-Tier EUC08 on or before March 31, 2009, and before or during an EUC08 Second-Tier period in the state. An individual who exhausts First-Tier EUC08 following the end of an EUC08 Second-Tier period will *not* be eligible for Second-Tier EUC08 unless the state again triggers “on” an EUC08 Second-Tier period.

Note: See Section 2 under “*Operating Instructions*” of Attachment A of UIPL 23–08, Change 2.

5. Question: May a state augment an individual’s EUC08 account with Second-Tier benefits as soon as the state enters into an EUC08 Second-Tier period?

Answer: No. The state may only augment an individual’s EUC08 account with Second-Tier benefits after the individual exhausts First-Tier EUC08 benefits and only if that exhaustion occurs during or before an EUC08 Second-Tier period and on or before March 31, 2009.

6. Question: When the amount remaining in an individual’s First-Tier EUC08 account is less than the full weekly benefit amount and the state is in a Second-Tier period, is Second-Tier EUC08 payable for the same week?

Answer: Yes, Second-Tier EUC08 is payable for the same week, the week of exhaustion. Second-Tier EUC08 will augment the EUC08 account to allow for the payment of an amount equal to the original weekly benefit amount.

7. Question: What is the last date a claim may be augmented?

Answer: For most states, the week beginning August 23, 2009, would be the last week that a claim could be augmented. In such a state an individual’s last week of potential eligibility would be the week ending August 29, 2009.

D. Multiple EUC08 Claims and Order of Payment

1. Question: An individual established two First-Tier EUC08 claims prior to the enactment of the Extension Act. Is the EUC08 account for each claim eligible to be increased to up to 20 weeks?

Answer: Yes.

2. Question: If there are two EUC08 claims, which one should be paid the enhanced First-Tier benefits first?

Answer: The oldest (first) EUC08 claim. (See Question and Answer D.7. in the Attachment to UIPL 23–08, Change 1.)

3. Question: Is it necessary to *immediately* recalculate the account of each EUC08 claim?

Answer: No. The state must immediately recalculate entitlement on the claim that will be paid first. Recalculation of the entitlement on any other EUC08 claim need not occur until *all* entitlement is exhausted on the EUC08 claim paid first, and the claimant files against the other claim.

4. Question: An individual has exhausted two First-Tier EUC08 claims. The state is subsequently in an EUC08 Second-Tier period and both accounts are eligible for augmentation. How is this situation handled?

Answer: The state will augment the oldest (first) EUC08 claim. After this augmented amount on the claim is exhausted, the state will augment and pay EUC08 on the other claim, if the claimant continues to have compensable unemployment and meets all other eligibility conditions, such as being able and available.

5. Question: An individual exhausts a First-Tier EUC08 claim during an EUC08 Second-Tier period. The individual has First-Tier entitlement on another claim. How is this situation handled?

Answer: The state will augment the oldest (first) EUC08 claim with Second-Tier benefits. After this augmented amount is exhausted, the state will pay any remaining First-Tier entitlement, including any enhanced First-Tier entitlement, on the other claim, if the claimant is otherwise eligible. If, when this remaining First-Tier entitlement is exhausted, or anytime thereafter within the statutory timeframe, the state is in an EUC08 Second-Tier period, the state will augment the account and pay benefits on this claim, if the claimant is otherwise eligible.

E. Interstate Claims for EUC08

1. Question: Under the permanent Federal-State Extended Benefit (EB) program an individual who files an interstate claim from a state that is not triggered "on" EB is limited to two weeks of EB. Does this same limitation apply to Second-Tier EUC08?

Answer: No. The "two-week" limitation of the permanent EB program does not apply to EUC08. Eligible individuals filing against a state that triggered "on" an EUC08 Second-Tier period may receive up to 13 weeks of Second-Tier EUC08.

Note: An individual who resides in a state that is triggered "on" but who is filing against a state that is *not* triggered "on" is *not* entitled to Second-Tier EUC08. This is because the individual's entitlement is determined under the applicable state law, that is, the law of the state with respect to which the individual is an exhaustee for EUC08 purposes.

F. Reporting Requirements for EUC08

1. Question: Are all Second-Tier augmentations counted as "monetary redeterminations?"

Answer: Yes. All augmentations are counted as monetary redeterminations. Activities related to the recalculation of First-Tier EUC08 and augmentation of Second-Tier EUC08, do not meet the definition under ET Handbook No. 401 for an initial, additional, or a transitional claim. States will receive

credit for monetary redetermination activity on the UI-3.

Note: An additional claim should be taken in connection with recalculation of EUC08 entitlement if the individual had intervening employment since filing his/her last claim.

2. Question: Must states track three different EUC08 activities: EUC08 (first 13 weeks), expanded First Tier EUC08, and Second-Tier EUC08?

Answer: States are required to report only First-Tier and Second-Tier EUC08 activities. In addition, states must revise previous reports of final payments, *once redeterminations have been made*, for prior EUC08 exhaustees on the EUC08-specific ETA 5159. States will resubmit Section B of the EUC08-specific ETA 5159 for claimants who were reported as exhaustees and who are no longer exhaustees because their First-Tier EUC08 accounts are recalculated. All First-Tier EUC08 activities are aggregate. For those states reporting Second-Tier EUC08 activity, they will report payment activities, first pays and final pays in the new Section C of the EUC08-specific ETA 5159.

Note: See Item 2.a. under *Reporting Instructions* in Attachment A of UIPL 23-08, Change 2.

3. Question: Are there separate time charges required for First-Tier and Second-Tier EUC08?

Answer: No, separate time charges are not required. The administrative funding and reporting of financial data will be for the entire EUC08 program.

4. Question: Is there a date by which states are required to revise the ETA 5159 to back out the final payment numbers for EUC08 claims that are recalculated to redetermine the First Tier balance?

Answer: States are expected to revise their prior reports and submit them with their December 2008 ETA 5159 Report. Additional revisions to these reports are to be made on an ongoing basis, as needed. Many states may be able to simply re-run reports for prior quarters after the redeterminations are made. Other states may need to count transactions and back them out from pre-existing totals.

5. Question: How should states report Second-Tier EUC08 on the Liable Agent Data Transfer (LADT)?

Answer: The expanded reporting (Section C) on the ETA 5159 does not include any data elements that break out reporting for Interstate Claims or for First- and Second-Tier EUC08. States should report aggregate interstate claims activity for both First- and Second-Tier EUC08 in the same manner as states have been reporting for the LADT and

unemployment insurance required reports.

Signed at Washington, DC, this 23rd day of January 2009.

Douglas F. Small,

Deputy Assistant Secretary, Employment and Training Administration, U.S. Department of Labor.

[FR Doc. E9-2533 Filed 2-5-09; 8:45 am]

BILLING CODE 4510-FW-P

NATIONAL SCIENCE FOUNDATION

Proposal Review Panel for Physics; Notice of Meeting

In accordance with the Federal Advisory Committee Act (Pub. L. 92-463, as amended), the National Science Foundation announces the following meeting.

Name: LIGO Science Education Center Partnership (SUBR), Proposal Review Panel for Physics, #1208.

Date and Time: Thursday, February 19, 2009; 8:30 a.m.–5:30 p.m.

Friday, February 20, 2009; 8 a.m.–4 p.m.

Place: Southern University of Baton Rouge, Louisiana and LIGO Livingston, Louisiana.

Type of Meeting: Partially Closed.

Contact Person: Kathleen McCloud, Program Director, Division of Physics, National Science Foundation (703) 292-8236.

Purpose of Meeting: To provide an evaluation concerning the proposal submitted to the National Science Foundation.

Tentative Agenda

Thursday, February 19, 2009

8:30 a.m.–11 a.m. Closed—Executive Session, Overview by LIGO-SUBR staff.
11 a.m.–1:30 p.m. Open—tour of LIGO Education Center and Lunch.
1:30 p.m.–2 p.m. Travel to SUBR.
2:30 p.m.–5:30 p.m. Closed—Executive Session.

Friday, February 20, 2009

8 a.m.–9 a.m. Closed—Executive Session.
9 a.m.–10:30 a.m. Open—tour of SUBR facilities.
11 a.m.–4 p.m. Closed—Executive Session with LIGO and SUBR, Close out.

Reason for Closing: The proposal contains proprietary or confidential material, including technical information on personnel. These matters are exempt under 5 U.S.C. 552b(c)(2)(4) and (6) of the Government in the Sunshine Act.

Dated: February 3, 2009.

Susanne Bolton,

Committee Management Officer.

[FR Doc. E9-2532 Filed 2-5-09; 8:45 am]

BILLING CODE 7555-01-P

NATIONAL SCIENCE FOUNDATION**Notice of Permit Modification Request Received Under the Antarctic Conservation Act of 1978**

AGENCY: National Science Foundation.

ACTION: Notice of permit modification request received under the Antarctic Conservation Act of 1978, Public Law 95-541.

SUMMARY: Notice is hereby given that the National Science Foundation (NSF) has received a request to modify a permit issued to conduct activities regulated under the Antarctic Conservation Act of 1978 (Pub. L. 95-541; Code of Federal Regulations Title 45, Part 670).

DATES: Interested parties are invited to submit written data, comments, or views with respect to the permit modification by March 9, 2009. The permit modification request may be inspected by interested parties at the Permit Office, address below.

ADDRESSES: Comments should be addressed to Permit Office, Room 755, Office of Polar Programs, National Science Foundation, 4201 Wilson Boulevard, Arlington, Virginia 22230.

FOR FURTHER INFORMATION CONTACT: Polly A. Penhale or Nadene G. Kennedy at the above address or (703) 292-8030.

Description of Permit Modification Requested

On October 1, 2008, the National Science Foundation issued a waste management permit (2009 WM-001) to Erica Wikander, Environmental Officer, Quark Expeditions, Inc. after posting a notice in the June 9, 2008 **Federal Register**. Public comments were not received. The issued permit was for the operation of remote field support and emergency provisions for the expedition vessels, AKADEMIK SERGEY VAVILOV, AKADEMIK IOFFEE and CLIPPER ADVENTURER. The permit holder requests to take 4 ATV's and two 10 gallon plastic containers of regular gasoline ashore, which will be housed in the garage overnight at Bellingshausen Station. The ATV's will be used during the course of a marathon that will be run on King George Island. The ATV's will be used primarily for safety reasons should anyone need to return to the beach or ship, due to an accident or a collapse. The ATV's will be used to conduct a thorough cleanup after the marathon.

In addition the permit holder proposes to take 3 portable toilets ashore and set them up in small tents. After the marathon everything will be removed back to the ship and no human

waste will be left ashore. The waste from the portable toilets will be put into the storage tank for sewage on the ships.

The duration of the requested modification is coincident with the current permit which expires on March 31, 2013.

Nadene G. Kennedy,

Permit Officer.

[FR Doc. E9-2551 Filed 2-5-09; 8:45 am]

BILLING CODE 7555-01-P

NUCLEAR REGULATORY COMMISSION

[Docket Nos. 50-277 and 50-278]

Exelon Generation Company, LLC, and PSEG Nuclear, LLC; Environmental Assessment and Finding of No Significant Impact; Correction NRC-2009-0033

AGENCY: Nuclear Regulatory Commission.

ACTION: Environmental Assessment and Finding of No Significant Impact; Correction.

SUMMARY: This document corrects a notice appearing in the **Federal Register** on January 29, 2009 (74 FR 5191), that notified the public of the Environmental Assessment and Finding of No Significant Impact for issuance of an Exemption from Title 10 of the Code of Federal Regulations (10 CFR) Part 50, Appendix R, Section III.G, "Fire Protection of Safe Shutdown Capability," for the use of operator manual actions in lieu of the requirements specified in Section III.G.2 as requested by Exelon Generation Company, LLC for operation of Peach Bottom Atomic Power Station, Units 2 and 3 located in York and Lancaster Counties, Pennsylvania. This action is necessary to correct the Licensee's name as stated in the subject heading of the original notice.

FOR FURTHER INFORMATION CONTACT: John D. Hughey, Office of Nuclear Reactor Regulation, U.S. Nuclear Regulatory Commission, Washington, DC 20555-0001; telephone (301) 415-3204, e-mail: John.Hughey@nrc.gov.

SUPPLEMENTARY INFORMATION: On page 5191, in the first column, 11th line, the subject heading is corrected to read from "Entergy Nuclear Operations, Inc.;" to "Exelon Generation Company, LLC, and PSEG Nuclear, LLC.;"

Dated in Rockville, Maryland, this 29th day of January 2009.

For the Nuclear Regulatory Commission.

John D. Hughey,

Project Manager, Plant Licensing Branch I-2, Division of Operating Reactor Licensing, Office of Nuclear Reactor Regulation.

[FR Doc. E9-2546 Filed 2-5-09; 8:45 am]

BILLING CODE 7590-01-P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-59336; File No. SR-CBOE-2008-127]

Self-Regulatory Organizations; Chicago Board Options Exchange, Incorporated; Order Approving Proposal To Eliminate the \$3 Underlying Price Requirement for Continued Listing and Listing of Additional Series

February 2, 2009.

On December 18, 2008, the Chicago Board Options Exchange, Incorporated ("Exchange" or "CBOE") filed with the Securities and Exchange Commission ("Commission") pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")¹ and Rule 19b-4 thereunder,² a proposed rule change to eliminate the \$3 underlying price requirement for continued listing and for the listing of additional series. The proposed rule change was published for comment in the **Federal Register** on January 2, 2009.³ The Commission received one comment letter on the proposed rule change.⁴ This order approves the proposed rule change.

The proposed rule change amends CBOE Rule 5.4.01 to eliminate the \$3 market price per share requirement from the Exchange's requirements for continued approval for an underlying security and amends CBOE Rule 5.4.02 to eliminate the prohibition against listing additional series of options on an underlying security at any time when the price per share of such underlying security is less than \$3.

The Exchange believes that the \$3 market price per share requirement is no longer necessary or appropriate, and states that only those underlying securities meeting the remaining maintenance listing criteria set forth in Rule 5.4.01 will be eligible for

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ See Securities Exchange Act Release No. 59152 (December 23, 2008), 74 FR 149 (January 2, 2009) ("Notice").

⁴ See letter to Florence E. Harmon, Acting Secretary, Commission, from Janet M. Kissane, Senior Vice President—Legal and Corporate Secretary, Office of the General Counsel, NYSE Euronext dated January 9, 2009 ("NYSE Euronext Letter").

continued listing and the listing of additional option series. The Exchange believes that the current \$3 market price per share requirement could have a negative effect on investors. For example, in the current volatile market environment, the Exchange is currently unable to list new series on underlying securities trading below \$3. If there is market demand for series below \$3, the Exchange would be unable to accommodate such requests and investors would be unable to hedge their positions with options series with strikes below \$3.

After carefully reviewing the proposed rule change, the Commission finds that the proposal is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange.⁵ In particular, the Commission finds that the proposed rule change is consistent with Section 6(b)(5) of the Act,⁶ which, among other things, requires that the rules of a national securities exchange be designed to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in regulating transactions in securities, to remove impediments to and perfect the mechanism of a free and open market and a national market system and, in general, to protect investors and the public interest.

CBOE's rules provide that a security underlying an option will not be deemed to meet the requirements for continued approval if the underlying security ceases to be an NMS stock.⁷ CBOE's rules also include other minimum standards for continued approval, including requirements related to the minimum number of outstanding shares, number of holders, and trading volume of the underlying security.⁸ The Commission believes that securities underlying options traded on CBOE will remain subject to adequate minimum standards for continued approval, which should help to ensure that only options on liquid underlying securities are permitted to trade on CBOE. The Commission also notes that the NYSE Euronext letter generally

supports the proposal.⁹ Accordingly, the Commission believes that CBOE's proposed rule change is consistent with the Act.

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,¹⁰ that the proposed rule change (SR-CBOE-2008-127), be, and hereby is, approved.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.¹¹

Florence E. Harmon,

Deputy Secretary.

[FR Doc. E9-2481 Filed 2-5-09; 8:45 am]

BILLING CODE 8011-01-P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-59331; File No. SR-CBOE-2009-003]

Self-Regulatory Organizations; Chicago Board Options Exchange, Incorporated; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change Related to Trades for Less Than \$1

January 30, 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 January 29, 2009, the Chicago Board Options Exchange, Incorporated ("Exchange" or "CBOE") filed with the Securities and Exchange Commission (the "Commission") the proposed rule change as described in Items I and II below, which Items have been prepared by the Exchange. The Exchange filed the proposal as a "non-controversial" proposed rule change pursuant to Section 19(b)(3)(A)(iii) 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

The Exchange is proposing to extend its program that allows transactions to take place at a price that is below \$1 per option contract until May 29, 2009. The text of the proposed rule change is available on the Exchange's Web site

(<http://www.cboe.org/Legal>), at the Exchange's Office of the Secretary and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of those statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant parts of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

An "accommodation" or "cabinet" trade refers to trades in listed options on the Exchange that are worthless or not actively traded. Cabinet trading is generally conducted in accordance with the Exchange Rules, except as provided in Exchange Rule 6.54, *Accommodation Liquidations (Cabinet Trades)*, which sets forth specific procedures for engaging in cabinet trades. Rule 6.54 currently provides for cabinet transactions to occur via open outcry at a cabinet price of \$1 per option contract in any options series open for trading in the Exchange, except that the Rule is not applicable to trading in option classes participating in the Penny Pilot Program. Under the procedures, bids and offers (whether opening or closing a position) at a price of \$1 per option contract may be represented in the trading crowd by a Floor Broker or by a Market-Maker or provided in response to a request by a PAR Official/OBO, a Floor Broker or a Market-Maker, but must yield priority to all resting orders in the PAR Official/OBO cabinet book (which resting cabinet book orders may be closing only). So long as both the buyer and the seller yield to orders resting in the cabinet book, opening cabinet bids can trade with opening cabinet offers at \$1 per option contract.

On December 30, 2008, the Exchange temporarily amended the procedures through January 30, 2009 to allow transactions to take place in open outcry at a price of at least \$0 but less than \$1

⁵ In approving this proposed rule change, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. See 15 U.S.C. 78c(f).

⁶ 15 U.S.C. 78f(b)(5).

⁷ See CBOE Rule 5.4.01(f). Rule 600 of Regulation NMS defines an NMS security as "any security or class of securities for which transaction reports are collected, processed, and made available pursuant to an effective transaction reporting plan, or an effective national market system plan for reporting transactions in listed options," and an NMS stock as "any NMS security other than an option."

⁸ See CBOE Rule 5.4.01(a)-(c).

⁹ See NYSE Euronext Letter, *supra* note 4.

¹⁰ 15 U.S.C. 78s(b)(2).

¹¹ 17 CFR 200.30-3(a)(12).

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ 15 U.S.C. 78s(b)(3)(A)(iii).

⁴ 17 CFR 240.19b-4(f)(6).

per option contract.⁵ These lower priced transactions are traded pursuant to the same procedures applicable to \$1 cabinet trades, except that (i) bids and offers for opening transactions are only permitted to accommodate closing transactions in order to limit use of the procedure to liquidations of existing positions, and (ii) the procedures are also available for trading in option classes participating in the Penny Pilot Program.⁶ The Exchange believes that allowing a price of at least \$0 but less than \$1 better accommodates the closing of options positions in series that are worthless or not actively traded, particularly due to recent market conditions which have resulted in a significant number of series being out-of-the-money. For example, a market participant might have a long position in a call series with a strike price of \$100 and the underlying stock might now be trading at \$30. In such an instance, there might not otherwise be a market for that person to close-out the position even at the \$1 cabinet price (e.g., the series might be quoted no bid).⁷

The purpose of the instant rule change is to extend the operation of these temporary procedures through May 29, 2009, so that the procedures can continue without interruption

⁵ Securities Exchange Act Release No. 59188 (December 30, 2008), 74 FR 480 (January 6, 2009) (SR-CBOE-2008-133).

⁶ Currently the \$1 cabinet trading procedures are limited to options classes traded in \$0.05 or \$0.10 standard increment. The \$1 cabinet trading procedures are not available in Penny Pilot Program classes because in those classes an option series can trade in a standard increment as low as \$0.01 per share (or \$1.00 per option contract with a 100 share multiplier). Because the temporary procedures allow trading below \$0.01 per share (or \$1.00 per option contract with a 100 share multiplier), the procedures are available for all classes, including those classes participating in the Penny Pilot Program.

⁷ As with other accommodation liquidations under Rule 6.54, transactions that occur for less than \$1 are not be disseminated to the public on the consolidated tape. In addition, as with other accommodation liquidations under Rule 6.54, the transactions are exempt from the Consolidated Options Audit Trail ("COATS") requirements of Exchange Rule 6.24, *Required Order Information*. However, the Exchange maintains quotation, order and transaction information for the transactions in the same format as the COATS data is maintained. In this regard, all transactions for less than \$1 must be reported to the Exchange following the close of each business day. The rule also provides that transactions for less than \$1 will be reported for clearing utilizing forms, formats and procedures established by the Exchange from time to time. In this regard, the Exchange initially intends to have clearing firms directly report the transactions to the Options Clearing Corporation ("OCC") using OCC's position adjustment/transfer procedures. This manner of reporting transactions for clearing is similar to the procedure that CBOE currently employs for on-floor position transfer packages executed pursuant to Exchange Rule 6.49A, *Transfer of Positions*.

pending review by the Commission of a separate proposed CBOE rule change filing that will seek permanent approval of the temporary procedures pursuant to Section 19(b)(2) of the Act.⁸

2. Statutory Basis

The Exchange believes the proposed rule change is consistent with the Act⁹ and the rules and regulations thereunder and, in particular, the requirements of Section 6(b) of the Act.¹⁰ Specifically, the Exchange believes the proposed rule change is consistent with the Section 6(b)(5)¹¹ 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 allowing for liquidations at a price less than \$1 per option contract better facilitates the closing of options positions that are worthless or not actively trading.

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

Because the foregoing proposed rule change does not: (i) Significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; or (iii) become operative for 30 days from the date on which it was filed, or such shorter time as the Commission may designate if consistent with the protection of investors and the public interest, it has become effective pursuant to Section 19(b)(3)(A) of the Act¹² and Rule 19b-4(f)(6) thereunder.¹³

⁸ 15 U.S.C. 78s(b)(2).

⁹ 15 U.S.C. 78ff(b)(1).

¹⁰ 15 U.S.C. 78f(b).

¹¹ 15 U.S.C. 78f(b)(5).

¹² 15 U.S.C. 78s(b)(3)(A).

¹³ 17 CFR 240.19b-4(f)(6). In addition, Rule 19b-4(f)(6) requires a self-regulatory organization to give the Commission written notice of its intent to file

CBOE has requested that the Commission waive the 30-day operative delay to enable Interpretations and Policies .03 to CBOE Rule 6.54 to continue in effect without interruption while the Exchange formulates a permanent rule change that will be submitted for Commission review pursuant to Section 19(b)(2) of the Act.¹⁴ The Exchange argues that the extension of the temporary program that allows for accommodation liquidations to occur at less than \$1 per option contract would allow for the orderly closing of option positions that are worthless and not actively traded. The Commission believes that waiving the 30-day operative delay¹⁵ is consistent with the protection of investors and the public interest. Therefore, the Commission designates the proposal operative upon filing.

At any time within 60 days of the filing of the proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (<http://www.sec.gov/rules/sro.shtml>); or
- Send an e-mail to rule-comments@sec.gov. Please include File Number SR-CBOE-2009-003 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-2009-003. This file number should be included on 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. CBOE has satisfied this requirement.

¹⁴ 15 U.S.C. 78s(b)(2). The Commission notes that CBOE has not yet filed that proposal.

¹⁵ For purposes only of waiving the 30-day operative delay, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. See 15 U.S.C. 78c(f).

subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (<http://www.sec.gov/rules/sro.shtml>). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room, 100 F Street, NE., Washington, DC 20549, on official business days between the hours of 10 a.m. and 3 p.m. Copies of such filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make publicly available. All submissions should refer to File Number SR-CBOE-2009-003 and should be submitted on or before February 27, 2009.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.¹⁶

Florence E. Harmon,
Deputy Secretary.

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-59335; File No. SR-FINRA-2008-061]

Self-Regulatory Organizations; Financial Industry Regulatory Authority, Inc.; Order Approving Proposed Rule Change To Adopt FINRA Rule 5240 (Anti-Intimidation/Coordination) in the Consolidated FINRA Rulebook

February 2, 2009.

On December 11, 2008, the Financial Industry Regulatory Authority, Inc. ("FINRA") (f/k/a National Association of Securities Dealers, Inc. ("NASD")), filed with the Securities and Exchange Commission ("Commission" or "SEC"), pursuant to Section 19(b)(1) of the

Securities Exchange Act of 1934 ("Act")¹ and Rule 19b-4 thereunder,² a proposed rule change to adopt NASD IM-2110-5 as FINRA Rule 5240 in the consolidated FINRA rulebook ("Consolidated FINRA Rulebook")³ without material change. The proposed rule change was published for comment in the **Federal Register** on December 29, 2008.⁴ The Commission received no comment letters in response to the proposed rule change. This order approves the proposed rule change.

NASD IM-2110-5 currently identifies three general types of conduct that are inconsistent with just and equitable principles of trade:⁵ (1) Coordinating activities by members involving quotations, prices, trades, and trade reporting (e.g., agreements to report trades inaccurately or maintain certain minimum spreads); (2) "directing or requesting" another member to alter prices or quotations; and (3) engaging in conduct that threatens, harasses, coerces, intimidates, or otherwise attempts improperly to influence another member or person associated with a member. The IM also sets forth seven specific exclusions that identify bona fide commercial activity that is permitted (e.g., bona fide negotiations and unilateral decisions regarding spreads). The proposed rule change would renumber NASD IM-2110-5 as FINRA Rule 5240 in the Consolidated FINRA Rulebook.

After careful review, the Commission finds that the proposed rule change is consistent with the requirements of the Act, and the rules and regulations thereunder that are applicable to a national securities association,⁶ and in

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ The current FINRA rulebook consists of two sets of rules: (1) NASD Rules and (2) rules incorporated from NYSE ("Incorporated NYSE Rules") (together referred to as the "Transitional Rulebook"). The Incorporated NYSE Rules apply only to those members of FINRA that are also members of the NYSE ("Dual Members"). Dual members must also comply with NASD Rules. For more information about the rulebook consolidation process, see FINRA *Information Notice*, March 12, 2008 ("Rulebook Consolidation Process").

⁴ See Securities Exchange Act Release No. 59119 (December 18, 2008), 73 FR 79527.

⁵ NASD Rule 2110 requires members to "observe high standards of commercial honor and just and equitable principles of trade." On September 25, 2008, the Commission approved adopting NASD Rule 2110 into the Consolidated FINRA Rulebook as FINRA Rule 2010 without substantive change. See Securities Exchange Act Release No. 58643 (September 25, 2008), 73 FR 57174 (October 1, 2008). That rule change took effect on December 15, 2008. See FINRA *Regulatory Notice* 08-57 (October 2008).

⁶ In approving this proposal, the Commission has considered the proposed rule's impact on efficiency, competition and capital formation. See 15 U.S.C. 78c(f).

particular, with Section 15A(b)(6) of the Act,⁷ which requires, among other things, that FINRA rules be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, and, in general, to protect investors and the public interest. The Commission notes that FINRA originally adopted NASD IM-2110-5 to fulfill part of its 1996 settlement agreement⁸ with the SEC.⁹ FINRA's adoption of NASD IM-2110-5 as FINRA Rule 5240 in the Consolidated FINRA Rulebook provides notice to members of behavior that violates just and equitable principles of trade.

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,¹⁰ that the proposed rule change (SR-FINRA-2008-061) be, and hereby is, approved.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.¹¹

Florence E. Harmon,
Deputy Secretary.

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-59340; File No. SR-FINRA-2008-047]

Self-Regulatory Organizations; Financial Industry Regulatory Authority, Inc.; Order Approving Proposed Rule Change To Amend the Codes of Arbitration Procedure To Raise the Amount in Controversy Heard by a Single Chair-Qualified Arbitrator to \$100,000

February 2, 2009.

I. Introduction

The 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") on September 18, 2008, pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934

⁷ 15 U.S.C. 78o-3(b)(6).

⁸ See *In the Matter of National Association of Securities Dealers, Inc.*, Administrative Proceeding File No. 3-9056, Securities Exchange Act Release No. 37538 (August 8, 1996).

⁹ See Securities Exchange Act Release No. 38845 (July 17, 1997), 62 FR 39564 (July 23, 1997). Although FINRA is not making material changes to the rule, one of the minor changes made by FINRA is to add the phrase "or other person" to paragraphs (a)(1) and (a)(3) of the rule to clarify that coordination with or intimidation of a non-FINRA member is covered by the rule.

¹⁰ 15 U.S.C. 78s(b)(2).

¹¹ 17 CFR 200.30-3(a)(12).

¹⁶ 17 CFR 200.30-3(a)(12).

("Act")¹ and Rule 19b-4 thereunder,² a proposed rule change to amend the Code of Arbitration Procedure for Customer Disputes ("Customer Code") and the Code of Arbitration Procedure for Industry Disputes ("Industry Code," and together with the Customer Code, the "Codes") to raise the amount in controversy that will be heard by a single chair-qualified arbitrator to \$100,000.³ The proposed rule change was published for comment in the **Federal Register** on October 2, 2008.⁴ The Commission received seven comments in response to the proposed rule change.⁵ This order approves the proposed rule change.

II. Description of the Proposed Rule Change

FINRA proposed to amend its Customer Code and Industry Code to raise the amount in controversy that would be heard by a single arbitrator to \$100,000, exclusive of interest and expenses.⁶ The arbitrator would be selected from the roster of arbitrators who are qualified to serve as chairpersons. This means that investors' claims for up to \$100,000 would be heard by a public, chair-qualified arbitrator.

Under the proposal, parties would be permitted to request a panel of three arbitrators for claims of more than \$25,000, but not more than \$100,000, if all parties agreed in writing to the

request.⁷ Claims of more than \$100,000, or claims that do not specify any amount in controversy, would continue to be heard by three arbitrators unless the parties agree in writing to one arbitrator.⁸

Currently, if the amount of a claim is \$25,000 or less, a single arbitrator is appointed to resolve the matter. If the amount of a claim is more than \$25,000, but not more than \$50,000, a single arbitrator is appointed, unless a party asks for three arbitrators in its initial pleading. Claims for over \$50,000, or claims that do not specify any amount in controversy, are heard by a panel of three arbitrators.⁹

FINRA also proposed to remove the current option for one party unilaterally to require three arbitrators in certain cases with claims for more than \$25,000.¹⁰ FINRA believes this is not an efficient use of resources, as it requires other parties to incur higher hearing session costs and additional delays caused by scheduling three arbitrators instead of one. Therefore, the proposed rule would mandate a single arbitrator in all such cases unless all parties agree, in writing, to request a three-person panel.

In FINRA's view, raising the threshold for claims heard by a single arbitrator would increase efficiencies and decrease costs for parties and FINRA. Parties would experience reduced case processing times because of the flexibility associated with scheduling conference calls and hearing dates with one arbitrator as opposed to three. Parties would save time in the arbitrator selection process because they would receive only one list of eight names from which to choose their arbitrator, rather than three lists of eight names.¹¹ This

⁷ *Id.*

⁸ See proposed amendments to Rules 12401(c) and 13401(c).

⁹ See Rules 12401 and 13401. The current threshold for appointing one or three arbitrators has been in effect since 1998. See Securities Exchange Act Release No. 38635 (May 14, 1997), 62 FR 27819 (May 21, 1997) (SR-NASD-97-22) (approval order) and NASD Notice to Members 98-90. Customer disputes are resolved by a single, chair-qualified public arbitrator or a majority-public panel consisting of a public arbitrator, a chair-qualified public arbitrator, and a non-public arbitrator. Industry disputes are resolved by a public panel or a non-public panel depending upon the parties to the controversy and the nature of the claims asserted (see Rules 13402 and 13802).

¹⁰ See proposed amendments to Rules 12401(b) and 13401(b).

¹¹ For example, for customer cases, if the panel consists of one arbitrator, the Neutral List Selection System ("the System") generates a list of eight public arbitrators from the chairperson roster. If the panel consists of three arbitrators, the System generates a list of eight public arbitrators from the chairperson roster, a list of eight arbitrators from the public roster, and a list of eight arbitrators from the non-public roster. FINRA sends the lists to the

means they would only research the disclosures and histories of eight proposed arbitrators instead of 24.

Parties would also benefit from reduced hearing session fees. For claims between \$25,000.01 and \$50,000, parties would save \$150 per hearing session¹² because hearing session fees would be reduced from \$600 (for a hearing with three arbitrators) to \$450 (for a hearing with one arbitrator).¹³ For claims between \$50,000.01 and \$100,000, the savings would be \$300 per hearing session because hearing session fees would be reduced from \$750 (for a hearing with three arbitrators) to \$450 (for a hearing with one arbitrator). The parties' cost for photocopying pleadings and exhibits would be reduced by two-thirds. FINRA would benefit from a more efficient use of its arbitrator roster since cases for \$100,000 or less would use only one arbitrator instead of three. FINRA's photocopying costs and mailing expenses would also be reduced.

III. Comment Letters

The Commission received seven comments on the proposal, as well as FINRA's response to comments¹⁴, all of which are discussed below.

Most commenters, particularly securities claimants' attorneys and legal clinics representing claimants, generally supported the proposal.¹⁵ Some commenters supported the proposal in part.¹⁶ One commenter, a registered broker-dealer, opposed the entire proposal.¹⁷ Six commenters¹⁸ supported increasing the monetary threshold under which disputes would be heard by a single arbitrator; four commenters¹⁹ supported requiring the consent of all parties for a three-arbitrator panel for claims under \$100,000; and three commenters²⁰ opposed requiring single arbitrators to

parties along with each arbitrator's employment history for the prior 10 years and other background information (see Rules 12403 and 13403).

¹² The term "hearing session" means any meeting between the parties and arbitrator(s) of four hours or less, including a hearing or a pre-hearing conference. See Rules 12100(n) and 13100(n). For full day hearings, the savings would be \$300 for claims between \$25,000.01 and \$50,000, and \$600 for claims between \$50,000.01 and \$100,000.

¹³ See Rules 12902 and 13902.

¹⁴ Letter from Margo A. Hassan, FINRA, dated December 2, 2008 ("FINRA Letter").

¹⁵ Caruso, PIABA, Neuman, Cornell Securities Law Clinic, and John Jay Legal Services Letters.

¹⁶ See Estell Letter.

¹⁷ See Charles Schwab Letter.

¹⁸ See Caruso, Estell, PIABA, Neuman, Cornell Securities Law Clinic, and John Jay Legal Services Letters.

¹⁹ See PIABA, Cornell Securities Law Clinic, John Jay Legal Services and Neuman Letters.

²⁰ See Estell, PIABA, and Cornell Securities Law Clinic Letters.

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ The former NASD Rule 12000 Series (Customer Code) and 13000 Series (Industry Code) have been adopted as the FINRA 12000 Series (Customer Code) and 13000 Series (Industry Code) in the new consolidated rulebook pursuant to SR-FINRA-2008-021, which was approved by the Commission. See Securities Exchange Act Release No. 58643 (September 25, 2008), 73 FR 57174 (October 1, 2008) (SR-FINRA-2008-021) (approval order). The FINRA Rule 12000 Series (Customer Code) and 13000 Series (Industry Code), as set forth in SR-FINRA-2008-021, became effective on December 15, 2008. See FINRA Regulatory Notice 08-57 (SEC Approves New Consolidated FINRA Rules) (October 2008).

⁴ See Securities Exchange Act Release No. 58651 (September 25, 2008), 73 FR 57391 (October 2, 2008) (SR-FINRA-2008-047) ("Rulemaking Notice").

⁵ See Stephen B. Caruso, Esq., dated October 9, 2008 ("Caruso Letter"); Barry D. Estell, Esq., dated October 20, 2008 ("Estell Letter"); Laurence S. Schultz, Esq., Public Investors Arbitration Bar Association, dated October 20, 2008 ("PIABA Letter"); David P. Neuman, Esq., dated October 23, 2008 ("Neuman Letter"); William A. Jacobsen, Esq. and Seth M. Nadler, Cornell Securities Law Clinic, dated October 23, 2008 ("Cornell Securities Law Clinic Letter"); Gregory M. Scanlon, Esq., Charles Schwab & Co., Inc., dated October 23, 2008 ("Charles Schwab Letter"); and Jill Gross, Esq. and Stephanie Myers, John Jay Legal Services, Inc., dated October 23, 2008 ("John Jay Legal Services Letter").

⁶ See proposed amendments to Rules 12401(b) and 13401(b).

be chair-qualified. One commenter noted that the proposed rule change did not mention any change to the filing fees that investors would pay to bring an arbitration claim.²¹

Detailed Discussion of Comments and FINRA Response

Increasing the Monetary Threshold Under Which Disputes Would Be Heard by a Single Arbitrator

Proposed amendments to Rules 12401(b) and 13401(b) would raise the amount in controversy that would be heard by a single arbitrator to \$100,000, exclusive of interest and expenses. Most commenters supported increasing the monetary threshold under which disputes would be heard by a single arbitrator.²² These commenters generally agreed with statements in the Rulemaking Notice that the increased threshold would reduce arbitration costs and increase efficiency for arbitration participants by saving them time and money.²³ Some commenters suggested increasing the threshold for one-arbitrator panels to \$200,000²⁴ or \$250,000.²⁵ One commenter opposed expanding the availability of single-arbitrator panels, stating that the maximum savings of \$600 per day of hearings estimated by FINRA (or \$300 per party per day) are insufficient to justify the rule change.²⁶ This commenter also stated that smaller hearing panels will degrade the decision making process for FINRA awards, because, under the current rule, decision making is a collaborative process in which all arbitrators benefit from one another's viewpoints. Moreover, this commenter opined that in some cases, one arbitrator's inaccurate view can be nullified by the arbitrator's colleagues' majority ruling.²⁷

FINRA responded to these comments by indicating that it believes that the proposal, as filed, strikes the right balance between offering users an efficient and cost effective forum and providing three-arbitrator panels for disputes that involve greater amounts in controversy or that do not specify an amount in controversy. By raising the threshold as proposed, FINRA would be restoring the proportion of cases heard

by a single arbitrator—roughly a third—to what it was when the single arbitrator threshold was last increased in 1998. In particular, FINRA expects that the proposal would double the percentage of single-arbitrator cases from approximately 17 percent to 34 percent. In addition, by eliminating the option for one party unilaterally to request three arbitrators in cases with claims of more than \$25,000, FINRA stated that all parties will benefit by increased efficiencies and cost savings. For these reasons, FINRA declined to amend the proposed single arbitrator threshold.²⁸

Consent of All Parties for a Three-Arbitrator Panel for Claims Under \$100,000

Proposed amendments to Rules 12401(b) and 13401(b) would provide that a panel of three arbitrators would hear claims of more than \$25,000, but not more than \$100,000, if all parties agreed in writing to the request. Most commenters either specifically supported requiring the consent of all parties for a three-arbitrator panel for claims under \$100,000,²⁹ or implicitly supported it by expressing support for the entire proposed rule change.³⁰ One commenter supported this provision, and to guarantee its effectiveness, urged FINRA to clarify that a party may only unilaterally procure a three-arbitrator panel if at least one of the parties asserts aggregate claims in excess of \$100,000.³¹ This commenter also expressed concern that the proposed rule could be interpreted to permit a single party to compel a three-arbitrator panel if multiple parties' claims exceed \$100,000 when aggregated, even if no single party's claims exceed \$100,000.³²

FINRA responded that it does not intend to change its current practice with respect to aggregating claims. Currently, upon receipt of a statement of claim and an answer thereto, FINRA staff determines the total amount claimed by claimants and the total amount claimed by respondents, and appoints the number of arbitrators required by Rules 12401 and 13401. In doing so, FINRA staff only aggregates a claimant's claim with another claimant's claim, or a respondent's claim with another respondent's claim. FINRA staff does not aggregate all of the parties' claims (e.g., claimants' claims with respondents' claims). FINRA stated that it will explain in the Regulatory

Notice announcing the rule change how the \$100,000 threshold will be applied and declined to revise the proposal as requested.³³

Requiring Single Arbitrators To Be Chair-Qualified

Several commenters opposed the requirement that single arbitrators be chair-qualified.³⁴ One commenter noted that the chair-qualification requirement would make it more difficult for arbitrators to get the required "service" to become chair-qualified, and would reduce the pool of available chair-qualified arbitrators.³⁵ Another commenter posited that this requirement would produce a small, insulated pool of repeat arbitrators and undercut efforts to ensure non-biased hearings through random selection of arbitrators.³⁶ One commenter called this requirement "a further erosion of investor rights," and expressed concern that chair-qualified arbitrators may be biased towards member firms.³⁷ The commenter also estimated, without explanation, that under the proposed rule change, it could take ten or more years for an otherwise qualified neutral arbitrator to become chair-qualified.³⁸

FINRA responded by noting that it is not proposing to amend the rules relating to the chairperson rosters or the composition of arbitration panels. FINRA stated that it understands that raising the threshold for a single chair-qualified arbitrator will result in fewer arbitrators serving on certain cases. FINRA believes that appointing chair-qualified arbitrators to resolve claims up to \$100,000 would ensure that parties have experienced arbitrators resolving their disputes. FINRA also noted that, in addition to completing FINRA's chairperson training, chair-qualified arbitrators must either (i) have a law degree and have served as an arbitrator through award on at least two cases, or (ii) have served as an arbitrator through award on at least three cases.³⁹

Filing Fees That Investors Would Pay To Bring an Arbitration Claim

One commenter noted that the proposed rule change did not mention any change to the filing fees that investors would pay to bring an

²¹ See Caruso Letter.

²² See Caruso, Estell, PIABA, Neuman, Cornell Securities Law Clinic, and John Jay Legal Services Letters.

²³ See Caruso, PIABA, Neuman, and Cornell Securities Law Clinic Letters.

²⁴ See John Jay Legal Services Letter.

²⁵ See Caruso and PIABA Letters. The PIABA Letter supported raising the amount in controversy at the option of the investor.

²⁶ See Charles Schwab Letter.

²⁷ *Id.*

²⁸ See FINRA Letter.

²⁹ See PIABA, Cornell Securities Law Clinic, and John Jay Legal Services Letters.

³⁰ See Neuman Letter.

³¹ See Cornell Securities Law Clinic Letter.

³² *Id.*

³³ See FINRA Letter.

³⁴ See Estell, PIABA, and Cornell Securities Law Clinic Letters.

³⁵ See PIABA Letter. FINRA Rule 13400 requires an arbitrator to have served in a minimum number of cases to be eligible to be chair-qualified.

³⁶ See Cornell Securities Law Clinic Letter.

³⁷ See Estell Letter.

³⁸ See Estell Letter.

³⁹ See FINRA Letter.

arbitration claim.⁴⁰ This commenter suggested that the economic benefits that will inure to FINRA from reduced arbitration costs should be passed through to public investors in terms of reduced filing fees.⁴¹

FINRA responded by stating that it considered the effect of the proposal on all fees imposed by the forum. FINRA indicated that the significant cost savings for hearing sessions with a single arbitrator represent the greatest impact of the proposal to users of the forum. For example, under the proposal the forum fees for a dispute involving \$75,000 will decrease from \$750 to \$450 per four-hour hearing session. FINRA has not proposed to amend the initial filing fees, which are already based on the amount in dispute, and which may be reallocated by the panel at the end of the case. The Codes will continue to provide that the Director of Arbitration may defer payment of all or part of the filing fee if a claimant has demonstrated a financial hardship. Moreover, parties will continue to be able to request that the panel consider assessing all or part of any filing fee on other parties in the case. For these reasons, FINRA declined to revise the forum's filing fees.⁴²

IV. Discussion and Findings

After careful review of the proposed rule change, the comments, and FINRA's response to the comments, the Commission finds that the proposed rule change is consistent with the requirements of the Act, and the rules and regulations thereunder that are applicable to a national securities association.⁴³ In particular, the Commission believes the proposed rule change is consistent with the provisions of Section 15A(b)(6) of the Act,⁴⁴ 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. The Commission believes that the proposed rule change will reduce costs for participants in FINRA arbitration proceedings with claims of greater than \$25,000 but no more than \$100,000 who have their matters heard before a single arbitrator, while preserving the parties' ability to

agree to have their case heard by a panel of three arbitrators.

The Commission believes that FINRA has responded adequately to the comments regarding increasing the monetary threshold under which disputes would be heard by a single arbitrator. The Commission agrees that the proposal, as filed, balances offering users an efficient and cost-effective forum for disputes of \$100,000 or less and providing three-arbitrator panels for disputes that involve greater amounts or that do not specify an amount in controversy. The Commission also agrees that parties in these cases will experience reduced case processing times because of the flexibility associated with scheduling conference calls and hearing dates with one arbitrator rather than three, and that FINRA would benefit from a more efficient use of its arbitrator roster.

The Commission also believes that FINRA has adequately responded to comments regarding the aggregation of claims in calculating whether the \$100,000 threshold has been met. The Commission notes that FINRA is not changing its current practice with respect to aggregating claims, and clarifying this practice in the Regulatory Notice announcing the rule change should help to resolve any ambiguity about how FINRA will determine whether a matter may be heard by a single arbitrator.

The Commission also believes that FINRA has adequately responded to comments regarding the requirement that single arbitrators be chair-qualified arbitrators. The Commission agrees that appointing chair-qualified arbitrators to resolve claims up to \$100,000 would ensure that parties have experienced arbitrators resolving their disputes.

The Commission also believes that FINRA has adequately responded to comments regarding filing fees that investors would pay to bring a claim. The Commission agrees that parties will realize cost savings for hearing sessions with a single arbitrator.

V. Conclusions

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,⁴⁵ that the proposed rule change (SR-FINRA-2008-047) be, and hereby is, approved.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.⁴⁶

Florence E. Harmon,

Deputy Secretary.

[FR Doc. E9-2531 Filed 2-5-09; 8:45 am]

BILLING CODE 8011-01-P

⁴⁵ 15 U.S.C. 78s(b)(2).

⁴⁶ 17 CFR 200.30-3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-59332; File No. SR-NYSEArca-2008-136]

Self-Regulatory Organizations; NYSE Arca, Inc.; Order Approving Proposed Rule Change Amending NYSE Arca Equities Rule 5.2(j)(6) Relating to the Initial Listing Standards for Equity Index-Linked Securities, Commodity-Linked Securities, Currency-Linked Securities, Fixed Income Index-Linked Securities, Futures-Linked Securities and Multifactor Index-Linked Securities

January 30, 2009.

I. Introduction

On December 10, 2008, NYSE Arca, Inc. ("NYSE Arca" or "Exchange") filed with the Securities and Exchange Commission ("Commission"), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")¹ and Rule 19b-4 thereunder,² a proposed rule change to amend NYSE Arca Equities Rule 5.2(j)(6), which sets forth listing standards for Equity Index-Linked Securities, Commodity-Linked Securities, Currency-Linked Securities, Fixed Income Index-Linked Securities, Futures-Linked Securities and Multifactor Index-Linked Securities ("Index-Linked Securities"). The proposed rule change was published in the **Federal Register** on December 31, 2008.³ The Commission received no comments on the proposal. This order approves the proposed rule change.

II. Description of the Proposal

The Exchange proposes to amend one of the requirements of NYSE Arca Equities Rule 5.2(j)(6), which sets forth the listing standards for Index-Linked Securities. Rule 5.2(j)(6) permits the Exchange to consider for listing and trading Index-Linked Securities pursuant to Rule 19b-4(e) under the Act, provided that, among other things, in no event will a loss or negative payment at maturity be accelerated by a multiple that exceeds twice the performance of an underlying Reference Asset. The Exchange proposes to amend Rule 5.2(j)(6)(A)(d) to provide that in no event will a loss or negative payment at maturity be accelerated by a multiple that exceeds *three* times the performance of an underlying Reference Asset. The Exchange proposes this change to allow it to list and trade Index-Linked Securities that employ

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ See Securities Exchange Act Release No. 59146 (December 22, 2008), 73 FR 80504.

⁴⁰ See Caruso Letter.

⁴¹ *Id.*

⁴² See FINRA Letter.

⁴³ In approving this proposal, the Commission has considered the proposed rule's impact on efficiency, competition and capital formation. See 15 U.S.C. 78c(f).

⁴⁴ 15 U.S.C. 78o-3(b)(6).

investment strategies similar or analogous to certain exchange-traded funds which list and trade on the Exchange pursuant to NYSE Arca Equities Rule 5.2(j)(3).⁴ Currently, exchange-traded funds are able to seek daily investment results, before fees and expenses, that correspond to three times the inverse or opposite of the daily performance (–300%) of the underlying indexes.

For Index-Linked Securities that are structured to allow a loss or negative payment at maturity that may be accelerated by a multiple that exceeds three times the performance of an underlying Reference Asset, the Exchange's proposal would continue to require specific Commission approval pursuant to Section 19(b)(2) of the Act.⁵ In particular, NYSE Arca Equities Rule 5.2(j)(6) would expressly prohibit such Index-Linked Securities from being approved by the Exchange for listing and trading pursuant to Rule 19b–4(e) under the Act.⁶

III. Discussion and Commission's Findings

After careful review, the Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange, in particular, with Section 6(b) of the Act⁷ and the rules and regulations thereunder. Specifically, the Commission finds that the proposal is consistent with Section 6(b)(5) of the Act,⁸ which requires, among other things, that the Exchange's rules be designed to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest.⁹

The Commission believes that the proposal reasonably balances the removal of impediments to a free and open market with the protection of investors and the public interest, two principles set forth in Section 6(b)(5) of

the Act.¹⁰ The Commission notes that it has previously approved a proposed rule change that would permit the Exchange to list and trade, pursuant to Rule 19b–4(e) under the Act, exchange-traded funds that seek daily investment results, before fees and expenses, that correspond to three times the inverse or opposite of the daily performance (–300%) of the underlying indexes.¹¹ With respect to the listing and trading of Index-Linked Securities that would allow a loss or negative payment at maturity that is accelerated by a multiple that exceeds three times the performance of an underlying Reference Asset, the Commission further notes that the Exchange would be required to obtain prior Commission approval pursuant to Section 19(b)(2) of the Act.¹²

The Commission also notes that Index-Linked Securities must comply with all of the applicable provisions under NYSE Arca Equities Rule 5.2(j)(6), as proposed to be amended, and all other requirements applicable to Index-Linked Securities including, without limitation, requirements relating to initial and continued listing standards, the dissemination of index value and related information, rules and policies governing the trading of equity securities, trading hours, trading halts, surveillance, firewalls, and Information Bulletins to ETP Holders, as set forth in prior Commission orders approving the generic listing rules applicable to the listing and trading of Index-Linked Securities.

The Commission also notes that NYSE Arca Equities Rule 9.2(a), which sets forth the Exchange's suitability requirements, would apply to the trading of Index-Linked Securities. Specifically, before recommending a transaction to a non-institutional customer in such securities, ETP Holders must have reasonable grounds to believe that the recommendation is suitable for the customer, based on facts disclosed by the customer after reasonable inquiry concerning the customer's investment objectives, financial situation, needs, and any other information that such ETP Holder believes would be useful to make a recommendation. ETP Holders must also have a reasonable basis to believe that the customer can evaluate the special characteristics, and is able to bear the financial risks, of investments in Index-Linked Securities. An Information Bulletin would inform ETP Holders of the suitability requirements

of NYSE Arca Equities Rule 9.2(a) prior to the commencement of trading in such securities.

In sum, the Commission believes that the Exchange's amendment to NYSE Arca Equities Rule 5.2(j)(6) relating to the listing and trading of Index-Linked Securities should fulfill the intended objective of Rule 19b–4(e) under the Act by allowing such derivative securities products to be listed and traded without separate Commission approval. The Commission believes that the proposed rule change should facilitate the listing and trading of additional types of Index-Linked Securities and reduce the time frame for bringing these securities to market.

For the foregoing reasons, the Commission finds that the proposed rule change is consistent with the Act.¹³

IV. Conclusion

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,¹⁴ that the proposed rule change (SR–NYSEArca–2008–136) be, and it hereby is, approved.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.¹⁵

Florence E. Harmon,
Deputy Secretary.

[FR Doc. E9–2529 Filed 2–5–09; 8:45 am]

BILLING CODE 8011–01–P

DEPARTMENT OF STATE

[Public Notice 6489]

Overseas Security Advisory Council (OSAC) Meeting Notice; Closed Meeting

The Department of State announces a meeting of the U.S. State Department—Overseas Security Advisory Council on February 26, 2009 at the Boeing Company, Arlington, Virginia. Pursuant to Section 10(d) of the Federal Advisory Committee Act (5 U.S.C. Appendix), 5 U.S.C. 552b(c)(4), and 5 U.S.C. 552b(c)(7)(E), it has been determined that the meeting will be closed to the public. The meeting will focus on an examination of corporate security policies and procedures and will involve extensive discussion of proprietary commercial information that is considered privileged and confidential, and will discuss law enforcement investigative techniques and procedures. The agenda will include updated committee reports, a

⁴ See Securities Exchange Act Release No. 58825 (October 21, 2008), 73 FR 63756 (October 27, 2008) (SR–NYSEArca–2008–89).

⁵ 15 U.S.C. 78s(b)(2). See e-mail dated January 29, 2009 from Tim Malinowski, Director, NYSE Euronext to Mitra Mehr, Special Counsel, Division of Trading and Markets, Commission (“NYSE Arca e-mail”).

⁶ 17 CFR 240.19b–4(e). See NYSE Arca e-mail.

⁷ 15 U.S.C. 78f(b).

⁸ 15 U.S.C. 78f(b)(5).

⁹ In approving the proposed rule change the Commission has considered the proposed rule's impact on efficiency, competition and capital formation. See 15 U.S.C. 78c(f).

¹⁰ 15 U.S.C. 78f(b)(5).

¹¹ See *supra* note 4.

¹² 15 U.S.C. 78s(b)(2).

¹³ 15 U.S.C. 78f(b)(5).

¹⁴ 15 U.S.C. 78s(b)(2).

¹⁵ 17 CFR 200.30–3(a)(12).

global threat overview, and other matters relating to private sector security policies and protective programs and the protection of U.S. business information overseas.

FOR MORE INFORMATION CONTACT: Marsha Thurman, Overseas Security Advisory Council, Department of State, Washington, DC 20522-2008, phone: 571-345-2214.

Dated: January 26, 2008.

Gregory B. Starr,

*Director of the Diplomatic Security Service,
Department of State.*

[FR Doc. E9-2584 Filed 2-5-09; 8:45 am]

BILLING CODE 4710-43-P

DEPARTMENT OF VETERANS AFFAIRS

Research Advisory Committee on Gulf War Veterans' Illnesses; Notice of Meeting

The Department of Veterans Affairs (VA) gives notice under Public Law 92-463 (Federal Advisory Committee Act) that the Research Advisory Committee on Gulf War Veterans' Illnesses will

meet on February 23-24, 2009. The meeting will be held in Room NG3.202 at the T. Boone Biomedical Building, University of Texas Southwestern, 6001 Forest Park Road, Dallas, Texas. On February 23, the session will convene at 8 a.m. and adjourn at 4:30 p.m. On February 24, the session will convene at 8 a.m. and adjourn at 1 p.m. All sessions will be open to the public.

The purpose of the Committee is to provide advice and make recommendations to the Secretary of Veterans Affairs on proposed research studies, research plans and research strategies relating to the health consequences of military service in the Southwest Asia theater of operations during the Gulf War.

At the February 23-24 meeting, the Committee will review VA program activities related to Gulf War veterans' illnesses and updates on relevant scientific research published since the last Committee meeting. Additionally, there will be presentations and discussion of white matter disorders affecting Gulf War veterans and preliminary results from the University of Texas Southwestern Gulf War Illnesses Research Program.

Additionally, public comments will be received at 4:15 p.m. on February 23 and at 12:30 p.m. on February 24. Public comments will be limited to five minutes each. A sign-in sheet will be available each day. Individuals who speak are invited to submit 1-2 page summaries of their comments at the time of the meeting for inclusion in the official meeting record. Members of the public may also submit written statements for the Committee's review to Dr. Roberta White, RAC-Gulf War Veterans' Illnesses (T-GW), U.S. Department of Veterans Affairs, 116B-4 150 S. Huntington Ave., Boston, MA 02130.

Any member of the public seeking additional information should contact Dr. William Goldberg, Designated Federal Officer, at (202) 461-1667, or Dr. White, Scientific Director, at (617) 278-4517.

Dated: February 3, 2009.

By Direction of the Secretary.

E. Philip Riggan,

Committee Management Officer.

[FR Doc. E9-2586 Filed 2-5-09; 8:45 am]

BILLING CODE 8320-01-P



Federal Register

**Friday,
February 6, 2009**

Part II

The President

**Proclamation 8344—American Heart
Month, 2009**

**Proclamation 8345—National African
American History Month, 2009**

**Memorandum of February 4, 2009—State
Children's Health Insurance Program**

**Notice of February 4, 2009—Continuation
of the National Emergency with Respect
to the Situation In or In Relation to Côte
d'Ivoire**

Presidential Documents

Title 3—

Proclamation 8344 of February 2, 2009

The President

American Heart Month, 2009

By the President of the United States of America

A Proclamation

Together, we can turn the tide on the number one killer of American women and men. Heart disease claims more lives each year than all forms of cancer combined. During American Heart Month, we renew our commitment to promoting heart disease awareness. It is never too late to start protecting heart health.

Certain risk factors can lead to heart disease. These include: high blood pressure, high cholesterol, obesity, physical inactivity, smoking, and diabetes. Practicing the following “Big Four” habits can help mitigate these risks: eating a heart healthy diet, getting regular physical activity, maintaining a healthy weight, and avoiding tobacco. Unfortunately, only 3 percent of U.S. adults practice all of these habits. As a Nation, we must work to increase that number.

Forming these healthy habits does not have to be difficult: Setting realistic goals, making gradual improvements, and inviting family and friends to join in this pursuit can lead to a healthier lifestyle. Above all, we must remember that taking action can mean a longer, healthier, and more enjoyable life.

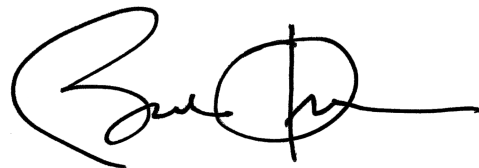
Michelle and I especially encourage women to take heart health seriously. More women than men die of heart disease each year, and many women fail to make the connection between risk factors and their personal risk of developing heart disease. The Federal Government’s *The Heart Truth* campaign gives women a personal and urgent wake-up call about their risk for heart disease. On the first Friday in February, *The Heart Truth* will lead the Nation in celebrating National Wear Red Day to promote heart disease awareness. All Americans are encouraged to wear red or the Red Dress Pin—the national symbol for women and heart disease awareness—to show support for adopting the Big Four heart health lifestyle habits. This year on National Wear Red Day, we urge all Americans to practice the “Big Four” healthy habits for reducing heart disease risk.

During American Heart Month, we also honor the health professionals, researchers, and other heart health ambassadors whose efforts help all Americans lead longer and healthier lives.

In acknowledgement of the importance of the ongoing fight against cardiovascular disease, the Congress, by Joint Resolution approved December 30, 1963, as amended (77 Stat. 843; 36 U.S.C. 101), has requested that the President issue an annual proclamation designating February as “American Heart Month.”

NOW, THEREFORE, I, BARACK OBAMA, President of the United States of America, do hereby proclaim February 2009 as American Heart Month, and I invite all Americans to participate in National Wear Red Day on February 6, 2009. I also invite the Governors of the States, the Commonwealth of Puerto Rico, officials of other areas subject to the jurisdiction of the United States, and the American people to join me in recognizing and reaffirming our commitment to fighting cardiovascular disease.

IN WITNESS WHEREOF, I have hereunto set my hand this second day of February, in the year of our Lord two thousand nine, and of the Independence of the United States of America the two hundred and thirty-third.

A handwritten signature in black ink, appearing to be Barack Obama's signature, consisting of a large 'B' followed by a circle and a vertical line through it, and a horizontal line extending to the right.

[FR Doc. E9-2705
Filed 2-5-09; 11:15 am]
Billing code 3195-W9-P

Presidential Documents

Proclamation 8345 of February 2, 2009

National African American History Month, 2009

By the President of the United States of America

A Proclamation

The history of African Americans is unique and rich, and one that has helped to define what it means to be an American. Arriving on ships on the shores of North America more than 300 years ago, recognized more as possessions than people, African Americans have come to know the freedoms fought for in establishing the United States and gained through the use of our founding principles of freedom of speech, freedom of the press, the right to assembly, and due process of law. The ideals of the Founders became more real and more true for every citizen as African Americans pressed us to realize our full potential as a Nation and to uphold those ideals for all who enter into our borders and embrace the notion that we are all endowed with certain unalienable rights.

Since Carter G. Woodson first sought to illuminate the African American experience, each February we pause to reflect on the contributions of this community to our national identity. The history is one of struggle for the recognition of each person's humanity as well as an influence on the broader American culture. African Americans designed our beautiful Capital City, gave us the melodic rhythms of New Orleans Jazz, issued new discoveries in science and medicine, and forced us to examine ourselves in the pages of classic literature. This legacy has only added luster to the brand of the United States, which has drawn immigrants to our shores for centuries.

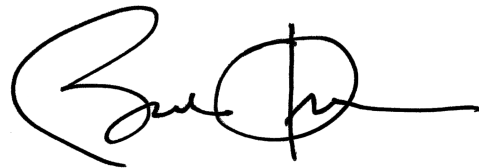
This year's theme, "The Quest for Black Citizenship in the Americas," is a chance to examine the evolution of our country and how African Americans helped draw us ever closer to becoming a more perfect union.

The narrative of the African American pursuit of full citizenship with all of the rights and privileges afforded others in this country is also the story of a maturing young Nation. The voices and examples of the African American people worked collectively to remove the boulders of systemic racism and discrimination that pervaded our laws and our public consciousness for decades. Through the work of Frederick Douglass and Harriet Tubman, Booker T. Washington and George Washington Carver, Martin Luther King and Thurgood Marshall, the African American community has steadily made progress toward the dreams within its grasp and the promise of our Nation. Meanwhile, the belief that those dreams might one day be realized by all of our citizens gave African American men and women the same sense of duty and love of country that led them to shed blood in every war we have ever fought, to invest hard-earned resources in their communities with the hope of self empowerment, and to pass the ideals of this great land down to their children and grandchildren.

As we mark National African American History Month, we should take note of this special moment in our Nation's history and the actors who worked so diligently to deliver us to this place. One such organization is the National Association for the Advancement of Colored People—the NAACP—which this year will witness 100 years of service to the Nation on February 12. Because of their work, including the contributions of those luminaries on the front lines and great advocates behind the scenes, we as a Nation were able to take the dramatic steps we have in recent history.

NOW, THEREFORE, I, BARACK OBAMA, President of the United States of America, by virtue of the authority vested in me by the Constitution and the laws of the United States, do hereby proclaim February 2009 as National African American History Month. I call upon public officials, educators, librarians, and all the people of the United States to observe this month with appropriate ceremonies, activities, and programs that raise awareness and appreciation of African American history.

IN WITNESS WHEREOF, I have hereunto set my hand this second day of February, in the year of our Lord two thousand nine, and of the Independence of the United States of America the two hundred and thirty-third.

A handwritten signature in black ink, appearing to be "Barack Obama", written in a cursive style. The signature is positioned to the right of the text.

[FR Doc. E9-2707

Filed 2-5-09; 11:15 am]

Billing code 3195-W9-P

Presidential Documents

Memorandum of February 4, 2009

State Children's Health Insurance Program

Memorandum for the Secretary of Health And Human Services

The State Children's Health Insurance Program (SCHIP) encourages States to provide health coverage for uninsured children in families whose incomes are too high to qualify for Medicaid but too low to afford private insurance. Since 1997, when SCHIP was enacted, States have had the authority to set their SCHIP income eligibility levels, subject to available funding. In recent years, as the cost of private insurance has increased, States have raised eligibility levels to offer health care coverage to more families, with families paying a share of the cost based on their income.

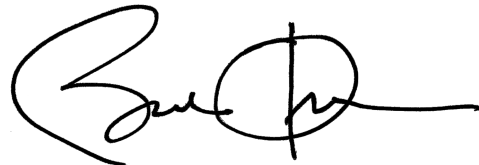
On August 17, 2007, the Centers for Medicare & Medicaid Services (CMS) issued a letter to State health officials limiting the flexibility of States to set income eligibility standards for their SCHIP programs. On May 7, 2008, CMS issued a subsequent letter restating the policy set forth in the August 17, 2007, letter.

The August 17, 2007, letter imposes additional requirements that States must meet in order to cover children under SCHIP plans, including plans that CMS had previously approved. These requirements have limited coverage under several State plans that otherwise would have covered additional, uninsured children. As a result, tens of thousands of children have been denied health care coverage. Unless the August 17, 2007, letter is withdrawn, many more children will be denied coverage.

By this memorandum, I request that you immediately withdraw the August 17, 2007, and May 7, 2008, letters to State health officials and implement SCHIP without the requirements imposed by those letters.

This memorandum 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.

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

A handwritten signature in black ink, appearing to be Barack Obama's signature, consisting of a large 'B' followed by a circle and a horizontal line.

THE WHITE HOUSE,
Washington, February 4, 2009

Presidential Documents

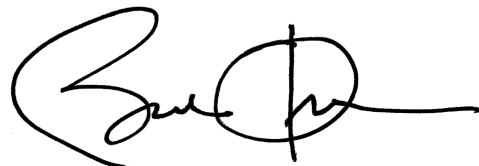
Notice of February 4, 2009

Continuation of the National Emergency With Respect To the Situation In or In Relation To Côte d'Ivoire

On February 7, 2006, by Executive Order 13396, the President declared a national emergency and ordered related measures blocking the property of certain persons contributing to the conflict in Côte d'Ivoire, 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 constituted by the situation in or in relation to Côte d'Ivoire, which has been addressed by the United Nations Security Council in Resolution 1572 of November 15, 2004, and subsequent resolutions, and has resulted in the massacre of large numbers of civilians, widespread human rights abuses, significant political violence and unrest, and attacks against international peacekeeping forces leading to fatalities. Because the situation in or in relation to Côte d'Ivoire continues to pose an unusual and extraordinary threat to the national security and foreign policy of the United States, the national emergency declared on February 7, 2006, and the measures adopted on that date to deal with that emergency, must continue in effect beyond February 7, 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 declared in Executive Order 13396.

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' followed by a circle and a horizontal line.

THE WHITE HOUSE,
Washington, February 4, 2009

[FR Doc. E9-2722

Filed 2-5-09; 12:00 pm]

Billing code 3195-W9-P

Reader Aids

Federal Register

Vol. 74, No. 24

Friday, February 6, 2009

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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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