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OFFICE OF THE FEDERAL REGISTER

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

WHO: Sponsored by the Office of the Federal Register.

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

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

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

CANCELLED

WHEN: Tuesday, April 12, 2011
9 a.m.–12:30 p.m.

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

RESERVATIONS: (202) 741–6008

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Presidential Documents

Title 3—

The President

Proclamation 8649 of April 7, 2011

National Volunteer Week, 2011

By the President of the United States of America

A Proclamation

America's story has been marked by the service of volunteers. Generations of selfless individuals from all walks of life have served each other and our Nation, each person dedicated to making tomorrow better than today. They exemplify the quintessential American idea that we can change things, make things better, and solve problems when we work together.

Volunteers are the lifeblood of our schools and shelters, hospitals and hotlines, and faith-based and community groups. From mentoring at-risk youth and caring for older Americans to supporting our veterans and military families and rebuilding after disasters, these everyday heroes make a real and lasting impact on the lives of millions of women and men across the globe.

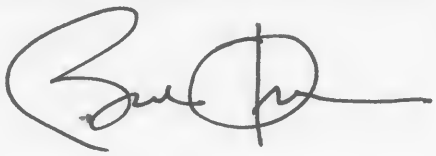
Last year, nearly 63 million Americans gave of themselves through service. Their compassion is a testament to the generosity of the American spirit. In difficult times, Americans are coming together—tackling our challenges instead of ignoring them—and renewing the principle that we are our brother's keeper and our sister's keeper.

Today, as many Americans face hardship, we need volunteers more than ever. Service opportunities tap the energy and ingenuity of our greatest resource—the American people—to improve our neighborhoods and our world. My Administration is committed to investing in community solutions and increasing opportunities for Americans to serve. The bipartisan Edward M. Kennedy Serve America Act strengthened the programs of the Corporation for National and Community Service, which engage millions of citizens each year in service through Senior Corps, AmeriCorps, and Learn and Serve America. We are building the capacity of organizations and communities to tackle their own problems by investing in social innovation and volunteer cultivation. And through United We Serve, a national call to service, we are making it easier for women and men of all ages to find volunteer opportunities or create their own projects where they see a need.

During National Volunteer Week, we celebrate the profound impact of volunteers and encourage all Americans to discover their own power to make a difference. Every one of us has a role to play in making our communities and our country stronger. I encourage all Americans to help us renew progress and prosperity and build a brighter future for our Nation by visiting www.Serve.gov to find a local project.

NOW, THEREFORE, I, BARACK OBAMA, President of the United States of America, by virtue of the authority vested in me by the Constitution and the laws of the United States, do hereby proclaim April 10 through April 16, 2011, as National Volunteer Week. I call upon all Americans to observe this week by volunteering in service projects across our country and pledging to make service a part of their daily lives.

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



[FR Doc. 2011–8837
Filed 4–11–11; 8:45 am]
Billing code 3195–W1–P

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DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

[Document Number AMS–FV–09–0047]

7 CFR Part 46

Perishable Agricultural Commodities Act: Impact of Post-Default Agreements on Trust Protection Eligibility

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule.

SUMMARY: The Department of Agriculture (USDA) is amending the regulations under the Perishable Agricultural Commodities Act (PACA) to allow, if there is a default in payment as defined in the regulations, a seller, supplier, or agent who has met the PACA trust eligibility requirements to enter into a scheduled agreement for payment of the past due amount without foregoing its trust eligibility. USDA is also amending 7 CFR 46.46(e)(2) by adding the words "prior to the transaction." This change clarifies that the 30-day maximum time period for payment to which a seller can agree and still qualify for coverage under the trust refers to pre-transaction agreements.

DATES: *Effective Date:* April 13, 2011.

FOR FURTHER INFORMATION CONTACT: Phyllis L. Hall or Josephine E. Jenkins, Trade Practices Section, 202–720–6873.

SUPPLEMENTARY INFORMATION:

Background of PACA Trust Provisions

Under the 1984 amendment, perishable agricultural commodities, inventories of food or other derivative products, and any receivables or proceeds from the sale of such commodities or products, are to be held in a non-segregated floating trust for the benefit of unpaid sellers. This trust is created by operation of law upon the purchase of such goods, and the produce buyer is the statutory trustee for the benefit of the produce seller. To preserve its trust benefits, the unpaid supplier, seller, or agent must give the buyer written notice of intent to preserve its rights under the trust within 30 calendar days after payment was due. Alternatively, as provided in the 1995 amendments to the PACA, a PACA licensee may provide notice of intent to preserve its trust rights by including specific language as part of its ordinary and usual billing or invoice statements.

The trust is a non-segregated "floating trust" made up of all of a buyer's commodity-related assets, under which there may be a commingling of trust assets. As each supplier gives ownership, possession, or control of perishable agricultural commodities to a buyer, and preserves its trust rights, that supplier becomes a participant in the trust. Thus, trust participants remain trust beneficiaries until they have been paid in full.

Under current 7 CFR 46.46(e)(2), only transactions with payment terms of 30 days from receipt and acceptance, or less, are eligible for trust protection. Section 46.46(e)(1) of the regulations (7 CFR 46.46(e)(1)) requires that any payment terms beyond "prompt" payment as defined by the regulations, usually 10 days after receipt and acceptance in a customary purchase and sale transaction, must be expressly agreed to, and reduced to writing, before entering into the transaction. A copy of the agreement must be retained in the files of each party and the payment due date must be disclosed on the invoice or billing statement.

Over the past few years, several federal courts have invalidated the trust rights of unpaid creditors because these creditors agreed in writing, and in some cases, by oral agreement, after default on payment, to accept payments over time from financially troubled buyers. In general, these courts have invalidated the seller's previously perfected trust rights because the agreements were deemed to extend payment terms beyond 30 days.[1]

The court decisions at issue have held that any post-default agreement, whether oral or written, that extends the buyer's obligation to pay the seller's invoices beyond 30 days after receipt and acceptance of the produce abrogates the produce seller's PACA trust rights. These decisions have held that (1) when a seller enters into the post-default agreement, the agreement modifies any valid payment agreement entered into prior to the transaction and therefore voids the trust protection,[2] and (2) post-default agreements that allow for installment payments exceeding 30 days from receipt of produce violate the PACA prompt-pay provisions.[3]

Many of the court decisions at issue have been based on an interpretation of § 46.46(e) of the regulations (7 CFR 46.46(e)). Section 46.46(e)(1) (7 CFR 46.46(e)(1)) requires that parties who elect to use different times for payment must reduce their agreement to writing before entering into the transaction. Current § 46.46(e)(2) (7 CFR 46.46(e)(2)) states that the maximum time for payment for a shipment to which a seller can agree and still qualify for coverage under the trust is 30 days after receipt and acceptance of the commodities. It is our interpretation that § 46.46(e)(2), like paragraph (e)(1) of the regulations (7 CFR 46.46(e)(1) and (e)(2)), addresses pre-transaction agreements only.

This interpretation of our regulations is consistent with the Secretary's unwillingness to impute a waiver of trust rights as illustrated in the policies established by the Secretary and upheld by the courts in the context of the trust provisions of the Packers and Stockyards Act (7 U.S.C. 181 *et seq.*), after which the PACA trust provisions are largely modeled.[4] In the context of the PACA trust, the right to make a claim against the trust are vested in the seller, supplier, or agent who has met the eligibility requirements of paragraphs (e)(1) and (2) of § 46.46 (7

[1] See, *Poris Foods Corp.* v. *Foresite Foods, Inc.*, No. 1:05–cv–610–WSD, 2007 WL 568841 (N.D. Ga. Feb. 20, 2007); *Bocchi Americos Assoc.* v. *Commerce Fresh Mktg., Inc.*, No. Civ. A. H0402411, 2005 WL 3164240 (S.D. Tex. Nov. 28, 2005); *American Bonona Co.* v. *Republic Not. Bonk of N.Y.*, 362 F.3d 33 (2nd Cir. 2004); *Potterson Frozen Foods, Inc.* v. *Crown Foods, Int'l*, 307 F.3d 666, 667 (7th Cir. 2002); *Greg Orchords Produce, Inc.* v. *P. Roncone J.*, 180 F.3d 888, 892 (7th Cir. 1999); *Idohoan Fresh* v. *Advantoge Produce, Inc.*, 157F.3d 197, 205 (3d Cir. 1998); *In re Lombordo Fruit ond Produce Co.*, 12 F.3d 806, 809 (8th Cir. 1993); and *Hull* v. *Houser's Foods, Inc.*, 924 F.2d 777, 781–82 (8th Cir. 1991).

[2] *See Americon Bonono Co.*, 362 F.3d at 33; *Patterson Frozen Foods*, 307 F.3d at 669.

[3] *Americon Bonana Co.*, 362 F.3d at 46.

[4] *See, e.g., In re Gotham Provision Co., Inc.*, 669 F.2d 1000, 1007 (5th Cir. 1982).

CFR 46.46(e)(1) and (2)). The seller, supplier, or agent remains a beneficiary of the PACA trust until the debt owed is paid in full as stated in section 5(c)(4) of the statute. An agreement to pay the antecedent debt in installments is not considered payment in full. Thus, we do not believe that a post-default payment agreement should constitute a waiver of a seller's previously perfected trust rights.

Notice of Proposed Rulemaking

In response to the Fruit and Vegetable Advisory Committee's request that the Secretary of Agriculture address the impact of post-default payment agreement on PACA trust eligibility, a proposed rule to amend PACA regulations was published in the **Federal Register** on June 8, 2010, [75 FR 32306].[5] The proposal sought to amend Title 7, Part 46 to ensure that qualified PACA trust beneficiaries maintain their trust protection after entering into a post-default agreement. The comment period initially closed on August 9, 2010. However, the comment period was reopened and extended an additional 30 days. The reopening of the comment period was published in the **Federal Register** on August 23, 2010, [75 FR 51693]. The comment period closed a second time on September 22, 2010.

The proposal sought to amend 7 CFR 46.46(e)(2) by adding the words "prior to the transaction." This change would clarify that the 30-day maximum time period for payment for a shipment to which a seller can agree and still qualify for coverage under the trust relates back to paragraph (e)(1) which refers to pre-transaction agreements.

The proposal also added a new paragraph (e)(3) to 7 CFR 46.46. The new paragraph provided that in circumstances of a default in payment as defined in § 46.46(a)(3), a seller, supplier, or agent who has met the eligibility requirements of § 46.46 paragraphs (e)(1) and (2) could agree in writing to a schedule for payment of the past due amount and still remain eligible under the trust. The post-default payment agreement could not extend beyond 180 days from the default date.

Comments

AMS received 130 timely comments. The commenters substantially approved of the proposed rule, except in regard to the limits on the length of post-default payment agreements and on collection activities. They expressed concerns that the suggested wording in the proposed regulation may itself create the same confusion, uncertainty, and need for costly litigation that the new regulation aims to eliminate. Eighty-nine of the 130 commenters offered alternative language for the amendment, four of which included the rationale for the suggested alternative language. These 89 commenters favored the removal of the requirement of a written post-default agreement and recommended the deletion of the last three sentences of § 46.46(e)(3) of the proposed rule which (1) set a 180-day limitation on post-default agreements, (2) limited collection activities in cases of bankruptcy and civil actions, and 3) stated that the remaining unpaid amount under the scheduled payment agreement continued to qualify for trust protection.

Twenty-three of the 130 comments raised legitimate concerns about the proposed changes to the regulations, stating:

1. It is contrary to the law—only full payment ends a supplier's trust rights. The commenters suggested that the proposed rule conflicts with the statutory language that a trust creditor remains eligible for trust benefits until it has received full payment.

2. The regulation cements a post-default waiver rule in the regulations. The commenters reason that if the Secretary acknowledges in the regulations that some post-default agreements can forfeit trust rights, this could be interpreted by the courts to prohibit all post-transaction agreements.

3. The proposed regulation will result in more problems than currently exist. The comments noted that there is no problem in the industry with post-default agreements to collect trust assets outside of litigation, so, no regulatory action is required over such agreements.

4. Routine past due collection efforts will jeopardize trust rights. The language in the proposed rule would necessitate that every time there is a past due debt, sellers will have to consult a PACA lawyer.

5. All claims in trust cases would be subject to extensive litigation about post-default collection efforts. Commenters noted that initially, produce suppliers try to resolve past due payments over the phone, thus, under the proposed rule, every subsequent trust claim will be the subject of the same expensive litigation to determine if there was a forfeiture due to an oral post default agreement.

We recognize the serious nature of the concerns the comments raise: That the proposed regulation, as written, is contrary to the plain language of the statute that trust creditors remain eligible until fully paid; that the proposed regulation could be interpreted broadly to prohibit all post-transaction agreements; that it creates new problems; that routine collection activities could jeopardize trust rights and give rise to extensive litigation. Because we agree with these comments, we are revising the regulation.

Twenty-eight of the 130 commenters specifically requested that the 180-day cap for post-default payment plans be stricken from the proposed rule, indicating that it may be unrealistic under a multitude of circumstances, and that the time limitation would create new challenges to the trust eligibility of a creditor who attempts to collect on a past due debt. We agree.

In addition, we agree that Congress intended that the seller, supplier, or agent remains a beneficiary of the PACA trust until the debt owed is paid and, recognizing that a 180-day limitation would create a new time limitation and new opportunity for litigation and misinterpretation of the regulations. Therefore, we are removing the 180-day limitation of post default agreements from the final rule.

Commenters noted that initially, produce suppliers try to resolve past due payments over the phone, thus, under the proposed rule, every subsequent trust claim will be the subject of the same expensive litigation to determine if there was a forfeiture due to an oral post default agreement. Because we agree with the comments that it is typical for produce suppliers to attempt to resolve past due payments over the telephone and, a requirement for a written post-default agreement would be burdensome and unnecessary, we are removing the requirement that a post-default agreement must be in writing from the final rule.

It is our interpretation of the statute and regulations that post-default agreements are not an extension of the 30-day maximum time period for pre-transaction agreements that would result in a waiver of the seller's trust rights; post-default payment agreements are an attempt to collect a debt that remains due until fully paid. The Secretary has long recognized a significant difference between the relative positions of buyers and sellers before a transaction, versus their positions after a buyer defaults on payment. The Secretary has observed that "produce sellers are not in an equal bargaining position with produce purchasers who are in possession of the produce seller's perishable agricultural

[5] To view the proposed rule and the comments we received, go to *http:/www.regulations/gov.*

commodities."[6] After a buyer has defaulted on payment, the seller is at the buyer's mercy since produce deteriorates rapidly, leaving no collateral. Any agreement reached after default is not an arm's length transaction. The trust is intended to provide protection to the unpaid seller whose bargaining position has changed for the worse after delivering its produce to a buyer. We do not believe that a seller's perfected trust rights should be lost because the seller enters into a payment arrangement, in an attempt to collect a debt, after the buyer has violated the PACA's prompt payment requirement.

We also agree with the comments from a California law firm that specializes in PACA law regarding the proposal to limit collection activities in cases of bankruptcy and civil actions. The commenter reminded us that limits on collection activities in cases of bankruptcy and civil actions are "already amply controlled under existing laws and procedures administered by the United States district and bankruptcy courts* * *." Because laws already exist to ensure that a buyer in bankruptcy and civil actions cannot continue to make preferential payments to select creditors, we are eliminating the third and fourth sentences in § 46.46, paragraph (e)(3) of the final rule.

One commenter, a New Jersey based attorney specializing in PACA, recommended that the Secretary withdraw the proposed new regulation and solicit further suggestions for alternate language. USDA opted not to implement this recommendation. This commenter also included a suggestion for changes to § 46.46 (c)(1), § 46.2(aa)(11). The commenter suggested a new paragraph in § 46.46 to address payment terms with a debtor who has entered into a post-default agreement. We do not adopt the suggestion, as it presents significant problems of implementation and interpretation by bringing separate, subsequent transactions into the analysis. USDA also opted not to adopt this suggestion because it is beyond the scope of the proposed rule.

The courts have expressed concern that post-default agreements could undermine the enforcement of the prompt pay provisions of the PACA. No commenters echoed the courts' concerns. When a buyer defaults on payment for produce, it has committed a violation of section 2(4) of the PACA (7 U.S.C. 499b(4)). The defaulting buyer's license is then subject to suspension or revocation, or the buyer may be assessed a civil penalty for its violations of the PACA. Allowing a seller who has perfected its trust rights to enter into a post-default payment agreement with the defaulting buyer does not negate the buyer's violations of the Act. The trust is a means to protect the seller's right to payment for produce, not to enforce the prompt payment provisions of the Act. The Secretary can still initiate an enforcement action against the buyer to seek the appropriate sanction for violations of the Act without regard to any post-default agreement entered into between the unpaid seller and the buyer in default.

Based on full consideration of comments received during the initial and reopened comment periods, USDA has determined that it is appropriate to simplify the language of the final rule in order to avoid creating any additional confusion, uncertainty, and unnecessarily protracted, costly litigation about post-default agreements and collection efforts. New § 46.46(3) will be amended to delete the last three sentences of the proposal, and permit post-default agreements made in any manner. Furthermore, accepting partial payments after default would not affect a seller's trust rights.

No comments addressed the proposal to amend § 46.46(e)(2) by adding the words "prior to the transaction." This change would clarify that the 30-day maximum time period for payment for a shipment to which a seller can agree and still qualify for coverage under the trust relates back to paragraph (e)(1) which refers to pre-transaction agreements. Therefore, this change is finalized as proposed.

Executive Orders 12866 and 12988

This final rule has been determined to be not significant for the purposes of Executive Order 12866, and therefore, has not been reviewed by the Office of Management and Budget. This final rule has been reviewed under Executive Order 12988, Civil Justice Reform, and is not intended to have retroactive effect. This final rule will not preempt any State or local laws, regulations, or policies, unless they present an irreconcilable conflict with this rule. There are no administrative procedures that must be exhausted prior to any judicial challenge to the provisions of this final rule.

Effects on Small Businesses

Pursuant to requirements set forth in the Regulatory Flexibility Act (RFA) (5 U.S.C. 601 *et seq.*), USDA has considered the economic impact of this final rule on small entities. The purpose of the RFA is to fit regulatory actions to the scale of businesses subject to such actions in order that small businesses will not be unduly or disproportionately burdened. The Small Business Administration (SBA) has defined small agricultural service firms (13 CFR 121.601) as those whose annual receipts are less than $7,000,000. There are approximately 14,400 firms licensed under the PACA, a majority of which could be classified as small entities.

The final regulations would clarify that a trust beneficiary who has perfected its trust rights does not forfeit those rights by entering into a post-default agreement to accept partial or installment payments on the amount past due. This language would provide companies of all sizes with clear regulatory guidance on this matter, thereby reducing the time and expense associated with litigating matters involving post-default agreements and trust right preservation under the PACA. Therefore, we believe that this final rule will not have a significant economic impact on a substantial number of small entities.

Paperwork Reduction Act

In accordance with OMB regulations (5 CFR part 1320) that implement the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35), the information collection and recordkeeping requirements that are covered by this final rule are currently approved under OMB number 0581–0031.

E-Government Act Compliance

USDA is committed to complying with the E-Government Act, which requires Government agencies in general to provide the public the option of submitting information or transacting business electronically to the maximum extent possible. Forms are available on our PACA Web site at *http://www.ams.usda.gov/paca* and can be printed, completed, and faxed. Currently, forms are transmitted by fax machine, postal delivery and can be accepted by e-mail.

List of Subjects in 7 CFR Part 46

Agricultural commodities, Definitions, Accounts and records, Duties of licensees, Statutory trust.

For the reasons set forth in the preamble, 7 CFR part 46 is amended as follows:

PART 46—[AMENDED]

■ 1. The authority citation for part 46 continues to read as follows:

[6] *See In re: Scamcorp, Inc.*, 57 Agric. Dec. 527, 563 (1998).

Authority: 7 U.S.C. 499a–499t.

■ 2. In § 46.46, paragraph (e)(2) is revised, paragraphs (e)(3) and (4) are redesignated as paragraphs (e)(4) and (5), and a new paragraph (e)(3) is added as follows:

§ 46.46 Statutory trust.

* * * * *

(e) * * *

(2) The maximum time for payment for a shipment to which a seller, supplier, or agent can agree, prior to the transaction, and still be eligible for benefits under the trust is 30 days after receipt and acceptance of the commodities as defined in § 46.2(dd) and paragraph (a)(1) of this section.

(3) If there is a default in payment as defined in § 46.46(a)(3), the seller, supplier, or agent who has met the eligibility requirements of paragraphs (e)(1) and (2) of this section will not forfeit eligibility under the trust by agreeing in any manner to a schedule for payment of the past due amount or by accepting a partial payment.

* * * * *

Dated: April 5, 2011.

Ellen King,

Acting Administrator, Agricultural Marketing Service.

[FR Doc. 2011–8718 Filed 4–11–11; 8:45 am]

BILLING CODE 3410–02–P

DEPARTMENT OF AGRICULTURE

Food Safety and Inspection Service

9 CFR Parts 391, 590, and 592

[FDMS Docket Number FSIS–2006–0025]

RIN 0583–AD40

New Formulas for Calculating the Basetime, Overtime, Holiday, and Laboratory Services Rates; Rate Changes Based on the Formulas; and Increased Fees for the Accredited Laboratory Program.

AGENCY: Food Safety and Inspection Service, USDA.

ACTION: Final rule.

SUMMARY: The Food Safety and Inspection Service (FSIS) is amending its regulations to establish formulas for calculating the rates that it charges meat and poultry establishments, egg products plants, and importers and exporters for providing voluntary, overtime, and holiday inspection, and identification, certification, and laboratory services. The 2011 basetime, overtime, holiday, and laboratory services rates in this final rule will be applied on the effective date. For future years, FSIS will use the formulas established to calculate the annual rates. FSIS will publish the rates annually in **Federal Register** notices prior to the start of each calendar year and will apply them on the first FSIS pay period at the beginning of the calendar year. The Agency is also increasing the codified flat annual fee for its Accredited Laboratory Program for FY 2012 and FY 2013.

DATES: This final rule is effective May 22, 2011.

FOR FURTHER INFORMATION CONTACT: For further information concerning policy issues contact Rachel Edelstein, Director, Policy Issuances Division, Office of Policy and Program Development, FSIS, U.S. Department of Agriculture, Room 6065 South Building, 1400 Independence Ave., SW., Washington, DC 20250–3700; telephone (202) 720–0399, fax (202) 690–0486.

For further information concerning fees contact Michele Torrusio, Director, Budget Division, Office of Management, FSIS, U.S. Department of Agriculture, Room 2159 South Building, 1400 Independence Avenue, SW., Washington, DC 20250–3700; telephone (202) 720–8700, fax (202) 690–4155.

SUPPLEMENTARY INFORMATION:

Background

The Federal Meat Inspection Act (FMIA) (21 U.S.C. 601 *et seq.*) and the Poultry Products Inspection Act (PPIA) (21 U.S.C. 451 *et seq.*) provide for mandatory Federal inspection of livestock and poultry slaughtered at official establishments and of meat and poultry processed at official establishments. The Egg Products Inspection Act (EPIA) (21 U.S.C. 1031 *et seq.*) provides for mandatory inspection of egg products processed at official plants. FSIS bears the cost of mandatory inspection provided during non-overtime and non-holiday hours of operation. Official establishments and official egg products plants pay for inspection services performed on holidays or on an overtime basis.

Under the Agricultural Marketing Act of 1946 (AMA), as amended (7 U.S.C. 1621 *et seq.*), FSIS provides a range of voluntary inspection, certification, and identification services to assist in the orderly marketing of various animal products and byproducts. These services include the certification of technical animal fats and the inspection of exotic animal products, such as antelope and elk products. The AMA provides that FSIS may assess and collect fees to recover the costs of the voluntary inspection, certification, and identification services it provides.

Also under the AMA, FSIS provides certain voluntary laboratory services that establishments and others may request the Agency to perform. Laboratory services are provided for four types of analytic testing: Microbiological testing, residue chemistry tests, food composition tests, and pathology testing. Again, the AMA provides that FSIS may collect fees to recover the costs of providing these services.

FSIS also accredits non-Federal analytical laboratories under its Accredited Laboratory Program. Such accreditation allows laboratories to conduct analyses of official meat and poultry samples. The Food, Agriculture, Conservation, and Trade Act of 1990, as amended, mandates that laboratory accreditation fees cover the costs of the Accredited Laboratory Program. This same Act mandates an annual payment of an accreditation fee on the anniversary date of each accreditation.

Proposed Rule

On October 8, 2009, FSIS published a proposed rule to amend its regulations to establish formulas for calculating the rates it charges meat and poultry establishments, egg products plants, and importers and exporters for providing voluntary, overtime, and holiday inspection, and identification, certification, and laboratory services (74 FR 51800). FSIS also proposed to keep the annual fee for its Accredited Laboratory Program at $4,500 for FY 2009, 2010 and 2011, and increase it to $5,000 for FY 2012 and FY 2013 (74 FR 51802).

As FSIS explained in the proposed rule, historically, the Agency amended its regulations annually to change the rates and fees. However, because the rulemaking process is lengthy, the fiscal year repeatedly would partially elapse before the Agency could publish a final rule to amend its rates and fees. As a result, the Agency was unable to recover the full cost of the services it provided.

To address the delays in recovering the cost of services, in January 2006, FSIS amended its regulations to provide for multiple annual rate and fee increases in one action (71 FR 2135). With this rulemaking, the rates and fees for 2006–2008 were increased and FSIS established criteria for determining the rate and fee increases on a multi-year basis. While this solution enabled the Agency to increase rates and fees each year, estimates used to establish the annual rates and fees were imprecise and have left the Agency collecting too little, and thus, not fully recovering its

costs. Because of the duration of the rulemaking process, rate increases have not been available until approximately three-fourths of the way into the fiscal year. This has resulted in a considerable monetary loss for FSIS.

In 2009, the Agency performed a cost analysis using actual FY 2008 data. On the basis of that analysis, the October 2009 proposed rule set forth the various rates FSIS projected it needed to charge in order to recover its costs. FSIS developed proposed formulas in consultation with a private accounting firm to determine the rates for FY 2010 and future years. FSIS also proposed raising its fees for the Accredited Laboratory Program to cover its increased direct overhead costs, including salary increases, employee benefits, inflation, and bad debt, and to maintain an adequate operating reserve.

Final Rule

In this final rule, FSIS is amending its regulations to codify, with modifications, the proposed formulas for calculating and establishing the rates for basetime, overtime, holiday, and laboratory services set forth in the proposed rule. FSIS has also made changes to the proposed regulatory text to correct inadvertent inconsistencies in terminology. For example, the preamble to the proposed rule referred to "fees" for the basetime, overtime, holiday, and laboratory services rates. In this preamble, FSIS is consistently using the term "rate" for the basetime, overtime, holiday, and laboratory services rates, and "fee" for the laboratory accreditation fee.

In the proposed rule, the Agency stated that the basetime, overtime, holiday, and laboratory services rates would be determined "For each fiscal year and based on previous fiscal year's actual costs and hours" (proposed 9 CFR 391.2(a), 391.3, 391.4(a), 590.126, 590.128, 592.510(a), 592.520, 592.530). Because of the time necessary to obtain previous fiscal year data and to calculate the formulas, in this final rule FSIS is specifying that the rates will be determined for each calendar year, as opposed to for "each fiscal year," based on the previous fiscal year's (ending on September 30) actual costs and hours data, except for the cost of living and inflation percentages. FSIS is also specifying that the cost of living and inflation percentages included in the formulas will be based on economic assumptions for the calendar year in which the rates will apply.

The proposed provisions for the "overhead rate" (9 CFR 391.2(b)(3) and 592.510(b)(3)) stated that the rate is based on the "average information technology (IT) costs from the previous two years in the Public Health Data Communication Infrastructure System Fund." The Agency proposed the two year average because of excessively high 2007 IT costs. However, in this final rule, to maintain consistency with the timeframes used in the other rate calculations, the Agency is amending 9 CFR 391.2(b)(3) and 592.510(b)(3) to refer to the "information technology costs from the previous fiscal year." In addition, the preamble discussion of the overhead rate stated that the rate included "provision for the operating balance". This language was not included in the proposed codified text. This final rule corrects the codified text to include the addition of the provision for the operating balance.

The proposed regulatory text for the "benefits" and "travel and operating rates" (9 CFR 391.2(b)(1) and (2), and 592.510(b)(1) and (2)) did not specify that the applicable costs would be divided by the applicable hours. The proposed regulatory text did not clearly state that the percentage of the cost of living increase (for the basetime, overtime, holiday, laboratory services, and benefits rate) and the percentage of inflation (for the travel and operating and overhead rates) adjustments are added to the quotients of pay divided by hours in the rate formulas. However, FSIS did provide examples in the preamble which indicated that costs would be divided by the hours, and demonstrated how the percent of cost of living and inflation are calculated, then added in the formulas to determine the appropriate rates. In this final rule, the regulatory text has been modified to clearly state that applicable costs would be divided by applicable hours and the cost of living and inflation percentage adjustments are added to the quotients in the formulas to determine the rates.

The proposed rule's discussion of the "Proposed Formulas" (FR 74 51801) and the codified text (9 CFR 391.2(a), 391.3(a) and (b), 391.4(a), 590.126, 590.128, 592.510(a), 592.520, and 592.530) used the terms "regular hours" and "hours worked" interchangeably. In this final rule, the Agency is amending the codified text to use consistently the term "regular hours." The term "regular hours" refers to the hours during regular working time (not including holiday or overtime hours) that are associated with on-site food product inspection.

In addition, the proposed rule's preamble (74 FR 51801) and codified text included the term "salaries paid" (9 CFR 391.2(a), 391.3(a) and (b), 391.4(a), 590.126, 590.128, 592.510(a), 592.520, and 592.530). In this final rule, for clarity, the term "salaries paid" is being replaced by "regular direct pay" because this is the pay for "regular hours."

FSIS intends to announce future annual rate changes, using the formulas in this final rule, in **Federal Register** notices approximately 30 days prior to the start of each new calendar year. FSIS will apply the new rates at the start of the first FSIS pay period each new calendar year. The 2011 rates in this final rule will be applied starting May 22, 2011, the first pay period 30 days after the publication of the rule.

This final rule adopts the proposed fees for the accredited laboratory program. FSIS will propose changes to the laboratory accreditation fees in future rulemakings when necessary.

Recalculated Rates

The rates published in the October 2009 proposed rule were calculated using the best data and economic analyses available at the time. These rates were based upon actual FY 2008 data. The proposed rule stated that the rates would be based on the previous year's actual costs and hours. Fiscal Year 2010 ended on September 30, 2010, and the Agency's FY 2010 actual cost data are now available. In addition, since the publication of the proposed rule, the Office of Management and Budget (OMB) released updated projected economic assumptions, "Analytical Perspectives, Budget of the United States Government, Fiscal Year 2011." The economic assumptions in the "Economic and Budget Analyses" section, *http://www.whitehouse.gov/sites/default/files/omb/budget/fy2011/assets/econ_analyses.pdf* include the projected overall average civilian Federal pay raises and locality pay adjustments for future calendar years.

Therefore, the rates for 2011 in this final rule have been recalculated based on the previous fiscal year costs and hours (FY 2010), the calendar year percentage of cost of living increase and inflation (calendar year 2011), and, as discussed above, the IT costs from the previous fiscal year (FY 2010). Table 1 lists the recalculated 2011 rates and the projected 2012 rates, Table 2 lists the rates FSIS currently assesses, and Table 3 lists the rates from the October 2009 proposed rule.

TABLE 1—2011 ADJUSTED RATE (PER HOUR PER EMPLOYEE) BY TYPE OF SERVICE

Service	2011 rate (estimates rounded to reflect billable quarters)	Projected 2012 rate (estimates rounded to reflect billable quarters)
Basetime	$53.92	$54.68
Overtime	67.52	68.64

TABLE 1—2011 ADJUSTED RATE (PER HOUR PER EMPLOYEE) BY TYPE OF SERVICE—Continued

Service	2011 rate (estimates rounded to reflect billable quarters)	Projected 2012 rate (estimates rounded to reflect billable quarters)
Holiday	$81.08	$82.28
Laboratory	67.08	68.04

TABLE 2—CURRENT RATES (PER HOUR PER EMPLOYEE) BY TYPE OF SERVICE

Service	Current rate
Basetime	$49.93
Overtime & holiday	58.93
Laboratory	70.82

TABLE 3—OCTOBER 2009 PROPOSED RATES (PER HOUR PER EMPLOYEE) BY TYPE OF SERVICE

Service	Estimates rounded to reflect billable quarters		
	2010 rate	Projected rate 2011	Projected rate 2012
Basetime	$51.36	$52.84	$54.64
Overtime	64.88	66.84	68.84
Holiday	78.44	80.84	83.32
Laboratory	65.08	67.04	69.08

The "travel and operating rate" and the "overhead rate" used in the proposed rule calculations were inadvertently transposed. In this final rule, the Agency has corrected this error in all of the preamble calculations below that include "travel and operating rate" or "overhead rate."

Formulas for the Basetime, Overtime, Holiday, and Laboratory Services Rates

FSIS is amending its regulations to provide the following formulas for the basetime, overtime, holiday, and laboratory services rates. The rates provided in Table 1, "2011 ADJUSTED RATE (PER HOUR PER EMPLOYEE) BY TYPE OF SERVICE" are based on calculations using unrounded numbers for the components, e.g., benefits, travel and operating, and overhead. The calculations provided below are for illustration and the components of the rates may not appear to be rounded correctly. However, the final rates are rounded correctly. In addition, all of the final rates have been rounded to make the amount divisible by the quarter hour (15 minutes). Fifteen minutes is the minimum charge for the services covered by these rates.

FSIS is amending 9 CFR 391.2 and 592.510 to establish the following formula to calculate the basetime rate per hour per program employee:

Basetime Rate = The quotient of dividing the Office of Field Operations (OFO) plus Office of International Affairs (OIA) inspection program personnel's previous fiscal year's regular direct pay by the previous fiscal year's regular hours, plus the quotient multiplied by the calendar year's percentage of cost of living increase, plus the benefits rate, plus the travel and operating rate, plus the overhead rate, plus the allowance for bad debt rate.

The calculation for the 2011 basetime rate per hour per program employee is:

[FY 2010 OFO and OIA Regular Direct Pay divided by the previous fiscal year's Regular Hours ($406,663,564/15,164,875)] = $26.82 + ($26.82 * 1.4% (calendar year 2011 Cost of Living Increase)) = $27.20 + $8.30 (benefits rate) + $.89 (travel and operating rate) + $17.52 (overhead rate) + $.01 (bad debt allowance rate) = $53.92.

Following the discussion of the "Laboratory Services Rate" is an explanation of how the benefits rate, travel and operating rate, overhead rate, and bad debt allowance rate were calculated.

FSIS is amending 9 CFR 391.3, 590.126, 590.128, 592.520, and 592.530, to establish the following formulas for overtime and holiday rates per hour per program employee:

Overtime Rate = The quotient of dividing the Office of Field Operations (OFO) plus Office of International Affairs (OIA) inspection program personnel's previous fiscal year's regular direct pay by the previous fiscal year's regular hours, plus the quotient multiplied by the calendar year's percentage of cost of living increase, multiplied by 1.5, plus the benefits rate, plus the travel and operating rate, plus the overhead rate, plus the allowance for bad debt rate.

The calculation for the 2011 overtime rate per hour per program employee is:

[FY 2010 OFO and OIA Regular Direct Pay divided by previous fiscal year's Regular Hours ($406,663,564/15,164,875)] = $26.82 + ($26.82 * 1.4% (calendar year 2011 Cost of Living Increase)) = $27.20 * 1.5 = $40.79 + $8.30 (benefits rate) + $.89 (travel and operating rate) + $17.52 (overhead rate) + $.01 (bad debt allowance rate) = $67.52.

Holiday Rate = The quotient of dividing the Office of Field Operations (OFO) plus Office of International Affairs (OIA) inspection program personnel's previous fiscal year's regular direct pay by the previous fiscal year's regular hours, plus the quotient multiplied by the calendar year's percentage of cost of living increase, multiplied by 2, plus the benefits rate, plus the travel and operating rate, plus the overhead rate, plus the allowance for bad debt rate.

The calculation for the 2011 holiday rate per hour per program employee calculation is:

[FY 2010 OFO and OIA Regular Direct Pay divided by Regular Hours ($406,663,564/15,164,875)] = $26.82 + ($26.82 * 1.4% (calendar year 2011 Cost of Living Increase)) = $27.20 * 2 = $54.39 + $8.30 (benefits rate) + $.89 (travel and operating rate) + $17.52 (overhead rate) + $.01 (bad debt allowance rate) = $81.11 (rounded to $81.08).

FSIS is amending 9 CFR 391.4, to establish the following formula for the

laboratory services rate per hour per program employee:

Laboratory Services Rate = The quotient of dividing the Office of Public Health Science (OPHS) previous fiscal year's regular direct pay by the OPHS previous fiscal year's regular hours, plus the quotient multiplied by the calendar year's percentage cost of living increase, plus the benefits rate, plus the travel and operating rate, plus the overhead rate, plus the allowance for bad debt rate.

The calculation for the 2011 laboratory services rate per hour per program employee is:

[FY 2010 OPHS Regular Direct Pay/OPHS Regular hours ($21,012,082/527,975)] = $39.80 + ($39.80 * 1.4% (calendar year 2011 Cost of Living Increase)) = $40.36 + $8.30 (benefits rate) + $.89 (travel and operating rate) + $17.52 (overhead rate) + $.01 (bad debt allowance rate) = $67.08.

Formulas for the Benefits, Travel and Operating, Overhead, and Allowance for Bad Debt Rates

FSIS is amending 391.2 and 592.510 to provide the formulas for calculating the Benefits, Travel and Operating, Overhead, and Allowance for Bad Debt Rates. These rates are components of the basetime, overtime, holiday, and laboratory services rates formulas.

Benefits Rate: The quotient of dividing the previous fiscal year's direct benefits costs by the previous fiscal year's total hours (regular, overtime, and holiday), plus the quotient multiplied by the calendar year's percentage cost of living increase. Some examples of direct benefits are health insurance, retirement, life insurance, and Thrift Savings Plan basic and matching contributions.

The calculation for the 2011 benefits rate per hour per program employee is:

[FY 2010 Direct Benefits/(Total Regular hours + Total Overtime hours + Total Holiday hours) ($140,660,995/17,171,053)] = $8.19 + ($8.19 * 1.4% (calendar year 2011 Cost of Living Increase) = $8.30.

Travel and Operating Rate: The quotient of dividing the previous fiscal year's total direct travel and operating costs by the previous fiscal year's total hours (regular, overtime, and holiday), plus the quotient multiplied by the calendar year's percentage of inflation.

The calculation for the 2011 travel and operating rate per hour per program employee is:

[FY 2010 Total Direct Travel and Operating Costs/(Total Regular hours + Total Overtime hours + Total Holiday hours) ($15,090,489/17,171,053)] = $.88 + ($.88 * 1.2% (2011 Inflation) = $.89.

Overhead Rate: The quotient of dividing the previous fiscal year's indirect costs plus the previous fiscal year's information technology (IT) costs in the Public Health Data Communication Infrastructure System Fund plus the previous fiscal year's Office of Management Program cost in the Reimbursable and Voluntary Funds plus the provision for the operating balance less any Greenbook costs (i.e., costs of USDA support services prorated to the service component for which fees are charged) that are not related to food inspection by the previous fiscal year's total hours (regular, overtime, and holiday) worked across all funds, plus the quotient multiplied by the calendar year's percentage of inflation.

The calculation for the 2011 overhead rate per hour per program employee is:

[FY 2010 Total Overhead/(Total Regular hours + Total Overtime hours + Total Holiday hours) ($337,861,367/19,521,571)] = $17.31 + ($17.31 * 1.2% (2011 Inflation) = $17.52.

Allowance for Bad Debt Rate = Previous fiscal year's total allowance for bad debt (for example, debt owed that is not paid in full by plants and establishments that declare bankruptcy) divided by previous fiscal year's total hours (regular, overtime, and holiday) worked.

The 2011 calculation for bad debt rate per hour per program employee is:

[FY 2010 Total Bad Debt/(Total Regular hours + Total Overtime hours + Total Holiday hours) = ($222,481/19,521,571)] = $.01.

Laboratory Accreditation Fee

Consistent with the proposed rule, FSIS is also amending 9 CFR 391.5 to keep the laboratory accreditation fee at $4,500.00 for fiscal year 2011 and to increase it to $5,000.00 beginning in fiscal year 2012. FSIS will propose changes to the laboratory accreditation fees through future rulemakings when necessary.

As discussed in the proposed rule (74 FR 51802), FSIS needs to raise the fee for this program to cover its increased direct overhead costs, including those for salary increases, employee benefits, inflation, and bad debt, and to maintain an adequate operating reserve. Furthermore, FSIS must maintain a "carryover" amount each year as a reserve to cover the contractual costs that the Accredited Laboratory Program must pay at the beginning of each fiscal year. The increases are also necessary to cover salaries and other operating expenses during the first two to three months of the fiscal year. Less than 5% of the program's income is received during the first two months of a fiscal year. Approximately 75% of the program's income is received in late December and early January; the remainder of the program's income is received about evenly across the rest of the fiscal year. Maintaining an adequate reserve is therefore essential for the Accredited Laboratory Program to be fully functional during the first quarter of any fiscal year.

Responses to Comments

FSIS received seven comments in response to the proposed rule. The commenters included meat trade associations, private citizens, and a meat processor.

Most commenters acknowledged that codified formulas in the regulations for these rates would afford the Agency the ability to raise rates based on pay increases for Federal employees and inflation.

Comments: One comment from a meat processor expressed concern that the first-year overtime rate increase is above the rate of inflation and above the wage based increase in the commenter's geographical area. Another comment from a trade association expressed concern that the overtime rate for the first year is approximately a 10% increase.

Response: The existing basetime, overtime, holiday, and laboratory services rates have not increased for more than three years, since October 1, 2007. FSIS developed the current overtime rate in 2005, using an estimated Annual General Increase (AGI) of 2.3% per year for 2006–2008. The actual AGI during 2006–2008 averaged 2.9%. The Agency absorbed the difference between the projected and actual increase, including the costs of benefits that have increased at an average of 4.6% each year. In addition, the rates established in the 2006 final rule are still being used in calendar year 2010. The higher rates are necessary because of increased salary costs across several years and current overhead costs.

Comments: One meat processor and two trade associations opposed the methodology of adding travel, benefits, overhead, and bad debt costs to the overtime and holiday inspection rates and stated that the proposed formulas were not clear.

Response: The methodology of adding travel, benefits, overhead and bad debts costs to overtime and holiday inspection rates has been used to establish the rates for previous years. FSIS has always been reimbursed by industry for the salary

and overhead costs for both overtime work and work on Federal holidays. Contrary to one commenter's concern, the calculations do not multiply travel, benefits, overhead, and bad debt costs by 1.5 and 2.0 for overtime and holiday rates, respectively. As illustrated in the calculations, these costs are added to the adjusted salary amounts for overtime and holiday pay.

The Agency contracted with a large world-wide accounting firm to ensure that the methodology for the fee calculations was sound and without flaws. The accounting firm's analysis of the methodology was performed in accordance with the "Standards for Consulting Services," established by the American Institute of Certified Public Accountants. Consistent with the proposed rule, the final rule specifies all cost components used to calculate the rates. In this final rule, the Agency has clarified and made consistent the terminology used in the proposal.

Comments: One trade association encouraged the Agency to acknowledge the impact that the holiday rate change would have on small and very small meat processors. Another trade association expressed concern that the overtime fee increase would disproportionately affect small and medium sized businesses that are not able to run two shifts but rely on overtime to meet consumer demand.

Response: Overtime and holiday inspection services are generally sought by the 370 large establishments and plants that have a large production volume of approximately 162,500,000 pounds of product per year. These establishments have greater complexity and diversity in the products they produce than the 5,140 small and very small Federal establishments whose low production volume averages 1,400,000 pounds of product per year.[1] Establishments or plants with lower production volume are unlikely to use a significant amount of overtime and holiday inspection services, except on those occasions when demand exceeds supply for their products. In addition, the costs that industry would incur as a result of the increase in rates are similar to other increases that the industry faces because of inflation and wage increases.

Comments: One meat processor opposed the holiday inspection service rate because establishments do not recognize the same holidays as the Federal government.

Response: FSIS follows the schedule of Federal holidays identified by the Office of Personnel Management, as well as any additional Federal holidays authorized by the President. FSIS has no authority to mandate which days will be "holidays" for establishments or plants. When an establishment chooses to remain open and requires reimbursable inspection services from FSIS on a Federal holiday, then FSIS must pay its inspection workforce accordingly. FSIS inspectors are paid double time for holiday work. Therefore, consistent with the proposed rule, the final rule provides a holiday rate of two times the employee's hourly rate of base pay.

Comments: Three trade associations expressed concern regarding how the Agency assesses overtime inspection rates. They contend that, because establishments are required to operate under Hazard Analysis Critical Control Point (HACCP) systems, processing establishments should be able to freely operate at any appropriate time, with FSIS providing a level of inspection to fit accordingly. The commenters believe this would negate the need for overtime inspection.

Response: This rule establishes the rate for overtime inspection service. The commenters' concern relates to a separate issue that is whether HACCP systems in plants should permit plants to freely operate at any time without being assessed "overtime fees." Sections 9 CFR 307.4(c), 381.37(c), and 590.124 provide that official establishments shall be provided inspection service, without charge, for up to 8 consecutive hours per shift during the workweek. The regulations also provide that the workweek is 5 consecutive days. Inspection service provided outside of these bounds is, by definition, overtime service.

Comment: One trade association questioned the 30-day comment period for the proposed rule and stated that the comment period should have been longer.

Response: The Agency must recover the actual cost of these inspection services for its continued sound financial management. To expeditiously solicit comments on the proposed rule and make the rulemaking effective so that FSIS's costs can be recovered as quickly as possible, the Administrator determined that 30 days for public comment was sufficient. A 30-day comment period is not uncommon when the Agency needs timely responses. For example, the July 2005 proposed rule "Changes in Fees for Meat, Poultry, and Egg Products Inspection Services Fiscal Years 2005–2008," solicited comments within 30 days (70 FR 41635).

Executive Order 12866 and Final Regulatory Flexibility Act

This final rule was reviewed by the Office of Management and Budget under Executive Order 12866 and was determined to be significant. The proposed rule was determined to be not significant.

This final rule establishes the formulas FSIS will use to calculate the rates that it charges meat and poultry establishments, egg products plants, and importers and exporters for providing voluntary inspection, identification and certification services, overtime and holiday inspection services, and laboratory services. This final rule also increases the annual fee that FSIS assesses for its Accredited Laboratory Program for FY 2012 and FY 2013. This rule is necessary to ensure that FSIS recovers its cost of providing these voluntary inspection and laboratory accreditation services.

Economic Effects of New Fees

By codifying formulas to calculate future annual rates, the Agency will streamline the rulemaking process to help ensure that the new rates are effective at the beginning of each calendar year. The rates will be determined for each calendar year, based on the previous fiscal year's (ending on September 30) actual costs and hours data, and the upcoming year's projected cost of living and inflation percentages. The new rates will be adjusted to reflect inflation and federal pay raises but will not support any new budgetary initiatives. If rates increase, the costs that industry will experience are similar to other increases that the industry will experience because of inflation and wage increases.

The total volume of meat and poultry slaughtered under Federal inspection in 2009 was about 90.9 billion pounds (2009–8 Livestock, Dairy, Meat, and Poultry Outlook Report, Economic Research Service, USDA). The total volume in egg product production in 2009 was about 2.6 billion pounds (2009 National Agricultural Statistical Service, USDA). The increase in cost per pound of product associated with the new rates is, in general, $.002. Even in competitive industries such as meat, poultry, and egg products, this amount of increase in costs would have an insignificant impact on profits and processes.

Even though the increases in the basetime, overtime, and holiday rates

[1] Establishment numbers obtained from USDA FSIS Performance Based Inspection System (PBIS) and represent all Federal & Talmadge-Aiken (State excluded), Active & Inactive (Withdrawn excluded) establishments. Volume data obtained from USDA FSIS PBIS, the Animal Disposition Reporting System, and USDA Economic Research Service Food Availability (Per Capital) Data System.

are negligible, the industry is likely to pass along a significant portion of the rate increases to consumers because of the inelastic nature of the demand curve facing consumers. Research has shown that consumers are unlikely to reduce demand significantly for meat, poultry, and egg products when prices increase. Huang estimates that quantity demanded of meat, poultry, and egg products would fall by .36 percent for a one percent increase in price (Huang, Kao S., A Complete System for Demand for Food. USDA/ERS Technical Bulletin No. 1821, 1993, p. 24). Because of the inelastic nature of demand and the competitive nature of the industry, individual firms are not likely to experience any change in market share in response to an increase in inspection fees.

Table 4 (below) represents the revenues the Agency collected in FY 2009 and FY 2010, and the projected revenues for FY 2011 and FY 2011. For basetime, overtime, holiday, and laboratory services, the Agency collected $146.5 million in FY 2009 and $148.9 million in FY 2010, and based on the new rate structure, is projecting to collect $164.2 million in FY 2011, and $171.9 million in FY 2012.

For the Accredited Laboratory Program, the Agency collected $317,250 in FY 2009 and $293,000 in FY 2010. The fee will increase from $4,500 (the current rate) to $5,000 per entity in FY 2012. The Agency expects to collect approximately $270,000 in FY 2011, and $300,000 in FY 2012.

The total revenue amounts for the basetime, overtime, holiday, and laboratory services rates with the Accredited Lab Fees for FY 2009 and FY 2010 (actual amounts), and FY 2011 and FY 2012 (projected amounts) are shown in Table 4 (below).

TABLE 4—TOTAL AMOUNT COLLECTED BY THE AGENCY

Service	Actual FY 2009 amounts	Actual FY 2010 amounts	Projected FY 2011 amounts based on rate increase January 1, 2011	Projected FY2012 amounts based on rate increase January 1, 2012
Basetime Rate	$ 7,300,000	$ 6,900,000	$ 7,409,000	$ 7,629,000
Overtime (OT)/Holiday Rate(H)[2]	126,400,000 (OT) 12,800,000 (H)	131,100,000 (OT) 10,900,000 (H)	N/A	N/A
Overtime Rate	N/A	N/A	145,536,000	149,025,000
Holiday Rate	N/A	N/A	11,250,000	15,222,000
Laboratory Services Rate	530	178	500	500
Accredited Lab Fee	317,250	293,000	270,000	300,000
Grand Total	146,817,780	149,193,178	164,465,500	172,176,500

Final Regulatory Flexibility Analysis

The FSIS Administrator certifies that, for the purposes ofthe Regulatory Flexibility Act (5 U.S.C. 601–602), the final rule will not have a significant impact on a substantial number of small entities in the United States. As explained further below, while this action will affect a substantial number of small entities, the action will likely not have a significant effect on these small entities.

Objective of the Final Rule

The changes in this final rule will affect those entities in the United States that slaughter or process meat, poultry, and egg products for consumption. There are about 2,320 small federally inspected establishments (with more than 10 but less than 500 employees) and 2,720 very small establishments (with fewer than 10 employees) based on HACCP Classification. Therefore, a total of 5,040 small and very small establishments (or 83 percent of the establishments) could be possibly affected by this rule. These small and very small establishments are categorized in the following North American Industry Classification System (NAICS) codes: 311611—Animal (except Poultry) Slaughtering; 311612—Meat Processed from Carcasses; 311613—Rendering and Meat Byproduct Processing; 311615–Poultry Processing; and 311999—All other Miscellaneous Food Manufacturing (Egg products). These codes can be found in The U.S. Small Business Administration Table of Small Business Size Standards Matched to the NAICS [3] as modified by the Office of Management and Budget in 2007(effective August 22, 2008). The size threshold for these industries is 500 employees. All establishments that have 500 or fewer employees are considered small.

These small and very small establishments like the 1,031 large establishments would incur the rates from 2011–2012 and in perpetuity only if they incur voluntary inspection, overtime and holiday inspection services, identification and certification services, or laboratory services.

Significant Alternatives Considered

Alternative 1: Amend the regulations to publish the basetime, overtime, holiday, and laboratory services rates and laboratory accreditation fees on a multiple year basis (current approach).

Under this alternative, the Agency would continue to publish proposed and final rules to establish rates and fees for multiple consecutive years. However, the projected rates and fees are based on economic factors, such as inflation and cost of living, and other factors such as employee benefits and travel and operating costs, that change on a yearly basis. While this solution has enabled the Agency to increase rates and fees on a multiple year basis, the estimates used to establish the annual rates and fees were imprecise and have left the Agency collecting too little, and thus, not fully recovering its costs. Therefore, the Agency rejects this alternative because it would continue to create unnecessary uncertainty and inflexibility to update fees based on economic conditions.

Alternative 2: Amend the regulations to update the rates and fees on an annual basis.

Under this alternative, the Agency would amend its regulations annually to update the rates and fees using current

[2] Overtime and Holiday Rates were the same for FY 2009 and 2010.

[3] The size standards are for the most part expressed in either millions of dollars or number of employees. A size standard is the largest that a business can be and still qualify as a small business for Federal Government programs.

data and economic factors. This alternative was used prior to the current approach of establishing the rates and fees on a multiple year basis (Alternative 1). However, because the rulemaking process is lengthy, the fiscal year repeatedly elapsed before the Agency could publish the final rule to amend the rates and fees. As a result, the Agency was unable to recover its full costs. This action would be the least costly to small entities because they would not pay the adjusted rates and fees until they were published, which would in effect cause a shortfall in the Agency's budget. Therefore, the Agency rejects this alternative.

Alternative 3: Establish formulas for calculating rates and publish the rates in a **Federal Register** Notice prior to the start of the calendar year.

Under this alternative, FSIS would establish formulas for calculating rates that it charges for basetime, overtime, holiday, and laboratory services, and publish the rates annually in a **Federal Register** Notice prior to the start of each calendar year. The Agency would continue to publish the laboratory accreditation fees on an as needed basis. This action would enable the Agency to recover its costs for providing voluntary inspection, overtime and holiday inspection services, identification and certification services, and laboratory services on a yearly basis, and would notify small entities of the new rates prior to the beginning of the calendar year, so that the entities can budget for these new fees. Therefore, the Agency has selected this alternative.

Estimating the Impact on Small and Very Small Entities

As discussed in the Economic Effects of New Fees section, in 2009, there was a total volume of 90.9 billion pounds slaughtered of meat and poultry and 2.6 billion pounds of egg products processed. According to the FSIS Animal Disposition Reporting System, in 2009 the 5,040 small and very small Federal establishments' production volume averaged 1,400,000 pounds of product per year, or a total of 7.1 billion pounds per year or approximately 7 percent of the total production.

In FY 2009, there were a total of 146,000 hours charged from voluntary inspection (basetime) service, 2.1 million hours charged from reimbursable overtime, 218,000 hours charged from holiday inspection services, and 7 hours charged for laboratory services.[4] There are not enough data to definitively determine the number of these hours that were incurred by small and very small entities, and therefore their direct cost as a result of this rule. However, if we used the 7 percent from the total production and apply it to the hours, small and very small entities would incur 147,000 hours out of 2.1 million hours of reimbursable overtime and 15,300 hours of holiday inspection services, and at a rate of $58.93, per hour (2009 rate), the total cost will be $9.6 million ((15,300 + 147,000)* $58.93), compared to $127 million for large entities.

For the voluntary inspection (basetime), if we used the 7 percent from the total production and apply it to the hours, small and very small entities would incur 10,200 hours out of 146,000 hours and at a rate of $49.93, the total cost would be $510,000 dollars compared to $6.8 million for the large entities. Dividing the total cost of $10.1 million ($9.6 million plus $510,000) by 5,040 small and very small entities would incur a cost of an average of $2,000 per small and very small entity.

Likewise, if we apply the 2011 rates, the 5,040 small and very small entities would incur a cost of $10.5 million (155,800 hours * $67.52) for overtime, $787,000 (9,712 hours * $81.08) for holiday, and $528,000 (9,800 hours * $53.92) for voluntary services (basetime). The total cost incurred by small and very small entities for the 2011 year would be $11.8 million ($10.5 million plus $787,000 plus $528,000) or $2,341 ($11.8 million/5,040 entities) per entity.

Comparing the average cost of $2,000 per small and very small entity (2009) to $2,341 per entity (2011 rate), the total increase in fees and impact of the final rule on small and very small entities would be about $341 per entity.

The Accredited Laboratory program has a total of 60 labs[5] participating, of which an estimated 40 labs are considered small. The Accredited Lab fee for each lab will increase by $500, from $4,500 in FY 2011 to $5,000 in FY 2012. This fee is necessary to have a carry over amount each year as a reserve to cover the contractual costs that the Accredited Laboratory Program must pay at the beginning of each fiscal year and to cover salaries and other operating expenses during the first two to three months of the fiscal year. Without this fee, the Agency would not have enough funds to cover the cost incurred during this period. The laboratory fee is a mandatory cost of doing business with FSIS and without the FSIS accreditation the labs would not be permitted to analyze official meat and poultry samples for establishments. These small entities would likely recover this cost by passing it along to the establishments, who pay for their services.

Therefore, the Agency believes that the final rule will not have a significant economic impact on a substantial number of small entities, whether establishments or laboratories.

Paperwork Reduction Act

This rule does not contain any new information collection or record keeping requirements that are subject to the Office of Management and Budget (OMB) approval under the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.*

E-Government Act

FSIS and USDA are committed to achieving the purposes of the E-Government Act (44 U.S.C. 3601, *et seq.*) by, among other things, promoting the use of the Internet and other information technologies and providing increased opportunities for citizen access to Government information and services, and for other purposes.

Executive Order 12988

This rule has been reviewed under Executive Order 12988, Civil Justice Reform. This rule: (1) Has no retroactive effect; and (2) does not require administrative proceedings before parties may file suit in court challenging this rule. However, the administrative procedures specified in 9 CFR 306.5, 381.35, and 590.300 through 590.370, respectively, must be exhausted before any judicial challenge may be made of the application of the provisions of the final rule, if the challenge involves any decision of an FSIS employee relating to inspection services provided under the FMIA, PPIA, or EPIA.

Executive Order 13175

This final rule has been reviewed in accordance with the requirements of Executive Order 13175, Consultation and Coordination with Indian Tribal Governments. The review reveals that this regulation will not have substantial and direct effects on Tribal governments and will not have significant Tribal implications.

Additional Public Notification

Public awareness of all segments of rulemaking and policy development is important. Consequently, in an effort to ensure that minorities, women, and persons with disabilities are aware of this rule, FSIS will announce it online through the FSIS Web page located at

[4] There are estimated to be no small entities applying for laboratory services.

[5] Four of the labs are the states of Illinois, Iowa, Louisiana, and Minnesota Department of Agriculture Laboratories.

http://www.fsis.usda.gov/regulations_&_policies/Federal_Register_Publications_&_Related_Documents/index.asp.

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

Options range from recalls to export information to regulations, directives and notices. Customers can add or delete subscriptions themselves, and have the option to password protect their accounts.

USDA Nondiscrimination Statement

The U.S. Department of Agriculture (USDA) prohibits discrimination in all its programs and activities on the basis of race, color, national origin, gender, religion, age, disability, political beliefs, sexual orientation, and marital or family status. (Not all prohibited bases apply to all programs.)

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To file a written complaint of discrimination, write USDA, Office of the Assistant Secretary for Civil Rights, 1400 Independence Avenue, SW., Washington, DC 20250–9410 or call 202–720–5964 (voice and TTY). USDA is an equal opportunity provider and employer.

List of Subjects

9 CFR Part 391

Fees and charges, Government employees, Meat inspection, Poultry products.

9 CFR Part 590

Eggs and egg products, Exports, Food labeling, Imports.

9 CFR Part 592

Eggs and egg products, Exports, Food labeling, Imports.

For the reasons set forth in the preamble, FSIS is amending 9 CFR Chapter III as follows:

PART 391—FEES AND CHARGES FOR INSPECTION AND LABORATORY ACCREDITATION

■ 1. The authority citation for part 391 continues to read as follows:

Authority: 7 U.S.C. 138d; 7 U.S.C. 1622, 1627 and 2219a 21 U.S.C. 451 *et seq.;* 21 U.S.C. 601–695;

■ 2. Section 391.2 is revised to read as follows:

§ 391.2 Basetime rate.

(a) For each calendar year, FSIS will calculate the basetime rate for inspection services, per hour per program employee, provided pursuant to §§ 350.7, 351.8, 351.9, 352.5, 354.101, 355.12, and 362.5 of this chapter, using the following formula: The quotient of dividing the Office of Field Operations plus Office of International Affairs inspection program personnel's previous fiscal year's regular direct pay by the previous fiscal year's regular hours, plus the quotient multiplied by the calendar year's percentage of cost of living increase, plus the benefits rate, plus the travel and operating rate, plus the overhead rate, plus the allowance for bad debt rate.

(b) FSIS will calculate the benefits, travel and operating, overhead, and allowance for bad debt rate components of the basetime rate, using the following formulas:

(1) *Benefits rate.* The quotient of dividing the previous fiscal year's direct benefits costs by the previous fiscal year's total hours (regular, overtime, and holiday), plus the quotient multiplied by the calendar year's percentage cost of living increase. Some examples of direct benefits are health insurance, retirement, life insurance, and Thrift Savings Plan basic and matching contributions.

(2) *Travel and operating rate.* The quotient of dividing the previous fiscal year's total direct travel and operating costs by the previous fiscal year's total hours (regular, overtime, and holiday), plus the quotient multiplied by the calendar year's percentage of inflation.

(3) *Overhead rate.* The quotient of dividing the previous fiscal year's indirect costs plus the previous fiscal year's information technology (IT) costs in the Public Health Data Communication Infrastructure System Fund plus the previous fiscal year's Office of Management Program cost in the Reimbursable and Voluntary Funds plus the provision for the operating balance less any Greenbook costs (i.e., costs of USDA support services prorated to the service component for which the fees are charged) that are not related to food inspection, by the previous fiscal year's total hours (regular, overtime, and holiday) worked across all funds, plus the quotient multiplied by the calendar year's percentage of inflation.

(4) *Allowance for bad debt rate.* Previous fiscal year's allowance for bad debt (for example, debt owed that is not paid in full by plants and establishments that declare bankruptcy) divided by the previous fiscal year's total hours (regular, overtime, and holiday) worked.

(c) The calendar year's cost of living increases and percentage of inflation factors used in the formulas in this section are based on the Office of Management and Budget's Presidential Economic Assumptions.

■ 3. Section 391.3 is revised to read as follows:

§ 391.3 Overtime and holiday rates.

For each calendar year, FSIS will calculate the overtime and holiday rates, per hour per program employee, provided pursuant to §§ 307.5, 350.7, 351.8, 351.9, 352.5, 354.101, 355.12, 362.5, and 381.38 of this chapter, using the following formulas:

(a) *Overtime rate.* The quotient of dividing the Office of Field Operations plus Office of International Affairs inspection program personnel's previous fiscal year's regular direct pay by the previous fiscal year's regular hours, plus the quotient multiplied by the calendar year's percentage of cost of living increase, multiplied by 1.5, plus the benefits rate, plus the travel and operating rate, plus the overhead rate, plus the allowance for bad debt rate.

(b) *Holiday rate.* The quotient of dividing the Office of Field Operations plus Office of International Affairs inspection program personnel's previous fiscal year's regular direct pay by the previous fiscal year's regular hours, plus the quotient multiplied by the calendar year's percentage of cost of living increase, multiplied by 2, plus the benefits rate, plus the travel and operating rate, plus the overhead rate, plus the allowance for bad debt rate.

(c) FSIS will calculate the benefits rate, the travel and operating rate, the overhead rate, and the allowance for bad debt rate using the formulas set forth in

§ 391.2(b), and the cost of living increases and percentage of inflation factors set forth in § 391.2(c).

■ 4. Section 391.4 is revised to read as follows:

§ 391.4 Laboratory services rate.

(a) For each calendar year, FSIS will calculate the laboratory services rate, per hour per program employee, provided pursuant to §§ 350.7, 351.9, 352.5, 354.101, 355.12, and 362.5 of this chapter, using the following formula: The quotient of dividing the Office of Public Health Science (OPHS) previous fiscal year's regular direct pay by OPHS previous fiscal year's regular hours, plus the quotient multiplied by the calendar year's percentage cost of living increase, plus the benefits rate, plus the travel and operating rate, plus the overhead rate, plus the allowance for bad debt rate.

(b) FSIS will calculate the benefits rate, the travel and operating rate, the overhead rate, and the allowance for bad debt rate using the formulas set forth in § 391.2(b), and the cost of living increases and percentage of inflation factors set forth in § 391.2(c).

■ 5. Paragraph (a) of § 391.5 is revised to read as follows:

§ 391.5 Laboratory accreditation fee.

(a) The annual fee for the initial accreditation and maintenance of accreditation provided pursuant to § 439.5 of this chapter shall be $4,500.00 for fiscal year 2011; and $5,000.00 for fiscal years 2012 and 2013.

* * * * *

PART 590—INSPECTION OF EGGS AND EGG PRODUCTS (EGG PRODUCTS INSPECTION ACT)

■ 6. The authority citation for part 590 continues to read as follows:

Authority: 21 U.S.C. 1031–1056.

■ 7. In § 590.126, remove the second sentence and add three sentences in its place to read as follows:

§ 590.126 Overtime inspection service.

* * * The official plant must give reasonable advance notice to the inspector of any overtime service necessary and must pay for such overtime. For each calendar year, FSIS will calculate the overtime rate for inspection service, per hour per program employee, using the following formula: The quotient of dividing the Office of Field Operations plus Office of International Affairs inspection program personnel's previous fiscal year's regular direct pay by the previous fiscal year's regular hours, plus the quotient multiplied by the calendar year's percentage of cost of living increase, multiplied by 1.5, plus the benefits rate, plus the travel and operating rate, plus the overhead rate, plus the allowance for bad debt rate. FSIS calculates the benefits rate, the travel and operating rate, the overhead rate, and the allowance for bad debt rate using the formulas set forth in § 592.510(b) and the cost of living increases and percentage of inflation factors set forth in § 592.510(c) of this chapter.

■ 8. In § 590.128(a), remove the second sentence and add three sentences in its place to read as follows:

§ 590.128 Holiday inspection service.

(a) * * * The official plant must, in advance of such holiday work, request the inspector in charge to furnish inspection service during such period and must pay the Agency for such holiday work at the hourly rate. For each calendar year, FSIS calculates the holiday rate for inspection service, per hour per program employee, using the following formula: The quotient of dividing the Office of Field Operations plus Office of International Affairs inspection program personnel's previous fiscal year's regular direct pay by the previous fiscal year's regular hours, plus the quotient multiplied by the calendar year's percentage of cost of living increase, multiplied by 2, plus the benefits rate, plus the travel and operating rate, plus the overhead rate, plus the allowance for bad debt rate. FSIS will calculate the benefits rate, the travel and operating rate, the overhead rate, and the allowance for bad debt rate using the formulas set forth in § 592.510(b), and the cost of living increases and percentage of inflation factors set forth in § 592.510(c) of this chapter.

* * * * *

PART 592—VOLUNTARY INSPECTION OF EGG PRODUCTS

■ 9. The authority citation for part 592 continues to read as follows:

Authority: 7 U.S.C. 1621–1627.

■ 10. Section 592.510 is revised to read as follows:

§ 592.510 Basetime rate.

(a) For each calendar year, FSIS will calculate the basetime rate for inspection services, per hour per program employee, using the following formula: The quotient of dividing the Office of Field Operations plus Office of International Affairs inspection program personnel's previous fiscal year's regular direct pay by the previous fiscal year's regular hours, plus the quotient multiplied by the calendar year's percentage of cost of living increase, plus the benefits rate, plus the travel and operating rate, plus the overhead rate, plus the allowance for bad debt rate.

(b) FSIS will calculate the benefits, travel and operating, overhead, and allowance for bad debt rate components of the basetime rate, using the following formulas:

(1) *Benefits rate.* The quotient of dividing the previous fiscal year's direct benefits costs by the previous fiscal year's total hours (regular, overtime, and holiday), plus the quotient multiplied by the calendar year's percentage cost of living increase. Some examples of direct benefits are health insurance, retirement, life insurance, and Thrift Savings Plan basic and matching contributions.

(2) *Travel and operating rate.* The quotient of dividing the previous fiscal year's total direct travel and operating costs by the previous fiscal year's total hours (regular, overtime, and holiday), plus the quotient multiplied by the calendar year's percentage of inflation.

(3) *Overhead rate.* The quotient of dividing the previous fiscal year's indirect costs plus the previous fiscal year's information technology (IT) costs in the Public Health Data Communication Infrastructure System Fund plus the previous fiscal year's Office of Management Program cost in the Reimbursable and Voluntary Funds plus the provision for the operating balance less any Greenbook costs (i.e., costs of USDA support services prorated to the service component for which fees are charged) that are not related to food inspection, by the previous fiscal year's total hours (regular, overtime, and holiday) worked across all funds, plus the quotient multiplied by the calendar year's percentage of inflation.

(4) *Allowance for bad debt rate.* Previous fiscal year's allowance for bad debt (for example, debt owed that is not paid in full by plants and establishments that declare bankruptcy) divided by the previous fiscal year's total hours (regular, overtime, and holiday) worked.

(c) The calendar year's cost of living increases and percentage of inflation factors used in the formulas in this section are based on the Office of Management and Budget's Presidential Economic Assumptions.

■ 11. In § 592.520, remove the second sentence and add three sentences in its place to read as follows:

§ 592.520 Overtime rate.

* * * The official plant must give reasonable advance notice to the inspector of any overtime service

necessary. For each calendar year, FSIS will calculate the overtime rate for inspection service, per hour per program employee, using the following formula: The quotient of dividing the Office of Field Operations plus Office of International Affairs inspection program personnel's previous fiscal year's regular direct pay by previous fiscal year's regular hours, plus the quotient multiplied by the calendar year's percentage of cost of living increase multiplied by 1.5, plus the benefits rate, plus the travel and operating rate, plus the overhead rate, plus the allowance for bad debt rate. FSIS calculates the benefits rate, the travel and operating rate, the overhead rate, and the allowance for bad debt using the formulas set forth in § 592.510(b), and the cost of living increases and percentage of inflation factors set forth in § 592.510(c).

■ 12. In § 592.530, remove the second sentence and add three sentences in its place to read as follows:

§ 592.530 Holiday rate.

* * * The official plant must, in advance of such holiday work, request that the inspector in charge furnish inspection services during such period and must pay the Agency for such holiday work at the hourly rate. For each calendar year, FSIS will calculate the holiday rate for inspection service, per hour per program employee, using the following formula: The quotient of dividing the Office of Field Operations plus Office of International Affairs inspection program personnel's previous fiscal year's regular direct pay by previous fiscal year's regular hours, plus the quotient multiplied by the calendar year's percentage of cost of living increase, multiplied by 2, plus the benefits rate, plus the travel and operating rate, plus the overhead rate, plus the allowance for bad debt rate. FSIS calculates the benefits rate, the travel and operating rate, the overhead rate, and the allowance for bad debt using the formulas set forth in § 592.510(b), and the cost of living increases and percentage of inflation factors set forth in § 592.510(c).

Done in Washington, DC, on April 7, 2011.

Alfred V. Almanza,

Administrator.

[FR Doc. 2011–8699 Filed 4–11–11; 8:45 am]

BILLING CODE 3410–DM–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2011–0233; Directorate Identifier 98–ANE–10–AD; Amendment 39–16660; AD 2011–08–10]

RIN 2120–AA64

Airworthiness Directives; Rolls-Royce plc (RR) RB211–Trent 768–60 and Trent 772–60 Turbofan Engines

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule; request for comments.

SUMMARY: We are superseding an existing airworthiness directive (AD) for RR RB211–Trent 700 series turbofan engines. That AD currently requires, for the step aside gearbox (SAGB), repositioning of the oil metering jet up into the oil distributor within the bevel gearshaft, followed by initial and repetitive visual inspections of the magnetic chip detector (MCD). Since we issued that AD, RR has demonstrated that the repositioning of the oil metering jet eliminates the need for the repetitive inspections. This AD changes the applicability from RB211–Trent 700 series turbofan engines, to RB211–Trent 768–60 and Trent 772–60 turbofan engines. This AD also eliminates the visual inspections of the MCD from the AD requirements. This AD was prompted by RR demonstrating that the repositioning of the oil metering jet eliminates the need for the repetitive inspections, by the need to correct the AD applicability, and by the need to eliminate the visual inspections of the MCD. We are issuing this AD to prevent in-flight engine shutdowns caused by SAGB driving bevel gearshaft ball bearing failure.

DATES: This AD is effective April 27, 2011.

The Director of the Federal Register previously approved the incorporation by reference of a certain publication listed in this AD as of October 1, 1998 (63 FR 49416, September 16, 1998).

We must receive any comments on this AD by May 27, 2011.

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

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

For service information identified in this AD, contact Rolls-Royce plc, P.O. Box 31, Derby, DE24 8BJ, United Kingdom; telephone 44 1332 242424; fax 44 1332 249936; *e-mail: tech.help@rolls-royce.com*. You may review copies of the referenced service information at the FAA, Engine & Propeller Directorate, 12 New England Executive Park, Burlington, MA. For information on the availability of this material at the FAA, call 781–238–7125.

Examining the AD Docket

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

FOR FURTHER INFORMATION CONTACT: Alan Strom, Aerospace Engineer, Engine Certification Office, FAA, Engine & Propeller Directorate, 12 New England Executive Park, Burlington, MA 01803; telephone 781–238–7143; fax 781–238–7199; *e-mail: alan.strom@faa.gov.*

SUPPLEMENTARY INFORMATION:

Discussion

On September 8, 1998, we issued AD 98–19–12, Amendment 39–10754 (63 FR 49416, September 16, 1998), for RR RB211–Trent 700 series turbofan engines. That AD requires, for the SAGB, repositioning of the oil metering jet up into the oil distributor within the bevel gearshaft, followed by initial and repetitive visual inspections of the MCD. That AD resulted from reports of uncommanded engine shutdowns caused by failure of the SAGB driving bevel gearshaft ball bearing due to oil starvation. We issued that AD to prevent in-flight engine shutdowns caused by SAGB driving bevel gearshaft ball bearing failure.

Actions Since AD Was Issued

Since we issued AD 98–19–12, RR has demonstrated that the repositioning of the oil metering jet eliminates the need for the repetitive inspections. Also, since we issued that AD, Rolls Royce put into service, its RB211–Trent 772B–

60 model turbofan engine, which does not have the unsafe condition that AD sought to correct. Since the AD applicability states that it is for RB211–Trent 700 series turbofan engines, that applicability includes the RB211–Trent 772B–60 engines, and it shouldn't.

FAA's Determination

We are issuing this AD because we evaluated all the relevant information and determined the unsafe condition described previously is likely to exist or develop in other products of the same type design.

AD Requirements

This AD retains the oil metering jet repositioning requirements of AD 98–19–12. This AD also eliminates the initial and repetitive visual inspections of the MCD, required by AD 98–19–12. This AD also corrects the applicability from RB211–Trent 700 series turbofan engines, to, RB211–Trent 768–60 turbofan engines prior to serial No. 41052, and RB211–Trent 772–60 turbofan engines prior to serial No. 41052.

FAA's Justification and Determination of the Effective Date

Since no domestic operators use RB211–Trent 768–60 or RB211–Trent 772–60 turbofan engines, we find that notice and opportunity for prior public comment are unnecessary and that good cause exists for making this amendment effective in less than 30 days.

Comments Invited

This AD is a final rule that involves requirements affecting flight safety, and we did not provide you with notice and an opportunity to provide your comments before it becomes effective. However, we invite you to send any written data, views, or arguments about this AD. Send your comments to an address listed under the **ADDRESSES** section. Include the docket number FAA–2011–0233 and Directorate Identifier 98–ANE–10–AD at the beginning of your comments. We specifically invite comments on the overall regulatory, economic, environmental, and energy aspects of this AD. We will consider all comments received by the closing date and may amend this AD because of those comments.

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

Costs of Compliance

We estimate that this AD affects no engines installed on airplanes of U.S. registry. The elimination of visual inspection requirements by this AD, adds no additional economic burden.

Authority for This Rulemaking

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

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

Regulatory Findings

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

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

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

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

(3) Will not affect intrastate aviation in Alaska, and

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

List of Subjects in 14 CFR Part 39

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

Adoption of the Amendment

Accordingly, under the authority delegated to me by the Administrator, the FAA amends part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

■ 2. The FAA amends § 39.13 by removing airworthiness directive (AD) 98–19–12, Amendment 39–10754 (63 FR 49416, September 16, 1998), and adding the following new AD:

2011–08–10 Rolls-Royce plc: Amendment 39–16660; Docket No. FAA–2011–0233; Directorate Identifier 98–ANE–10–AD.

Effective Date

(a) This AD is effective April 27, 2011.

Affected ADs

(b) This AD supersedes AD 98–19–12, Amendment 39–10754.

Applicability

(c) This AD applies to Rolls-Royce plc (RR) RB211–Trent 768–60 turbofan engines prior to serial No. 41052, and RB211–Trent 772–60 turbofan engines prior to serial No. 41052.

Unsafe Condition

(d) This AD was prompted by RR demonstrating that the repositioning of the oil metering jet eliminates the need for the repetitive inspections, by the need to correct the AD applicability, and by the need to eliminate the visual inspections of the MCD. We are issuing this AD to prevent in-flight engine shutdowns caused by step aside gearbox (SAGB) driving bevel gearshaft ball bearing failure.

Compliance

(e) Comply with this AD before further flight, unless already done.

Repositioning of the Oil Metering Jet

(f) Reposition the oil metering jet up into the oil distributor within the bevel gearshaft, using RR Service Bulletin No. RB.211 72–C270, dated June 1, 1997.

Alternative Methods of Compliance (AMOCs)

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

Related Information

(h) For more information about this AD, contact Alan Strom, Aerospace Engineer, Engine Certification Office, FAA, Engine & Propeller Directorate, 12 New England Executive Park, Burlington, MA 01803; telephone 781–238–7143; fax 781–238–7199; *e-mail: alan.strom@faa.gov.*

Material Incorporated by Reference

(i) You must use Rolls-Royce plc Service Bulletin No. RB.211 72–C270, dated June 1, 1997, to do the actions required by this AD.

(1) The Director of the Federal Register previously approved the incorporation by reference of this service information under 5

U.S.C. 552(a) and 1 CFR part 51, as of October 1, 1998 (63 FR 49416, September 16, 1998).

(2) For service information identified in this AD, contact Rolls-Royce plc, P.O. Box 31, Derby, DE24 8BJ, United Kingdom; telephone 44 1332 242424; fax 44 1332 249936; *e-mail: tech.help@rolls-royce.com.*

(3) You may review copies at the FAA, New England Region, 12 New England Executive Park, Burlington, MA; or at the National Archives and Records Administration (NARA). For information on the availability of this material at NARA, call 202–741–6030, or go to: *http://www.archives.gov/federal-register/cfr/ibr-locations.html.* For information on the availability of this material at the FAA, call 781–238–7125.

Issued in Burlington, Massachusetts, on April 5, 2011.

Peter A. White,

Acting Manager, Engine & Propeller Directorate, Aircraft Certification Service.

[FR Doc. 2011–8469 Filed 4–11–11; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2009–1185; Directorate Identifier 2009–NE–24–AD; Amendment 39–16656; AD 2011–08–06]

RIN 2120–AA64

Airworthiness Directives; Honeywell International Inc. LTS101 Series Turboshaft Engines and LTP101 Series Turboprop Engines

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: We are adopting a new airworthiness directive (AD) for the products listed above. This AD requires removing certain power turbine rotors from service using a specific drawdown schedule. This AD was prompted by reports of fatigue cracks in the airfoil of the power turbine blades. We are issuing this AD to prevent fracture of the power turbine blade airfoil, which could result in sudden loss of engine power and prevent continued safe flight or safe landing.

DATES: This AD is effective May 17, 2011.

ADDRESSES: For service information identified in this AD, contact Honeywell International Inc., P.O. Box 52181, Phoenix, AZ 85072–2181; *phone:* 800–601–3099 (U.S.A.) or 602–365–3099 (International); or go to: *https://portal.honeywell.com/wps/portal/aero.* You may review copies of the referenced service information at the FAA, Engine & Propeller Directorate, 12 New England Executive Park, Burlington, MA. For information on the availability of this material at the FAA, call 781–238–7125.

Examining the AD Docket

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

FOR FURTHER INFORMATION CONTACT: Robert Baitoo, Aerospace Engineer, Los Angeles Aircraft Certification Office, FAA, Transport Airplane Directorate, 3960 Paramount Blvd., Lakewood, CA 90712–4137; *phone:* 562–627–5245; *fax:* 562–627–5210; *e-mail: robert.baitoo@faa.gov.*

SUPPLEMENTARY INFORMATION:

Discussion

We issued a supplemental notice of proposed rulemaking (SNPRM) to amend 14 CFR part 39 to include an AD that would apply to the specified products. That SNPRM published in the **Federal Register** on December 17, 2010 (75 FR 78937). The original notice of proposed rulemaking (74 FR 67829, December 21, 2009) proposed to require removing power turbine blades, part number (P/N) 4–141–084–06 from service, using a drawdown schedule. The SNPRM proposed to require expanding and clarifying the applicability to include more engine models and power turbine blade P/Ns that could have the unsafe condition, and clarifying the applicability by specifying power turbine rotor P/Ns instead of the blade P/Ns.

Comments

We gave the public the opportunity to participate in developing this AD. We received no comments on the SNPRM.

Conclusion

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

Costs of Compliance

We estimate that this AD will affect 240 engines installed on aircraft of U.S. registry. We also estimate that it will take about 30 work-hours per engine to perform the actions, and that the average labor rate is $85 per work-hour. If all removed power turbine rotors get replaced, required parts will cost about $70,000 per engine. Based on these figures, we estimate the total cost of the AD to U.S. operators to be $17,412,000.

Authority for This Rulemaking

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

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

Regulatory Findings

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

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

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

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

(3) Will not affect intrastate aviation in Alaska, and

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

List of Subjects in 14 CFR Part 39

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

Adoption of the Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

■ 2. The FAA amends § 39.13 by adding the following new airworthiness directive (AD):

2011–08–06 Honeywell International Inc. (Formerly AlliedSignal, Textron Lycoming): Amendment 39–16656; Docket No. FAA–2009–1185; Directorate Identifier 2009–NE–24–AD.

Effective Date

(a) This AD is effective May 17, 2011.

Affected ADs

(b) None.

Applicability

(c) This AD applies to Honeywell International LTS101–600A–2, –3, –3A, LTS101–700D–2, LTS101–650B–1, LTS101–650C–3, LTS101–650C–3A, LTS101–750B–1, LTS101–750B–2, LTS101–750C–1, and LTS101–850B–2 turboshaft engines; and LTP101–600A–1A and LTP101–700A–1A turboprop engines with power turbine rotor, part number (P/N) 4–141–290–01, –02, –03, –05, –06, –11, –12, –13, –14, or –16, installed. These engines are installed on, but not limited to, Eurocopter AS350 and BK117 series and Bell 222 series helicopters; and Page Thrush, Air Tractor AT–302, and Pacific Aero 08–600, Piaggio P166 DL3, and Riley International R421 airplanes.

Unsafe Condition

(d) This AD results from reports of fatigue cracks in the airfoil of the power turbine blade. We are issuing this AD to prevent fracture of the power turbine blade airfoil, which could result in sudden loss of engine power and prevent continued safe flight or safe landing.

Compliance

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

(f) For engines with power turbine rotors, P/Ns 4–141–290–11, –12, –13, and –14, marked with "ORI T41881," on the aft hub in the vicinity of the P/N, no further action is required.

Removing Power Turbine Rotors From LTS101–600A–2, –3, –3A, and LTS101–700D–2 Turboshaft Engines and LTP101–600A–1A and LTP101–700A–1A Turboprop Engines

(g) For LTS101–600A–2, –3, –3A, and LTS101–700D–2 turboshaft engines and LTP101–600A–1A and LTP101–700A–1A turboprop engines, remove power turbine rotors, P/Ns 4–141–290–01, –02, –03, –05, –06, –11, –12, –13, –14, or –16, using the cycles specified in Table 1 of this AD:

TABLE 1—DRAWDOWN CYCLES FOR LTS101–600A–2, –3, –3A, AND LTS101–700D–2 TURBOSHAFT ENGINES AND LTP101–600A–1A AND LTP101–700A–1A TURBOPROP ENGINES

If power turbine rotor time on the effective date of this AD is . . .	Then remove the power turbine rotor from the engine . . .
(1) Fewer than 5,000 cycles-since-new (CSN)	Between 5,000 and 5,500 CSN.
(2) 5,000 to 7,899 CSN	Within 500 cycles-in-service (CIS) after the effective date of this AD or before exceeding 8,000 CSN, whichever occurs first.
(3) 7,900 to 9,999 CSN	Within 100 CIS after the effective date of this AD or before exceeding 10,050 CSN, whichever occurs first.
(4) 10,000 or more CSN	Within 50 CIS after the effective date of this AD.

Removing Power Turbine Rotors From LTS101–650B–1, –650C–3,—650C–3A, –750B–1, –2, –750C–1, and –850B–2 Engines

(h) Remove power turbine rotors, P/Ns 4–141–290–01, –02 –03, –05, –06, –11, –12, –13, –14, or –16, using the cycles specified in Table 2 of this AD:

TABLE 2—DRAWDOWN CYCLES FOR LTS101–650B–1, –650C–3,–650C–3A, –750B–1, –2, –750C–1, AND –850B–2 ENGINES

If power turbine rotor time on the effective date of this AD is . . .	Then remove the power turbine rotor from the engine . . .
(1) Fewer than 5,500 CSN	Between 5,000 and 7,200 CSN.
(2) 5,500 to 7,999 CSN	Within 1,700 CIS after the effective date of this AD or before exceeding 8,950 CSN, whichever occurs first.
(3) 8,000 to 9,999 CSN	Within 950 CIS after the effective date of this AD or before exceeding 10,400 CSN, whichever occurs first.
(4) 10,000 or more CSN	Within 400 CIS after the effective date of this AD.

Alternative Methods of Compliance

(i) The Manager, Los Angles Aircraft Certification Office, has the authority to approve alternative methods of compliance for this AD if requested using the procedures found in 14 CFR 39.19.

Related Information

(j) Contact Robert Baitoo, Aerospace Engineer, Los Angeles Aircraft Certification Office, FAA, Transport Airplane Directorate, 3960 Paramount Blvd., Lakewood, CA 90712–4137; *phone:* 562–627–5245; *fax:* 562–627–5210; *e-mail: robert.baitoo@faa.gov,* for more information about this AD.

(k) Honeywell International Inc. Service Bulletins LT 101–71–00–0252 and LTS101–71–00–0253, pertain to the subject of this AD. Contact Honeywell International Inc., P.O. Box 52181, Phoenix, AZ 85072–2181; telephone (800) 601–3099 (U.S.A.) or (602) 365–3099 (International); or go to: *https://portal.honeywell.com/wps/portal/aero,* for a copy of this service information.

Issued in Burlington, Massachusetts, on March 30, 2011.

Peter A. White,

Acting Manager, Engine & Propeller Directorate, Aircraft Certification Service.

[FR Doc. 2011–8470 Filed 4–11–11; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. FAA–2010–0869; Airspace Docket No. 10–AEA–21]

Revocation of Class E Airspace; Kutztown, PA

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This action removes Class E Airspace at Kutztown, PA. The Kutztown Airport has been abandoned and therefore controlled airspace associated with the airport is being removed.

DATES: *Effective date:* 0901 UTC, June 30, 2011. The Director of the Federal Register approves this incorporation by reference action under title 1, Code of Federal Regulations, part 51, subject to the annual revision of FAA Order 7400.9 and publication of conforming amendments.

FOR FURTHER INFORMATION CONTACT: Richard Horrocks, Operations Support Group, Eastern Service Center, Federal Aviation Administration, P.O. Box 20636, Atlanta, Georgia 30320; telephone (404) 305–5588.

SUPPLEMENTARY INFORMATION:

History

The FAA received a notice from its Aeronautical Products office that the Kutztown Airport, PA, has been listed as abandoned as per NFDD09–240 (12/16/2009). After evaluation it was decided the Class E airspace associated with the Kutztown Airport is no longer required.

Since this action eliminates the impact of controlled airspace on users of the National Airspace System in the vicinity of the Kutztown Airport, notice and public procedure under 5 U.S.C. 553(b) are unnecessary. Class E airspace designations are published in paragraph 6005 of FAA Order 7400.9U dated August 18, 2010, and effective September 15, 2010, which is incorporated by reference in 14 CFR 71.1. The Class E designation listed in this document will be removed from publication subsequently in the Order.

The Rule

This amendment to Title 14, Code of Federal Regulations (14 CFR) part 71 removes Class E airspace at Kutztown Airport, Kutztown, PA, as the airport has been abandoned and all instrument approach procedures cancelled.

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

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

This rulemaking is promulgated under the authority described in subtitle VII, part A, subpart I, section 40103. Under that section, the FAA is charged with prescribing regulations to assign the use of airspace necessary to ensure the safety of aircraft and the efficient use of airspace. This regulation is within the scope of that authority as it removes controlled airspace at Kutztown, PA.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

Adoption of the Amendment

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

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

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

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

§ 71.1 [Amended]

■ 2. The incorporation by reference in 14 CFR 71.1 of Federal Aviation Administration Order 7400.9U, Airspace Designations and Reporting Points, dated August 18, 2010, and effective September 15, 2010, is amended as follows:

Paragraph 6005 Class E Airspace Areas Extending Upward From 700 Feet or More Above the Surface of the Earth.

* * * * *

AEA PA E5 Kutztown, PA [Removed]

Issued in College Park, Georgia, on April 1, 2011.

Mark D. Ward,

Manager, Operations Support Group, Eastern Service Center, Air Traffic Organization.

[FR Doc. 2011–8538 Filed 4–11–11; 8:45 am]

BILLING CODE 4910–13–P

FEDERAL TRADE COMMISSION

16 CFR Part 305

RIN 3084–AB03

Appliance Labeling Rule

AGENCY: Federal Trade Commission (FTC or Commission).

ACTION: Final rule.

SUMMARY: The Commission extends the effective date for its new light bulb labeling requirements to January 1, 2012, to provide manufacturers with additional compliance time. In addition, the Commission exempts from the new label requirements incandescent bulbs that will not be produced after January 1, 2013, due to Federal efficiency standards.

DATES: The amendments published in this document will become effective on January 1, 2012. In addition, the July 19, 2011 effective date announced at 75 FR 41696 (July 19, 2010) is delayed until January 1, 2012.

ADDRESSES: Requests for copies of this document should be sent to: Public Reference Branch, Room 130, Federal Trade Commission, 600 Pennsylvania Avenue, NW., Washington, DC 20580. The complete record of this proceeding is also available at that address. Parts of the proceeding, including this document, are available at *http://www.ftc.gov.*

FOR FURTHER INFORMATION CONTACT: Hampton Newsome, (202) 326–2889, Attorney, Division of Enforcement, Bureau of Consumer Protection, Federal Trade Commission, Room M–8102B, 600 Pennsylvania Avenue, NW., Washington, DC 20580.

SUPPLEMENTARY INFORMATION:

I. Background

In response to a petition from the National Electrical Manufacturers Association (NEMA), on December 29,

2010 (75 FR 81943), the Commission published a **Federal Register** Notice proposing to extend the effective date of new labeling rules for light bulbs to January 1, 2012.[1] The new labeling rules, originally scheduled to become effective on July 19, 2011, apply to general service lamps (*i.e.*, medium screw base incandescent, compact fluorescent (CFL), and light-emitting diode (LED) products) and feature a "Lighting Facts" label disclosing bulb brightness, annual energy cost, life, color appearance, and energy use.[2]

Based on concerns about the original deadline, NEMA asked the Commission to: (1) Extend the new label's effective date for all covered bulbs, except CFLs, to January 1, 2012; (2) extend the effective date for CFLs to January 1, 2013; and (3) exempt all incandescent bulbs that will be phased out by 2014 due to revised Federal energy efficiency standards. After considering NEMA's petition, as well as responses from the Natural Resources Defense Council and Earthjustice, the Commission proposed extending the effective date for all covered bulbs to January 1, 2012, and exempting bulbs phased out by Federal efficiency standards in place by 2013 (*e.g.*, 75-watt bulbs). The proposal did not include NEMA's request for an additional extension for CFLs, nor did it exempt incandescent bulbs that will be phased out by the 2014 Federal efficiency standards (*i.e.*, 60- and 40-watt bulbs). The Commission received ten comments on these proposals.[3]

II. Final Rule

The Commission extends the effective date for the new labeling requirements to January 1, 2012, for all covered bulbs to provide manufacturers additional implementation time. The Commission is not providing an additional extension for CFLs because such a delay would deprive consumers of the new label's benefits for these widely available high efficiency bulbs just as new efficiency standards become effective. Finally, consistent with its proposal, the Commission is not requiring the new label for incandescent bulbs phased out by 2012 and 2013 Federal efficiency standards (*i.e.*, 75-watt reflector bulbs and bulbs subject to 2012 DOE efficiency standards) but is requiring the new label for 60- and 40-watt bulbs subject to 2014 standards.[4]

A. Extension of Effective Date for All Covered Bulbs

As proposed in the December 29, 2010 Notice, the final rule extends the effective date for all covered bulbs to January 1, 2012. The extension is warranted by legitimate industry concerns raised after the effective date was originally established.

In reaching this decision, the Commission considered several comments which found the proposed extension reasonable, another which found it too short, and others which found it too long. Specifically, IMERC, NRDC, IKEA of Sweden, and Universal Lighting Systems supported the proposed extension. Both IMERC and IKEA, for instance, argued that the extension is reasonable because, a wide variety of manufacturers need more time to re-label packages given the complexities of global supply chains.

However, NEMA argued that the extension only provides minimal relief to manufacturers and does not solve the difficulties outlined in its petition. NEMA noted that manufacturers and retailers conduct annual "product reviews," which presumably involve the development of new or revised packaging, during the third quarter of the calendar year in advance of the retail "lighting season," which takes place during the fourth and first quarters of the calendar year. Thus, according to NEMA, the proposed extension is effectively much shorter than six months because manufacturers must implement any packaging changes as part of their product reviews to complete them in time for the "lighting season."

Finally, Earthjustice argued against any extension, reiterating its earlier concerns that NEMA's petition provided no new evidence justifying a delay, and asserting that the new label is necessary as soon as possible to help consumers make informed purchasing decisions.[5] Also, Earthjustice noted that NEMA's petition demonstrates that manufacturers can meet the current effective date for LED and halogen products with no exceptions or delays, and thus no extension is warranted for these products.

The Commission adopts the proposed extension to address the logistical challenges industry faces in implementing the new label. As the Commission explained in the December 2010 Notice, and as detailed in NEMA's petition, the large number of packaging styles involved, the difficulties posed by overseas manufacturing and packaging, and the extensive nature of the label changes required for each package weigh in favor of providing manufacturers with additional time to comply. In addition, the new January 1, 2012, effective date coincides with the effective date for new Federal efficiency standards that will begin to phase out inefficient incandescent bulbs. Thus, even with the extension, consumers will have the new label to help with this transition.

The Commission declines to grant NEMA's request for additional time. As noted earlier, NEMA's comments suggest that any package changes must be completed several months before January 1, 2012, to coincide with manufacturers' "product reviews" in anticipation of the retail "lighting season." However, NEMA offers no details about the "lighting season" and its impact on labeling. Indeed, NEMA only describes the season's duration generally, stating that it covers "the 4th and 1st quarters of a calendar year." This half-year window appears to give manufacturers sufficient time to revise bulb packaging. Manufacturers could complete package revisions by the January 1, 2012, label deadline and still introduce their products during the remaining three months of the "lighting season." NEMA's comment does not indicate otherwise. Nor did NEMA's comment propose an alternative effective date that would alleviate its perceived problems.

Moreover, the Commission now has provided bulb manufacturers with considerable time to plan their

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[1] This document uses the terms lamp, light bulb, and bulb interchangeably.

[2] 75 FR 41696 (Jul. 19, 2010). The Commission issued the new labels and established the original effective date of July 19, 2011 pursuant to the Energy Independence and Security Act of 2007 (Pub. L. 110–140) (EISA). EISA also established new minimum efficiency standards phasing out inefficient incandescent bulbs over a three year period (100-watt bulbs in 2012, 75-watt bulbs in 2013, and 60- and 40-watt bulbs in 2014). These new standards will increase the prevalence of more efficient incandescent halogen bulbs, CFLs, and LEDs. In the July 19, 2010 Notice, the Commission exempted 100-watt incandescent bulbs from the new label because they will remain on the market for only a short time.

[3] *See http://www.ftc.gov/os/comments/lightbulblabelexten/index.shtm*. Unless otherwise stated, the comments discussed in this document refer to: Brickman (# 00005); Earthjustice (# 00009); Garcia (# 00002); IKEA of Sweden (# 00003); Leyn (# 00007); IMERC (# 00008); Natural Resources Defense Council (# 00011); NEMA (# 00010); Sood (# 00004); and VanPelt (# 00006). Several comments addressed issues not germane to the proposed extension such as the general merits of the Lighting Facts label. This Notice does not address these comments.

[4] NEMA's petition also requested certain changes to the label's formatting requirements, particularly for smaller packages. The Commission did not propose any changes in its December 29, 2010 Notice and, in response, received no comments seeking Rule changes. *See* 75 FR at 81946. Accordingly, this Notice does not address these issues.

[5] Another comment (Brickman) also opposed any extension, arguing that the label is necessary to make consumers aware of the energy-saving benefits of CFLs and LEDs.

packaging changes. Specifically, the Commission provided initial notice of potential package changes in 2008, announced the details of those changes in June 2010, and recently proposed the extension it is now making final.

Finally, the Commission also declines to set an earlier effective date for LEDs and new incandescent halogen products as suggested by Earthjustice because an earlier date likely would have little impact on labeling for those products. As noted in the December 2010 Notice, manufacturers are likely to use the new label for these products as they enter the market over the next year. Thus, an earlier effective date for these products is not necessary.

B. No Additional Extension for CFLs

As proposed in the December 29, 2010 Notice, the Commmission declines to extend the effective date for CFLs to January 1, 2013. Such a delay would deprive consumers of the new label's benefits for these widely-available bulbs during an important transition period. With the exception of NEMA, the commenters supported the Commission's proposal not to provide additional time for CFL labeling. NEMA reiterated its request for a CFL extension, but without providing additional information or argument.

As explained in the December 2010 Notice, further delaying the new CFL label would hinder consumers' ability to compare CFLs to new, efficient incandescent halogens and LEDs as those technologies become more available. Moreover, further delay for the market's most prevalent high efficiency bulbs may hamper ongoing efforts to help consumers understand the new label and use it in purchasing decisions. In addition, extending the effective date for all covered bulbs to January 1, 2012, along with the exemption of certain incandescent bulbs as discussed below in subsection C, should ease the burden of labeling CFLs.

C. Incandescent Bulbs Subject to New Federal Efficiency Standards

As proposed in the December 29, 2010 Notice, the final rule maintains the new Lighting Facts label for 60- and 40-watt incandescent bulbs but exempts from the label requirements 75-watt incandescent bulbs, and reflector bulbs that do not meet DOE's July 14, 2012, standards.[6]

Industry commenters sought exemptions for all incandescents affected by the EISA standards, while other comments urged fewer exemptions than proposed. Specifically, NEMA restated that manufacturers have been reducing investment in incandescent products phased out by EISA and that new labeling requirements will force them to make additional capital investments in products that will soon exit the market. Similarly, Universal Lighting Systems explained that the general public already knows these bulbs are inefficient, and thus requiring new labeling for the short time these products remain available is unnecessary and a waste of resources.

In contrast, NRDC, Earthjustice, IMERC, and IKEA of Sweden urged the Commission to reconsider the proposed exemption for 75-watt bulbs. In particular, Earthjustice argued that the Commission has assigned unwarranted significance to the shorter time period the 75-watt bulb may be available after the new effective date.[7] Earthjustice also argued that the FTC should not consider the relatively low market share of 75-watt bulbs because the Commission has previously stated that 75-watt bulb labeling will benefit consumers. IMERC argued that NEMA failed to present sufficient information to make a compelling argument for the exemption.

In addition, citing the recent phase-out of 100-watt incandescent bulbs in California and Europe, NRDC asserted that 75-watt bulbs will remain on store shelves well after January 1, 2013, due to manufacturer and retailer stockpiling. Moreover, Earthjustice stated that, with the phase-out of 100-watt bulbs, consumers looking for the brightest bulbs would gravitate to 75-watt bulbs given their tendency to equate watts with brightness. Earthjustice asserted that the new label on 75-watt bulbs would help consumers in determining that such bulbs may, in fact, be less bright than some higher efficiency alternatives. Similarly, Earthjustice asserted that, without the new label, consumers will confuse old 75-watt (~1,100 lumen) bulbs with new 72-watt incandescent halogens that have a higher lumen rating.

Furthermore, NRDC also argued that the modest package revision cost associated with relabeling 75-watt bulbs would be offset by the economic and environmental benefits resulting from consumers using the new label to select more efficient bulbs, particularly given 75-watt bulbs' higher energy costs. Finally, NRDC and IKEA of Sweden noted that requiring the new label on inefficient incandescents may provide incentives to speed the phase out of incandescent bulbs prior to the effective date of the new efficiency standards.

After considering these comments, the Commission now exempts 75-watt and certain reflector bulbs as proposed in the December 2010 Notice. The new label is necessary for 60- and 40-watt bulbs because these bulbs may remain in production for two years after the new label's introduction and occupy a much greater market share than other inefficient incandescents such as 75-watt bulbs.[8] Moreover, the commenters offered no information to refute that the benefits to consumers of requiring the new label for 60- and 40-watt bulbs outweigh "reinvestment" concerns raised by NEMA.

Despite concerns raised by commenters, the Commission, as detailed below, does not believe the new label is warranted for 75-watt bulbs because they will remain available for a relatively short time and manufacturers can redirect resources to label other bulbs. When it issued the new labeling rule in July 2010, the Commission chose to require the new label for traditional incandescent bulbs remaining in production for more than a year after the Rule's effective date, including 75-watt bulbs, which would have stayed in production for a year and half after the original effective date. However, the new six-month extension shortens the period that 75-watt bulbs will remain in production after the effective date, reducing the benefits of re-labeling these soon-to-be obsolete products. As NRDC notes, 75-watt bulbs may continue to appear on store shelves even after the end of production. However, it is reasonable to assume that these bulbs will not be prevalent on shelves for an extended period given their limited market share, manufacturer

[6] In its petition, NEMA had sought an exemption for 60- and 40-watt incandescent bulbs phased out by EISA efficiency standards effective January 1, 2014, and for 75-watt incandescent bulbs phased out by the EISA efficiency standards effective January 1, 2013. See 42 U.S.C. 6295(l). It also sought to exclude certain inefficient incandescent reflector products that DOE efficiency regulations will eliminate on July 14, 2012. 10 CFR 430.32(n)(5). No comment opposed the exemption for these reflector bulbs.

[7] The Commission originally required labeling for 75-watt bulbs because these products would remain on the market for "more than a year" after the effective date. However, under the extended deadline, they will be manufactured for no more than one year after the new effective date.

[8] According to past estimates, 75-watt bulbs account for only about 19% of the incandescent market compared to 58% for 60- and 40-watt bulbs. See *http://neep.org/uploads/Summit/2010%20Presentations/NEEP%20Lighting_Swope.pdf*. (DOE presentation using 2006 incandescent estimates). As comments suggest, some consumers may gravitate to 75-watt bulbs as the highest wattage bulb remaining on the market, confusing their wattage with light output. However, even if such confusion does arise, it should be minimal given the relatively small market share of these bulbs and the limited time period they will be available.

disinvestment in traditional incandescent technologies as indicated in NEMA's petition, and the increasing availability of more efficient incandescent halogen bulbs that have similar performance characteristics. Finally, the exemption will allow manufacturers to focus their labeling resources on products that will remain in the market well into the future, such as CFLs.

III. Paperwork Reduction Act

The current Rule contains recordkeeping, disclosure, testing, and reporting requirements that constitute "information collection requirements" as defined by 5 CFR 1320.7(c), the regulation that implements the Paperwork Reduction Act (PRA).[9] OMB has approved the Rule's existing information collection requirements through May 31, 2011 (OMB Control No. 3084–0069). The amendments in this document will not increase and, in fact, likely will reduce somewhat the previously estimated burden for the lamp labeling amendments.

IV. Regulatory Flexibility Act

The Regulatory Flexibility Act (RFA), 5 U.S.C. 601–612, requires that the Commission provide an Initial Regulatory Flexibility Analysis (IRFA) with a Proposed Rule, and a Final Regulatory Flexibility Analysis (FRFA) with the final rule, unless the Commission certifies that the Rule will not have a significant economic impact on a substantial number of small entities.[10]

The Commission does not anticipate that these amendments will have a significant economic impact on a substantial number of small entities. The Commission recognizes that some of the affected manufacturers may qualify as small businesses under the relevant thresholds. However, the Commission does not expect that the economic impact of the proposed amendments will be significant. If anything, the changes will reduce the Rule's burden on affected entities.

In its July 19, 2010 Notice (75 FR at 41711), the Commission estimated that the new labeling requirements will apply to about 50 product manufacturers and an additional 150 online and paper catalog sellers of covered products. The Commission expects that approximately 150 qualify as small businesses.

Although the Commission certified under the RFA that the amendments would not, if promulgated, have a significant impact on a substantial number of small entities, the Commission has determined, nonetheless, that it is appropriate to publish an FRFA in order to explain the impact of the amendments on small entities as follows:

A. Statement of the Need for, and Objectives of, the Amendments

Section 321(b) of the Energy Independence and Security Act of 2007 (Pub. L. 110–140) requires the Commission to conduct a rulemaking to consider the effectiveness of lamp labeling and to consider alternative labeling approaches. The Commission has issued an extension to the Rule's effective date to provide industry members with additional compliance time.

B. Issues Raised by Comments in Response to the IRFA

The Commission did not receive any comments specifically related to the impact of the final amendments on small businesses.

C. Estimate of Number of Small Entities to Which the Amendments Will Apply

Under the Small Business Size Standards issued by the Small Business Administration, lamp manufacturers qualify as small businesses if they have fewer than 1,000 employees (for other household appliances the figure is 500 employees). Lamp catalog sellers qualify as small businesses if their sales are less than $8.0 million annually. The Commission estimates that there are approximately 150 entities subject to the final rule's requirements that qualify as small businesses.[11]

D. Projected Reporting, Recordkeeping, and Other Compliance Requirements

The final amendments will not increase any reporting, recordkeeping, or other compliance requirements associated with the Commission's labeling rules (75 FR 41696). The amendments will only extend the effective date for complying with the new lamp's labeling requirements previously issued at 75 FR 41696. The final amendments will also exempt from those requirements incandescent bulbs that fail to meet Federal energy efficiency standards by 2013 (*e.g.*, 75-watt bulbs).

E. Duplicative, Overlapping, or Conflicting Federal Rules

The Commission has not identified any other Federal statutes, rules, or policies that would duplicate, overlap, or conflict with the final amendments.

F. Alternatives

The Commission sought comment and information on the need, if any, for alternative compliance methods that, consistent with the statutory requirements, would reduce the economic impact of the rule on small entities. In extending the effective date for the new labeling requirements and exempting certain bulbs from those requirements, the Commission is currently unaware of the need for special provisions to enable small entities to take advantage of the proposed extension or exemption. The Commission expects that the proposed amendments will reduce or defer, rather than increase, the economic impact of the rule's requirements for all entities, including small entities.

V. Final Rule

List of Subjects in 16 CFR part 305

Advertising, Energy conservation, Household appliances, Labeling, Reporting and recordkeeping requirements.

For the reasons discussed above, the Commission amends part 305 of title 16, Code of Federal Regulations, as follows:

PART 305—RULE CONCERNING DISCLOSURES REGARDING ENERGY CONSUMPTION AND WATER USE OF CERTAIN HOME APPLIANCES AND OTHER PRODUCTS REQUIRED UNDER THE ENERGY POLICY AND CONSERVATION ACT ("APPLIANCE LABELING RULE")

■ 1. The authority citation for part 305 continues to read as follows:

Authority: 42 U.S.C. 6294.

■ 2. In § 305.15, paragraph (c)(1) is revised to read as follows:

§ 305.15 Labeling for lighting products.

* * * * *

(c)(1) Any covered incandescent lamp that is subject to and does not comply with the January 1, 2012 or January 1, 2013 efficiency standards specified in 42 U.S.C. 6295 or the DOE standards at 10 CFR 430.32(n)(5) effective July 14, 2012 shall be labeled clearly and conspicuously on the principal display panel of the product package with the following information in lieu of the labeling requirements specified in paragraph (b):

* * * * *

[9] 44 U.S.C. 3501–3521.

[10] 5 U.S.C. 603–605.

[11] *See* 75 FR at 41712.

By direction of the Commission.

Donald S. Clark,

Secretary.

[FR Doc. 2011–8689 Filed 4–11–11; 8:45 am]

BILLING CODE 6750–01–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R03–OAR–2010–0139; FRL–9292–9]

Approval and Promulgation of Air Quality Implementation Plans; District of Columbia; Section 110(a)(2) Infrastructure Requirements for the 1997 8-Hour Ozone and the 1997 and 2006 Fine Particulate Matter National Ambient Air Quality Standards

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: EPA is approving submittals from the District of Columbia (the District) pursuant to the Clean Air Act (CAA or the Act) sections 110(k)(2) and (3). These submittals address the infrastructure elements specified in the CAA section 110(a)(2), necessary to implement, maintain, and enforce the 1997 8-hour ozone and fine particulate matter ($PM_{2.5}$) national ambient air quality standards (NAAQS) and the 2006 $PM_{2.5}$ NAAQS. This final rule is limited to the following infrastructure elements which were subject to EPA's completeness findings pursuant to CAA section 110(k)(1) for the 1997 8-hour ozone NAAQS dated March 27, 2008, and the 1997 $PM_{2.5}$ NAAQS dated October 22, 2008: 110(a)(2)(A), (B), (C), (D)(ii), (E), (F), (G), (H), (J), (K), (L), and (M).

DATES: *Effective Date:* This final rule is effective on May 12, 2011.

ADDRESSES: EPA has established a docket for this action under Docket ID Number EPA–R03–OAR–2010–0139. All documents in the docket are listed in the *http://www.regulations.gov* Web site. Although listed in the electronic docket, some information is not publicly available, i.e., confidential business information (CBI) or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available either electronically through *http://www.regulations.gov* or in hard copy for public inspection during normal business hours at the Air Protection Division, U.S. Environmental Protection Agency, Region III, 1650 Arch Street, Philadelphia, Pennsylvania 19103. Copies of the State submittal are available at the District of Columbia Department of the Environment, Air Quality Division, 51 N Street, NE., Fifth Floor, Washington, DC 20002.

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

SUPPLEMENTARY INFORMATION:

I. Background

On May 17, 2010 (75 FR 27512), EPA published a notice of proposed rulemaking (NPR) for the District. The NPR proposed approval of the District's submittals that provide the basic program elements specified in the CAA sections 110(a)(2)(A), (B), (C), (D)(ii), (E), (F), (G), (H), (J), (K), (L), and (M) necessary to implement, maintain, and enforce the 1997 8-hour ozone and $PM_{2.5}$ NAAQS and the 2006 $PM_{2.5}$ NAAQS. The formal submittals submitted by the District Department of the Environment on December 6, 2007 and January 11, 2008 addressed the section 110(a)(2) requirements for the 1997 8-hour ozone NAAQS; the submittals dated August 25, 2008 and September 22, 2008 addressed the section 110(a)(2) requirements for the 1997 $PM_{2.5}$ NAAQS; and the submittal dated September 21, 2009 addressed the section 110(a)(2) requirements for the 2006 $PM_{2.5}$ NAAQS.

II. Summary of Relevant Submissions

The above referenced submittals address the infrastructure elements specified in the CAA section 110(a)(2). These submittals refer to the implementation, maintenance and enforcement of the 1997 8-hour ozone, the 1997 $PM_{2.5}$ NAAQS, and the 2006 $PM_{2.5}$ NAAQS. The rationale supporting EPA's proposed action is explained in the NPR and the technical support document (TSD) and will not be restated here. No public comments were received on the NPR. However, the portion of the TSD relating to section 110(a)(2)(D)(ii) is being revised because the TSD did not give the correct reason for the proposed approval. The TSD is available on line at *http://www.regulations.gov*, Docket number EPA–R03–OAR–2010–0139.

III. Final Action

EPA is approving the District's submittals that provide the basic program elements specified in CAA sections 110(a)(2)(A), (B), (C), (D)(ii), (E), (F), (G), (H), (J), (K), (L), and (M) necessary to implement, maintain, and enforce the 1997 8-hour ozone and $PM_{2.5}$ NAAQS and the 2006 $PM_{2.5}$ NAAQS.

EPA made completeness findings for the 1997 8-hour ozone NAAQS on March 27, 2008 (73 FR 16205) and on October 22, 2008 (73 FR 62902) for the 1997 $PM_{2.5}$ NAAQS. These findings pertained only to whether the submissions were complete, pursuant to section 110(k)(1)(A), and did not constitute EPA approval or disapproval of such submissions. Each of these findings noted that the District failed to submit a complete SIP addressing the portions of (C) and (J) relating to the Part C permit programs for the 1997 8-hour ozone and the 1997 $PM_{2.5}$ NAAQS.

The District has not submitted a permit program required under sections 110(a)(2)(C) and (J). Therefore, EPA is not approving the submissions with respect to sections 110(a)(2)(C) and (J) relating to the Part C permit programs for the 1997 8-hour ozone, the 1997 $PM_{2.5}$ NAAQS or the 2006 $PM_{2.5}$ NAAQS. However, these requirements with respect to the permit programs have already been addressed by a Federal Implementation Plan (FIP) that remains in place (see 40 CFR 52.499), and therefore this action will not trigger any additional FIP obligation with respect to this requirement.

Two elements identified in section 110(a)(2) are not governed by the three year submission deadline of section 110(a)(1) because SIPs incorporating necessary local nonattainment area controls are not due within three years after promulgation of a new or revised NAAQS, but rather are due at the time the nonattainment area plan requirements are due pursuant to section 172. These elements are: (1) Submissions required by section 110(a)(2)(C) to the extent that subsection pertains to a permit program in Part D Title I of the CAA; and (2) any submissions required by section 110(a)(2)(I), which pertain to the nonattainment planning requirements of Part D Title I of the CAA. This action does not cover these specific elements. This action also does not address the requirements of section 110(a)(2)(D)(i) for the 1997 8-hour ozone NAAQS and 1997 $PM_{2.5}$ NAAQS, since they have been addressed by separate findings issued by EPA. *See* April 25, 2005 (70 FR 21147) and June 9, 2010 (75 FR 32673).

This notice does not take any action to approve or disapprove any existing state provisions with regard to excess emissions during startup, shutdown, or malfunction (SSM) of operations at a facility. EPA believes that a number of states have SSM provisions which are contrary to the CAA and existing EPA

guidance (August 11, 1999 Steven Herman and Robert Perciasepe Guidance Memorandum, "State Implementation Plans: Policy Regarding Excess Emissions During Malfunctions, Startup, and Shutdown") and EPA plans to address such state regulations in the future. In the meantime, EPA encourages any state having a deficient SSM provision to take steps to correct it as soon as possible.

This notice also does not take any action to approve or disapprove any existing state rules with regard to Director's discretion or variance provisions. EPA believes that a number of states have such provisions which are contrary to the CAA and existing EPA guidance (52 FR 45109, November 24, 1987), and EPA plans to take action in the future to address such state regulations. In the meantime, EPA encourages any state having a Director's discretion or variance provision which is contrary to the CAA to take steps to correct the deficiency as soon as possible.

IV. Statutory and Executive Order Reviews

A. General Requirements

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

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

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

B. Submission to Congress and the Comptroller General

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

C. Petitions for Judicial Review

Under section 307(b)(1) of the CAA, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by June 13, 2011. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this action for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action pertaining to the District of Columbia's section 110(a)(2) infrastructure requirements for the 1997 8-hour ozone and $PM_{2.5}$ NAAQS, and the 2006 $PM_{2.5}$ NAAQS, may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2).)

List of Subjects in 40 CFR part 52

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

Dated: April 1, 2011.

W.C. Early,

Acting Regional Administrator, EPA Region III.

40 CFR part 52 is amended as follows:

PART 52—[AMENDED]

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

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

Subpart J—District of Columbia

■ 2. In § 52.470, the table in paragraph (e) is amended by adding entries at the end of the table for "Section 110(a)(2) Infrastructure Requirements for the 1997 8-Hour Ozone NAAQS", "Section 110(a)(2) Infrastructure Requirements for the 1997 $PM_{2.5}$ NAAQS", and "Section 110(a)(2) Infrastructure Requirements for the 2006 $PM_{2.5}$ NAAQ" to read as follows:

§ 52.470 Identification of plan.

* * * * * *

(e) * * *

Name of non-regulatory SIP revision	Applicable geographic or nonattainment area	State submittal date	EPA approval date	Additional explanation
*	*	*	*	*
Section 110(a)(2) Infrastructure Requirements for the 1997 8-Hour Ozone NAAQS.	District of Columbia	12/06/07 1/11/08	4/12/11 [Insert Federal Register page number where the document begins and date].	This action addresses the following CAA elements: 110(a)(2)(A), (B), (C), (D)(ii), (E), (F), (G), (H), (J), (K), (L), and (M).
Section 110(a)(2) Infrastructure Requirements for the 1997 $PM_{2.5}$ NAAQS.	District of Columbia	8/25/08 9/22/08	4/12/11 [Insert Federal Register page number where the document begins and date].	This action addresses the following CAA elements: 110(a)(2)(A), (B), (C), (D)(ii), (E), (F), (G), (H), (J), (K), (L), and (M).
Section 110(a)(2) Infrastructure Requirements for the 2006 $PM_{2.5}$ NAAQS.	District of Columbia	9/21/09	4/12/11 [Insert Federal Register page number where the document begins and date].	This action addresses the following CAA elements: 110(a)(2)(A), (B), (C), (D)(ii), (E), (F), (G), (H), (J), (K), (L), and (M).

[FR Doc. 2011–8567 Filed 4–11–11; 8:45 am]
BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R04–OAR–2006–0130–201111(a); FRL–9293–4]

Approval and Promulgation of Implementation Plans: Florida; Prevention of Significant Deterioration

AGENCY: Environmental Protection Agency (EPA).

ACTION: Direct final rule.

SUMMARY: EPA is taking direct final action to convert a conditional approval of provisions in the Florida State Implementation Plan (SIP) to a full approval under the federal Clean Air Act (CAA or Act). On June 17, 2009, the State of Florida, through the Florida Department of Environmental Protection (FDEP), submitted a SIP revision in response to the conditional approval of its New Source Review (NSR) permitting program. The revision includes changes to certain parts of the Prevention of Significant Deterioration (PSD) construction permit program in Florida, including the definition of "new emissions unit," "regulated air pollutant" and "significant emissions rate" as well as recordkeeping requirements. In addition, Florida provided a clarification that the significant emissions rate for mercury in the Florida regulations is intended to apply as a state-only provision. EPA has determined that this revision addresses the conditions identified in the conditional approval, and is therefore approvable. This action is being taken pursuant to section 110 of the CAA.

DATES: This direct final rule is effective June 13, 2011 without further notice, unless EPA receives adverse comment by May 12, 2011. If EPA receives such comments, it will publish a timely withdrawal of the direct final rule in the **Federal Register** and inform the public that the rule will not take effect.

ADDRESSES: Submit your comments, identified by Docket ID No. EPA–R04–OAR–2006–0130, by one of the following methods:

1. *http://www.regulations.gov:* Follow the on-line instructions for submitting comments.
2. *E-mail: adams.yolanda@epa.gov.*
3. *Fax:* (404) 562–9019.
4. *Mail:* EPA–R04–OAR–2006–0130, Air Planning Branch, Air, Pesticides and Toxics Management Division, U.S. Environmental Protection Agency, Region 4, 61 Forsyth Street, SW., Atlanta, Georgia 30303–8960.
5. *Hand Delivery or Courier:* Ms. Yolanda Adams, Air Planning Branch, Air, Pesticides and Toxics Management Division, U.S. Environmental Protection Agency, Region 4, 61 Forsyth Street, SW., Atlanta, Georgia 30303–8960. Such deliveries are only accepted during the Regional Office's normal hours of operation. The Regional Office's official hours of business are Monday through Friday, 8:30 to 4:30, excluding Federal holidays.

Instructions: Direct your comments to Docket ID No. "EPA–R04–OAR–2006–0130." EPA's policy is that all comments received will be included in the public docket without change and may be made available online at *http://www.regulations.gov,* including any personal information provided, unless the comment includes information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Do not submit through *http://www.regulations.gov* or e-mail, information that you consider to be CBI or otherwise protected. The *http://www.regulations.gov* Web site is an "anonymous access" system, which means EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an e-mail comment directly to EPA without going through *http://www.regulations.gov,* your e-mail address will be automatically captured and included as part of the comment that is placed in the public docket and made available on the Internet. If you submit an electronic comment, EPA recommends that you include your name and other contact information in the body of your comment and with any disk or CD–ROM you submit. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses. For additional information about EPA's public docket visit the EPA Docket Center homepage at *http://www.epa.gov/epahome/dockets.htm.*

Docket: All documents in the electronic docket are listed in the *http://www.regulations.gov* index. Although listed in the index, some information is not publicly available, *i.e.,* CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available either electronically in *http://www.regulations.gov* or in hard copy at the Regulatory Development Section, Air Planning Branch, Air, Pesticides and Toxics Management Division, U.S.

Environmental Protection Agency, Region 4, 61 Forsyth Street, SW., Atlanta, Georgia 30303–8960. EPA requests that if at all possible, you contact the person listed in the **FOR FURTHER INFORMATION CONTACT** section to schedule your inspection. The Regional Office's official hours of business are Monday through Friday, 8:30 to 4:30, excluding Federal holidays.

FOR FURTHER INFORMATION CONTACT: For information regarding the Florida SIP, contact Twunjala Bradley, Regulatory Development Section, Air Planning Branch, Air, Pesticides and Toxics Management Division, U.S. Environmental Protection Agency, Region 4, 61 Forsyth Street, SW., Atlanta, Georgia 30303–8960. Ms. Bradley may also be reached via telephone or electronic mail at (404) 562–9352 and *bradley.twunjala@epa.gov*. For information regarding NSR, contact Yolanda Adams, Air Permits Section, at the same address above. Ms. Adams may also be reached via telephone or electronic mail at (404) 562–9214 and *adams.yolanda@epa.gov*.

SUPPLEMENTARY INFORMATION:

I. Background

On February 3, 2006, FDEP submitted a revision to its PSD regulations in response to the 2002 NSR Reform Rules for EPA approval into the Florida SIP.[1] The February 3, 2006, SIP revision included changes to the Florida SIP, specifically in Florida Administrative Code (F.A.C.) Rules, Chapters 62–204—Air Pollution Control—General Provisions, 62–210—Stationary Sources—General Requirements, and 62–212—Stationary Source—Preconstruction Review, which became state-effective on February 2, 2006, and February 12, 2006. EPA proposed to conditionally approve these PSD SIP rules under section 110 of the CAA on April 4, 2008. *See* 73 FR 18466. In the April 4, 2008 rulemaking, EPA determined that portions of Florida's February 3, 2006 SIP revision were not consistent with the federal PSD regulations set forth at 40 CFR 51.166. Therefore, EPA proposed to conditionally approve Florida's PSD program which established a commitment from FDEP to adopt the necessary regulations for consistency with federal PSD provisions to obtain full approval. EPA did not receive any comments on the proposal. EPA finalized its conditional approval of F.A.C. Chapters 62–204, 62–210, and 62–212, into the Florida SIP on June 27, 2008. *See* 73 FR 36435.

On June 17, 2009, FDEP submitted the revision to its SIP incorporating the changes required by EPA as outlined in the conditional approval. See 73 FR 18466. Specifically, the June 17, 2009, SIP revision changes definitions in F.A.C Chapter 62–210.200 for "new emissions unit," "regulated air pollutant," and "significant emissions rate" as well as the recordkeeping requirements in F.A.C. Chapter 62–212.300(3)(a)1. In addition, Florida provided a clarification that the significant emissions rate for mercury in the Florida regulations is considered a state-only provision and is not intended to be incorporated into the Florida SIP. After consideration, EPA concludes that the June 17, 2009, SIP revision satisfies the conditions listed in EPA's June 27, 2008, conditional approval. Today, EPA is converting the June 27, 2008, conditional approval to a full approval.

II. EPA's Analysis of How Florida's Revisions Satisfy the Terms of the Conditional Approval

In response to EPA's June 27, 2008, conditional approval, Florida made three changes to its PSD requirements. These changes were required to ensure that Florida's PSD program is consistent with the federal PSD regulations (at 40 CFR 51.166) to obtain full approval of the program. First, Florida changed the definition of "new emissions unit" in F.A.C. Chapter 62–210.200 to indicate that it is a unit " * * * that has existed for less than 2 years from the date such emissions unit first operated." This definition is consistent with the federal definition of "New Emissions Unit" found at 40 CFR 51.166(b)(7)(i). Second, Florida changed the definitions of "Regulated Air Pollutant" and "Significant Emissions Rate" in F.A.C. Chapter 62–210.200 to include ozone depleting substances. This change is consistent with the federal definition of "Significant" in 40 CFR 51.166(b)(23). Third, Florida changed its recordkeeping requirements in F.A.C. Chapter 62–212.300(3)(a)1 to clarify that the applicant must provide a record of the amount of emissions excluded pursuant to the projected actual emissions requirements, an explanation as to why these emissions were excluded, and any netting calculations if applicable. This change is consistent with the federal recordkeeping requirements at 40 CFR 51.166(r)(6).

In addition, Florida provided a clarification that the significant emissions rate for mercury is considered a state-only provision and is not intended to be incorporated into the Florida SIP. EPA has determined that this clarification satisfies the condition listed in EPA's conditional approval.

III. Final Action

As explained above, FDEP submitted changes to the definition of "new emissions unit," "regulated air pollutant," and "significant emissions rate" in F.A.C. Chapter 62–210.200 and the recordkeeping requirements in F.A.C. Chapter 62–212.300(3)(a)1. In addition, FDEP provided a clarification that the significant emissions rate for mercury in the Florida regulations is intended to apply as a state-only requirement only and is not intended to be incorporated into the Florida SIP. FDEP has satisfied the conditions listed in EPA's conditional approval. Therefore, EPA is taking direct final action to convert its conditional approval of Florida's SIP revisions to a full approval of Florida's PSD program.

As a result of Florida's June 17, 2009, SIP revision satisfying the conditional approval requirements and EPA's conversion to a full approval, the conditional approval language at § 52.519 of 40 CFR part 52, included in EPA's final conditional approval published June 27, 2008 (73 FR 36435), is no longer necessary. This action removes the conditional approval language relating to Florida's PSD program from the CFR to reflect that the program has been approved. EPA is publishing this rulemaking to remove and reserve § 52.519 of 40 CFR part 52.

EPA is publishing this rule without prior proposal because the Agency views this as a noncontroversial submittal and anticipates no adverse comments. However, in the proposed rules section of this **Federal Register** publication, EPA is publishing a separate document that will serve as the proposal to approve the SIP revision should adverse comments be filed. This rule will be effective June 13, 2011 without further notice unless the Agency receives adverse comments by May 12, 2011.

If EPA receives such comments, then EPA will publish a document withdrawing the final rule and informing the public that the rule will not take effect. All public comments

[1] On December 31, 2002 (67 FR 80186), EPA published final rule changes to 40 CFR parts 51 and 52, regarding the CAA's PSD and nonattainment NSR programs. On November 7, 2003 (68 FR 63021), EPA published a notice of final action on the reconsideration of the December 31, 2002, final rule changes. The December 31, 2002, and the November 7, 2003, final actions are collectively referred to as the "2002 NSR Reform Rules."

received will then be addressed in a subsequent final rule based on the proposed rule. EPA will not institute a second comment period. Parties interested in commenting should do so at this time. If no such comments are received, the public is advised that this rule will be effective on June 13, 2011 and no further action will be taken on the proposed rule.

IV. Statutory and Executive Order Reviews

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

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

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

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

Under section 307(b)(1) of the CAA, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by June 13, 2011. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this action for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. Parties with objections to this direct final rule are encouraged to file a comment in response to the parallel notice of proposed rulemaking for this action published in the proposed rules section of today's **Federal Register**, rather than file an immediate petition for judicial review of this direct final rule, so that EPA can withdraw this direct final rule and address the comment in the proposed rulemaking. This action may not be challenged later in proceedings to enforce its requirements. (*See* section 307(b)(2)).

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Incorporation by reference, Intergovernmental relations, Ozone, and Reporting and recordkeeping requirements.

Dated: March 31, 2011.

A. Stanley Meiburg,

Acting Regional Administrator, Region 4.

40 CFR part 52 is amended as follows:

PART 52—[AMENDED]

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

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

Subpart K—Florida

§ 52.519 [Removed and Reserved]

■ 2. Section 52.519 is removed and reserved.

■ 3. Section 52.520(c) is amended by revising entries "62–210.200" and "62–212.300" to read as follows:

§ 52.520 Identification of plan.

* * * * *

(c) * * *

EPA-APPROVED FLORIDA REGULATIONS

State citation (Section)	Title/subject	State effective date	EPA approval date	Explanation
*	*	*	*	*
Chapter 62–210 Stationary Sources—General Requirements				
*	*	*	*	*
62–210.200	Definitions	6/29/09	4/12/11 ..... [Insert citation of publication].	
*	*	*	*	*
Chapter 62–212 Stationary Sources—Preconstruction Review				
*	*	*	*	*
62–212.300	General Preconstruction Review Requirements.	6/29/09	4/12/11 ..... [Insert citation of publication].	

EPA-APPROVED FLORIDA REGULATIONS—Continued

State citation (Section)	Title/subject	State effective date	EPA approval date	Explanation
*	*	*	*	*

* * * * *

[FR Doc. 2011–8701 Filed 4–11–11; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R09–OAR–2010–0743; FRL–9279–1]

Revisions to the California State Implementation Plan; Sacramento Metropolitan Air Quality Management District

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: EPA is finalizing approval of a revision to the Sacramento Metropolitan Air Quality Management District's portion of the California State Implementation Plan (SIP). This revision was proposed in the **Federal Register** on October 5, 2010, and concerns emissions of oxides of nitrogen (NO_X) from the landfill gas flare at the Kiefer Landfill in Sacramento, California. We are approving portions of a Permit to Operate that limit NO_X emissions from this facility under the Clean Air Act as amended in 1990 (CAA or the Act).

DATES: This rule is effective on May 12, 2011.

ADDRESSES: EPA has established docket number EPA–R09–OAR–2010–0743 for this action. Generally, documents in the docket for this action are available electronically at *http://www.regulations.gov* or in hard copy at EPA Region IX, 75 Hawthorne Street, San Francisco, California. While all documents in the docket are listed at *http://www.regulations.gov*, some information may be publicly available only at the hard copy location (*e.g.*, copyrighted material, large maps, multi-volume reports), and some may not be available in either location (*e.g.*, confidential business information (CBI)). To inspect the hard copy materials, please schedule an appointment during normal business hours with the contact listed in the **FOR FURTHER INFORMATION CONTACT** section.

FOR FURTHER INFORMATION CONTACT: Mae Wang, EPA Region IX, (415) 947–4124, *wang.mae@epa.gov*.

SUPPLEMENTARY INFORMATION: Throughout this document, "we," "us" and "our" refer to EPA.

Table of Contents

I. Proposed Action

On October 5, 2010 (75 FR 61369), EPA proposed to approve portions of the Permit to Operate for the Kiefer Landfill into the California SIP. The submitted portions of the Permit to Operate for the Kiefer Landfill (Permit No. 17359), which was issued by the Sacramento Metropolitan Air Quality Management District (SMAQMD), relate to the control of NO_X emissions from the air pollution control landfill gas flare. The SMAQMD originally issued Permit No. 17359 on August 7, 2006, and later revised it on November 13, 2006. We are proposing to act on the submitted portions of Permit No. 17359, as revised on November 13, 2006. The California Air Resources Board (CARB) submitted this SIP revision to EPA on July 11, 2007.

We proposed to approve the submitted conditions of SMAQMD Permit No. 17359 into the SMAQMD portion of the California SIP because we determined that they complied with the relevant CAA requirements for SIP approval. Our proposed action contains more information on the submitted portions of the permit and our evaluation.

II. Public Comments and EPA Responses

EPA's proposed action provided a 30-day public comment period. During this period, we did not receive any comments.

III. EPA Action

No comments were submitted that change our assessment that the submitted conditions of SMAQMD Permit No. 17359 comply with the relevant CAA requirements. Therefore, as authorized in section 110(k)(3) of the Act, EPA is fully approving these conditions into the California SIP. Specifically, we are approving permit conditions 1, 6, 10, 11, 16, 20, 27, 28, and 29, or portions thereof, which together establish an enforceable NO_X limitation satisfying RACT for the air pollution control landfill gas flare at the Kiefer Landfill. *Please see* the docket for a copy of the complete submitted document.

IV. Statutory and Executive Order Reviews

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

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

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

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

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

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

Under section 307(b)(1) of the CAA, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by June 13, 2011. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this action for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements (see section 307(b)(2)).

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Incorporation by reference, Intergovernmental relations, Nitrogen dioxide, Ozone, Reporting and recordkeeping requirements.

Dated: February 15, 2011.

Jared Blumenfeld,

Regional Administrator, Region IX.

Part 52, Chapter I, Title 40 of the Code of Federal Regulations is amended as follows:

PART 52—[AMENDED]

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

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

Subpart F—California

■ 2. Section 52.220 is amended by adding paragraph (c)(382) to read as follows:

§ 52.220 Identification of plan.

* * * * *

(c) * * *

(382) New and amended regulations for the following APCDs were submitted on July 11, 2007, by the Governor's designee.

(i) *Incorporation by reference.*

(A) Sacramento Metropolitan Air Quality Management District.

(*1*) Permit to Operate for the Kiefer Landfill ("Permit to Operate No. 17359 (Rev01)"), as revised on November 13, 2006.

* * * * *

[FR Doc. 2011–8466 Filed 4–11–11; 8:45 am]

BILLING CODE 6560–50–P

CORPORATION FOR NATIONAL AND COMMUNITY SERVICE

45 CFR Part 2553

RIN 3045–AA52

Retired and Senior Volunteer Program Amendments

AGENCY: Corporation for National and Community Service.

ACTION: Final rule.

SUMMARY: The Corporation for National and Community Service (Corporation) is issuing a final rule that sets forth a competitive process for selecting grant recipients for the Retired and Service Volunteer Program (RSVP), including performance measurement requirements, as required by the Domestic Volunteer Service Act (DVSA), as amended by the Edward M. Kennedy Serve America Act (Serve America Act) (Pub. L. 111–13) of April 21, 2009.

DATES: This final rule is effective July 11, 2011.

FOR FURTHER INFORMATION CONTACT: Katharine Delo Gregg at (202) 606–6965 (*kgregg@cns.gov*). The TDD/TTY number is (202) 606–3472. You may request this rule in an alternative format for the visually impaired.

SUPPLEMENTARY INFORMATION:

I. Background—The October 26, 2010, Proposed Rule

On October 26, 2010. the Corporation published a proposed rule (45 CFR part 2553) in the **Federal Register** (Vol. 75, No. 206) to regulate the competitive grantmaking process for the Retired and Senior Volunteer Program (RSVP).

The proposed rule implements RSVP re-competition statutory requirements set forth in the Edward M. Kennedy Serve America Act (Serve America Act), which President Obama signed into law on April 21, 2009. The Serve America Act reauthorizes and expands national service programs administered by the Corporation for National and Community Service (Corporation) by amending the National and Community Service Act of 1990 (NCSA) and the Domestic Volunteer Service Act of 1973 (DVSA).

The Serve America Act amended the DVSA by requiring the Corporation to develop a competitive process for selecting grant recipients for the RSVP Program, beginning in fiscal year 2013. The competitive process, as directed by statute, will include the use of peer review panels with expertise in senior service and aging, site inspections, as appropriate, and evaluations of existing grantees. The amended statute requires that, beginning in fiscal year 2013, RSVP grants be awarded for a period of 3 years, with an option for renewal of 3 years if the grantee meets the performance measures established in its grant award, as well as complying with the terms and conditions of the grant.

60-Day Comment Period

In the **Federal Register** of October 26, 2010 (45 CFR part 2553), the Corporation published the proposed rule, with a 60-day comment period. The Corporation received a total of 21 comments from twelve commenters, including one association that represents several hundred members. Comments are discussed in detail in Part III.

In general, most of the comments supported the proposed regulations.

II. Discussion of the Final Rule

The current competitive process for selecting RSVP grantees only occurs when there is new money above the appropriated base funding for RSVP grants. The future competitive process for selecting RSVP grantees will include the same elements specified in the amended DVSA that have been used for previous competitive processes. The elements specified in the amended DVSA are discussed below.

A. Peer review panels [DVSA § 201(e)(2)(B)(i); 45 CFR 2553.71(b)]: As

of 2013, RSVP grant applications will be reviewed by blended peer review panels that will include members with specialized expertise in senior service and aging, as well as Corporation staff, who will offer their expert opinions concerning each application. The use of blended peer review panels is well established at the Corporation and is currently part of the process of selecting grantees for other programs such as AmeriCorps and Learn and Serve America. The Corporation also has considerable experience in using outside reviewers with expertise in senior service and aging on selection panels for Senior Corps grants, including RSVP. The Corporation's existing processes for announcing peer review opportunities, registering potential reviewers, selecting reviewers for particular competitions, managing review panels, and considering peer review opinions in making the final selection of grantees will be adapted to meet the requirements for RSVP grant competitions.

B. Site inspections [DVSA § 201(e)(2)(B)(ii); 45 CFR 2553.71(b)]: As appropriate, on-going RSVP grant applicants or proposed project sites may be visited by Corporation representatives as part of the competitive selection process. While such site inspections would normally not be needed, circumstances could arise during the grantee selection process where on-site observations or meetings might be helpful, for example, in clarifying aspects of an application or validating the capacity of an organization to administer a federal grant.

C. Performance Measures, Outcomes, and Other Criteria [DVSA §§ 201(e)(2)(B)(v) and 201(g); 45 CFR 2553.12(l) and Subpart J]: As a part of the competitive process, the Corporation will develop performance measures, outcomes, and other criteria that will be used in the evaluation of applicants. The performance measures will be established in the Notification of Funding Availability and may be different than those incorporated in current grants. These performance measures, outcomes, and criteria will reflect the different needs of rural and urban communities. These performance measures, outcomes, and criteria will be used in conducting the competitive process and in developing assessment reports as described in paragraph D, below.

Pursuant to section 201(g)(2)(A) & (B) of the Serve America Act, prior to Fiscal Year 2014 that is, the first year after initiation of the competitive process, the performance measures, outcomes, and other criteria established for the competitive process may not be updated or modified, except when the Corporation determines that a performance measure, outcome, or criterion has become operationally problematic. In such cases, after consulting with RSVP project directors, sponsor executives, and others as appropriate, and notifying the authorizing committees, the Corporation may eliminate that performance measure, outcome, or criterion, or modify it.

D. Assessments of existing RSVP projects [DVSA §§ 201(f) and (g); 45 CFR 2553(f)]: The Corporation has set up a mechanism for consulting with RSVP project directors during the development and implementation of the assessment process. All existing RSVP grants will receive a report from the Corporation in a standardized format that assesses program strengths and weaknesses in a way that can assist the grantee with program improvement. This report will guide the Corporation's training and technical assistance for the project. The standardized report will, in addition to assessing the program's strengths and weaknesses, include:

1. An assessment of the extent to which the grantee meets or exceeds the performance measures, outcomes, and other criteria established for its grant;

2. An assessment of whether the project has adequately addressed the needs of the population and community it serves;

3. An assessment of the grant's efforts to collaborate with other community organizations, units of government, and entities providing services to seniors;

4. An assessment of the project's compliance with requirements for appropriate use of Federal funds, based on use of a protocol for fiscal management; and

5. An assessment of whether the project is in conformity with eligibility, outreach, enrollment, and other RSVP programmatic requirements.

To the maximum extent practicable, the report for each project will take into account input received from individuals who are knowledgeable about RSVP, including current or former employees of the Corporation and representatives of the communities served by RSVP volunteers.

The process of assessing existing RSVP grants will begin in Fiscal Year 2010 and run through Fiscal Year 2012, with the objective of completing the assessment and resulting training and technical assistance prior to conducting the initial cycle of grant competitions in Fiscal Year 2013.

E. Maintenance of volunteers and geographic service areas [DVSA § 201(e)(2)(B)(iv)]: The Corporation will ensure that (a) grants awarded as a result of the competitive selection process beginning in Fiscal Year 2013 are for at least the same number of volunteers annually as were supported for the service area during the previous grant cycle and (b) maintain a similar program distribution as was maintained during the previous grant cycle. In addition, the Corporation will minimize any disruption to RSVP volunteers that might result from implementing the competitive process of grantee selection.

F. Program Termination [DVSA § 201(g)(3); 45 CFR 2553.31]: Until 2013, the Corporation will continue to initiate termination or denial of an application for refunding in the event that a grantee does not meet one or more of the performance measures, outcomes, and other criteria established as described above. Any such termination or denial of refunding will follow the notification and due process currently followed in such cases, in accordance with Section 412 of the DVSA, as implemented by 45 CFR part 1206 Grants and Contracts—Suspension and Termination and Denial of Application for Refunding, except that after initiation of competition in FY 2013, the provisions governing denial of refunding will not apply to a grant that has been competed in accordance with 45 CFR 2553.71, and where the grantee has also completed its optional three-year renewal term.

G. Technical Assistance [DVSA § 201(h) and (j); 45 CFR 2553.71(f)]: The Corporation will develop procedures for providing technical assistance, including regular monitoring visits, to assist grantees in meeting the established performance measures, outcomes, and criteria. One component of such technical assistance, which was launched in October 2009, is an online resource guide available at *http://www.nationalserviceresources.org/rsvp-online-resource-guide*. The Corporation updates this online guide from time to time with examples of high-performing RSVP projects and other information.

H. Grant Extension for Purpose of New Competition [DVSA § 201(i); 2553.71(e)]: To minimize disruption to volunteers and services, if a grantee fails to meet one or more of the established performance measures, outcomes, and other criteria, the Corporation will continue to fund the current grantee for up to 12 months if the competition for a replacement sponsor has not resulted in a replacement sponsor. During those 12 months, the Corporation will conduct a new competition to serve the geographic area served by the current

grantee and reach out to other potential sponsors. The current grantee will be eligible for the new competition and, during the 12-month period, the Corporation may continue to provide training and technical assistance in meeting established performance measures.

All provisions of part 2553 not modified by the amendments described below will remain in effect, including the provision in § 2553(a) that a "Corporation grant may be awarded to fund up to 90 percent of the total project cost in the first year, 80 percent in the second year, and 70 percent in the third and succeeding years." Thus, the Corporation will continue to require that a current grantee applying for a new grant must contribute from non-Corporation funds at least 30 percent of the total project cost. A new applicant, on the other hand, will be required to contribute 10 percent in the first year of the grant, 20 percent in the second year, and 30 percent in the third and succeeding years.

III. Comments and Response

Of the 21 comments received, the vast majority of the comments pertained to clarification of the implementation of the proposed regulation but generally supported the regulation. The comments and our responses are set forth below.

Comment: Seven comments stated that specifying the "blended peer review panels that will include members with specialized expertise in senior service" is insufficient and encouraged the Corporation to utilize peer reviewers with specialized knowledge applicable to RSVP grants.

Response: The Corporation agrees and will engage peer review panelists that possess the appropriate expertise and knowledge base to meet the requirements of the SAA, and to participate in a robust and transparent competitive review process.

Comment: Seven comments suggested that site inspections be preceded by prior notice, as well as explicitly state that the purpose of the site visits is constructive, and not intended to be an evaluation of the particular program.

Response: The Corporation will clarify that the site inspections are a part of the competitive review intended to assist the Corporation during competition in clarifying aspects of an application or validating the capacity of an organization to administer a Federal grant, as well as other elements of the application review process, and are not part of technical assistance nor intended as a continuous improvement tool.

Comment: Twelve comments expressed concern that the development of performance measures would not be consistent with the Corporation's larger goals, nor would they reflect grantees' specific circumstances and local needs.

Response: The Corporation agrees that coordination between national standard measures and grantee initiated measures is essential. The Corporation's new strategic plan will help to inform how the overall performance measures will fit within a structure of national and local measures.

Comment: Nine comments suggested that if the Corporation consults meaningfully with grantees when providing the required pre-competition assessment, the process will go more smoothly and the results will be better. In addition, the process will be more efficient and more widely supported if the report for each project includes input not only from Corporation but from community representatives who actually work with, and benefit from, RSVP as well.

Response: The Corporation agrees with this comment, as the process for disseminating the pre-competition assessments to existing RSVP grantees includes one-on-one consultation between state program officers and grantee project directors, occurring upon the grantee's receipt of the assessment, and is designed to ensure the grantee receives appropriate technical assistance to maximize the effectiveness of the assessment. Additionally, the Community Stakeholder Survey was provided to all current grantees as a tool to measure how effectively an RSVP project builds meaningful, interactive community partnerships and identifies and addresses community needs from the perspective of the project's community stakeholders. The survey is designed to be completed by the group whom the grantee feels is the most appropriate.

Comment: Four comments stated support of the Corporation's intention to enroll at least the same number of volunteers as were supported during the previous grant cycle, but also inquired about the sponsor's corresponding responsibilities. Specifically, a commenter expressed concern about a sponsor's program responsibilities with regard to maintaining the number of volunteers, stating that the proposed language misinterprets Congressional intent in that the commenter believes the language in the statute is directed to the Corporation, not to the program sponsor.

Response: The Corporation believes that, as the grant-making entity, it has the responsibility and authority to require a program sponsor that is being replaced by a subsequent program sponsor to maintain the current requirements concerning the maintenance of volunteers and geographic service areas. The Corporation also maintains that the statutory requirement is not mutually exclusive, in that both the Corporation and project sponsors who are being replaced by subsequent sponsors have separate, independent responsibilities, in regard to the implementation of the competitive process, to "make every effort to minimize the disruption to volunteers." Therefore, § 2553.23(i) is merely the Corporation's implementation of this Congressional mandate.

Comment: Six comments stated that grantees should be able to work with the Corporation on the substance of the technical assistance provided to grantees.

Response: The Corporation agrees with this comment and has convened, and will continue to convene, a working group of project directors to consult on many aspects of preparing for competition, including technical assistance.

Comment: Six comments disagreed with the level of non-Corporation matching funds, which requires current grantees to maintain their required matching funds at a minimum of 30 percent of the total project cost.

Response: The proposed policy of requiring non-Corporation matching funds to be at a minimum of 30 percent of the total project cost when the incumbent is awarded another grant reflects an internal alignment with Corporation policy. The underlying rationale for the policy is that the incumbent has already achieved a level of program operations that supports the grant. New applicants are provided a comparable opportunity to achieve the same level of program operations.

IV. Effective Dates

The final rule takes effect July 11, 2011.

V. Regulatory Procedures

Executive Order 12866

The Corporation has determined that this rule is not an "economically significant" rule within the meaning of E.O. 12866 because it is not likely to result in: (1) An annual effect on the economy of $100 million or more, or an adverse and material effect on a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or state, local, or tribal government or communities; (2) the creation of a serious inconsistency or interference with an

action taken or planned by another agency; (3) a material alteration in the budgetary impacts of entitlement, grants, user fees, or loan programs or the rights and obligations of recipients thereof; or (4) the raising of novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in E.O. 12866. It is, however, a significant rule and has been reviewed by the Office of Management and Budget in accordance with E.O. 12866.

Executive Order 12866 and Executive Order 13563

Executive Orders 13563 and 12866 direct agencies to assess all costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects, distributive impacts, and equity). E.O. 13563 emphasizes the importance of quantifying both costs and benefits, of reducing costs, of harmonizing rules, and of promoting flexibility. This rule has been designated a "significant regulatory action" although not economically significant, under section 3(f) of E.O. 12866. Accordingly, the rule has been reviewed by the Office of Management and Budget.

Regulatory Flexibility Act

As required by the Regulatory Flexibility Act of 1980, 5 U.S.C. 605 (b), the Corporation certifies that this rule will not have a significant economic impact on a substantial number of small entities. This regulatory action will not result in (1) an annual effect on the economy of $100 million or more; (2) a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions; or (3) significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic and export markets. Therefore, the Corporation has not performed the initial regulatory flexibility analysis that is required under the Regulatory Flexibility Act, 5 U.S.C. 601 *et seq.*, for major rules that are expected to have such results.

Unfunded Mandates

For purposes of Title II of the Unfunded Mandates Reform Act of 1995, 2 U.S.C. 1531–1538, as well as Executive Order 12875, this regulatory action does not contain any federal mandate that may result in increased expenditures in either federal, state, local, or tribal governments in the aggregate, or impose an annual burden exceeding $100 million on the private sector.

Paperwork Reduction Act

This rule contains no information collection requirements and is therefore not subject to the requirements of the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 *et seq.*).

Executive Order 13132, Federalism

Executive Order 13132, *Federalism*, prohibits an agency from publishing any rule that has Federalism implications if the rule either imposes substantial direct compliance costs on state and local governments and is not required by statute, or the rule preempts state law, unless the agency meets the consultation and funding requirements of section 6 of the Executive Order. The rule does not have any Federalism implications, as described above.

List of Subjects in Part 2553

Aged, Grant programs—social programs, Volunteers.

For the reasons set forth in the preamble, the Corporation for National and Community Service amends 45 CFR part 2553 as follows:

PART 2553—THE RETIRED AND SENIOR VOLUNTEER PROGRAM

■ 1. The authority citation for part 2553 continues to read as follows:

Authority: 42 U.S.C. 4950 *et seq.*

■ 2. Amend § 2553.12 by:
■ a. Redesignating paragraphs (l) through (r) as paragraphs (m) through (s) respectively; and
■ b. Adding a new paragraph (l) to read as follows:

§ 2553.12 Definitions.

* * * * *

(l) *Performance measures.* Indicators intended to help determine the impact of an RSVP project on the community, including the volunteers. Performance measures currently include, but are not limited to, the following performance indicators:

(1) *Output indicator.* The amount or units of service that RSVP volunteers have completed, or the number of people the project has served. An output indicator does not provide information on benefits or other changes in the lives of the volunteers or the people served.

(2) *Outcome indicator.* Specifies a change that has occurred in the lives of the people served or the volunteers. It is an observable and measurable indication of whether or not a project is making progress toward its outcome target.

* * * * *

■ 3. Amend § 2553.23 by adding new paragraphs (i) and (j) to read as follows:

§ 2553.23 What are a sponsor's program responsibilities?

* * * * *

(i) Minimize any disruption to RSVP volunteers when one sponsor is replaced by another as a result of relinquishment, denial of refunding, or recompetition of a grant.

(j) Make every effort to meet such performance measures as may be established for the RSVP project by mutual agreement.

* * * * *

■ 4. Amend § 2553.31 by revising paragraph (c) to read as follows:

§ 2553.31 What are the rules on suspension, termination and denial of refunding of grants?

* * * * *

(c) Beginning in FY 2013, the procedures for suspension and termination of RSVP grants, which are specified in 45 CFR part 1206, shall continue to apply, but the procedures in part 1206 applicable to denial of refunding of an RSVP grantee shall not apply to any grant awarded through the competitive process described in § 2553.71 of this part.

* * * * *

■ 5. Revise § 2553.71 to read as follows:

§ 2553.71 What is the process for application and award of a grant?

As funds become available, the Corporation solicits applications for RSVP grants from eligible organizations through a competitive process.

(a) *What are the application requirements for an RSVP grant?* An applicant must:

(1) Submit required information determined by the Corporation.

(2) Demonstrate compliance with any applicable requirements specified in the Notice of Funding Availability or Notice of Funding Opportunity.

(b) *What process does the Corporation use to select new RSVP grantees?*

(1) The Corporation reviews and determines the merits of an application by its responsiveness to published guidelines and to the overall purpose and objectives of the program. In conducting its review during the competitive process, the Corporation considers the input and opinions of those serving on a peer review panel, including members with expertise in

senior service and aging, and may conduct site inspections, as appropriate.

(2) The selection process includes:

(i) Determining whether an application complies with the application requirements, such as deadlines, eligibility, and programmatic requirements, including performance measurement requirements;

(ii) Applying published selection criteria, as stated in the applicable Notice of Funding Availability or Notice of Funding Opportunity, to assess the quality of the application;

(iii) Applying any applicable priorities or preferences, as stated in the applicable Notice of Funding Availability or Notice of Funding Opportunity;

(iv) Ensuring innovation and geographic, demographic, and programmatic diversity across the Corporation's RSVP grantee portfolio; and

(v) Identifying the applications that most completely respond to the published guidelines and offer the highest probability of successfully carrying out the overall purpose and objectives of the program.

(c) *How is a grant awarded?* (1) Subject to the availability of funds, the award will be documented by a Notice of Grant Award (NGA).

(2) The Corporation and the sponsoring organization are parties to the NGA. The NGA will document the sponsor's commitment to fulfill specific programmatic objectives and financial obligations. It will document the extent of the Corporation's obligation to provide assistance to the sponsor.

(d) *What happens if the Corporation rejects an application?* The Corporation will return to the applicant an application that is not approved for funding, informing the applicant of the Corporation's decision.

(e) *For what period of time does the Corporation award a grant?* The Corporation awards an RSVP grant for a specified period that is 3 years in duration with an option for a grant renewal of 3 years, if the grantee's performance and compliance with grant terms and conditions are satisfactory. The Corporation will use the Denial of Refunding procedures set forth in 45 CFR part 1206 to deny funding to a grantee when the Corporation determines that the grant should not be renewed for an additional 3 years.

(f) *What assistance in preparation for competitive award of all RSVP grants will the Corporation provide to sponsors who have previously received a grant and whose grants are expiring in fiscal year 2011, 2012, or 2013?* (1) For each grant expiring in fiscal years 2011, 2012, or 2013, the Corporation will evaluate the grant, to the maximum extent practicable, in fiscal years 2010, 2011, and 2012, respectively.

(2) The evaluation will give particular attention to the different needs of rural and urban projects, including those serving Native American communities, and will evaluate the extent to which the sponsor meets or exceeds performance measures, outcomes, and other criteria established by the Corporation.

(3) To the maximum extent practicable, the Corporation will ensure that each evaluation is conducted by a review team made up of trained individuals who are knowledgeable about RSVP, including current or former employees of the Corporation and representatives of communities served by RSVP volunteers, who will provide their input and opinions concerning each grant.

(4) The Corporation will use the evaluation findings as the basis for providing recommendations for program improvement, and for the provision of training and technical assistance.

(5) The evaluation will assess:

(i) The project's strengths and areas in need of improvement;

(ii) Whether the project has adequately addressed population and community-wide needs;

(iii) The efforts of the project to collaborate with other community-based organizations, units of government, and entities providing services to seniors, taking into account barriers to such collaboration that such programs may encounter;

(iv) The project's compliance with the program requirements for the appropriate use of Federal funds as embodied in a protocol for fiscal management;

(v) To what extent the project is in conformity with the eligibility, outreach, enrollment, and other requirements for RSVP projects; and

(vi) The extent to which the project is achieving other measures of performance developed by the Corporation, in consultation with the review team.

■ 6. Add a new Subpart J to read as follows:

Subpart J—Performance Measures

Sec.

Subpart J—Performance Measurement

§ 2553.100 What is the purpose of this subpart?

This subpart sets forth the minimum performance measurement requirements for Corporation-funded Retired and Senior Volunteer Program (RSVP) projects.

§ 2553.101 What is the purpose of performance measurement?

The purpose of performance measurement is to strengthen the RSVP project and foster continuous improvement. Reporting on performance measures is used by the Corporation as part of assessing the impact of the project on the community and on the accomplishment of the objectives established in the Corporation's Strategic Plan. In addition, as part of the competitive process, performance measures are used to assess how an applicant for a grant approaches the design of volunteer activities and the measurement of their impact on community needs.

§ 2553.102 What performance measurement information must be part of an application for funding under RSVP?

An application to the Corporation for funding under RSVP must contain:

(a) Performance measures.

(b) Estimated performance data for the project years covered by the application.

(c) Actual performance data, where available, for the preceding completed project year.

§ 2553.103 Who develops the performance measures?

(a) An applicant is responsible for developing its own project-specific performance measures.

(b) In addition, the Corporation may establish performance measures that will apply to all Corporation-sponsored RSVP projects, which sponsors will be responsible for meeting.

§ 2553.104 What performance measures must be submitted to the Corporation and how are these submitted?

(a) An applicant for Corporation funds is required to submit at least one of each

of the following types of performance measures as part of their application. The Corporation will provide standard forms.

(1) Output indicators.

(2) Outcome indicators.

(b) An applicant must also submit any uniform performance measures the Corporation may establish for all applicants.

(c) The Corporation may specify additional requirements relating to performance measures on an annual basis in program guidance and related materials.

§ 2553.105 How are performance measures approved and documented?

(a) The Corporation reviews and approves performance measures for all applicants that apply for funding from the Corporation.

(b) An applicant must follow Corporation-provided guidance and formats provided when submitting performance measures.

(c) Final performance measures, as negotiated between the applicant and the Corporation, will be documented in the Notice of Grant Award (NGA).

§ 2553.106 How does a sponsor report performance measures to the Corporation?

The Corporation will set specific reporting requirements, including frequency and deadlines, concerning performance measures established in the grant award. A sponsor is required to report on the actual results that occurred when implementing the grant and to regularly measure the project's performance.

§ 2553.107 What must a sponsor do if it cannot meet its performance measures?

Whenever a sponsor finds it is not on track to meet its performance measures, it must develop a plan to get back on track or submit a request to the Corporation to amend its performance measures. The request must include all of the following:

(a) Why the project is not on track to meet its performance requirements;

(b) How the project has been tracking performance measures;

(c) Evidence of corrective steps taken;

(d) Any new proposed performance measures; and

(e) A plan to ensure that the project will meet the new proposed measure(s).

§ 2553.108 When may a sponsor change a project's performance measures?

Performance measures may be changed only if the Corporation approves the sponsor's request to do so.

§ 2553.109 What happens if a sponsor fails to meet the performance measures included in the Notice of Grant Award (NGA)?

If a sponsor fails to meet a target performance measure established in the NGA, the Corporation will negotiate a period of no more than one year for meeting the performance measure. At that point, if the sponsor still fails to meet the performance measure, the Corporation may take one or more of the following actions:

(a) Reduce the amount of the grant;

(b) Suspend, terminate, or deny refunding of the grant, in accordance with the provisions of Section 2553.31 of this part;

(c) Take this information into account in assessing any application from the organization for a new grant or augmentation of an existing grant under any program administered by the Corporation;

(d) Amend the terms of any Corporation grant to the organization; or

(e) Take other actions that the Corporation deems appropriate.

Dated: April 5, 2011.

Wilsie Y. Minor,

Acting General Counsel.

[FR Doc. 2011–8556 Filed 4–11–11; 8:45 am]

BILLING CODE 6050–28–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[MB Docket No. 10–264; RM–11615, DA 11–572]

Television Broadcasting Services; Decatur, IL

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: The Commission grants a petition for rulemaking filed by WAND(TV) Partnership ("WAND(TV)"), the licensee of WAND(TV), Decatur, Illinois, requesting the substitution of channel 17 for channel 18 at Decatur. WAND(TV) states that this channel substitution will expand service to a greater number of viewers and lessen the interference to its normally protected service area.

DATES: This rule is effective May 12, 2011.

FOR FURTHER INFORMATION CONTACT: Adrienne Y. Denysyk, *adrienne.denysyk@fcc.gov*, Media Bureau, (202) 418–1600.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's *Report and Order*, MB Docket No. 10–264, adopted March 29, 2011, and released March 30, 2011. 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://fjallfoss.fcc.gov/ecfs/*). 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 the company's Web site, *http://www.bcipweb.com*. To request materials in accessible formats for people with disabilities (braille, large print, electronic files, audio format), send an e-mail to *fcc504@fcc.gov* or call the Consumer & 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.

Federal Communications Commission.

Barbara A. Kreisman,

Chief, Video Division, Media Bureau.

Final Rule

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, and 339.

§ 73.622 [Amended]

■ 2. Section 73.622(i), the Post-Transition Table of DTV Allotments

under Illinois, is amended by adding channel 17 and removing channel 18 at Decatur.

[FR Doc. 2011–8753 Filed 4–11–11; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[DA 11–488]

Update Station License Expiration Dates

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: In this document the Federal Communications Commission updates its rules to reflect the current license expiration dates for radio and television broadcast stations. The current version of the rule specifies license expiration dates from 2011 through 2014 for radio stations and 2012 through 2015 for television stations; these expiration dates are long out of date. Modifying the rule will enable broadcast station licensees to quickly peruse the rule to determine when their stations' licenses will expire. It will also accurately reflect the expiration dates listed both in the Commission's data base and on the broadcast stations' most recent license or renewal authorization.

DATES: Effective April 12, 2011.

FOR FURTHER INFORMATION CONTACT: Michael Wagner 202–418–2775.

SUPPLEMENTARY INFORMATION: The Federal Communications Commission considers this rule to be a procedural rule change which is exempt from notice-and-comment under 5 U.S.C. 553(b)(3)(A).

This rule is not a significant rule for purposes of Executive Order 12866 and has not been reviewed by the Office of Management and Budget. As required by the Regulatory Flexibility Act, the Federal Communications Commission certifies that these regulatory amendments will not have a significant impact on small business entities.

The Commission will not send a copy of this item pursuant to the Congressional Review Act, *see* 5 U.S.C. 801(a)(1)(A), because the changes made involve only the year in which broadcast station licenses expire. There are no substantive or procedural changes to any rule.

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

List of Subjects in 47 CFR Part 73

Radio, Station license period, Television.

Federal Communications Commission.

William T. Lake,

Chief, Media Bureau.

Rule Changes

For the reasons set forth in the preamble, amend part 73 of title 47 of the Code of Federal Regulations as follows:

PART 73—TELECOMMUNICATIONS

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

Authority: 47 U.S.C. 154, 303, 334, 336, and 339.

■ 2. Revise § 73.1020(a)(1) through (18) to read as follows:

§ 73.1020 Station license period.

(a) * * *

(1) Maryland, District of Columbia, Virginia and West Virginia:

(i) Radio stations, October 1, 2011.

(ii) Television stations, October 1, 2012.

(2) North Carolina and South Carolina:

(i) Radio stations, December 1, 2011.

(ii) Television stations, December 1, 2012.

(3) Florida, Puerto Rico and the Virgin Islands:

(i) Radio stations, February 1, 2012.

(ii) Television stations, February 1, 2013.

(4) Alabama and Georgia:

(i) Radio stations, April 1, 2012.

(ii) Television stations, April 1, 2013.

(5) Arkansas, Louisiana and Mississippi:

(i) Radio stations, June 1, 2012.

(ii) Television stations, June 1, 2013.

(6) Tennessee, Kentucky and Indiana:

(i) Radio stations, August 1, 2012.

(ii) Television stations, August 1, 2013.

(7) Ohio and Michigan:

(i) Radio stations, October 1, 2012.

(ii) Television stations, October 1, 2013.

(8) Illinois and Wisconsin:

(i) Radio stations, December 1, 2012.

(ii) Television stations, December 1, 2013.

(9) Iowa and Missouri:

(i) Radio stations, February 1, 2013.

(ii) Television stations, February 1, 2014.

(10) Minnesota, North Dakota, South Dakota, Montana and Colorado:

(i) Radio stations, April 1, 2013.

(ii) Television stations, April 1, 2014.

(11) Kansas, Oklahoma and Nebraska:

(i) Radio stations, June 1, 2013.

(ii) Television stations, June 1, 2014.

(12) Texas:

(i) Radio stations, August 1, 2013.

(ii) Television stations, August 1, 2014.

(13) Wyoming, Nevada, Arizona, Utah, New Mexico and Idaho:

(i) Radio stations, October 1, 2013.

(ii) Television stations, October 1, 2014.

(14) California:

(i) Radio stations, December 1, 2013.

(ii) Television stations, December 1, 2014.

(15) Alaska, American Samoa, Guam, Hawaii, Mariana Islands, Oregon and Washington:

(i) Radio stations, February 1, 2014.

(ii) Television stations, February 1, 2015.

(16) Connecticut, Maine, Massachusetts, New Hampshire, Rhode Island and Vermont:

(i) Radio stations, April 1, 2014.

(ii) Television stations, April 1, 2015.

(17) New Jersey and New York:

(i) Radio stations, June 1, 2014.

(ii) Television stations, June 1, 2015.

(18) Delaware and Pennsylvania:

(i) Radio stations, August 1, 2014.

(ii) Television stations, August 1, 2015.

* * * * *

[FR Doc. 2011–8752 Filed 4–11–11; 8:45 am]

BILLING CODE 6712–01–P

DEPARTMENT OF STATE

48 CFR Parts 604, 637 and 652

RIN 1400–AC32

[Public Notice 7262]

Department of State Acquisition Regulation

AGENCY: State Department.

ACTION: Final rule.

SUMMARY: This final rule adds a contract clause to the Department of State Acquisition Regulation (DOSAR) to implement the Department's procedures regarding personal identity verification of contractor personnel, as required by Homeland Security Presidential Directive 12 (HSPD–12), Policy for a Common Identification Standard for Federal Employees and Contractors, and

Federal Information Processing Standards Publication (FIPS PUB) Number 201, Personal Identity Verification (PIV) of Federal Employees and Contractors. This clause will apply to contracts that require contractor employees to perform on-site at a Department of State location and/or that require contractor employees to have access to Department information systems.

DATES: *Effective Date:* This rule is effective May 12, 2011.

FOR FURTHER INFORMATION CONTACT: Barbara Latvanas, Procurement Analyst, Department of State, Office of the Procurement Executive, 2201 C Street, NW., Suite 900, State Annex Number 27, Washington, DC 20522; *telephone number:* 703–516–1755; *e-mail address: LatvanasBA@state.gov.*

SUPPLEMENTARY INFORMATION: The Department published a proposed rule, Public Notice 5992 at 72 FR 64980, November 19, 2007, with a request for comments. The rule was proposed to implement the contractor personal identification requirements of Homeland Security Presidential Directive 12 (HSPD–12), and Federal Information Processing Standards Publication (FIPS PUB) Number 201, Personal Identity Verification (PIV) of Federal Employees and Contractors. (See 71 FR 208, January 3, 2006). As specified in the proposed rule, the DOSAR clause directs contractors to an Internet Web site document that outlines the personal identity verification procedures for various types of contractors (cleared and uncleared), location of performance (domestic and overseas facilities), and the access requirements (physical and/or logical). The rule was discussed in detail in Public Notice 5992. No public comments were received. The Department is now promulgating a final rule with no changes from the proposed rule.

Regulatory Findings

Administrative Procedure Act

The Department of State does not consider this rule to be a "significant regulatory action" under Executive Order 12866, section 3(f), Regulatory Planning and Review. In addition, the Department is exempt from Executive Order 12866 except to the extent that it is promulgating regulations in conjunction with a domestic agency that are significant regulatory actions. The Department has nevertheless reviewed the regulation to ensure its consistency with the regulatory philosophy and principles set forth in that Executive Order.

Regulatory Flexibility Act

The Department of State, in accordance with the Regulatory Flexibility Act (5 U.S.C. 605(b)), has reviewed this regulation and, by approving it, certifies that this rule will not have a significant economic impact on a substantial number of small entities.

Unfunded Mandates Act of 1995

This rule will not result in the expenditure by State, local, and tribal governments, in the aggregate, or by the private sector, of $100 million or more in any year and it will not significantly or uniquely affect small governments. Therefore, no actions were deemed necessary under the provisions of the Unfunded Mandates Act of 1995.

Small Business Regulatory Enforcement Fairness Act of 1996

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

Executive Order 13563 and Executive Order 12866

The Department of State does not consider this rule to be a "significant regulatory action" under Executive Order 12866, section 3(f), Regulatory Planning and Review, as amended by Executive Order 13563. In addition, the Department is exempt from Executive Order 12866 except to the extent that it is promulgating regulations in conjunction with a domestic agency that are significant regulatory actions. The Department has nevertheless reviewed the regulation to ensure its consistency with the regulatory philosophy and principles set forth in that Executive Order.

Executive Order 13132

This rule will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with section 6 of Executive Order 13132, it is determined that this rule does not have sufficient federalism implications to require consultations or warrant the preparation of a federalism summary impact statement.

Paperwork Reduction Act

Information collection requirements have been approved under the Paperwork Reduction Act of 1980 by OMB, and have been assigned OMB control number 1405–0050.

List of Subjects in 48 CFR Parts 604, 637 and 652

Government procurement, Electronic commerce, Contracts.

Accordingly, for reasons set forth in the preamble, title 48, chapter 6 of the Code of Federal Regulations is amended as follows:

■ 1. The authority citation for 48 CFR parts 604, 637 and 652 continue to read as follows:

Authority: 40 U.S.C. 486(c); 22 U.S.C. 2658.

Subchapter A—General

PART 604—ADMINISTRATIVE MATTERS

■ 2. Add subpart 604.13 to read as follows:

Subpart 604.13—Personal Identity Verification of Contractor Personnel

Sec.
604.1300 Policy.
604.1301 Contract clause.
604.1301–70 DOSAR contract clause.

Subpart 604.13—Personal Identity Verification of Contractor Personnel

604.1300 Policy.

The DOS official responsible for verifying contractor employee personal identity is the Assistant Secretary for Diplomatic Security.

604.1301 Contract clause.

604.1301–70 DOSAR contract clause.

The contracting officer shall insert the clause at 652.204–70, Department of State Personal Identification Card Issuance Procedures, in solicitations and contracts that require contractor employees to perform on-site at a DOS location and/or that require contractor employees to have access to DOS information systems.

Subchapter F—Special Categories of Contracting

PART 637—SERVICE CONTRACTING

■ 3. Section 637.110 is amended by removing paragraph (b) and

redesignating paragraphs (c) and (d) as paragraphs (b) and (c), respectively.

Subchapter H—Clauses and Forms

PART 652—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

■ 4. Add § 652.204–70 to read as follows:

652.204–70 Department of State Personal Identification Card Issuance Procedures.

As prescribed in 604.1301–70, insert the following clause:

Department of State Personal Identification Card Issuance Procedures (MAY 2011)

(a) The Contractor shall comply with the Department of State (DOS) Personal Identification Card Issuance Procedures for all employees performing under this contract who require frequent and continuing access to DOS facilities, or information systems. The Contractor shall insert this clause in all subcontracts when the subcontractor's employees will require frequent and continuing access to DOS facilities, or information systems.

(b) The DOS Personal Identification Card Issuance Procedures may be accessed at *http://www.state.gov/m/ds/rls/rpt/c21664.htm.*

(End of clause)

■ 5. Section 652.237–71 is removed and reserved.

■ 6. Section 652.237–72 is amended by removing "637.110(c)" and adding "637.110(b)" in its place in the introductory text.

■ 7. Section 652.237–73 is revised by removing "637.110(d)" and adding "637.110(c)" in its place in the introductory text.

Dated: March 28, 2011.

Corey M. Rindner,

Procurement Executive, Bureau of Administration, Department of State.

[FR Doc. 2011–8720 Filed 4–11–11; 8:45 am]

BILLING CODE 4710–24–P

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

49 CFR Part 541

[Docket No. NHTSA–2011–0026]

RIN 2127–AK91

Federal Motor Vehicle Theft Prevention Standard; Final Listing of 2012 Light Duty Truck Lines Subject to the Requirements of This Standard and Exempted Vehicle Lines for Model Year 2012

AGENCY: National Highway Traffic Safety Administration (NHTSA), Department of Transportation.

ACTION: Final rule.

SUMMARY: This final rule announces NHTSA's determination that there are no new model year (MY) 2012 light duty truck lines subject to the parts-marking requirements of the Federal motor vehicle theft prevention standard because they have been determined by the agency to be high-theft or because they have a majority of interchangeable parts with those of a passenger motor vehicle line. This final rule also identifies those vehicle lines that have been granted an exemption from the parts-marking requirements because the vehicles are equipped with antitheft devices determined to meet certain statutory criteria.

DATES: *Effective Date:* The amendment made by this final rule is effective April 12, 2011.

FOR FURTHER INFORMATION CONTACT: Ms. Rosalind Proctor, Consumer Standards Division, Office of International Policy, Fuel Economy and Consumer Programs, NHTSA, West Building, 1200 New Jersey Avenue, SE., (NVS–131, Room W43–302) Washington, DC 20590. Ms. Proctor's telephone number is (202) 366–4931. Her fax number is (202) 493–0073.

SUPPLEMENTARY INFORMATION: The theft prevention standard applies to (1) all passenger car lines; (2) all multipurpose passenger vehicle (MPV) lines with a gross vehicle weight rating (GVWR) of 6,000 pounds or less; (3) low-theft light-duty truck (LDT) lines with a GVWR of 6,000 pounds or less that have major parts that are interchangeable with a majority of the covered major parts of passenger car or MPV lines; and (4) high-theft light-duty truck lines with a GVWR of 6,000 pounds or less.

The purpose of the theft prevention standard (49 CFR part 541) is to reduce the incidence of motor vehicle theft by facilitating the tracing and recovery of parts from stolen vehicles. The standard seeks to facilitate such tracing by requiring that vehicle identification numbers (VINs), VIN derivative numbers, or other symbols be placed on major component vehicle parts. The theft prevention standard requires motor vehicle manufacturers to inscribe or affix VINs onto covered original equipment major component parts, and to inscribe or affix a symbol identifying the manufacturer and a common symbol identifying the replacement component parts for those original equipment parts, on all vehicle lines subject to the requirements of the standard.

Section 33104(d) provides that once a line has become subject to the theft prevention standard, the line remains subject to the requirements of the standard unless it is exempted under § 33106. Section 33106 provides that a manufacturer may petition annually to have one vehicle line exempted from the requirements of § 33104, if the line is equipped with an antitheft device meeting certain conditions as standard equipment. The exemption is granted if NHTSA determines that the antitheft device is likely to be as effective as compliance with the theft prevention standard in reducing and deterring motor vehicle thefts.

The agency annually publishes the names of those LDT lines that have been determined to be high theft pursuant to 49 CFR part 541, those LDT lines that have been determined to have major parts that are interchangeable with a majority of the covered major parts of passenger car or MPV lines and those vehicle lines that are exempted from the theft prevention standard under section 33104. Appendix A to Part 541 identifies those LDT lines that are or will be subject to the theft prevention standard beginning in a given model year. Appendix A–I to Part 541 identifies those vehicle lines that are or have been exempted from the theft prevention standard.

For MY 2012, there are no new LDT lines that will be subject to the theft prevention standard in accordance with the procedures published in 49 CFR part 542. Therefore, Appendix A does not need to be amended.

For MY 2012, the list of lines that have been exempted by the agency from the parts-marking requirements of Part 541 is amended to include nine vehicle lines newly exempted in full. The nine exempted vehicle lines are the BMW Carline X1, Chrysler Fiat 500, Ford Fusion, Chevrolet Sonic, Range Rover Evoque, Outlander Sport, Suzuki Kizashi, Toyota Corolla and the VW Audi A8.

We note that the agency removes from the list being published in the **Federal Register** each year certain vehicle lines that have been discontinued more than 5 years ago. Therefore, the Buick LeSabre, Buick Park Avenue (1992–2005), Buick Regal/Century, Chevrolet Cavalier, Chevrolet Classic, Oldsmobile Alero, Oldsmobile Aurora, Pontiac Bonneville, Pontiac GrandAm, Pontiac Sunfire, Acura CL, Acura NSX, Acura RL, Isuzu Axiom and the Mazda Millennia have been removed from the Appendix A–I listing. The agency will continue to maintain a comprehensive database of all exemptions on our Web site. However, we believe that re-publishing a list containing vehicle lines that have not been in production for a considerable period of time is unnecessary.

The vehicle lines listed as being exempt from the standard have previously been exempted in accordance with the procedures of 49 CFR part 543 and 49 U.S.C., 33106. Therefore, NHTSA finds for good cause that notice and opportunity for comment on these listings are unnecessary. Further, public comment on the listing of selections and exemptions is not contemplated by 49 U.S.C. Chapter 331. For the same reasons, since this revised listing only informs the public of previous agency actions and does not impose additional obligations on any party, NHTSA finds for good cause that the amendment made by this notice should be effective as soon as it is published in the **Federal Register**.

Regulatory Impacts

A. Executive Order 12866 and DOT Regulatory Policies and Procedures Executive Order 12866, "Regulatory Planning and Review" (58 FR 51735, October 4, 1993), provides for making determinations whether a regulatory action is "significant" and therefore subject to Office of Management and Budget (OMB) review and to the requirements of the Executive Order. The Order defines a "significant regulatory action" as one that is likely to result in a rule that may:

(1) Have an annual effect on the economy of $100 million or more or adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or Tribal governments or communities;

(2) Create a serious inconsistency or otherwise interfere with an action taken or planned by another agency;

(3) Materially alter the budgetary impact of entitlements, grants, user fees, or loan programs or the rights and obligations of recipients thereof; or

(4) Raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in the Executive Order.

This final rule was not reviewed under Executive Order 12866. It is not significant within the meaning of the DOT Regulatory Policies and Procedures. It will not impose any new burdens on vehicle manufacturers. This document informs the public of previously granted exemptions. Since the only purpose of this final rule is to inform the public of previous actions taken by the agency no new costs or burdens will result.

B. Regulatory Flexibility Act

The Regulatory Flexibility Act of 1980 (5 U.S.C. 601 *et seq.*) requires agencies to evaluate the potential effects of their rules on small businesses, small organizations and small governmental jurisdictions. I have considered the effects of this rulemaking action under the Regulatory Flexibility Act and certify that it would not have a significant economic impact on a substantial number of small entities. As noted above, the effect of this final rule is only to inform the public of the agency's previous actions.

C. National Environmental Policy Act

NHTSA has analyzed this final rule for the purposes of the National Environmental Policy Act. The agency has determined that implementation of this action will not have any significant impact on the quality of the human environment. Accordingly, no environmental assessment is required.

D. Executive Order 13132 (Federalism)

The agency has analyzed this rulemaking in accordance with the principles and criteria contained in Executive Order 13132 and has determined that it does not have sufficient Federal implications to warrant consultation with State and local officials or the preparation of a federalism summary impact statement.

E. Unfunded Mandates Act

The Unfunded Mandates Reform Act of 1995 requires agencies to prepare a written assessment of the costs, benefits and other effects of proposed or final rules that include a Federal mandate likely to result in the expenditure by State, local or tribal governments, in the aggregate, or by the private sector, of more than $100 million annually ($120.7 million as adjusted annually for inflation with base year of 1995). The assessment may be combined with other assessments, as it is here.

This final rule will not result in expenditures by State, local or tribal governments or automobile manufacturers and/or their suppliers of more than $120.7 million annually. This document informs the public of previously granted exemptions. Since the only purpose of this final rule is to inform the public of previous actions taken by the agency, no new costs or burdens will result.

F. Executive Order 12988 (Civil Justice Reform)

Pursuant to Executive Order 12988, "Civil Justice Reform" [1] the agency has considered whether this final rule has any retroactive effect. We conclude that it would not have such an effect. In accordance with § 33118 when the Theft Prevention Standard is in effect, a State or political subdivision of a State may not have a different motor vehicle theft prevention standard for a motor vehicle or major replacement part. 49 U.S.C. 33117 provides that judicial review of this rule may be obtained pursuant to 49 U.S.C. 32909. Section 32909 does not require submission of a petition for reconsideration or other administrative proceedings before parties may file suit in court.

G. Paperwork Reduction Act

The Department of Transportation has not submitted an information collection request to OMB for review and clearance under the Paperwork Reduction Act of 1995 (Pub. L. 104–13, 44 U.S.C. Chapter 35). This rule does not impose any new information collection requirements on manufacturers.

List of Subjects in 49 CFR Part 541

Administrative practice and procedure, Labeling, Motor vehicles, Reporting and recordkeeping requirements.

In consideration of the foregoing, 49 CFR Part 541 is amended as follows:

PART 541—[AMENDED]

■ 1. The authority citation for Part 541 continues to read as follows:

Authority: 49 U.S.C. 33101, 33102, 33103, 33104, 33105 and 33106; delegation of authority at 49 CFR 1.50.

■ 2. In Part 541, Appendix A–I is revised to read as follows:

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[1] *See* 61 FR 4729, February 7, 1996.

Appendix A-I to Part 541 – Lines With Antitheft Devices Which are Exempted From the Parts-Marking Requirements of This Standard Pursuant to 49 CFR Part 543

Manufacturer	Subject Lines
BMW	MINI
	X1[1]
	X3
	X5
	Z4
	1 Car Line
	3 Car Line
	5 Car Line
	6 Car Line
	7 Car Line
CHRYSLER	300C
	Fiat 500[1]
	Town and Country MPV
	Jeep Grand Cherokee
	Jeep Patriot
	Jeep Wrangler
	Dodge Charger
	Dodge Challenger
	Dodge Journey
	Dodge Magnum (2008)
FORD MOTOR CO	Escape
	Explorer
	Five-Hundred (2007)
	Focus
	Fusion[1]
	Lincoln Town Car
	Mustang
	Mecury Mariner
	Mercury Grand Marquis
	Mercury Sable
	Taurus
	Taurus X
GENERAL MOTORS	Buick Lucerne
	Buick LaCrosse
	Cadillac CTS
	Cadillac DTS/Deville
	Chevrolet Camaro
	Chevrolet Cobalt (2005-2010)
	Chevrolet Corvette
	Chevrolet Cruze

[1] Granted an exemption from the parts marking requirements beginning with MY 2012.

Manufacturer	Subject Lines
	Chevrolet Equinox
	Chevrolet Impala/Monte Carlo
	Chevrolet Malibu/Malibu Maxx
	Chevrolet Sonic[1]
	Chevrolet Uplander
	GMC Terrain
	Pontiac G6
	Pontiac Grand Prix
	Saturn Aura
HONDA	Acura TL
HYUNDAI	Azera
	Genesis
	VI
JAGUAR	XJ
	XK
	Land Rover Range Rover Evoque[1]
KIA	Amanti
MAZDA	2
	3
	5
	6
	CX-7
	CX-9
	MX-5 Miata
	Tribute
MERCEDES-BENZ	smart USA fortwo
	SL-Class (the models within this line are):
	SL550
	SL600
	SL55
	SL 63/AMG
	SL 65/AMG
	SLK-Class [2](the models within this line are):
	SLK 300
	SLK 350
	SLK 55 AMG

[1] Granted an exemption from the parts marking requirements beginning with MY 2012.

Manufacturer	Subject Lines
	S-Class/CL-Class (the models within this line are):
	S450
	S500
	S550
	S600
	S55
	S65
	CL500
	CL600
	CL55
	CL65
	C-Class/CLK-Class (the models within this line are):
	C240
	C300
	C350
	CLK 350
	CLK 550
	CLK 63AMG
	E-Class/CLS Class (the models within this line are):
	E320/E320DT CDi
	E350/E500/E55
	CLS500/CLS55
MITSUBISHI	Eclipse
	Endeavor
	Galant
	Lancer
	Outlander
	Outlander Sport[1]
NISSAN	Altima
	Cube
	Maxima
	Murano

[1] Granted an exemption from the parts marking requirements beginning with MY 2012.

[2] Granted an exemption from the parts marking requirements beginning with MY 2010.

Manufacturer	Subject Lines
	Pathfinder
	Quest
	Rogue
	Sentra
	Versa (2008-2011)[2]
	Versa Hatchback
	Infiniti G[3]
	Infiniti M[4]
PORSCHE	911
	Boxster/Cayman
	Panamera
SAAB	9-3
	9-5
SUBARU	Forester
	Impreza
	Legacy
	B9 Tribeca
	Outback
SUZUKI	Kizashi[1]
	XL-7
TOYOTA	Camry
	Corolla[1]
	Lexus ES
	Lexus GS
	Lexus LS
	Lexus SC
VOLKSWAGEN	Audi A3
	Audi A4
	Audi Allroad
	Audi A6
	Audi A8[1]
	Audi Q5
	New Beetle
	Golf/Rabbit/GTI/R32
	Jetta
	Passat[5]
	Tiguan

[1] Granted an exemption from the parts marking requirements beginning with MY 2012.

[2] (Old) Versa nameplate was changed to the Versa Hatchback beginning with MY 2012.

[3] Infiniti G line include the G25, G35 and G37 models

[4] Infiniti M line include the M35, M37, M45 and M56 models

[5] Passat line includes the CC model.

Issued on: April 7, 2011.

Joseph S. Carra,

Acting Associate Administrator for Rulemaking.

[FR Doc. 2011–8744 Filed 4–11–11; 8:45 am]

BILLING CODE 4910–59–C

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 218

RIN 0648–AX11

Taking and Importing Marine Mammals; U.S. Navy's Research, Development, Test, and Evaluation Activities Within the Naval Sea Systems Command Naval Undersea Warfare Center Keyport Range Complex

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

ACTION: Final rule.

SUMMARY: NMFS, upon application from the U.S. Navy (Navy), is issuing regulations to govern the unintentional taking of marine mammals incidental to activities conducted at the Naval Sea Systems Command (NAVSEA) Naval Undersea Warfare Center (NUWC) Keyport Range Complex for the period of April 2011 through April 2016. The Navy's activities are considered military readiness activities pursuant to the Marine Mammal Protection Act (MMPA), as amended by the National Defense Authorization Act for Fiscal Year 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 timeframes, 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-April 11, 2011 through April 11, 2016.

ADDRESSES: A copy of the Navy's application (which contains a list of the references used in this document), NMFS' Record of Decision (ROD), and other documents cited herein may be obtained by writing to Michael Payne, Chief, Permits, Conservation and Education Division, Office of Protected Resources, National Marine Fisheries Service, 1315 East-West Highway, Silver Spring, MD 20910–3225 or by telephone via the contact listed here (*see* **FOR FURTHER INFORMATION CONTACT**). Additionally, the Navy's LOA application may be obtained by visiting the Internet at: *http://www-keyport.kpt.nuwc.navy.mil/EIS_Home.htm.*

FOR FURTHER INFORMATION CONTACT: Shane Guan, Office of Protected Resources, NMFS, (301) 713–2289, ext. 137.

SUPPLEMENTARY INFORMATION: Extensive Supplementary Information was provided in the proposed rule for this activity, which was published in the **Federal Register** on Tuesday, July 7, 2009 (74 FR 32264). This information will not be reprinted here in its entirety; rather, all sections from the proposed rule will be represented herein and will contain either a summary of the material presented in the proposed rule or a note referencing the page(s) in the proposed rule where the information may be found. Any information that has changed since the proposed rule was published will be addressed herein. Additionally, this final rule contains a section that responds to the comments received during the public comment period.

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 marine mammals by U.S. citizens who engage in a specified activity (other than commercial fishing) during periods of not more than five consecutive years each if certain findings are made and regulations are issued or, if the taking is limited to harassment, notice of a proposed authorization is provided to the public for review.

Authorization shall be granted if NMFS finds that the taking will have a negligible impact on the species or stock(s), will not have an unmitigable adverse impact on the availability of the species or stock(s) for subsistence uses, and if the permissible methods of taking and requirements pertaining to the mitigation, monitoring and reporting of such taking are set forth.

NMFS has defined "negligible impact" in 50 CFR 216.103 as an impact resulting from the specified activity that cannot be reasonably expected to, and is not reasonably likely to, adversely affect the species or stock through effects on annual rates of recruitment or survival.

The NDAA (Pub. L. 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): 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 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 May 15, 2008, NMFS received an application from the Navy requesting authorization for the take of 5 species of marine mammals incidental to the RDT&E activities within the NAVSEA NUWC Keyport Range Complex Extension over the course of 5 years. These RDT&E activities are classified as military readiness activities. On April 29, 2009, NMFS received additional information and clarification on the Navy's proposed NAVSEA NUWC Keyport Range Complex Extension RDT&E activities. The Navy states that these RDT&E activities may cause various impacts to marine mammal species in the proposed action area. The Navy requests an authorization to take individuals of these marine mammals by Level B Harassment. Please refer to Tables 6–23, 6–24, 6–25, and 6–26 of the Navy's Letter of Authorization (LOA) application for detailed information of the potential marine mammal exposures from the RDT&E activities in the Keyport Range Complex Extension per year. However, due to the proposed mitigation and monitoring measures and standard range operating procedures in place, NMFS estimates that the take of marine mammals is likely to be lower than the amount requested. NMFS does not expect any marine mammals to be killed or injured as a result of the Navy's proposed activities, and NMFS is not proposing to authorize any injury or mortality incidental to the Navy's proposed RDT&E activities within the Keyport Range Complex Extension.

Background of Navy Request

The proposed rule contains a description of the Navy's mission, their responsibilities pursuant to Title 10 of the United States Code, and the specific purpose and need for the activities for which they requested incidental take authorization. The description

contained in the proposed rule has not changed (74 FR 32264; July 7, 2009; pages 32264–32265).

Description of the Specified Activities

The proposed rule contains a complete description of the Navy's specified activities that are covered by these final regulations, and for which the associated incidental take of marine mammals will be authorized in the related LOAs. The proposed rule describes the nature and levels of the RDT&E activities and the proposed range extension. These RDT&E activities consist of testing that involves active acoustic devices such as general range tracking, unmanned undersea vehicle (UUV) tracking systems, torpedo sonars, range targets and special tests, special sonars, sonobuoys and helicopter dipping sonar, side scan sonar, and other acoustic sources (acoustic modem, target simulators, navigation aids, sub-bottom profilers, and vessel engines, *etc.*); and testing that involves non-acoustic activities such as magnetic, oceanographic sensor, laser imaging detection and ranging, and inert mine hunting and inert mine clearing exercises. Since NMFS does not believe that those range activities involving non-acoustic testing will have adverse impacts to marine mammals, they were not analyzed further and will not be covered under this rule.

The proposed regulations were drafted in such a way that the Navy's specified actions were strictly defined by the amounts of each type of sound source utilized (*e.g.*, hours of source use) over the course of the 5-year regulations. Following the issuance of the proposed rule, the Navy realized that their evolving RDT&E programs necessitate greater flexibility in both the *types* and *amounts* of sound sources that they use.

The Navy regularly modifies or develops new technology, often in the way of sound sources that are similar to, but not exactly the same as, other sources. In this final rule, we increase flexibility by inserting language into § 218.170(c) that will allow for authorization of take incidental to the previously identified specified activities and sources or to "similar activities and sources," provided that the implementation of these changes in annual LOAs does not result in exceeding the incidental take analyzed and identified in the final rules.

Regarding amounts of sound source use, the proposed regulations only allowed for the authorization of take incidental to a 5-yr maximum amount of use for each specific sound source, even though in most cases our effects analyses do not differentiate the impacts from the majority of the different types of sources. Specifically, although some sonar sources are louder or put more acoustic energy into the water in a given amount of time, which results in more marine mammal takes, we do not differentiate between the individual takes that result from one source versus another. In this final rule, we increase flexibility by including language in § 218.170(c)(2) that allows for inter-annual variability in the amount of source use identified in each annual LOA (*i.e.*, one year the Navy could use a lot of one source, and little of another, and the next year those amounts could be reversed), provided it does not result in exceeding the incidental take analyzed and identified in the final rules. These technical regulatory modifications do not change the analyses conducted in the proposed rule.

No other changes have been made in this section from the proposed rule (74 FR 32264; July 7, 2009; pages 32265–32268). Tables 1 through 4 summarize the projected days of use by range site, primary acoustic sources commonly used within the NAVSEA NUWC Keyport Range Complex and their operating hours, and the proposed annual range activities and operations, respectively.

TABLE 1—PROJECTED ANNUAL DAYS OF USE BY RANGE SITE

	Keyport range site	DBRC site	QUTR site—offshore	QUTR site—surf zone
Current	55	200	14	0
Proposed	60	200	16	30

TABLE 2—PRIMARY ACOUSTIC SOURCES COMMONLY USED WITHIN THE NAVSEA NUWC KEYPORT RANGE COMPLEX AND THEIR ANNUAL OPERATING HOURS

Source	Frequency (kHz)	Max. source level (dB re 1 µPa @ 1 m)	Keyport site operating hours/yr	DBRC site operating hours/yr	QUTR site operating hours/yr	All sites total operating hours/yr
Sonar						
General range tracking	10–100	195 (at Keyport Site); 203 (at DBRC & QUTR Sites).	108.90	95.00	300.60	504.50
UUV Payloads	10–100	195	42.00	100.00	24.00	166.00
Torpedoes	10–100	233	1.00	17.50	2.50	21.00
Range targets and special tests.	5–100	195 (at Keyport Site);. 238 (at DBRC & QUTR Sites).	1.33	6.67	1.00	9.00
Special sonars (non-Navy, shore/pier static testing, diver activities) & Fleet Aircraft (active sonobuoys & dipping sonars).	2–2,500	225–235	105.00	120.00	96.00	321.00
Side-scan	100–700	235	42.00	100.00	24.00	166.00

TABLE 2—PRIMARY ACOUSTIC SOURCES COMMONLY USED WITHIN THE NAVSEA NUWC KEYPORT RANGE COMPLEX AND THEIR ANNUAL OPERATING HOURS—Continued

Source	Frequency (kHz)	Max. source level (dB re 1 µPa @ 1 m)	Keyport site operating hours/yr	DBRC site operating hours/yr	QUTR site operating hours/yr	All sites total operating hours/yr
Other Acoustic Sources						
Acoustic modems	10–300	210	41.00	100.00	24.00	166.00
Sub-bottom profiler	2–7	210	80.00	80.00	32.00	192.00
	35–45	220				
Target simulator (surface vessels, submarines, torpedoes, and UUV engine noise).	0.05—10	170	1.33	20.00	2.99	24.33

TABLE 3—PROPOSED ANNUAL RANGE ACTIVITIES AND OPERATIONS

Range activity	*Platform/system used*	*Proposed number of activities/year**		
		Keyport range site	*DBRC site*	*QUTR site*
Test Vehicle Propulsion	Thermal propulsion systems	5	130	30
	Electric/Chemical propulsion systems	55	140	30
Other Testing Systems and Activities.	Submarine testing	0	45	15
	Inert mine detection, classification and localization	5	20	10
	Non-Navy testing	5	5	5
	Acoustic & non-acoustic sensors (magnetic array, oxygen)	20	10	5
	Countermeasure test	5	50	5
	Impact testing	0	10	5
	Static in-water testing	10	10	6
	UUV test	45	120	40
	Unmanned Aerial System (UAS) test	0	2	2
Fleet Activities** (excluding RDT&E).	Surface Ship activities	1	10	10
	Aircraft activities	0	10	10
	Submarine activities	0	30	30
	Diver activities	45	5	15
Deployment Systems (RDT&E)	Range support vessels:			
	Surface launch craft	35	180	30
	Special purpose barges	25	75	0
	Fleet vessels***	15	20	20
	Aircraft (rotary and fixed wing)	0	10	20
	Shore and pier	45	30	30

* There may be several activities in 1 day. These numbers provide an estimate of types of range activities over the year.
** Fleet activities in the NAVSEA NUWC Keyport Range Complex do not include the use of surface ship and submarine hull-mounted active sonars.
*** As previously noted, Fleet vessels can include very small craft such as SEAL Delivery Vehicles.

Description of Marine Mammals in the Area of the Specified Activities

The information on marine mammals and their distribution and density are based on data gathered from NMFS, United States Fish and Wildlife Service (USFWS) and recent references, literature searches of search engines, peer review journals, and other technical reports, to provide a regional context for each species. The data were compiled from available sighting records, literature, satellite tracking, and stranding and by-catch data.

A total of 24 cetacean species and subspecies and 4 pinniped species are known to occur in Washington State waters; however, several are seen only rarely. Seven of these marine mammal species are listed as Federally-endangered under the Endangered Species Act (ESA) occur or have the potential to occur in the proposed action area: Blue whale (*Balaenoptera musculus*), fin whale (*B. physalus*), Sei whale (*B. borealis*), humpback whale (*Megaptera novaengliae*), north Pacific right whale (*Eubalaena japonica*), sperm whale (*Physeter macrocephalus*), and the southern resident population of killer whales (*Orcinus orca*). The species, Steller sea lion (*Eumetopias jubatus*), is listed as threatened under the ESA. The Description of Marine Mammals in the Area of the Specified Activities section has not changed from what was in the proposed rule (74 FR 32264; July 7, 2009; pages 32268–32273). Lists of marine mammal species known to occur or potentially occur within the Keyport, DBRC, and QUTR sites are shown in Tables 4, 5, and 6, respectively.

TABLE 4—MARINE MAMMAL KNOWN TO OCCUR OR POTENTIALLY OCCUR WITHIN THE KEYPORT ACTION AREA

Species	ESA/MMPA status	Occurrence in keyport action area	Density estimate (km^3)	
			Warm Season	Cold Season
Cetacean				
Mysticetes				
Minke whale	-/-	Very rare, year round	[a] 0	[a] 0
Humpback whale	E/D	Very rare, warm season; has never been recorded in action area.	[a] 0	[a] 0
Gray whale	-/-	Very rare, migrant and summer/fall resident population in primarily northern Puget Sound.	[a] 0	[a] 0
Odontocetes				
Killer whale:				
Transient	-/-	Very rare, year round; has never been recorded in action area.	[a] 0	[a] 0
S. Resident	E, CH/D	Very rare, summer/fall season; has never been recorded in action area..	[a] 0	[a] 0
Dall's porpoise	-/-	Rare, year round.	[a] 0	[a] 0
Pinnipeds				
Harbor seal	-/-	Common year-round resident	0.55	0.55
California sea lion	-/-	Rare, cold season	[a] 0	[a] 0
Steller sea lion	T/D	Rare, cold season; has never been recorded in action area.	[a] 0	[a] 0

Notes: D = Depleted, E = Endangered, CH = Critical Habitat, T = Threatened.
Warm season = May–October, Cold season = November–April.
abundant = the species is expected to be encountered during a single visit to the area and the number of individuals encountered during an average visit may be as many as hundreds or more; *common* = the species is expected to be encountered once or more during 2–3 visits to the area and the number of individuals encountered during an average visit is unlikely to be more than a few 10s; *uncommon* = the species is expected to be encountered at most a few times a year; *rare* = the species is not expected to be encountered more than once in several years; *very rare* = not expected to be encountered more than once in 10 years.
[a] Density estimates for these species were calculated for Puget Sound as a whole, but these species have never been recorded or observed in the action area. Thus the densities for the action area are shown as "0" to reflect this.

TABLE 5—MARINE MAMMAL KNOWN TO OCCUR OR POTENTIALLY OCCUR WITHIN THE DBRC ACTION AREA

Species	ESA/MMPA status	Occurrence in keyport action area	Density estimate (km^3)	
			Warm Season	Cold Season
Cetacean				
Mysticetes				
Minke whale	-/-	Very rare, year round; has never been recorded in action area.	[a] 0	[a] 0
Humpback whale	E/D	Very rare, warm season; has never been recorded in action area.	[a] 0	[a] 0
Gray whale	-/-	Very rare, spring/fall migrant and summer/fall resident population in primarily northern Puget Sound.	[a] 0	[a] 0
Odontocetes				
Killer whale				
Transient	-/-	Uncommon, spring/summer	Jan–Jun: 0.038	Jul–Dec: 0
S. Resident	E/D	Very rare, no recorded occurrence in Hood Canal.	[a] 0	[a] 0
Dall's porpoise	-/-	Very rare, year round	0	0
Pinnipeds				
Harbor seal	-/-	Common year-round resident	1.31	1.31
California sea lion	-/-	Common resident and seasonal migrant	[a] 0	0.052
Steller sea lion	T/D	Very rare, cold season; has never been recorded in action area.	[a] 0	[a] 0

Notes: D = Depleted, E = Endangered, CH = Critical Habitat, T = Threatened.
Warm season = May–October, Cold season = November–April.

abundant = the species is expected to be encountered during a single visit to the area and the number of individuals encountered during an average visit may be as many as hundreds or more; *common* = the species is expected to be encountered once or more during 2–3 visits to the area and the number of individuals encountered during an average visit is unlikely to be more than a few 10s; *uncommon* = the species is expected to be encountered at most a few times a year; *rare* = the species is not expected to be encountered more than once in several years; *very rare* = not expected to be encountered more than once in 10 years.

[a] These species have never been recorded or observed in the action area. Thus the densities for the action area are shown as "0" to reflect this.

TABLE 6—MARINE MAMMAL KNOWN TO OCCUR OR POTENTIALLY OCCUR WITHIN THE QUTR ACTION AREA

Species	ESA/MMPA status	Occurrence in keyport action area	Density estimate (km^3)	
			Warm season	Cold season
Cetacean				
Mysticetes				
Blue whale	E/D	Rare, warm season	0.0003	0
Fin whale	E/D	Rare, year-round	0.0012	0.0012
Gray whale:				
Resident	-/-	Uncommon, year-round	0.003	0.003
Migratory	-/-	Abundant briefly during cold season migration.	0	NA
Humpback whale	E/D	Uncommon, warm season	0.0237	0
Minke whale	-/-	Rare, year-round	0.0004	0.0004
North Pacific right whale	E/D	Very rare, warm season	[a] 0	[a] 0
Sei whale	E/D	Very rare, year-round	0.0002	0.0002
Odontocetes				
Baird's beaked whale	-/-	Uncommon, year-round	0.0027	0.0027
Hubb's & Stejneger's beaked whale	-/-	Uncommon, year-round	0.0027	0.0027
Dall's porpoise	-/-	Abundant, year-round	0.1718	0.1718
Harbor porpoise	-/-	Abundant, year-round	2.86	2.86
Northern right whale dolphin	-/-	Common, year-round	0.0419	0.0419
Pacific white-sided dolphin	-/-	Abundant, warm season	0.1929	0
Risso's dolphin	-/-	Uncommon, year-round	0.002	0.002
Short-beaked common dolphin	-/-	Uncommon, warm season	0.0012	0
Striped dolphin	-/-	Very rare, year-round	0.0002	0
Dwarf & pygmy sperm whales	-/-	Uncommon, warm season	0.0015	0
Sperm whale	E/D	Uncommon, warm season	0.0011	0.0011
Killer whale:				
N. Resident	-/-	Rare, year-round	0.0028	0.0028
S. Resident	E/D	Rare, year-round		
Offshore	-/-	Uncommon, year-round		
Transient	-/-	Uncommon, cold season		
Pinnipeds				
Phocids				
Harbor seal	-/-	Abundant, year-round	0.44	0.44
Northern elephant seal	-/-	Uncommon, year-round	Dec–Feb: 0.019 Mar–Apr: 0.026 May–Jul: 0.038 Aug–Nov: 0.047	
Otariids				
California sea lion	-/-	Common, year-round except May–July	Aug–Apr: 0.283 May–Jul: 0	
Northern fur seal	-/D	Common, year-round	0.091	0.117
Steller sea lion	T/D	Uncommon, year-round	0.0096	0.0096
Mustelids				
Sea otter	-/-	Does not presently occur within the action area.	[a] 0	[a] 0

Notes: D = Depleted, E = Endangered, CH = Critical Habitat, T = Threatened.
Warm season = May–October, Cold season = November–April.

abundant = the species is expected to be encountered during a single visit to the area and the number of individuals encountered during an average visit may be as many as hundreds or more; *common* = the species is expected to be encountered once or more during 2–3 visits to the area and the number of individuals encountered during an average visit is unlikely to be more than a few 10s; *uncommon* = the species is expected to be encountered at most a few times a year; *rare* = the species is not expected to be encountered more than once in several years; *very rare* = not expected to be encountered more than once in 10 years.

[a] These species have never been recorded or observed in the action area. Thus the densities for the action area are shown as "0" to reflect this.

A Brief Background on Sound

An understanding of the basic properties of underwater sound is necessary to comprehend many of the concepts and analyses presented in this document. A detailed description of this topic was provided in the proposed rule (74 FR 32264; July 7, 2009; pages 32273–32274) and is not repeated herein.

Potential Impacts to Marine Mammal Species

With respect to the MMPA, NMFS' effects assessment serves four primary purposes: (1) To prescribe the permissible methods of taking (*i.e.*, Level B Harassment (behavioral harassment), Level A Harassment (injury), or mortality, including an identification of the number and types of take that could occur by Level A or B harassment or mortality) and to prescribe other means of effecting the least practicable adverse impact on such species or stock and its habitat (*i.e.*, mitigation); (2) to determine whether the specified activity will have a negligible impact on the affected species or stocks of marine mammals (based on the likelihood that the activity will adversely affect the species or stock through effects on annual rates of recruitment or survival); (3) to determine whether the specified activity will have an unmitigable adverse impact on the availability of the species or stock(s) for subsistence uses; and (4) to prescribe requirements pertaining to monitoring and reporting.

In the Potential Impacts to Marine Mammal Species section of the proposed rule, NMFS included a qualitative discussion of the different ways that sonar operations may potentially affect marine mammals. *See* 74 FR 32264; July 7, 2009; pages 32274–42281. Marine mammals may experience direct physiological effects (such as threshold shift), acoustic masking, impaired communications, stress responses, and behavioral disturbance. The information contained in Potential Impacts to Marine Mammal Species from sonar operations section from the proposed rule has not changed.

Additional analyses on potential impacts to marine mammals from vessel movement within the NAVSEA NUWC Keyport Range Complex Study Area are added below.

Vessel Movement

There are limited data concerning marine mammal behavioral responses to vessel traffic and vessel noise, and a lack of consensus among scientists with respect to what these responses mean or whether they result in short-term or long-term adverse effects. In those cases where there is a busy shipping lane or where there is large amount of vessel traffic, marine mammals may experience acoustic masking (Hildebrand, 2005) if they are present in the area (*e.g.*, killer whales in Puget Sound; Foote *et al.*, 2004; Holt *et al.*, 2008). In cases where vessels actively approach marine mammals (*e.g.*, whale watching or dolphin watching boats), scientists have documented that animals exhibit altered behavior such as increased swimming speed, erratic movement, and active avoidance behavior (Bursk, 1983; Acevedo, 1991; Baker and MacGibbon, 1991; Trites and Bain, 2000; Williams *et al.*, 2002; Constantine *et al.*, 2003), reduced blow interval (Ritcher *et al.*, 2003), disruption of normal social behaviors (Lusseau, 2003; 2006), and the shift of behavioral activities which may increase energetic costs (Constantine *et al.*, 2003; 2004)). A detailed review of marine mammal reactions to ships and boats is available in Richardson *et al.* (1995). For each of the marine mammal's taxonomy groups, Richardson *et al.* (1995) provided the following assessment regarding marine mammal reactions to vessel traffic:

Toothed whales: "In summary, toothed whales sometimes show no avoidance reaction to vessels, or even approach them. However, avoidance can occur, especially in response to vessels of types used to chase or hunt the animals. This may cause temporary displacement, but we know of no clear evidence that toothed whales have abandoned significant parts of their range because of vessel traffic."

Baleen whales: "When baleen whales receive low-level sounds from distant or stationary vessels, the sounds often seem to be ignored. Some whales approach the sources of these sounds. When vessels approach whales slowly and nonaggressively, whales often exhibit slow and inconspicuous avoidance maneuvers. In response to strong or rapidly changing vessel noise, baleen whales often interrupt their normal behavior and swim rapidly away. Avoidance is especially strong when a boat heads directly toward the whale."

Pinnipeds: "In general, evidence about reactions of seals to vessels is meager. The limited data, plus the responses of seals to other noisy human activities, suggest that seals often show considerable tolerance of vessels. It is not known whether these animals are truly unaffected or are subject to stress. This uncertainty applies to many human activities and all marine mammals." In addressing walruses, Richardson *et al.* (1995) states, "walrus reactions to ships include waking up, head-raises, and entering the water. Females with young seem more wary than adult males. Walruses in open water are less responsive than those on ice pans, usually showing little reaction unless the ship is about to run over them."

It is important to recognize that behavioral responses to stimuli are complex and influenced to varying degrees by a number of factors such as species, behavioral contexts, geographical regions, source characteristics (moving or stationary, speed, direction, *etc.*), prior experience of the animal, and physical status of the animal. For example, studies have shown that beluga whales reacted differently when exposed to vessel noise and traffic. In some cases, naïve beluga whales exhibited rapid swimming from ice-breaking vessels up to 80 km away, and showed changes in surfacing, breathing, diving, and group composition in the Canadian high Arctic where vessel traffic is rare (Finley *et al.*, 1990). In other cases, beluga whales were more tolerant of vessels, but differentially responsive by reducing their calling rates, to certain vessels and operating characteristics (especially older animals) in the St. Lawrence River where vessel traffic is common (Blane and Jaakson, 1994). In Bristol Bay, Alaska, beluga whales continued to feed when surrounded by fishing vessels and resisted dispersal even when purposefully harassed (Fish and Vania, 1971).

In reviewing more than 25 years of whale observation data, Watkins (1986) concluded that whale reactions to vessel traffic were "modified by their previous experience and current activity: Habituation often occurred rapidly,

attention to other stimuli or preoccupation with other activities sometimes overcame their interest or wariness of stimuli." Watkins noticed that over the years of exposure to ships in the Cape Cod area, minke whales (*Balaenoptera acutorostrata*) changed from frequent positive (such as approaching vessels) interest to generally uninterested reactions; finback whales (*B. physalus*) changed from mostly negative (such as avoidance) to uninterested reactions; right whales (*Eubalaena glacialis*) apparently continued the same variety of responses (negative, uninterested, and positive responses) with little change; and humpbacks (*Megaptera novaeangliae*) dramatically changed from mixed responses that were often negative to often strongly positive reactions. Watkins (1986) summarized that "whales near shore, even in regions with low vessel traffic, generally have become less wary of boats and their noises, and they have appeared to be less easily disturbed than previously. In particular locations with intense shipping and repeated approaches by boats (such as the whale-watching areas of Stellwagen Bank), more and more whales had P [positive] reactions to familiar vessels, and they also occasionally approached other boats and yachts in the same ways."

In the case of the NAVSEA NUWC Keyport Range Complex Study Area, naval vessel traffic is expected to be much lower than in areas where there are large shipping lanes and large numbers of fishing vessels and/or recreational vessels. Nevertheless, the proposed action area is well traveled by a variety of commercial and recreational vessels, so marine mammals in the area are expected to be habituated to vessel noise.

As described in the proposed rule, typical vessel movement occurring at the surface includes the deployment or towing of mine counter-measure equipment, retrieval of equipment, and clearing and monitoring for non-participating vessels. As shown in Table 1, the projected annual days of range use amount to a total of 306 days for all range sites (60 days for Keyport Range Site, 200 days for DBRC Site, 16 days for offshore QUTR Site, and 30 days for surf zone QUTR Site).

Moreover, naval vessels transiting the study area or engaging in RDT&E activities will not actively or intentionally approach a marine mammal or change speed drastically. In addition, range craft would not be permitted to approach within 100 yards (91 m) of marine mammals, to the extent practicable considering human and vessel safety priorities. This includes marine mammals "hauled-out" on islands, rocks, and other areas such as buoys.

Mitigation

In order to issue an incidental take authorization (ITA) under Section 101(a)(5)(A) of the MMPA, NMFS must prescribe regulations setting forth the "permissible methods of taking pursuant to such activity, and other means of effecting the least practicable adverse impact on such species or stock and its habitat, paying particular attention to rookeries, mating grounds, and areas of similar significance." The NDAA amended the MMPA as it relates to military readiness activities and the incidental take authorization process such that "least practicable adverse impact" shall include consideration of personnel safety, practicality of implementation, and impact on the effectiveness of the "military readiness activity." The NUWC Keyport Range Complex's RDT&E activities are considered military readiness activities.

NMFS reviewed the Navy's proposed NUWC Keyport Range Complex's RDT&E activities and the proposed NUWC Keyport Range Complex's mitigation measures presented in the Navy's application to determine whether the activities and mitigation measures were capable of achieving the least practicable adverse effect on marine mammals.

Any mitigation measure prescribed by NMFS should be known to accomplish, have a reasonable likelihood of accomplishing (based on current science), or contribute to the accomplishment of one or more of the general goals listed below:

(1) Avoidance or minimization of injury or death of marine mammals wherever possible (goals (2), (3), and (4) may contribute to this goal).

(2) A reduction in the numbers of marine mammals (total number or number at biologically important time or location) exposed to underwater detonations or other activities expected to result in the take of marine mammals (this goal may contribute to (1), above, or to reducing harassment takes only).

(3) A reduction in the number of times (total number or number at biologically important time or location) individuals would be exposed to underwater detonations or other activities expected to result in the take of marine mammals (this goal may contribute to (1), above, or to reducing harassment takes only).

(4) A reduction in the intensity of exposures (either total number or number at biologically important time or location) to underwater detonations or other activities expected to result in the take of marine mammals (this goal may contribute to (1), above, or to reducing the severity of harassment takes only).

(5) A reduction in adverse effects to marine mammal habitat, paying special attention to the food base, activities that block or limit passage to or from biologically important areas, permanent destruction of habitat, or temporary destruction/disturbance of habitat during a biologically important time.

(6) For monitoring directly related to mitigation—an increase in the probability of detecting marine mammals, thus allowing for more effective implementation of the mitigation (shut-down zone, *etc.*).

NMFS reviewed the Navy's proposed mitigation measures, which included a careful balancing of the likely benefit of any particular measure to the marine mammals with the likely effect of that measure on personnel safety, practicality of implementation, and impact on the "military-readiness activity."

The Navy's proposed mitigation measures were described in detail in the proposed rule (74 FR 32264, pages 32293–32294). The Navy's measures address personnel training, marine observer responsibilities, operating procedures for RDT&E activities using sonar, and mitigation related to vessel traffic. The following additional requirements were added based on comments from the Marine Mammal Commission, Natural Resources Defense Council, and NMFS scientists:

(i) If there is clear evidence that a marine mammal is injured or killed as a result of the proposed Navy RDT&E activities, the Naval activities shall be immediately suspended and the situation immediately reported by personnel involved in the activity to the Range Officer, who will follow Navy procedures for reporting the incident to NMFS through the Navy's chain-of-command.

(j) For nighttime RDT&E activities of active acoustic transmissions in the Keyport Range proposed extension area, the Navy shall conduct passive acoustic monitoring within the Agate Pass and south of University Point in southern Port Orchard Reach. If Southern Resident killer whales are detected in the vicinity of the Keyport Range Site, the Range Office shall be notified immediately and the active acoustic sources must be shutdown if killer whales are confirmed to approach at 1,000 yards from the source.

In addition, in response to information provided by the Navy, the

requirement for general passive acoustic monitoring was modified to reflect the feasibility and practicability of PAM when used as a mitigation measure for the proposed RDT&E activities. The Navy indicated, and NMFS agreed, that the blanket requirement for PAM contained in the proposed rule will not be practicable due to limitation of assets at the Keyport Range Complex. Further, NMFS believes that the revised PAM would not change the results of the analysis on the effects of the proposed Keyport RDT&E activities on marine mammals. Therefore, the proposed mitigation measure concerning PAM has been modified as follows:

(g) Passive acoustic monitoring for cetaceans will be implemented throughout the NUWC Keyport Range Complex during RDT&E testing activities involving active sonar transmissions and when passive acoustic monitoring capabilities are being operated during the testing activity.

No other changes have been made to the mitigation measures described in the proposed rule.

Monitoring

In order to issue an ITA for an activity, Section 101(a)(5)(A) of the MMPA states that NMFS must set forth "requirements pertaining to the monitoring and reporting of such taking." The MMPA implementing regulations at 50 CFR 216.104 (a)(13) indicate that requests for LOAs must include the suggested means of accomplishing the necessary monitoring and reporting that will result in increased knowledge of the species and of the level of taking or impacts on populations of marine mammals that are expected to be present.

Monitoring measures prescribed by NMFS should accomplish one or more of the following general goals:

(1) An increase in the probability of detecting marine mammals, both within the safety zone (thus allowing for more effective implementation of the mitigation) and in general to generate more data to contribute to the analyses mentioned below.

(2) An increase in our understanding of how many marine mammals are likely to be exposed to levels of HFAS/MFAS (or explosives or other stimuli) that we associate with specific adverse effects, such as behavioral harassment, TTS, or PTS.

(3) An increase in our understanding of how marine mammals respond to HFAS/MFAS (at specific received levels), explosives, or other stimuli expected to result in take and how anticipated adverse effects on individuals (in different ways and to varying degrees) may impact the population, species, or stock (specifically through effects on annual rates of recruitment or survival) through any of the following methods:

- Behavioral observations in the presence of HFAS/MFAS compared to observations in the absence of sonar (need to be able to accurately predict received level and report bathymetric conditions, distance from source, and other pertinent information).
- Physiological measurements in the presence of HFAS/MFAS compared to observations in the absence of sonar (need to be able to accurately predict received level and report bathymetric conditions, distance from source, and other pertinent information), and/or
- Pre-planned and thorough investigation of stranding events that occur coincident to naval activities.
- Distribution and/or abundance comparisons in times or areas with concentrated HFAS/MFAS versus times or areas without HFAS/MFAS.

(4) An increased knowledge of the affected species.

(5) An increase in our understanding of the effectiveness of certain mitigation and monitoring measures.

A detailed description of monitoring measures is provided in the proposed rule (74 FR 32264, pages 32294–32297). The monitoring procedures require the Navy to conduct visual surveys (including shore-based and vessel surveys), passive acoustic monitoring, and marine mammal observers on Navy vessels.

Monitoring Workshop

During the public comment period on past proposed rules for Navy actions (such as the Hawaii Range Complex (HRC), and Southern California Range Complex (SOCAL) proposed rules), NMFS received a recommendation that a workshop or panel be convened to solicit input on the monitoring plan from researchers, experts, and other interested parties. The NAVSEA NUWC Keyport Range Complex RDT&E proposed rule included an adaptive management component and both NMFS and the Navy believe that a workshop would provide a means for Navy and NMFS to consider input from participants in determining whether (and if so, how) to modify monitoring techniques to more effectively accomplish the goals of monitoring set forth earlier in the document. NMFS and the Navy believe that this workshop is valuable in relation to all of the Range Complexes and major training exercise rules and LOAs that NMFS is working on with the Navy at this time, and consequently this single Monitoring Workshop will be included as a component of all of the rules and LOAs that NMFS will be processing for the Navy in the next year or so.

The Navy, with guidance and support from NMFS, will convene a Monitoring Workshop, including marine mammal and acoustic experts as well as other interested parties, in 2011. The Monitoring Workshop participants will review the monitoring results from the previous two years of monitoring pursuant to the NAVSEA NUWC Keyport Range Complex RDT&E rule as well as monitoring results from other Navy rules and LOAs (*e.g.*, AFAST, SOCAL, HRC, and other rules). The Monitoring Workshop participants would provide their individual recommendations to the Navy and NMFS on the monitoring plan(s) after also considering the current science (including Navy research and development) and working within the framework of available resources and feasibility of implementation. NMFS and the Navy would then analyze the input from the Monitoring Workshop participants and determine the best way forward from a national perspective. Subsequent to the Monitoring Workshop, modifications would be applied to monitoring plans as appropriate.

Integrated Comprehensive Monitoring Program

In addition to the site-specific Monitoring Plan for the NAVSEA NUWC Keyport Range Complex Study Area, the Navy will complete the Integrated Comprehensive Monitoring Program (ICMP) Plan by the end of 2009. The ICMP is currently in development by the Navy, with the Chief of Naval Operations Environmental Readiness Division (CNO–N45) having the lead. The program does not duplicate the monitoring plans for individual areas (*e.g.*, AFAST, HRC, SOCAL); instead it is intended to provide the overarching coordination that will support compilation of data from both range-specific monitoring plans as well as Navy funded research and development (R&D) studies. The ICMP will coordinate the monitoring program's progress towards meeting its goals and developing a data management plan. A program review board is also being considered to provide additional guidance. The ICMP will be evaluated annually to provide a matrix for progress and goals for the following year, and will make recommendations on adaptive management for refinement and analysis of the monitoring methods.

The primary objectives of the ICMP are to:

- Monitor and assess the effects of Navy activities on protected species;
- Ensure that data collected at multiple locations is collected in a manner that allows comparison between and among different geographic locations;
- Assess the efficacy and practicality of the monitoring and mitigation techniques;
- Add to the overall knowledge-base of marine species and the effects of Navy activities on marine species.

The ICMP will be used both as: (1) A planning tool to focus Navy monitoring priorities (pursuant to ESA/MMPA requirements) across Navy Range Complexes and Exercises; and (2) an adaptive management tool, through the consolidation and analysis of the Navy's monitoring and watchstander/marine observer data, as well as new information from other Navy programs (*e.g.*, R&D), and other appropriate newly published information.

In combination with the 2011 Monitoring Workshop and the adaptive management component of the NAVSEA NUWC Keyport Range Complex RDT&E rule and the other planned Navy rules (*e.g.*, Virginia Capes Range Complex, Jacksonville Range Complex, Cherry Point Range Complex, *etc.*), the ICMP could potentially provide a framework for restructuring the monitoring plans and allocating monitoring effort based on the value of particular specific monitoring proposals (in terms of the degree to which results would likely contribute to stated monitoring goals, as well as the likely technical success of the monitoring based on a review of past monitoring results) that have been developed through the ICMP framework, instead of allocating based on maintaining an equal (or commensurate to effects) distribution of monitoring effort across range complexes. For example, if careful prioritization and planning through the ICMP (which would include a review of both past monitoring results and current scientific developments) were to show that a large, intense monitoring effort in Hawaii would likely provide extensive, robust and much-needed data that could be used to understand the effects of sonar throughout different geographical areas, it may be appropriate to have other range complexes dedicate money, resources, or staff to the specific monitoring proposal identified as "high priority" by the Navy and NMFS, in lieu of focusing on smaller, lower priority projects divided throughout their home range complexes.

The ICMP will identify:

- A means by which NMFS and the Navy would jointly consider prior years' monitoring results and advancing science to determine if modifications are needed in mitigation or monitoring measures to better effect the goals laid out in the Mitigation and Monitoring sections of the NAVSEA NUWC Keyport Range Complex RDT&E rule.
- Guidelines for prioritizing monitoring projects.

If, as a result of the workshop and similar to the example described in the paragraph above, the Navy and NMFS decide it is appropriate to restructure the monitoring plans for multiple ranges such that they are no longer evenly allocated (by rule), but rather focused on priority monitoring projects that are not necessarily tied to the geographic area addressed in the rule, the ICMP will be modified to include a very clear and unclassified record-keeping system that will allow NMFS and the public to see how each range complex/project is contributing to all of the ongoing monitoring programs (resources, effort, money, *etc.*).

Adaptive Management

The final regulations governing the take of marine mammals incidental to Navy's NAVSEA NUWC Keyport Range Complex RDT&E activities contain an adaptive management component. The use of adaptive management will give NMFS the ability to consider new data from different sources to determine (in coordination with the Navy) on an annual basis if mitigation or monitoring measures should be modified or added (or deleted) if new data suggests that such modifications are appropriate (or are not appropriate) for subsequent annual LOAs.

The following are some of the possible sources of applicable data:

- Results from the Navy's monitoring from the previous year (either from NAVSEA NUWC Keyport Range Complex Study Area or other locations)
- Findings of the Workshop that the Navy will convene in 2011 to analyze monitoring results to date, review current science, and recommend modifications, as appropriate to the monitoring protocols to increase monitoring effectiveness
- Compiled results of Navy-funded research and development (R&D) studies (presented pursuant to the ICMP, which is discussed elsewhere in this document)
- Results from specific stranding investigations (either from NAVSEA NUWC Keyport Range Complex Study Area or other locations)
- Results from general marine mammal and sound research (funded by the Navy or otherwise)
- Any information which reveals that marine mammals may have been taken in a manner, extent or number not authorized by these regulations or subsequent Letters of Authorization

Mitigation measures could be modified or added (or deleted) if new data suggest that such modifications would have (or do not have) a reasonable likelihood of accomplishing the goals of mitigation laid out in this final rule and if the measures are practicable. NMFS would also coordinate with the Navy to modify or add to (or delete) the existing monitoring requirements if the new data suggest that the addition of (or deletion of) a particular measure would more effectively accomplish the goals of monitoring laid out in this final rule. The reporting requirements associated with this rule are designed to provide NMFS with monitoring data from the previous year to allow NMFS to consider the data and issue annual LOAs. NMFS and the Navy will meet annually, prior to LOA issuance, to discuss the monitoring reports, Navy R&D developments, current science and whether mitigation or monitoring modifications are appropriate.

Reporting

In order to issue an ITA for an activity, Section 101(a)(5)(A) of the MMPA states that NMFS must set forth "requirements pertaining to the monitoring and reporting of such taking." Effective reporting is critical to ensure compliance with the terms and conditions of a LOA, and to provide NMFS and the Navy with data of the highest quality based on the required monitoring. As NMFS noted in its proposed rule, additional detail has been added to the reporting requirements since they were outlined in the proposed rule. The updated reporting requirements are all included below. A subset of the information provided in the monitoring reports may be classified and not releasable to the public.

General Notification of Injured or Dead Marine Mammals

Navy personnel will ensure that NMFS (regional stranding coordinator) is notified immediately (or as soon as operational security allows) if an injured or dead marine mammal is found during or shortly after, and in the vicinity of, any Navy RDT&E activities. The Navy will provide NMFS with species or description of the animal(s), the condition of the animal(s) (including

carcass condition if the animal is dead), location, time of first discovery, observed behaviors (if alive), and photo or video (if available).

Annual Report

The NAVSEA NUWC Keyport Range Complex shall submit a report annually on October 1 describing the RDT&E activities conducted and implementation and results of the NAVSEA NUWC Keyport Range Complex Monitoring Plan (through June 1 of the same year) and RDT&E activities. The report will, at a minimum, include the following information:

(1) RDT&E Information:

- Date and time test began and ended
- Location
- Number and types of active sources used in the test
- Number and types of vessels, aircraft, *etc.*, participated in the test
- Total hours of observation effort (including observation time when sonar was not operating)
- Total hours of all active sonar source operation
- Total hours of each active sonar source
- Wave height (high, low, and average during the test)

(2) Individual Marine Mammal Sighting Info

- Location of sighting
- Species
- Number of individuals
- Calves observed (y/n)
- Initial detection sensor
- Indication of specific type of platform observation made from
- Length of time observers maintained visual contact with marine mammal(s)
- Wave height (in feet)
- Visibility
- Sonar source in use (y/n)
- Indication of whether animal is <200 yd, 200–500 yd, 500–1,000 yd, 1,000–2,000 yd, or >2,000 yd from sonar source above
- Mitigation implementation—Whether operation of sonar sensor was delayed, or sonar was powered or shut down, and how long the delay was
- Observed behavior—Marine observers shall report, in plain language and without trying to categorize in any way, the observed behavior of the animals (such as animal closing to bow ride, paralleling course/speed, floating on surface and not swimming, *etc.*)
- An evaluation of the effectiveness of mitigation measures designed to avoid exposing marine mammals to mid-frequency sonar. This evaluation shall identify the specific observations that support any conclusions the Navy reaches about the effectiveness of the mitigation.

NAVSEA NUWC Keyport Range Complex 5-yr Comprehensive Report

The Navy will submit to NMFS a draft report that analyzes and summarizes all of the multi-year marine mammal information gathered during HFAS/MFAS activities for which annual reports are required as described above. This report will be submitted at the end of the fourth year of the rule (December 2014), covering activities that have occurred through July 1, 2014. The Navy will respond to NMFS comments on the draft comprehensive report if submitted within 3 months of receipt. The report will be considered final after the Navy has addressed NMFS' comments, or three months after the submittal of the draft if NMFS does not comment by then.

Comments and Responses

On July 7, 2009, NMFS published a proposed rule (74 FR 32264) in response to the Navy's request to take marine mammals incidental to conducting RDT&E activities in the NAVSEA NUWC Keyport Range Complex Study Area and requested comments, information and suggestions concerning the request. During the 30-day public comment period, NMFS received comments from the Marine Mammal Commission (Commission), the Natural Resources Defense Council (NRDC), Friends of the Earth, and two private citizens. The comments are addressed below.

MMPA Concerns

Comment 1: Citing that most North American marine mammal biologists are in the field and that the general public is engaged in recreational activities during the period when the proposed rule was published for public comments, the Friends of the Earth requests NMFS to extend the comment period for a minimum of 30 days for the proposed rule.

Response: There is no prescribed minimum timeframe for public comment on proposed rules in the Administrative Procedure Act (APA) or section 101(a)(5)(A) of MMPA. NMFS routinely strives to ensure that the public is afforded at least a 30-day public comment period on all MMPA rules and believes that such a duration is reasonable for this particular rule making.

Whenever NMFS develops proposed regulations under the MMPA, the agency is required to first publish a notice of receipt of a request for the implementation of regulations and LOAs governing the incidental taking. This process typically affords the public up to 30 days to comment on a requester's application and provide NMFS with information and suggestions that will be considered in developing MMPA regulations. *See* 50 CFR 216.104. On July 3, 2008, NMFS published its "Notice; receipt of application for a Letter of Authorization (LOA); request for comments and information" for the Navy's NAVSEA NUWC Keyport Range Complex and solicited input for 30 days (*See* 73 FR 38183).

The public was also afforded 30 days to comment on the Keyport Range Complex proposed rule. For the proposed MMPA rulemaking for the Navy training and RDT&E activities, thirty days was appropriate in this instance because of: (1) The tight deadline of the scheduled RDT&E or training activities identified in the Navy's schedule; and (2) the fact that NMFS anticipated only low impacts to marine mammals with the implementation of mitigation and monitoring measures. Therefore, NMFS does not believe an additional 30-day comment period is warranted.

Comment 2: The Commission recommends that NMFS: (1) Work with the Navy to ensure that the final rule and any LOA issued under that rule provide authorization for the taking of all marine mammal species that could occur in the study area (including those listed under the Endangered Species Act) and that may be exposed to Level A or Level B harassment as a result of the proposed activities; and (2) either reconsider its decision to exclude endangered and threatened species from the authorization or provide a well-reasoned, science-based explanation for its apparent belief that the proposed mitigation measures will be much more effective for listed species than for unlisted species.

Response: First, NMFS worked with the Navy to ensure that the rule provides authorization for animals that are likely to be taken in the area, but NMFS does not agree with the Commission's recommendation that NMFS' final rule and LOAs should authorize takes of all marine mammal species that are known to occur in the Keyport Range Complex Study Area, regardless of how infrequently they occur. Second, to clarify, NMFS does not believe that the proposed mitigation measures will be much more effective for listed species than for unlisted species, rather, all of the listed species fell into a larger group of marine mammals that occur rarely and infrequently in Keyport and are unlikely to be exposed to the Navy sound sources

at all and, therefore, unlikely to be taken.

As described in the proposed rule (74 FR 32264; July 7, 2009), the annual estimated number of exposures from acoustic sources are given for each species, based on the abundance, distribution, and density of these species. NMFS is not authorizing the take of every marine mammal species that could potentially occur in the Keyport Range Complex Study Area, since many of these species (all ESA-listed species and some non-listed) occur rarely (*e.g.*, blue whale, fin whale, sei whale, North Pacific right whale, minke whale, killer whale, and striped dolphin) or occur infrequently (*e.g.*, humpback whale, Baird's beaked whale, Hubb's beaked whale, Stejneger's beaked whale, Risso's dolphin, short-beaked common dolphin, sperm whale, dwarf sperm whale, pygmy sperm whale, northern elephant seal, and Steller sea lion). In fact, none of the ESA-listed species are commonly found in the Keyport Range Complex Study Area, and NMFS' Biological Opinion for Keyport and NWTRC also indicates that these species will not be taken by the Keyport activities.

The estimates of 11,283 takes of harbor porpoises, 44 takes of northern fur seal, 114 takes of California sea lions, and 5,569 takes of harbor seals by Level B harassment as a result of the proposed Keyport Range Complex RDT&E activities are based on scientific modeling for acoustic sources using the risk function methodology, coupled with the analysis of the abundance, distribution, and density of marine mammal species in the action area.

Comment 3: The Commission requests NMFS describe the "specified events" that would involve or require special surveys at the Dabob Bay Range site (74 FR 32264; July 7, 2009; page 32295).

Response: According to the Navy, a "specified event" is a test or run plan well suited for monitoring because certain operational and environmental parameters are in place (*e.g.*, high level of activity, bottom mounted hydrophone in place, controlled environment, *etc.; see* 74 FR 32264; July 7, 2009; page 32295). As an RDT&E facility, it is important to maintain an open perspective of what kind of mid and high frequency events may be best for a special survey. Examples of the types of scenarios that would be considered for monitoring scenarios are those utilizing the high frequency systems that were modeled such as sources S6, S7, or S8 described in the proposed rule (74 FR 32264; July 7, 2009; page 32288). These may include a test unit and a launch and recovery craft and associated tracking sonar. For monitoring an activity with a mid frequency source, a range target operating at the lower end of its frequency range (5–100 kHz) at source level of 238 microPa @ 1 m or a countermeasure under test with an output frequency between 1 and 10 kHz may be the appropriate type of test to use for monitoring.

Mitigation

Comment 4: The Commission requests NMFS require the Navy to suspend an activity if a marine mammal is killed or seriously injured and the death or injury could be associated with the Navy's activities, and resumption of the activity should be contingent upon a review by NMFS of the circumstances of the death or injury and the Navy's plans for avoiding additional mortalities. If, upon review, those plans are deemed inadequate, then the Navy should be required to halt its operations until it has obtained the necessary authorization.

Response: Without detailed examination by an expert, it is usually not feasible to determine the cause of injury or mortality in the field. Therefore, NMFS has required in its final rule that if there is clear evidence that a marine mammal is injured or killed as a result of the proposed Navy RDT&E activities, the Naval activities shall be immediately suspended and the situation immediately reported by personnel involved in the activity to the Range Officer, who will follow Navy procedures for reporting the incident to NMFS through the Navy's chain-of-command.

For any other sighting of injured or dead marine mammals in the vicinity of any Navy RDT&E activities utilizing underwater active acoustic sources for which the cause of injury or mortality cannot be immediately determined, the Navy personnel will ensure that NMFS (regional stranding coordinator) is notified immediately (or as soon as operational security allows). The Navy will provide NMFS with species or description of the animal(s), the condition of the animal(s) (including carcass condition if the animal is dead), location, time of first discovery, observed behaviors (if alive), and photo or video (if available).

If NMFS determines that further investigation is appropriate, once investigations are completed and determinations made, NMFS would use the resulting information, if appropriate, to help reduce the likelihood that a similar event would happen in the future and to move forward with necessary steps to ensure environmental compliance for the Navy under the MMPA.

Comment 5: Stating that waters out to at least the 100-meter isobath represent vital habitat for a discrete population of harbor porpoises, the Oregon/Washington Coast stock, that the species has acute sensitivity to acoustic sources, and that the offshore population of approximately 37,745 would be exposed over 11,000 times, representing nearly 99 percent of all take authorized for QUTR under the proposed rule, the NRDC recommends establishing a protection area within waters landward of the 100-meter isobath. In addition, the NRDC recommends a buffer zone reflecting the sensitivity of the species should be applied beyond the 100-meter isobath, optimally ensuring that exposure levels within the 100-meter isobath do not exceed 120 dB. The NRDC recommends that NMFS ask the Navy to prepare a nominal propagation analysis for the coast to determine what stand-off distances are necessary to reduce exposure levels below this threshold.

Response: In order to determine the appropriate mitigation measures for a particular activity, NMFS must balance the benefit of the measure to the species, the likely effectiveness of a given measure, and the practicability of the measure for applicant implementation.

First, the estimated incidental takes of harbor porpoises are expected to be non-injurious, short-term Level B harassment. It is reasonable to expect high numbers of takes due to multiple takes of one individual in a year (not every estimated take represents a different individual). Given the nature of the activity, it is more likely that a percentage of the population (as opposed to the entire population) would be taken with each event, and that over time multiple repetitions of exposure to these short-term exercises would occur.

Regarding NRDC's recommendation, a buffer zone applied beyond the 100-meter isobaths is not practicable for this activity and would seriously affect the Navy's proposed RDT&E activities. While it is true that most Oregon/Washington Coast stock harbor porpoises occur in waters shallower than 100-m, excluding these regions would not be practicable, as it would mean that large regions of the Keyport Range Complex Study Area would be off limits for the proposed RDT&E activities. For example, the 100-m isobaths in the W237A Area of the QUTR Range Site extend off shore for more than 7 miles. With such large areas and all of the area of that specific depth range off limits to the proposed RDT&E activities, the Navy would not be able to

fulfill its mission activities. It is also not practicable to recommend a "do not exceed 120 dB" level within the 100-m isobath, as some of the active sources have received levels reaching 120 dB at ranges over 66 km (Table 7).

The majority of the harbor seals take numbers include exposures close to this 120-dB threshold level (rather than at a higher exposure level), due to the large Level B harassment isopleths. The effects of exposures to this lower level are expected to be comparatively less severe. Also, none of these exposures are expected to affect the stock through effects on annual rates of survival and reproduction.

TABLE 7—SOURCE LEVELS AND DISTANCES AT 120 DB RECEIVED LEVEL FROM EIGHT ACTIVE SOURCES

Source comparison	Source level	Range to 120 dB (km)
S1	207	2.12
S2	205	6.32
S3	186	1.76
S4	220	0.93
S5	233	66.03
S6	233	13.82
S7	230	9.12
S8	233	7.41

As stated in this document, exposures to marine mammals are expected to be limited to Level B harassment, and the seemingly large takes of harbor porpoise do not represent the individual animals that would be taken, instead, some individuals may be taken multiple times. Among these multiple takes, only 1 animal is expected to be exposed once to received levels that could cause minor TTS. Further, the NRDC's proposed mitigation of limiting the RDT&E activities to water deeper than 100-m isobaths would compromise the Navy's ability to accomplish their mission with limited added benefit to the species. Mitigation and monitoring measures, such as establishing and monitoring exclusion zones and shutdown measures, are expected to achieve the least practicable adverse impacts to marine mammals in the vicinity of the proposed project area.

Separately, NOAA has committed to convene a workshop of marine mammal experts in 2010/2011 to identify cetacean hotspots (areas of specifically important use or high density) using both field data and habitat modeling, as appropriate. The workshop results, in turn, could potentially support the need to designate protected areas in which Navy activities could potentially be limited, depending on NMFS' analysis of the benefit to the species of limiting activities in the area, the likely effectiveness of the measure, and the practicability of implementation. The adaptive management provisions in the Keyport rule would allow for the application of these protected areas, as appropriate.

Comment 6: The NRDC requests NMFS provide additional protection from the use of mid- and high-frequency acoustic sources within the Olympic Coast National Marine Sanctuary (NMS). Specifically, for those activities that do not require QUTR's instrumentation, NMFS should include measures to prohibit such activities from taking place in sanctuary waters. If this proves impracticable, the NRDC urges NMFS to substantially limit the number of RDT&E activities taking place by requiring prior approval from Pacific Fleet Command or other means to minimize sonar use in the area.

Response: NMFS has been working with the Navy throughout the rulemaking process to develop a series of strict mitigation and monitoring measures regarding the use of active acoustic sources in the Keyport Range Complex, which overlaps with the Olympic Coast NMS. These measures include the use of trained Navy marine observers who will conduct marine mammal monitoring to avoid collisions with marine mammals and the use of exclusion zones that avoid exposing marine mammals to levels of sound likely to result in temporary hearing loss, injury or death of marine mammals. However, prohibition of RDT&E activities and/or substantially limiting the number of RDT&E activities within the Olympic Coast NMS would compromise the Navy's mission and is impracticable for the proposed activities. The area and the number of the RDT&E events that were proposed to be carried out were carefully planned to have the least practicable adverse impacts to marine mammals while still meeting the Navy's RDT&E mission activity. In addition, the level and number of RDT&E events authorized are the maximum activities allowed within the five-year rule period; the actual number of events could be fewer than proposed.

Comment 7: The NRDC recommends that NMFS establish a seasonal protection area in certain canyons and banks on QUTR that represent important foraging habitat particularly for humpback whales. Citing Calambokidis *et al.* (2004), the NRDC states that humpback whales occur mostly in the northern part of the area, in a region informally known as the "Prairie." The NRDC further states that sonar impacts on beaked whales are also a concern in QUTR because these species have a general preference for waters of the lower continental slope. The NRDC requests NMFS to advocate avoidance, or a reduction of RDT&E activities, within areas between 500 and 2,000 meters depth with unusual bottom topography (such as canyons).

Response: There are no canyons or banks in the currently instrumented test range within the QUTR range site and its associated depth is limited to 91 meters. The proposed extension of the QUTR range site would expand the range boundaries to the full extent of range area W–237A, which does include canyons and banks and the varied topography. W–237A was determined to be a vital asset by the Navy to perform its RDT&E mission, and the proposed extension of the existing QUTR range site into the entire W–237A area is critical to fulfill the Navy's RDT&E mission activity. In addition, seasonal variability of oceanic conditions was also considered an important component of the Navy's RDT&E mission, and activities must be able to occur year round. Therefore, a restriction on seasonal use of the canyon and banks and making the areas between 500 and 2,000 meters off-limits to the proposed Keyport RDT&E operations would severely limit the Navy's mission activities, and will not be a practicable measure.

Although NMFS recognizes that the extended QUTR range site would include known feeding habitat for certain species of marine mammals including humpback whales, and the undersea canyon and banks of the type that are known to be used by beaked whales for feeding, the proposed RDT&E activities to be conducted within the extended QUTR range site would only take 16 days per year at its offshore area, with total operation time for all active acoustic sources adding up to approximately 507 hours, and the range tests would be comprised of low intensity mid- and high-frequency active acoustic sources (see Description of Specific Activities section above). In addition, humpback whales and beaked whales are rare within the proposed Keyport Range Complex. Scientific modeling on take calculations shows that the take of these species, even by Level B behavioral harassment, is very unlikely.

Lastly, as mentioned above, NMFS has been working with the Navy throughout the rulemaking process to develop a series of mitigation and monitoring measures so that adverse impact to marine mammals and their

habitat will be the least that is practicable. These measures include the use of trained Navy marine observers who will conduct marine mammal monitoring to avoid collisions with marine mammals and the use of exclusion zones that avoid exposing marine mammals to levels of sound likely to result in injury or death of marine mammals. The determination of appropriate mitigation measures includes consideration of benefit of the proposed measure to marine mammals, the likely effectiveness of the measure, and the practicability of the measure for applicant implementation. NMFS believes that the measures required of the Navy will result in the least practicable adverse impact.

Comment 8: The NRDC requests NMFS bar the use of mid- and high-frequency acoustic sources in those portions of the Keyport Range that extend into designated critical habitat for Southern Resident killer whales because these waters in Puget Sound are one of the most important habitats for the Southern Resident community of killer whales (and their near-exclusive habitat in summer/autumn months).

Response: The occurrence of Southern Resident killer whales (SRKW) in waters in the vicinity of the Keyport Range Site is rare (NMFS, 2006). The Navy conducted a density estimate of killer whales in inland waters of the Keyport Range Complex and concluded that density is zero for the Keyport Range Site (Navy, 2008). No take of SRKWs is expected or authorized. Therefore, NMFS does not agree with NRDC's recommendation.

The Keyport Range Complex has been at this site since 1914, and the existing Keyport Range Site was excluded from NMFS' 2006 critical habitat designation after a balancing of conservation benefits against national security considerations. The proposed Keyport Range Site extension would expand the existing range into the Southern Resident killer whale critical habitat. The extension would increase the area of the Keyport Range Site from 1.5 nm^2 to 1.7 nm^2 (5.1 km^2 to 5.9 km^2). The area in critical habitat is therefore approximately 0.2 nm^2 (0.8 km^2).

The Navy is required to shut down any active acoustic sources when any whale or dolphin is detected within 1,000 yards of the source. Modeling of three of the most powerful sources at the Keyport Range Site indicates that the received level at 1,000 yards drops down to 145 dB re 1 microPa, which is the level at which the risk function indicates a very small percentage of exposed animals would be harassed. Therefore, NMFS does not believe that the proposed RDT&E activities in the vicinity of SRKW critical habitat would result in the take this species if the shut-down mitigation measure is implemented.

Killer whales are mid-sized cetacean species with distinctive large dorsal fins and can be detected from a large distance, which allows mitigation and monitoring measures to be effectively carried out. However, to account for nighttime activities, NMFS has included an additional measure that will provide further assurance that no SRKW would be taken in the vicinity of the Keyport Range site. This additional measure requires the Navy to place a passive acoustic monitoring system at the northern and southern approaches to Port Orchard Reach and to conduct passive acoustic monitoring within the Agate Pass and south of University Point in southern Port Orchard Reach for nighttime RDT&E activities conducted in the Keyport Range Site Extension. If Southern Resident killer whales are detected in the vicinity of the Keyport Range Site, the Range Office shall be notified immediately and, in accordance with the required mitigation for all cetaceans, the active acoustic sources must be shutdown if killer whales are confirmed to approach at 1,000 yards from the source. NMFS considers passive acoustic monitoring for SRKW to be an effective way to supplement detection of this population in low light conditions, given that they are known to be more vocal compared to transient killer whales (Deecke *et al.*, 2005).

Comment 9: Citing that the exclusion zone for cetaceans is 1,000 yards and the exclusion zone for pinnipeds is 100 yards, the NRDC states that NMFS fails to explain why pinnipeds should be afforded less protection than cetaceans, especially as it notes that harbor seals will experience TTS onset at 183 dB, while cetaceans generally will experience TTS onset at 195 dB. The NRDC requests NMFS require a 1,000 yard exclusion zone for all marine mammals.

Response: Pinnipeds are abundant in the Keyport and Dabob current and proposed extensions. Given the limited operating area, close shore proximity and abundance of animals residing at the ranges, a greater standoff for pinnipeds would result in a large majority of activities interrupted, postponed or cancelled. As a result, the Keyport Range Complex would not meet its mission requirements, making such a measure impracticable. On the other hand, cetaceans are not as numerous as pinnipeds, and they are more easily detected at larger distances, allowing for the practicable implementation of a larger standoff distance.

The range to 183 dB re 1 microPa^2 (onset of TTS for harbor seal) for the mid frequency active acoustic source S5, which has a source level at 233 dB re 1 microPa @ 1 m (the highest of all active acoustic sources being used at Keyport Range Complex) is approximately 464 m. The total operation time for range target, which is under the S5 source type designation, is 9 hours per year for the entire Keyport Range Complex. All other active acoustic sources have lower source levels and thus the ranges to 183 dB 1 microPa^2 are expected to be much shorter. Although it is estimated that more than 2,000 harbor seals would incur Level B harassment which could cause TTS, the TTS is expected to be short-term in duration and of a low level (due to the modeled received levels, see Keyport Range Complex FEIS/OEIS, Navy, 2009). Even if TTS occurs in harbor seals, it is expected in the much higher frequency in their communication range. Additionally, no takes by Level A harassment are anticipated, based on the modeling results.

Sonar operations within the Keyport Range Complex have been ongoing for over 50 years and evidence shows that the pinniped populations remain abundant.

Monitoring

Comment 10: The NRDC request that NMFS require long-term monitoring of local populations on all ranges to see if any populations reflect habitat displacement or exhibit other negative impacts.

Response: NMFS agrees with the NRDC's suggestion. The Keyport Range Complex maintains a database of marine mammal sighting since 2003. NMFS is working and will continue to work with the Navy to develop and implement monitoring plans to help better understand the impacts of all Naval RDT&E and training activities that have the potential to adversely affect marine mammal species and their habitat. For the proposed Keyport Range Complex RDT&E activities, various monitoring measures will be implemented and are described in the Monitoring section of this document.

Comment 11: The Commission requests that NMFS require the Navy to develop and implement a detailed plan to verify the performance of the visual monitoring, passive acoustic monitoring, and other monitoring and mitigation measures being proposed to enable the Navy, NMFS, and other

interested parties to evaluate their effectiveness.

Response: NMFS has worked with the Navy throughout the rulemaking process to develop a series of mitigation, monitoring, and reporting protocols that will effect the least practicable adverse impact and increase our understanding of the impact of these activities on marine mammals. These monitoring and reporting measures include, but are not limited to: (1) The use of trained Navy marine observers who will conduct marine mammal monitoring to avoid collisions with marine mammals; (2) the use of exclusion zones that avoid exposing marine mammals to levels of sound likely to result in injury or death of marine mammals; (3) the use of MMOs/Navy marine observers to conduct vessel and shore-based surveys; and (4) annual monitoring reports and comprehensive reports to provide insights regarding impacts to marine mammals.

NMFS will evaluate the effectiveness of these measures through review and analyses of the Navy's annual monitoring reports, the annual adaptive management meetings required by the final 5-year rule, as well as a required Monitoring workshop that will be convened in 2011 to solicit detailed input from experts regarding the effectiveness of the Navy's monitoring. NMFS will, through this established adaptive management process, work with the Navy to determine whether additional mitigation and monitoring measures are necessary. In addition, with the ICMP, which is a comprehensive monitoring planning and prioritization tool, and the planned Monitoring Workshop in 2011, NMFS will work with the Navy and other interested parties to further improve its monitoring and mitigation plans for its future activities.

Miscellaneous Issues

Comment 12: Two individuals expressed general opposition to Navy testing and bombing activities and NMFS' issuance of an MMPA authorization because of the danger of killing marine life.

Response: NMFS appreciates the commenters' concern for the marine mammals that live in the area of the proposed activities. However, the proposed Keyport Range Complex activities do not include bombing or any explosive detonations. The proposed activities, as described in detail in the Proposed Rule (74 FR 32264; July 7, 2009), include the use of active acoustic sources to conduct the Navy's RDT&E activities. In addition, the MMPA allows individuals to take marine mammals incidental to specified activities if NMFS can make the necessary findings required by law (*i.e.*, negligible impact, unmitigable adverse impact on subsistence users, *etc.*). As explained throughout this rulemaking, NMFS has made the necessary findings under 16 U.S.C. 1371(a)(5)(A) to support issuance of the final rule.

Estimated Take of Marine Mammals

As mentioned previously, with respect to the MMPA, NMFS' effects assessments serve four primary purposes: (1) To prescribe the permissible methods of taking (*i.e.*, Level B Harassment (behavioral harassment), Level A Harassment (injury), or mortality, including an identification of the number and types of take that could occur by Level A or B harassment or mortality) and to prescribe other means of effecting the least practicable adverse impact on such species or stock and its habitat (*i.e.*, mitigation); (2) to determine whether the specified activity will have a negligible impact on the affected species or stocks of marine mammals (based on the likelihood that the activity will adversely affect the species or stock through effects on annual rates of recruitment or survival); (3) to determine whether the specified activity will have an unmitigable adverse impact on the availability of the species or stock(s) for subsistence uses (however, there are no subsistence communities in the NAVSEA NUWC Keyport Range Complex Study Area; thus, there would be no effect to any subsistence user); and (4) to prescribe requirements pertaining to monitoring and reporting.

In the Estimated Take of Marine Mammals section of the proposed rule, NMFS related the potential effects to marine mammals from sonar operations to the MMPA regulatory definitions of Level A and Level B Harassment and assessed the effects to marine mammals that could result from the specific activities that the Navy intends to conduct. The subsections of this analysis are discussed in the proposed rule (74 FR 32264; July 7, 2009; pages 32281–32290).

In the Estimated Exposures of Marine Mammals section of the proposed rule, NMFS described in detail how the take estimates were calculated through modeling (74 FR 32264; July 7, 2009; pages 32290–32292). A summary of potential exposures from active acoustic sources (per year) for marine mammals in the NAVSEA NUWC Keyport Range Complex Study Area is listed in Table 8. No change has been made to the final rule.

TABLE 8—COMBINED ESTIMATED ANNUAL MMPA LEVEL B EXPOSURES (TTS AND BEHAVIOR) FOR PROPOSED ANNUAL RDT&E ACTIVITIES OPERATIONS AT ALL SITES AFTER IMPLEMENTATION OF PROPOSED MITIGATION MEASURES

	TTS (level B) exposures	Risk function sub-TTS behavioral exposures
Endangered & Threatened Species		
Blue whale	0	0
Fin whale	0	0
Humpback whale	0	0
Sei whale	0	0
Sperm whale	0	0
Killer whale	0	0
Steller sea lion	0	0
Non-ESA Listed Species		
Minke whale	0	0
Gray whale	0	0
Dwarf and pygmy sperm whale	0	0
Baird's beaked whale	0	0
Mesoplodons	0	0

TABLE 8—COMBINED ESTIMATED ANNUAL MMPA LEVEL B EXPOSURES (TTS AND BEHAVIOR) FOR PROPOSED ANNUAL RDT&E ACTIVITIES OPERATIONS AT ALL SITES AFTER IMPLEMENTATION OF PROPOSED MITIGATION MEASURES—Continued

	TTS (level B) exposures	Risk function sub-TTS behavioral exposures
Risso's dolphin	0	0
Pacific white-sided dolphin	0	0
Short-beaked common dolphin	0	0
Striped dolphin	0	0
Northern right whale dolphin	0	0
Dall's porpoise	0	0
Harbor porpoise*	1	11,282
Northern fur seal	0	44
California sea lion	0	114
Northern elephant seal	0	14
Harbor seal	2,062	3,507

*For harbor porpoises, the model results represent the step function criteria where 100% of the population exposed to 120 dB SPL are listed. This is not a risk function calculation.

Effects on Marine Mammal Habitat

NMFS' NAVSEA NUWC Keyport Range Complex proposed rule included a section that addressed the effects of the Navy's activities on Marine Mammal habitat (74 FR 32264; July 7, 2009; pages 32292–32293). NMFS concluded that the Navy's activities would have minimal effects on marine mammal habitat. No changes have been made to the discussion contained in this section of the proposed rule.

Analysis and Negligible Impact Determination

NMFS' NAVSEA NUWC Keyport Range Complex proposed rule included a section that addressed the analysis and negligible impact determination of the Navy's activities on the affected species or stocks (74 FR 32264; July 7, 2009; pages 32298–32300).

The Navy's specified activities have been described based on best estimates of the planned RDT&E activities the Navy would conduct within the proposed NAVSEA NUWC Keyport Range Complex Extension. The acoustic sources proposed to be used in the NAVSEA NUWC Keyport Range Complex Extension are low intensity and total proposed sonar operation hours are under 1,570 hours. Taking the above into account, along with the fact that NMFS anticipates no mortalities and injuries to result from the action, the fact that there are no specific areas of reproductive importance for marine mammals recognized within the Keyport Range Complex Extension study area, the sections discussed below, and dependent upon the implementation of the proposed mitigation measures, NMFS has determined that Navy RDT&E activities utilizing underwater acoustic sources will have a negligible impact on the affected marine mammal species and stocks present in the proposed action area.

Behavioral Harassment

As discussed in the Potential Effects of Exposure of Marine Mammals to HFAS/MFAS and illustrated in the conceptual framework, marine mammals can respond to HFAS/MFAS in many different ways, a subset of which qualifies as harassment. One thing that the take estimates do not take into account is the fact that most marine mammals will likely avoid strong sound sources to some extent. Although an animal that avoids the sound source will likely still be taken in some instances (such as if the avoidance results in a missed opportunity to feed, interruption of reproductive behaviors, *etc.*) in other cases avoidance may result in fewer instances of take than were estimated or in the takes resulting from exposure to a lower received level than was estimated, which could result in a less severe response. The Keyport Range Complex application involves mid-frequency and high frequency active sonar operations shown in Table 2, and none of the tests would involve powerful tactical sonar such as the 53C series MFAS. Therefore, any disturbance to marine mammals resulting from MFAS and HFAS in the proposed Keyport Range Complex RDT&E activities is expected to be significantly less in terms of severity when compared to major sonar exercises (*e.g.*, AFAST, HRC, SOCAL). In addition, high frequency signals tend to have more attenuation in the water column and are more prone to lose their energy during propagation. Therefore, their zones of influence are much smaller, thereby making it easier to detect marine mammals and prevent adverse effects from occurring.

There is limited information available concerning marine mammal reactions to MFAS/HFAS. The Navy has only been conducting monitoring activities since 2006. From the four major training exercises (MTEs) of HFAS/MFAS in the SOCAL Study Area for which NMFS has received training and monitoring reports, no instances of obvious behavioral disturbance were observed by the Navy watchstanders. The proposed activities in the Keyport Range Complex are RDT&E activities, which are much smaller in scale when compared with major training events in SOCAL. One cannot conclude from these results that marine mammals were not harassed from HFAS/MFAS, as a portion of animals within the area of concern may not have been seen (especially those more cryptic, deep-diving species, such as beaked whales or *Kogia* sp.) and some of the non-biologist watchstanders might not have had the expertise to characterize behaviors. However, the data demonstrate that the animals that were observed did not respond in any of the obviously more severe ways, such as panic, aggression, or anti-predator response.

In addition to the monitoring that will be required pursuant to these regulations and subsequent LOAs, which is specifically designed to help us better understand how marine mammals respond to sound, the Navy and NMFS have developed, funded, and begun conducting a controlled exposure experiment with beaked whales in the Bahamas.

Diel Cycle

As noted previously, many animals perform vital functions, such as feeding,

resting, traveling, and socializing on a diel cycle (24-hr cycle). Substantive behavioral reactions to noise exposure (such as disruption of critical life functions, displacement, or avoidance of important habitat) are more likely to be significant if they last more than one diel cycle or recur on subsequent days (Southall *et al.*, 2007). Consequently, a behavioral response lasting less than one day and not recurring on subsequent days is not considered particularly severe unless it could directly affect reproduction or survival (Southall *et al.*, 2007).

In the previous section, we discussed the fact that potential behavioral responses to HFAS/MFAS that fall into the category of harassment could range in severity. By definition, the takes by Level B behavioral harassment involve the disturbance of a marine mammal or marine mammal stock in the wild by causing disruption of natural behavioral patterns (such as migration, surfacing, nursing, breeding, feeding, or sheltering) to a point where such behavioral patterns are abandoned or significantly altered. These reactions would, however, be more of a concern if they were expected to last over 24 hours or be repeated in subsequent days. Different sonar testing may not occur simultaneously. Some of the marine mammals in the Keyport Range Complex Study Area are residents and others would not likely remain in the same area for successive days, it is unlikely that animals would be exposed to HFAS/MFAS at levels or for a duration likely to result in a substantive response that would then be carried on for more than one day or on successive days.

TTS

NMFS and the Navy have estimated that individuals of some species of marine mammals may sustain some level of TTS from HFAS/MFAS operations. As mentioned previously, TTS can last from a few minutes to days, be of varying degree, and occur across various frequency bandwidths. The TTS sustained by an animal is primarily classified by three characteristics:

- Frequency—Available data (of mid-frequency hearing specialists exposed to mid to high frequency sounds—Southall *et al.*, 2007) suggest that most TTS occurs in the frequency range of the source up to one octave higher than the source (with the maximum TTS at ½; octave above).
- Degree of the shift (*i.e.*, how many dB is the sensitivity of the hearing reduced by)—generally, both the degree of TTS and the duration of TTS will be greater if the marine mammal is exposed to a higher level of energy (which would occur when the peak dB level is higher or the duration is longer). The threshold for the onset of TTS > 6 dB) for Navy sonars is 195 dB (SEL), which might be received at distances of up to 275–500 m from the most powerful MFAS source, the AN/SQS–53 (the maximum ranges to TTS from other sources would be less). An animal would have to approach closer to the source or remain in the vicinity of the sound source appreciably longer to increase the received SEL, which would be difficult considering the marine observers and the nominal speed of a sonar vessel (10–12 knots). Of all TTS studies, some using exposures of almost an hour in duration or up to 217 dB SEL, most of the TTS induced was 15 dB or less, though Finneran *et al.* (2007) induced 43 dB of TTS with a 64-sec exposure to a 20 kHz source (MFAS emits a 1-s ping 2 times/minute).
- Duration of TTS (Recovery time)—see above. Of all TTS laboratory studies, some using exposures of almost an hour in duration or up to 217 dB SEL, almost all recovered within 1 day (or less, often in minutes), though in one study (Finneran *et al.*, 2007), recovery took 4 days.

Based on the range of degree and duration of TTS reportedly induced by exposures to non-pulse sounds of energy higher than that to which free-swimming marine mammals in the field are likely to be exposed during HFAS/MFAS testing activities, it is unlikely that marine mammals would sustain a TTS from MFAS that alters their sensitivity by more than 20 dB for more than a few days (and the majority would be far less severe). Also, for the same reasons discussed in the Diel Cycle section, and because of the short distance within which animals would need to approach the sound source, it is unlikely that animals would be exposed to the levels necessary to induce TTS in subsequent time periods such that their recovery were impeded. Additionally, though the frequency range of TTS that marine mammals might sustain would overlap with some of the frequency ranges of their vocalization types, the frequency range of TTS from MFAS (the source from which TTS would more likely be sustained because the higher source level and slower attenuation make it more likely that an animal would be exposed to a higher level) would not usually span the entire frequency range of one vocalization type, much less span all types of vocalizations.

Acoustic Masking or Communication Impairment

As discussed above, it is also possible that anthropogenic sound could result in masking of marine mammal communication and navigation signals. However, masking only occurs during the time of the signal (and potential secondary arrivals of indirect rays), versus TTS, which occurs continuously for its duration. Masking effects from HFAS/MFAS are expected to be minimal. If masking or communication impairment were to occur briefly, it would be in the frequency range of MFAS, which overlaps with some marine mammal vocalizations; however, it would likely not mask the entirety of any particular vocalization or communication series because the pulse length, frequency, and duty cycle of the HFAS/MFAS signal does not perfectly mimic the characteristics of any marine mammal's vocalizations.

PTS, Injury, or Mortality

The Navy's model estimated that no marine mammal would be taken by Level A harassment (injury, PTS included) or mortality due to the low intensity of the active sound sources being used.

Based on the aforementioned assessment, NMFS determines that there would be the following number of takes: 11,283 harbor porpoises, 44 northern fur seals, 114 California sea lions, 14 northern elephant seals, and 5,569 harbor seals (5,468 Washington Inland Waters stock and 101 Oregon/Washington Coastal stock) by Level B harassment (TTS and sub-TTS) as a result of the proposed Keyport Range Complex RDT&E sonar testing activities. These numbers very likely do not represent the number of individuals that would be taken, since it's most likely that many individual marine mammals would be taken multiple times. However, if each take represents a different animal, these take numbers represent approximately 29.89%, 0.01%, 0.05%, 0.01%, 37.42%, and 0.41% of the Oregon/Washington Coastal stock harbor porpoises, Eastern Pacific stock northern fur seals, U.S. stock California sea lions, California breeding stock northern elephant seals, Washington Inland Waters stock harbor seals, and Oregon/Washington Coastal stock harbor seals, respectively, in the vicinity of the proposed Keyport Range Complex Study Area (calculation based on NMFS 2007 U.S. Pacific Marine Mammal Stock Assessments and 2007 U.S. Alaska Marine Mammal Stock Assessments).

No Level A take (injury, PTS included) or mortality would occur as the result of the proposed RDT&E and range extension activities for the Keyport Range Complex.

Based on these analyses, NMFS has determined that the total taking over the 5-year period of the regulations and subsequent LOAs from the Navy's NAVSEA NUWCX Keyport Range Complex RDT&E and range extension activities will have a negligible impact on the marine mammal species and stocks present in the Keyport Range Complex Study Area. No changes have been made to the discussion contained in this section of the proposed rule.

Subsistence Harvest of Marine Mammals

NMFS has determined that the total taking of marine mammal species or stocks from the Navy's mission activities in the Keyport Range Complex study area would not have an unmitigable adverse impact on the availability of the affected species or stocks for subsistence uses, since there are no such uses in the specified area.

ESA

There are eight marine mammal species/stocks, one sea turtle species, and four fish species over which NMFS has jurisdiction that are listed as endangered or threatened under the ESA that could occur in the NAVSEA NUWC Keyport Range Complex study area: Blue whale, fin whale, sei whale, humpback whale, North Pacific right whale, sperm whale, Southern Resident killer whale, Steller sea lions, leatherback sea turtle, Puget Sound Chinook salmon, Hood Canal summer-run chum salmon, Puget Sound Steelhead trout, and Coastal-Puget Sound bull trout.

Pursuant to Section 7 of the ESA, the Navy has consulted with NMFS on this action. NMFS has also consulted internally on the issuance of regulations under section 101(a)(5)(A) of the MMPA for this activity. NMFS' Biological Opinion concludes that the proposed RDT&E activities are not likely to jeopardize the continued existence of the threatened and endangered species listed under the ESA under NMFS jurisdiction.

NEPA

NMFS participated as a cooperating agency on the Navy's Final Environmental Impact Statement (FEIS) for the NAVSEA NUWC Keyport Range Complex, published on May 12, 2010. NMFS has adopted the Navy's EIS/OEIS in connection with this MMPA rulemaking and has prepared a record of decision.

Determination

Based on the analysis contained herein and in the proposed rule (and other related documents) of the likely effects of the specified activity on marine mammals and their habitat and dependent upon the implementation of the mitigation and monitoring measures, NMFS finds that the total taking from the NAVSEA NUWC Keyport Range Complex's RDT&E activities utilizing active acoustic sources (including MFAS/HFAS) over the 5 year period will have a negligible impact on the affected species or stocks and will not result in an unmitigable adverse impact on the availability of marine mammal species or stocks for taking for subsistence uses. NMFS has issued regulations for these exercises that prescribe the means of effecting the least practicable adverse impact on marine mammals and their habitat and set forth requirements pertaining to the monitoring and reporting of that taking.

Classification

This action does not contain a collection of information requirement for purposes of the Paperwork Reduction Act.

This proposed rule has been determined by the Office of Management and Budget to be not significant for purposes of Executive Order 12866.

Pursuant to the Regulatory Flexibility Act, the Chief Counsel for Regulation of the Department of Commerce certified to the Chief Counsel for Advocacy of the Small Business Administration at the proposed rule stage that this rule, if adopted, would not have a significant economic impact on a substantial number of small entities, and published such certification in the **Federal Register** notice of proposed rulemaking. No changes have been made that affect that certification. Accordingly, no final regulatory flexibility analysis is required, and none has been prepared.

The Assistant Administrator for Fisheries has determined that there is good cause under the Administrative Procedure Act (5 U.S.C. 553(d)(3)) to waive the 30-day delay in effective date of the measures contained in the final rule. The Navy has a compelling national policy reason to continue military readiness activities without interruption in the Keyport Range Complex. As discussed below, suspension/interruption of the Navy's ability to conduct RDT&E activities disrupts adequate and realistic testing of military equipment, vehicles, weapons, and sensors for proper operation and suitability for combat essential to our national security.

In order to meet its national security objectives, the Navy must continually maintain its ability to operate in a challenging at-sea environment, conduct military operations, control strategic maritime transit routes and international straits, and protect sea lines of communications that support international commerce. To meet these objectives, the Navy must identify, develop, and procure defense systems by continually integrating test and evaluation support throughout the defense acquisition process and providing essential information to decision-makers. Such testing and evaluation is critical in determining that a defense system performs as expected and whether these systems are operationally effective, suitable, survivable, and safe for their intended use.

In order to effectively fulfill its national security mission, the Navy has a need to conduct RDT&E activities covered by this final rule as soon as possible. The defense acquisition process is structured to be responsive and acquire quality products that satisfy user needs with measurable improvements on mission capability and operational support in a timely manner. Test and evaluation confirms performance of platforms and systems against documented capability needs and adversary capabilities. Delays in acquisition test and evaluation affect the Navy's need to meet its statutory mission to deploy worldwide naval forces equipped to meet existing and emergent threats. The Navy has and will be unable to plan to conduct activities covered by this final rule in the immediate future due to the uncertainties in the planning process and the fiscal and other consequences of planning for, preparing for, and then cancelling a major testing event. A 30-day delay furthers the amount of time the Navy is unable to plan for and execute an activity covered by this rule. Further, should an immediate national security requirement to use the range complex arise, the 30 day delay would prevent the Navy from meeting its mission. This would have adverse national security consequences.

Waiver of the 30-day delay of the effective date of the final rule will allow the Navy to continue to integrate RDT&E activities into the defense acquisition process to meet test and evaluation requirements, and to put capability into the hands of U.S. Sailors and Marines quickly.

List of Subjects in 50 CFR Part 218

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

Dated: April 4, 2011.

Samuel D. Rauch III,

Deputy Assistant Administrator for Regulatory Programs, National Marine Fisheries Service.

For reasons set forth in the preamble, 50 CFR part 218 is amended as follows.

PART 218—REGULATIONS GOVERNING THE TAKING AND IMPORTING OF MARINE MAMMALS

■ 1. The authority citation for part 218 continues to read as follows:

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

■ 2. Subpart R is added to part 218 to read as follows:

Subpart R—Taking Marine Mammals Incidental to U.S. Navy Research, Development, Test, and Evaluation Activities in the Naval Sea System Command (NAVSEA) Naval Undersea Warfare Center Keyport Range Complex and the Associated Proposed Extensions Study Area

Sec.

Subpart R—Taking Marine Mammals Incidental to U.S. Navy Research, Development, Test, and Evaluation Activities in the Naval Sea System Command (NAVSEA) Naval Undersea Warfare Center (NUWC) Keyport Range Complex and the Associated Proposed Extensions Study Area

§ 218.170 Specified activity and specified geographical area and effective dates.

(a) Regulations in this subpart apply only to the U.S. Navy for the taking of marine mammals that occur in the area outlined in paragraph (b) of this section and that occur incidental to the activities described in paragraph (c) of this section.

(b) These regulations apply only to the taking of marine mammals by the Navy that occurs within the Keyport Range Complex Action Area, which includes the extended Keyport Range Site, the extended Dabob Bay Range Complex (DBRC) Site, and the extended Quinault Underwater Tracking Range (QUTR) Site, as presented in the Navy's LOA application. The NAVSEA NUWC Keyport Range Complex is divided into open ocean/offshore areas and in-shore areas:

(1) Open Ocean Area—air, surface, and subsurface areas of the NAVSEA NUWC Keyport Range Complex Extension that lie outside of 12 nautical miles (nm) from land.

(2) Offshore Area—air, surface, and subsurface ocean areas within 12 nm of the Pacific Coast.

(3) In-shore—air, surface, and subsurface areas within the Puget Sound, Port Orchard Reach, Hood Canal, and Dabob Bay.

(c) These regulations apply only to the taking of marine mammals by the Navy if it occurs incidental to the following activities, or similar activities and sources (estimated amounts of use below):

(1) Range Activities Using Active Acoustic Devices:

(i) General range tracking: Narrow frequency output between 10 to 100 kHz with source levels (SL) between 195–203 dB re 1 microPa @ 1 m—up to 504.5 hours per year.

(ii) UUV Payloads: Operating frequency of 10 to 100 kHz with SLs less than 195 dB re 1 microPa @ 1 m at all range sites—up to 166 hours per year.

(iii) Torpedo Sonars: Operating frequency from 10 to 100 kHz with SL under 233 dB re 1 microPa @ 1 m—up to 21 hours per year.

(iv) Range Targets and Special Test Systems: 5 to 100 kHz frequency range with a SL less than 195 dB re 1 microPa @ 1 m at the Keyport Range Site and SL less than 238 dB re microPa @ 1 m at the DBRC and QUTR sites—up to 9 hours per year.

(v) Special Sonars (non-Navy, shore/pire static testing, diver activities) and Fleet Aircraft (active sonobuoys and dipping sonars): Frequencies vary from 100 to 2,500 kHz with SL less than 235 dB re 1 microPa @ 1 m—up to 321 hours per year.

(vi) Side Scan Sonar: Multiple frequencies typically at 100 to 700 kHz with SLs less than 235 dB re 1 microPa @ 1 m—up to 166 hours per year.

(vii) Other Acoustic Sources:

(A) Acoustic Modems: Emit pulses at frequencies from 10 to 300 kHz with SLs less than 210 dB re 1 microPa @ 1 m—up to 166 hours per year.

(B) Sub-bottom Profilers: Operate at 2 to 7 kHz at SLs less than 210 dB re 1 microPa @ 1 m, and 35 to 45 kHz at SLs less than 220 dB re 1 microPa @ 1 m—up to 192 hours per year.

(C) Target simulator (surface vessels, submarines, torpedoes, and UUV engine noise): Acoustic energy from engines usually from 50 Hz to 10 kHz at SLs less than 170 dB re 1 microPa @ 1 m—up to 24.5 hours per year.

(2) Increased Tempo and Activities due to Range Extension: Estimates of annual range activities and operations are listed in the following table, but may vary provided that the variation does not result in exceeding the amount of take indicated in § 218.171(c):

Range activity	Platform/system used	Proposed number of activities/year [1]		
		Keyport range site	DBRC site	QUTR site
Test Vehicle Propulsion	Thermal propulsion systems	5	130	30
	Electric/Chemical propulsion systems	55	140	30
Other Testing Systems and Activities.	Submarine testing	0	45	15
	Inert mine detection, classification and localization	5	20	10
	Non-Navy testing	5	5	5
	Acoustic & non-acoustic sensors (magnetic array, oxygen).	20	10	5
	Countermeasure test	5	50	5
	Impact testing	0	10	5
	Static in-water testing	10	10	6
	UUV test	45	120	40
	Unmanned Aerial System (UAS) test	0	2	2

Range activity	Platform/system used	Proposed number of activities/year [1]		
		Keyport range site	DBRC site	QUTR site
Fleet Activities [2] (excluding RDT&E)	Surface Ship activities	1	10	10
	Aircraft activities	0	10	10
	Submarine activities	0	30	30
	Diver activities	45	5	15
Deployment Systems (RDT&E)	Range support vessels:			
	Surface launch craft	35	180	30
	Special purpose barges	25	75	0
	Fleet vessels [3]	15	20	20
	Aircraft (rotary and fixed wing)	0	10	20
	Shore and pier	45	30	30

[1] There may be several activities in 1 day. These numbers provide an estimate of types of range activities over the year.
[2] Fleet activities in the NAVSEA NUWC Keyport Range Complex do not include the use of surface ship and submarine hull-mounted active sonars.
[3] As previously noted, Fleet vessels can include very small craft such as SEAL Delivery Vehicles.

(d) Regulations in this subpart are effective April 11, 2011 through April 11, 2016.

§ 218.171 Permissible methods of taking.

(a) Under Letters of Authorization issued pursuant to §§ 216.106 and 218.176 of this chapter, the Holder of the Letter of Authorization may incidentally, but not intentionally, take marine mammals within the area described in § 218.170(b), provided the activity is in compliance with all terms, conditions, and requirements of these regulations and the appropriate Letter of Authorization.

(b) The activities identified in § 218.170(c) must be conducted in a manner that minimizes, to the greatest extent practicable, any adverse impacts on marine mammals and their habitat.

(c) The incidental take of marine mammals under the activities identified in § 218.170(c) is limited to the following species, by Level B harassment only and the indicated number of times:

(1) Harbor porpoise (*Phocoena phocoena*)—56,415 (an average of 11,283 annually);

(2) Northern fur seal (*Callorhinus ursinus*)—220 (an average of 44 annually);

(3) California sea lion (*Zalophus californianus*)—570 (an average of 114 annually);

(4) Northern elephant seal (*Mirounga angustirostris*)—70 (an average of 14 annually);

(5) Harbor seal (*Phoca vitulina richardsi)* (Washington Inland Waters stock)—27,340 (an average of 5,468 annually); and

(6) Harbor seal (*P. v. richardsi*) (Oregon/Washington Coastal stock)—505 (an average of 101 annually).

§ 218.172 Prohibitions.

Notwithstanding takings contemplated in § 218.171 and authorized by a Letter of Authorization issued under § 216.106 of this chapter and § 218.176, no person in connection with the activities described in § 218.170 may:

(a) Take any marine mammal not specified in § 218.171(c);

(b) Take any marine mammal specified in § 218.171(c) other than by incidental take as specified in § 218.171 (c);

(c) Take a marine mammal specified in § 218.171(c) 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 these regulations or a Letter of Authorization issued under § 216.106 of this chapter and § 218.176.

§ 218.173 Mitigation.

When conducting RDT&E activities identified in § 218.170(c), the mitigation measures contained in this subpart and subsequent Letters of Authorization issued under § 216.106 of this chapter and § 218.176 must be implemented. These mitigation measures include, but are not limited to:

(a) Marine mammal observers training:

(1) All range personnel shall be trained in marine mammal recognition.

(2) Marine mammal observer training shall be conducted by qualified organizations approved by NMFS.

(b) Lookouts onboard vessels:

(1) Vessels on a range shall use lookouts during all hours of range activities.

(2) Lookout duties include looking for marine mammals.

(3) All sightings of marine mammals shall be reported to the Range Officer in charge of overseeing the activity.

(c) Visual surveillance shall be conducted just prior to all in-water exercises.

(1) Surveillance shall include, as a minimum, monitoring from all participating surface craft and, where available, adjacent shore sites.

(2) When cetaceans have been sighted in the vicinity of the operation, all range participants increase vigilance and take reasonable and practicable actions to avoid collisions and activities that may result in close interaction of naval assets and marine mammals.

(3) Actions may include changing speed and/or direction, subject to environmental and other conditions (*e.g.*, safety, weather).

(d) An "exclusion zone" shall be established and surveillance will be conducted to ensure that there are no marine mammals within this exclusion zone prior to the commencement of each in-water exercise.

(1) For cetaceans, the exclusion zone shall extend out 1,000 yards (914.4 m) from the intended track of the test unit.

(2) For pinnipeds, the exclusion zone shall extend out 100 yards (91 m) from the intended track of the test unit.

(e) Range craft shall not approach within 100 yards (91 m) of marine mammals, to the extent practicable considering human and vessel safety priorities. This includes marine mammals "hauled-out" on islands, rocks, and other areas such as buoys.

(f) In the event of a collision between a Navy vessel and a marine mammal, NUWC Keyport activities shall notify immediately the Navy chain of Command, which shall notify NMFS immediately.

(g) Passive acoustic monitoring for cetaceans will be implemented throughout the NUWC Keyport Range Complex during RDT&E testing activities involving active sonar transmissions when passive acoustic monitoring capabilities are being operated during the testing activity.

(h) Procedures for reporting marine mammal sightings on the NAVSEA

NUWC Keyport Range Complex shall be promulgated, and sightings shall be entered into the Range Operating System and forwarded to NOAA/NMML Platforms of Opportunity Program.

(i) If there is clear evidence that a marine mammal is injured or killed as a result of the proposed Navy RDT&E activities, the Naval activities shall be immediately suspended and the situation immediately reported by personnel involved in the activity to the Ranger Officer, who will follow Navy procedures for reporting the incident to NMFS through the Navy's chain-of-command.

(j) For nighttime RDT&E activities of active acoustic transmissions in the Keyport Range proposed extension area, the Navy shall conduct passive acoustic monitoring within the Agate Pass and south of University Point in southern Port Orchard Reach. If Southern Resident killer whales are detected in the vicinity of the Keyport Range Site, the Range Office shall be notified immediately and the active acoustic sources must be shutdown if killer whales are confirmed to approach at 1,000 yards from the source.

§ 218.174 Requirements for monitoring and reporting.

(a) The Holder of the Letter of Authorization issued pursuant to § 216.106 of this chapter and § 218.176 for activities described in § 218.170(c) is required to cooperate with the NMFS when monitoring the impacts of the activity on marine mammals.

(b) The Holder of the Authorization must notify NMFS immediately (or as soon as clearance procedures allow) if the specified activity identified in § 218.170(c) is thought to have resulted in the mortality or injury of any marine mammals, or in any take of marine mammals not identified or authorized in § 218.171(c).

(c) The Navy must conduct all monitoring and required reporting under the Letter of Authorization, including abiding by the NAVSEA NUWC Keyport Range Complex Monitoring Plan, which is incorporated herein by reference, and which requires the Navy to implement, at a minimum, the monitoring activities summarized below:

(1) Visual Surveys:

(i) The Holder of this Authorization shall conduct a minimum of 2 special visual surveys per year to monitor HFAS and MFAS respectively at the DBRC Range site.

(ii) For specified events, shore-based and vessel surveys shall be used 1 day prior to and 1–2 days post activity.

(A) Shore-based Surveys:

(*1*) Shore-based monitors shall observe test events that are planned in advance to occur adjacent to near shore areas where there are elevated topography or coastal structures, and shall use binoculars or theodolite to augment other visual survey methods.

(*2*) Shore-based surveys of the test area and nearby beaches shall be conducted for stranded marine animals following nearshore events. If any distressed, injured or stranded animals are observed, an assessment of the animal's condition (alive, injured, dead, or degree of decomposition) shall be reported immediately to the Navy and the information shall be transmitted immediately to NMFS through the appropriate chain of command.

(B) Vessel-based Surveys:

(*1*) Vessel-based surveys shall be designed to maximize detections of marine mammals near mission activity event.

(*2*) Post-analysis shall focus on how the location, speed and vector of the range craft and the location and direction of the sonar source (*e.g.* Navy surface vessel) relates to the animal.

(*3*) Any other vessels or aircraft observed in the area shall also be documented.

(iii) Surveys shall include the range site with special emphasis given to the particular path of the test run. When conducting a particular survey, the survey team shall collect the following information.

(A) Species identification and group size;

(B) Location and relative distance from the acoustic source(s);

(C) The behavior of marine mammals including standard environmental and oceanographic parameters;

(D) Date, time and visual conditions associated with each observation;

(E) Direction of travel relative to the active acoustic source; and

(F) Duration of the observation.

(iv) Animal sightings and relative distance from a particular active acoustic source shall be used post-survey to determine potential received energy (dB re 1 micro Pa-sec). This data shall be used, post-survey, to estimate the number of marine mammals exposed to different received levels (energy based on distance to the source, bathymetry, oceanographic conditions and the type and power of the acoustic source) and their corresponding behavior.

(2) Passive Acoustic Monitoring (PAM):

(i) The Navy shall deploy a hydrophone array in the Keyport Range Complex Study Area for PAM.

(ii) The array shall be utilized during the two special monitoring surveys in DBRC as described in § 218.174(c)(1)(i).

(iii) The array shall have the capability of detecting low frequency vocalizations (<1,000 Hz) for baleen whales and relatively high frequency (up to 30 kHz) for odontocetes.

(iv) Acoustic data collected from the PAM shall be used to detect acoustically active marine mammals as appropriate.

(3) Marine Mammal Observers on range craft or Navy vessels:

(i) Navy Marine mammal observers (NMMOs) may be placed on a range craft or Navy platform during the event being monitored.

(ii) The NMMO must possess expertise in species identification of regional marine mammal species and experience collecting behavioral data.

(iii) NMMOs may be placed alongside existing lookouts during the two specified monitoring events as described in § 218.174(c)(1)(i).

(iv) NMMOs shall inform the lookouts of any marine mammal sighting so that appropriate action may be taken by the chain of command. NMMOs shall schedule their daily observations to duplicate the lookouts' schedule.

(v) NMMOs shall observe from the same height above water as the lookouts, and they shall collect the same data collected by lookouts listed in § 218.174(c)(1)(iii).

(d) The Navy shall complete an Integrated Comprehensive Monitoring Program (ICMP) Plan in 2009. This planning and adaptive management tool shall include:

(1) A method for prioritizing monitoring projects that clearly describes the characteristics of a proposal that factor into its priority.

(2) A method for annually reviewing, with NMFS, monitoring results, Navy R&D, and current science to use for potential modification of mitigation or monitoring methods.

(3) A detailed description of the Monitoring Workshop to be convened in 2011 and how and when Navy/NMFS will subsequently utilize the findings of the Monitoring Workshop to potentially modify subsequent monitoring and mitigation.

(4) An adaptive management plan.

(5) A method for standardizing data collection for NAVSEA NUWC Keyport Range Complex Extension and across range complexes.

(e) Notification of Injured or Dead Marine Mammals—Navy personnel shall ensure that NMFS (regional stranding coordinator) is notified immediately (or as soon as clearance procedures allow) if an injured or dead marine mammal is found during or

shortly after, and in the vicinity of, any Navy activities utilizing sonar. The Navy shall provide NMFS with species or description of the animal(s), the condition of the animal(s) (including carcass condition if the animal is dead), location, time of first discovery, observed behaviors (if alive), and photo or video (if available).

(f) Annual Keyport Range Complex Monitoring Plan Report—The Navy shall submit a report annually by December 1 describing the implementation and results (through September 1 of the same year) of the Keyport Range Complex Monitoring Plan. Data collection methods will be standardized across range complexes to allow for comparison in different geographic locations. Although additional information will also be gathered, the NMMOs collecting marine mammal data pursuant to the Keyport Range Complex Monitoring Plan shall, at a minimum, provide the same marine mammal observation data required in § 218.174(c). The Keyport Range Complex Monitoring Plan Report may be provided to NMFS within a larger report that includes the required Monitoring Plan Reports from Keyport Range Complex and multiple range complexes.

(g) Keyport Range Complex 5-yr Comprehensive Report—The Navy shall submit to NMFS a draft comprehensive report that analyzes and summarizes *all* of the multi-year marine mammal information gathered during tests involving active acoustic sources for which individual reports are required in § 218.174 (d)–(f). This report will be submitted at the end of the fourth year of the rule (June 2013), covering activities that have occurred through September 1, 2013.

(h) The Navy shall respond to NMFS comments and requests for additional information or clarification on the Keyport Range Complex Extension Comprehensive Report, the Annual Keyport Range Complex Monitoring Plan Report (or the multi-Range Complex Annual Monitoring Report, it that is how the Navy chooses to submit the information) if submitted within 3 months of receipt. The report will be considered final after the Navy has addressed NMFS' comments, or three months after the submittal of the draft if NMFS does not comment by then.

(i) In 2011, the Navy shall convene a Monitoring Workshop in which the Monitoring Workshop participants will be asked to review the Navy's Monitoring Plans and monitoring results and make individual recommendations (to the Navy and NMFS) of ways of improving the Monitoring Plans. The recommendations shall be reviewed by the Navy, in consultation with NMFS, and modifications to the Monitoring Plan shall be made, as appropriate.

§ 218.175 Applications for Letters of Authorization.

To incidentally take marine mammals pursuant to these regulations for the activities identified in § 218.170(c), the U.S. Navy must apply for and obtain either an initial Letter of Authorization in accordance with § 218.176 or a renewal under § 218.177.

§ 218.176 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 § 218.177.

(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).

§ 218.177 Renewal of Letters of Authorization and adaptive management.

(a) A Letter of Authorization issued under § 216.106 and § 218.176 for the activity identified in § 218.170(c) will be renewed annually upon:

(1) Notification to NMFS that the activity described in the application submitted under § 218.175 shall 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 § 218.174(b); and

(3) A determination by the NMFS that the mitigation, monitoring and reporting measures required under § 218.173 and the Letter of Authorization issued under §§ 216.106 and 218.176, 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 218.177 indicates that a substantial modification to the described work, mitigation or monitoring undertaken during the upcoming season will occur, the NMFS will provide the public a period of 30 days for review and comment on the request. Public 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**.

(d) NMFS, in response to new information and in consultation with the Navy, may modify the mitigation or monitoring measures in subsequent LOAs if doing so creates a reasonable likelihood of more effectively accomplishing the goals of mitigation and monitoring set forth in the preamble of these regulations. Below are some of the possible sources of new data that could contribute to the decision to modify the mitigation or monitoring measures:

(1) Results from the Navy's monitoring from the previous year (either from Keyport Range Complex Study Area or other locations).

(2) Findings of the Monitoring Workshop that the Navy will convene in 2011 (§ 218.174(i)).

(3) Compiled results of Navy funded research and development (R&D) studies (presented pursuant to the ICMP (§ 218.174(d)).

(4) Results from specific stranding investigations (either from the Keyport Range Complex Study Area or other locations).

(5) Results from the Long Term Prospective Study described in the preamble to these regulations.

(6) Results from general marine mammal and sound research (funded by the Navy (described below) or otherwise).

(7) Any information which reveals that marine mammals may have been taken in a manner, extent or number not authorized by these regulations or subsequent Letters of Authorization.

§ 218.178 Modifications to Letters of Authorization.

(a) Except as provided in paragraph (b) of this section and § 218.177(d), no substantive modification (including withdrawal or suspension) to the Letter of Authorization by NMFS, issued

pursuant to § 216.106 of this chapter and § 218.176 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 § 218.177, 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 § 218.171(b), a Letter of Authorization issued pursuant to § 216.106 of this chapter and § 218.176 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.

[FR Doc. 2011–8573 Filed 4–11–11; 8:45 am]

BILLING CODE 3510–22–P

Proposed Rules

Federal Register
Vol. 76, No. 70
Tuesday, April 12, 2011

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

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. FAA–2011–0135; Airspace Docket No. 11–AGL–4]

Proposed Amendment of Class E Airspace; Madison, SD

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This action proposes to amend Class E airspace at Madison, SD to accommodate new Standard Instrument Approach Procedures (SIAP) at Madison Municipal Airport. The FAA is taking this action to enhance the safety and management of Instrument Flight Rules (IFR) operations for SIAPs at the airport.

DATES: 0901 UTC. Comments must be received on or before May 27, 2011.

ADDRESSES: Send comments on this proposal to the U.S. Department of Transportation, Docket Operations, 1200 New Jersey Avenue, SE., West Building Ground Floor, Room W12–140, Washington, DC 20590–0001. You must identify the docket number FAA–2011–0135/Airspace Docket No. 11–AGL–4, at the beginning of your comments. You may also submit comments through the Internet at *http://www.regulations.gov.* You may review the public docket containing the proposal, any comments received, and any final disposition in person in the Dockets Office between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The Docket Office (telephone 1–800–647–5527), is on the ground floor of the building at the above address.

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

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested parties are invited to participate in this proposed rulemaking by submitting such written data, views, or arguments, as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, aeronautical, economic, environmental, and energy-related aspects of the proposal. Communications should identify both docket numbers and be submitted in triplicate to the address listed above. Commenters wishing the FAA to acknowledge receipt of their comments on this notice must submit with those comments a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket No. FAA–2011–0135/Airspace Docket No. 11–AGL–4." The postcard will be date/time stamped and returned to the commenter.

Availability of NPRMs

An electronic copy of this document may be downloaded through the Internet at *http://www.regulations.gov.*. Recently published rulemaking documents can also be accessed through the FAA's web page at *http://www.faa.gov/airports_airtraffic/air_traffic/publications/airspace_amendments/.*

You may review the public docket containing the proposal, any comments received and any final disposition in person in the Dockets Office (see **ADDRESSES** section for address and phone number) between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. An informal docket may also be examined during normal business hours at the office of the Central Service Center, 2601 Meacham Blvd, Fort Worth, TX 76137.

Persons interested in being placed on a mailing list for future NPRMs should contact the FAA's Office of Rulemaking (202) 267–9677, to request a copy of Advisory Circular No. 11–2A, Notice of Proposed Rulemaking Distribution System, which describes the application procedure.

The Proposal

This action proposes to amend Title 14, Code of Federal Regulations (14 CFR), part 71 by amending Class E airspace extending upward from 700 feet above the surface to accommodate new standard instrument approach procedures at Madison Municipal Airport, Madison, SD. Controlled airspace is needed for the safety and management of IFR operations at the airport. Geographic coordinates would also be updated to coincide with the FAA's aeronautical database.

Class E airspace areas are published in Paragraph 6005 of FAA Order 7400.9U, dated August 18, 2010 and effective September 15, 2010, which is incorporated by reference in 14 CFR 71.1. The Class E airspace designation listed in this document would be published subsequently in the Order.

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

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

airspace at Madison Municipal Airport, Madison, SD.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (Air).

The Proposed Amendment

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

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

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

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

§ 71.1 [Amended]

2. The incorporation by reference in 14 CFR 71.1 of FAA Order 7400.9U, Airspace Designations and Reporting Points, dated August 18, 2010, and effective September 15, 2010, is amended as follows:

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

* * * * *

AGL SD E5 Madison, SD [Amended]

Madison Municipal Airport, SD
(Lat. 44°00′59″ N., long. 97°05′08″ W.)

That airspace extending upward from 700 feet above the surface within a 7-mile radius of Madison Municipal Airport, and within 3 miles each side of the 341° bearing from the airport extending from the 7-mile radius to 7.4 miles northwest of the airport, and within 2 miles each side of the 334° bearing from the airport extending from the 7-mile radius to 10.5 miles northwest of the airport.

Issued in Fort Worth, TX, on March 23, 2011.

Walter L. Tweedy,

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

[FR Doc. 2011–8615 Filed 4–11–11; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. FAA–2010–1053; Airspace Docket No. 10–ASW–15]

Proposed Establishment of Class E Airspace; Campbellton, TX

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This action proposes to establish Class E airspace at Campbellton, TX. Controlled airspace is necessary to accommodate new Standard Instrument Approach Procedures (SIAP) at 74 Ranch Airport. The FAA is taking this action to enhance the safety and management of Instrument Flight Rules (IFR) operations for SIAPs at the airport.

DATES: 0901 UTC. Comments must be received on or before May 27, 2011.

ADDRESSES: Send comments on this proposal to the U.S. Department of Transportation, Docket Operations, 1200 New Jersey Avenue, SE., West Building Ground Floor, Room W12–140, Washington, DC 20590–0001. You must identify the docket number FAA–2010–1053/Airspace Docket No. 10–ASW–15, at the beginning of your comments. You may also submit comments through the Internet at *http://www.regulations.gov.* You may review the public docket containing the proposal, any comments received, and any final disposition in person in the Dockets Office between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The Docket Office (telephone 1–800–647–5527), is on the ground floor of the building at the above address.

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

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested parties are invited to participate in this proposed rulemaking by submitting such written data, views, or arguments, as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, aeronautical, economic, environmental, and energy-related aspects of the proposal. Communications should identify both docket numbers and be submitted in triplicate to the address listed above. Commenters wishing the FAA to acknowledge receipt of their comments on this notice must submit with those comments a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket No. FAA–2010–1053/Airspace Docket No. 10–ASW–15." The postcard will be date/time stamped and returned to the commenter.

Availability of NPRMs

An electronic copy of this document may be downloaded through the Internet at *http://www.regulations.gov.* Recently published rulemaking documents can also be accessed through the FAA's Web page at *http://www.faa.gov/airports_airtraffic/air_traffic/publications/airspace_amendments/.*

You may review the public docket containing the proposal, any comments received and any final disposition in person in the Dockets Office (see **ADDRESSES** section for address and phone number) between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. An informal docket may also be examined during normal business hours at the office of the Central Service Center, 2601 Meacham Blvd., Fort Worth, TX 76137.

Persons interested in being placed on a mailing list for future NPRMs should contact the FAA's Office of Rulemaking (202) 267–9677, to request a copy of Advisory Circular No. 11–2A, Notice of Proposed Rulemaking Distribution System, which describes the application procedure.

The Proposal

This action proposes to amend title 14, Code of Federal Regulations (14 CFR), part 71 by establishing Class E airspace extending upward from 700 feet above the surface for new standard instrument approach procedures at 74 Ranch Airport, Campbellton, TX. Controlled airspace is needed for the safety and management of IFR operations at the airport.

Class E airspace areas are published in Paragraph 6005 of FAA Order 7400.9U, dated August 18, 2010 and effective September 15, 2010, which is incorporated by reference in 14 CFR 71.1. The Class E airspace designation listed in this document would be published subsequently in the Order.

The FAA has determined that this proposed regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore, (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a Regulatory Evaluation as the anticipated impact is so minimal. Since this is a routine matter that will

only affect air traffic procedures and air navigation, it is certified that this rule, when promulgated, will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

The FAA's authority to issue rules regarding aviation safety is found in Title 49 of the U.S. Code. Subtitle 1, section 106 describes the authority of the FAA Administrator. Subtitle VII, Aviation Programs, describes in more detail the scope of the agency's authority. This rulemaking is promulgated under the authority described in subtitle VII, part A, subpart I, section 40103. Under that section, the FAA is charged with prescribing regulations to assign the use of airspace necessary to ensure the safety of aircraft and the efficient use of airspace. This regulation is within the scope of that authority as it would establish controlled airspace at 74 Ranch Airport, Campbellton, TX.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (Air).

The Proposed Amendment

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

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

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

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

§ 71.1 [Amended]

2. The incorporation by reference in 14 CFR 71.1 of FAA Order 7400.9U, Airspace Designations and Reporting Points, dated August 18, 2010, and effective September 15, 2010, is amended as follows:

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

* * * * *

ASW TX E5 Campbellton, TX [New]

74 Ranch Airport, TX
(Lat. 28°41′06″ N., long. 98°22′58″ W.)

That airspace extending upward from 700 feet above the surface within a 6.3-mile radius of 74 Ranch Airport, and within 4 miles each side of the 324° bearing from the airport extending from the 6.3-mile radius of the airport to 10.1 miles northwest of the airport, and within 4 miles each side of the 144° bearing from the airport extending from the 6.3-mile radius of the airport to 9.6 miles southeast of the airport.

Issued in Fort Worth, TX, on March 23, 2011.

Richard H. Hall,

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

[FR Doc. 2011–8613 Filed 4–11–11; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. FAA–2011–0252; Airspace Docket No. 11–ANM–5]

Proposed Modification of Class E Airspace; Newcastle, WY

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This action proposes to modify Class E airspace at Newcastle, WY, to accommodate aircraft using the Area Navigation (RNAV) Global Positioning System (GPS) standard instrument approach procedures at Mondell Field Airport. The FAA is proposing this action to enhance the safety and management of aircraft operations at the airport. The airport name also would change to Mondell Field Airport.

DATES: Comments must be received on or before May 27, 2011.

ADDRESSES: Send comments on this proposal to the U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue, SE., Washington, DC 20590; telephone (202) 366–9826. You must identify FAA Docket No. FAA–2011–0252; Airspace Docket No. 11–ANM–5, at the beginning of your comments. You may also submit comments through the Internet at *http://www.regulations.gov.*

FOR FURTHER INFORMATION CONTACT: Eldon Taylor, Federal Aviation Administration, Operations Support Group, Western Service Center, 1601 Lind Avenue, SW., Renton, WA 98057; telephone (425) 203–4537.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested parties are invited to participate in this proposed rulemaking by submitting such written data, views, or arguments, as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, aeronautical, economic, environmental, and energy-related aspects of the proposal.

Communications should identify both docket numbers (FAA Docket No. FAA 2011–0252 and Airspace Docket No. 11–ANM–5) and be submitted in triplicate to the Docket Management System (*see* **ADDRESSES** section for address and phone number). You may also submit comments through the Internet at *http://www.regulations.gov.*

Commenters wishing the FAA to acknowledge receipt of their comments on this action must submit with those comments a self-addressed stamped postcard on which the following statement is made: "Comments to FAA Docket No. FAA–2011–0252 and Airspace Docket No. 11–ANM–5". The postcard will be date/time stamped and returned to the commenter.

All communications received on or before the specified closing date for comments will be considered before taking action on the proposed rule. The proposal contained in this action may be changed in light of comments received. All comments submitted will be available for examination in the public docket both before and after the closing date for comments. A report summarizing each substantive public contact with FAA personnel concerned with this rulemaking will be filed in the docket.

Availability of NPRMs

An electronic copy of this document may be downloaded through the Internet at *http://www.regulations.gov.* Recently published rulemaking documents can also be accessed through the FAA's web page at *http://www.faa.gov/airports_airtraffic/air_traffic/publications/airspace_amendments/.*

You may review the public docket containing the proposal, any comments received, and any final disposition in person in the Dockets Office (*see* the **ADDRESSES** section for the address and phone number) between 9 a.m. and 5 p.m., Monday through Friday, except federal holidays. An informal docket may also be examined during normal business hours at the Northwest Mountain Regional Office of the Federal Aviation Administration, Air Traffic Organization, Western Service Center, Operations Support Group, 1601 Lind Avenue, SW., Renton, WA 98057.

Persons interested in being placed on a mailing list for future NPRM's should contact the FAA's Office of Rulemaking, (202) 267–9677, for a copy of Advisory Circular No. 11–2A, Notice of Proposed Rulemaking Distribution System, which describes the application procedure.

The Proposal

The FAA is proposing an amendment to Title 14 Code of Federal Regulations (14 CFR) Part 71 by modifying Class E airspace extending upward from 700 feet above the surface at Mondell Field Airport, Newcastle, WY. Controlled airspace is necessary to accommodate aircraft using the RNAV (GPS) standard instrument approach procedures at Mondell Field Airport and would enhance the safety and management of aircraft operations at the airport. A minor airport name change would be made from Mondell Field to Mondell Field Airport, Newcastle, WY.

Class E airspace designations are published in paragraph 6005, of FAA Order 7400.9U, dated August 18, 2010, and effective September 15, 2010, which is incorporated by reference in 14 CFR 71.1. The Class E airspace designation listed in this document will be published subsequently in this Order.

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

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

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me, the Federal Aviation Administration proposes to amend 14 CFR part 71 as follows:

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

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

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

§ 71.1 [Amended]

2. The incorporation by reference in 14 CFR 71.1 of the Federal Aviation Administration Order 7400.9U, Airspace Designations and Reporting Points, dated August 18, 2010, and effective September 15, 2010 is amended as follows:

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

* * * * *

ANM WY E5 Newcastle, WY [Modified]

Mondell Field Airport, WY
(Lat. 43°53′08″ N., long. 104°19′05″ W.)
Ellsworth AFB, SD
(Lat. 44°08′42″ N., long. 103°06′13″ W.)

That airspace extending upward from 700 feet above the surface within 4 miles northeast and 8.3 miles southwest of the Mondell Field Airport 154° and 334° bearings extending from 5.3 miles northwest to 16.1 miles southeast of the airport; that airspace extending upward from 1,200 feet above the surface bounded on the north by the north edge of V–86, on the east by a 45.6-mile radius of Ellsworth AFB, on the south by the north edge of V–26, on the west by a line 4.3 miles west of and parallel to the Mondell Field Airport 360° bearing; that airspace extending upward from 700 feet MSL bounded on the north by the north edge of V–26, on the east by a 45.6-mile radius of Ellsworth AFB, on the south by the south edge of V–26, on the west by a line 4.3 miles west of and parallel to the Mondell Field Airport 360° bearing.

Issued in Seattle, Washington, on April 6, 2011.

Christine Mellon,

Acting Manager, Operations Support Group, Western Service Center.

[FR Doc. 2011–8743 Filed 4–11–11; 8:45 am]

BILLING CODE 4910–13–P

SOCIAL SECURITY ADMINISTRATION

20 CFR Parts 404 and 416

[Docket No. SSA 2010–0044]

RIN 0960–AG89

How We Collect and Consider Evidence of Disability

AGENCY: Social Security Administration (SSA).

ACTION: Notice of proposed rulemaking.

SUMMARY: We propose to modify the requirement to recontact your medical source(s) first when we need to resolve an inconsistency or insufficiency in the evidence he or she provided. Depending on the nature of the inconsistency or insufficiency, there may be other, more appropriate sources from whom we could obtain the information we need. By giving adjudicators more flexibility in determining how best to obtain this information, we will be able to make a determination or decision on disability claims more quickly and efficiently in certain situations. Eventually, our need to recontact your medical source(s) in many situations will be significantly reduced as a result of our efforts to improve the evidence collection process through the increased utilization of Health Information Technology (HIT).

DATES: To be sure that we consider your comments, we must receive them by June 13, 2011.

ADDRESSES: You may submit comments by any one of three methods—Internet, fax, or mail. Do not submit the same comments multiple times or by more than one method. Regardless of which method you choose, please state that your comments refer to Docket No. SSA–2010–0044 so that we may associate your comments with the correct regulation.

Caution: You should be careful to include in your comments only information that you wish to make publicly available. We strongly urge you not to include in your comments any personal information, such as Social Security numbers or medical information.

1. *Internet:* We strongly recommend that you submit your comments via the Internet. Please visit the Federal eRulemaking portal at *http://www.regulations.gov*. Use the *Search* function to find docket number SSA–2010–0044. The system will issue a tracking number to confirm your submission. You will not be able to view your comment immediately because we must post each comment manually. It may take up to a week for your comment to be viewable.

2. *Fax:* Fax comments to (410) 966–2830.

3. *Mail:* Mail your comments to the Office of Regulations, Social Security Administration, 107 Altmeyer Building, 6401 Security Boulevard, Baltimore, Maryland 21235–6401.

Comments are available for public viewing on the Federal eRulemaking portal at *http://www.regulations.gov* or in person, during regular business hours, by arranging with the contact person identified below.

FOR FURTHER INFORMATION CONTACT: Brian Rudick, Office of Regulations, Social Security Administration, 6401 Security Boulevard, Baltimore, MD 21235–6401, (410) 965–7102. For information on eligibility or filing for benefits, call our national toll-free number, 1–800–772–1213 or TTY 1–800–325–0778, or visit our Internet site, Social Security Online, at *http://www.socialsecurity.gov*.

SUPPLEMENTARY INFORMATION:

Explanation of Changes

Sometimes the evidence we receive from your treating physician, psychologist, or other medical source is inadequate for us to determine whether you are disabled; that is, we either do not have sufficient evidence to determine whether you are disabled or if after weighing the evidence we determine we cannot reach a conclusion about whether you are disabled.

Our current regulations describe what actions we will take in these situations. Currently, we will first recontact your medical source to determine whether the additional information we need is readily available, unless we know from past experience that the source either cannot or will not provide the necessary findings. We will seek additional evidence or clarification from your medical source when the report from your medical source contains a conflict or ambiguity that must be resolved, does not contain all the necessary information, or does not appear to be based on medically acceptable clinical and laboratory diagnostic techniques. We may do this by requesting copies of your medical source's records, a new report, or a more detailed report from your medical source, including your treating source, or by telephoning your medical source. If the information we need is not readily available from your medical source, we may request additional medical records, ask you to undergo a consultative examination (CE) at our expense, or ask you or others for more information. Sections 404.1512(e), 404.1527(c), 416.912(e), and 416.927(c).

We are currently engaged in efforts to dramatically improve the evidence collection process, particularly as it pertains to obtaining records from your medical source(s). Through the increased utilization of HIT, we will be able to obtain medical records from your source(s) electronically in a readable and organized format. HIT will also enable our adjudicators to access your complete records upon their receipt of a claim for adjudication. By obtaining all of the records from your medical source(s) at the outset of a claim and in a format that will speed our review of the evidence, we will be able to significantly reduce the need to recontact your source(s) for additional records or clarification. HIT will also reduce the number of CEs we might otherwise need when information from your medical source(s) is inadequate for us to determine disability.

In the meantime, we propose to modify the requirement in §§ 404.1512(e) and 416.912(e) that we first recontact your medical source(s) when we need to resolve an inconsistency or insufficiency in the evidence he or she provided. Under our proposed rule, after we have made every reasonable effort to help you get medical reports from your medical sources,[1] we will determine the best way to resolve the inconsistency or insufficiency. We will do that by taking one or more of several actions, including recontacting your medical source(s) when we need to resolve an inconsistency or insufficiency in the evidence he or she provided.

Although we propose to eliminate the requirement that we recontact your medical source(s) first when we need to resolve an inconsistency or insufficiency in the evidence he or she provided, we expect that our adjudicators would continue to recontact your medical source(s) when we believe such recontact is the most effective and efficient way to resolve an inconsistency or insufficiency. For example, if we have a report from one of your medical sources that contains a functional assessment of your physical capacity for work, but no clinical or objective findings in support, we expect that the adjudicator would first contact that source to find out the reasons for his or her assessment. Similarly, when the medical evidence we receive from one of your medical sources contains an internal inconsistency about an issue relevant to our disability determination, we would also expect that our adjudicator would contact that source to resolve the inconsistency.

However, our adjudicative experience has shown that, in some cases, there are other, more effective, ways to obtain the additional information we need. It is sometimes inefficient and ineffective to require our adjudicators to first contact your medical source(s). For example, when your medical source(s) does not specialize in the area of the impairment you have alleged and we need more evidence about its current severity, we may supplement the evidence in your case record by obtaining a CE with a specialist (such as a pulmonologist) who can perform the type of examination we need in order to determine whether you are disabled under our rules.

In addition, there are times when issues revealed in the medical evidence are better clarified by someone other than your medical source(s). For example, if the medical evidence contains a reference that indicates you returned to work, it may be more appropriate to contact you to verify this information and to obtain any related information, such as your schedule, earnings, and job duties, rather than recontacting your medical source(s). The current requirement to recontact your medical source(s) first can sometimes cause a delay in the adjudication of your case.

There are situations where we need the flexibility to determine how best to resolve inconsistencies and insufficiencies in the evidence. This proposed change would give our adjudicators the discretion to determine the best way to address these issues and obtain the needed information more quickly and efficiently. In these situations, we would shorten case processing time and conserve resources.

This proposed change would not alter our rules in §§ 404.1512(d) and 416.912(d) that require us to make every reasonable effort to help you get medical reports from your medical sources when you give us permission to request the reports. Rather, the proposed change would apply only after we have made those reasonable efforts. In addition to removing the requirement to recontact medical sources first in all situations, we propose to reorganize and clarify our rules about how we would consider and obtain additional evidence so that these rules are easier to understand and apply. Specifically, we propose to combine the guidance in current §§ 404.1512(e), 404.1527(c), 416.912(e),

[1] Sections 404.1512(d) and 416.912(d) require us to "make every reasonable effort" to develop "your complete medical history for at least the 12 months preceding the month in which you file your application unless there is a reason to believe that development of an earlier period is necessary or unless you say that your disability began less than 12 months before you filed your application." *See* §§ 404.1512(d)(1) and 416.912(d)(1) for how we define "every reasonable effort."

and 416.927(c) in a new section, proposed §§ 404.1520b and 416.920b. In this new section, we will:

- Explain when we consider evidence to be "insufficient" or "inconsistent";
- Explain that if all the evidence we receive, including any medical opinion(s), is consistent and there is sufficient evidence for us to determine whether you are disabled, we will make a determination or decision based on that evidence;
- Explain that if any of the evidence in your case record, including any medical opinion(s), is inconsistent, we will weigh the relevant evidence and decide if we can determine whether you are disabled based on the evidence we have;
- Explain that if the evidence is consistent but we have insufficient evidence to determine whether you are disabled or if after weighing the evidence we determine we cannot reach a conclusion about whether you are disabled, we will determine the best way to resolve any inconsistency or insufficiency;
- Explain that the action(s) we take will depend on the nature of the inconsistency or insufficiency;
- List the action(s) we will take to resolve the inconsistency or insufficiency and explain that we may not take all of the actions listed;
- Explain that if we cannot resolve the inconsistency or insufficiency, we will make a determination or decision based on the evidence we have.

Because we are proposing to remove current §§ 404.1512(e), 404.1527(c), 416.912(e), and 416.927(c), we would redesignate the paragraphs that follow. We would revise cross-references in §§ 404.1512(b)(6), 404.1545(a)(3), 416.912(b)(6), and 416.945(a)(3) to reflect these redesignations. We would also add cross-references to proposed §§ 404.1520b and 416.920b in §§ 404.1519a, 404.1520, 404.1527, 416.919a, 416.920, and 416.927.

Current §§ 404.1512(f) and 416.912(f) (proposed redesignated §§ 404.1512(e) and 416.912(e)), state, "If the information we need is not readily available from the records of your medical treatment source, or we are unable to seek clarification from your medical source, we will ask you to attend one or more consultative examinations at our expense." The phrase "not readily available from the records of your medical treatment source" could be read to require recontact with your medical sources first, so we propose to revise this language to say that we may ask you to attend one or more consultative examinations at our expense. Similarly, we would revise the first sentence in current §§ 404.1519a(a)(1) and 416.919a(a)(1) (proposed redesignated §§ 404.1519a(a) and 416.919a(a)) because it could also be read to require recontact first.

We would also remove from the list of situations which may require a CE in §§ 404.1519a(b) and 416.919a(b) the example that indicates that we could not resolve the inconsistency or insufficiency by recontacting your medical source. We also propose to combine the guidance in current §§ 404.1519a(a)(2) and (b) and 416.919a(a)(2) and (b), because both of these paragraphs explain that we will use results from CEs to resolve inconsistencies and insufficiencies.

Other Changes

We propose to make a number of other editorial corrections and non-substantive changes to the current rules. We are proposing these changes for clarity and consistency and to correct minor grammatical errors. For example, we propose to revise some language from passive to active voice. Where the current rules refer to a "determination," we propose to add the term "or decision," as appropriate, to clarify that these regulations apply to determinations and decisions at all levels of our administrative review process.

Our current title II rules state, "you must furnish medical and other evidence * * * about your medical impairment(s) and, if material to the determination of whether you are blind or disabled, its effect on your ability to work on a sustained basis." Section 404.1512(a). Our current title XVI rules state, "If material to the determination whether you are blind or disabled, medical and other evidence must be furnished about the effects of your impairment(s) on your ability to work, or if you are a child, on your functioning, on a sustained basis." Section 416.912(a). We propose to remove the words "blind or" from these two sections because your ability to work is not material to a determination or decision of whether you have blindness under titles II and XVI of the Social Security Act. This change reflects our current policy and operational practice with respect to the evaluation of disability claims involving blindness.

Clarity of These Proposed Rules

Executive Order 12866 requires each agency to write all rules in plain language. In addition to your substantive comments on these proposed rules, we invite your comments on how to make them easier to understand. For example:

- Have we organized the material to suit your needs?
- Are the requirements in the rules clearly stated?
- Do the rules contain technical language or jargon that is not clear?
- Would a different format (grouping and order of sections, use of headings, paragraphing) make the rules easier to understand?
- Would more (but shorter) sections be better?
- Could we improve clarity by adding tables, lists or diagrams?
- What else could we do to make the rules easier to understand?

When will we start to use these rules?

We will not use these rules until we evaluate the public comments we receive on them, determine whether they should be issued as final rules, and issue final rules in the **Federal Register**. If we publish final rules, we will explain in the preamble how we will apply them, and summarize and respond to the public comments. Until the effective date of any final rules, we will continue to use our current rules.

Regulatory Procedures

Executive Order 12866 as Supplemented by Executive Order 13563

We have consulted with the Office of Management and Budget (OMB) and determined that these proposed rules meet the requirements for a significant regulatory action under Executive Order 12866 as supplemented by Executive Order 13563. Thus, they were reviewed by OMB.

Regulatory Flexibility Act

We certify that these proposed rules, if published in final, would not have a significant economic impact on a substantial number of small entities because they would affect only individuals. Accordingly, a regulatory flexibility analysis as provided in the Regulatory Flexibility Act, as amended, is not required.

Paperwork Reduction Act

These proposed rules do not create any new or affect any existing collections and, therefore, does not require Office of Management Budget approval under the Paperwork Reduction Act.

(Catalog of Federal Domestic Assistance Program Nos. 96.001, Social Security—Disability Insurance; 96.002, Social Security—Retirement Insurance; 96.004, Social Security—Survivors Insurance; and 96.006, Supplemental Security Income)

List of Subjects

20 CFR Part 404

Administrative practice and procedure; Blind; Disability benefits; Old-Age, Survivors, and Disability Insurance; Reporting and recordkeeping requirements; Social Security.

20 CFR Part 416

Administrative practice and procedure; Aged, Blind, Disability benefits, Public Assistance programs; Reporting and recordkeeping requirements; Supplemental Security Income (SSI).

Michael J. Astrue,

Commissioner of Social Security.

For the reasons set out in the preamble, we propose to amend subpart P of part 404 and subpart I of part 416 of chapter III of title 20 Code of Federal Regulations as set forth below:

PART 404—FEDERAL OLD-AGE, SURVIVORS AND DISABILITY INSURANCE (1950–)

Subpart P—[Amended]

1. The authority citation for subpart P of part 404 continues to read as follows:

Authority: Secs. 202, 205(a), (b), and (d)–(h), 216(i), 221(a), (i) and (j), 222(c), 223, 225, and 702(a)(5) of the Social Security Act (42 U.S.C. 402, 405(a)–(b), and (d)–(h), 416(i), 421(a), (i) and (j), 422(c), 423, 425, and 902(a)(5)); sec. 211(b), Pub. L. 104–193, 110 Stat. 2105, 2189; sec. 202, Pub. L. 108–203, 118 Stat. 509 (42 U.S.C. 902 note).

2. Amend § 404.1512 by:

a. Revising the third sentence of paragraph (a);

b. In paragraph (b)(6), removing the phrase "(see § 404.1527(f)(1)(ii));" and adding in its place the phrase ". See § 404.1527(e)(2) through (3).",

c. Removing paragraph (e),

e. Redesignating paragraph (f) as (e)

f. Revising the heading and first sentence of newly redesignated paragraph (e), and g. Redesignating paragraph (g) as (f).

The revisions read as follows:

§ 404.1512 Evidence.

(a) * * * This means that you must furnish medical and other evidence that we can use to reach conclusions about your medical impairment(s) and, if material to the determination of whether you are disabled, its effect on your ability to work on a sustained basis. * * *

* * * * *

(e) *Obtaining a consultative examination.* We may ask you to attend one or more consultative examinations at our expense. * * *

* * * * *

3. Amend § 404.1519a by

a. Redesignating paragraph (a)(1) as paragraph (a) and revising the newly redesignated paragraph (a),

b. Removing paragraph (a)(2),

b. Revising paragraph (b) introductory text,

e. Adding "or" after the semi-colon in paragraph (b)(3),

E. Removing paragraph (b)(4), and

f. Redesignating paragraph (b)(5) as (b)(4).

The revisions read as follows:

§ 404.1519a When we will purchase a consultative examination and how we will use it.

(a) *General.* If we cannot get the information we need from your medical sources, we may decide to purchase a consultative examination. See § 404.1512 for the procedures we will follow to obtain evidence from your medical sources and § 404.1520b for how we consider evidence. Before purchasing a consultative examination, we will consider not only existing medical reports, but also the disability interview form containing your allegations as well as other pertinent evidence in your file.

(b) *Situations which may require a consultative examination.* We may purchase a consultative examination to try to resolve an inconsistency in the evidence, or when the evidence as a whole is insufficient to allow us to make a determination or decision on your claim. Some examples of when we might purchase a consultative examination to secure needed medical evidence, such as clinical findings, laboratory tests, a diagnosis, or prognosis, include but are not limited to:

* * * * *

4. Amend § 404.1520 by adding a sentence to the end of paragraph (a)(3) to read as follows:

§ 404.1520 Evaluation of disability in general.

(a) * * *

(3) * * * See § 404.1520b.

* * * * *

5. Add § 404.1520b to read as follows:

§ 404.1520b How we consider evidence.

After we review all of the evidence relevant to your claim, including medical opinions (see § 404.1527), we make findings about what the evidence shows. In some situations, we may not be able to make these findings because the evidence in your case record is insufficient or inconsistent. We consider evidence to be insufficient when it does not contain all the information we need to make our determination or decision. We consider evidence to be inconsistent when it conflicts with other evidence, contains an internal conflict, is ambiguous, or when the medical evidence does not appear to be based on medically acceptable clinical or laboratory diagnostic techniques. If the evidence in your case record is insufficient or inconsistent, we may need to take additional actions, as we explain in paragraphs (b) and (c) of this section.

(a) If all of the evidence we receive, including all medical opinion(s), is consistent and there is sufficient evidence for us to determine whether you are disabled, we will make our determination or decision based on that evidence.

(b) If any of the evidence in your case record, including any medical opinion(s), is inconsistent, we will weigh the relevant evidence and see whether we can determine whether you are disabled based on the evidence we have.

(c) If the evidence is consistent but we have insufficient evidence to determine whether you are disabled or if after weighing the evidence we determine we cannot reach a conclusion about whether you are disabled, we will determine the best way to resolve the inconsistency or insufficiency. The action(s) we take will depend on the nature of the inconsistency or insufficiency. We will try to resolve the inconsistency or insufficiency by taking any one or more of the actions listed in paragraphs (c)(1) through (c)(4) of this section. We might not take all of the actions listed below. We will consider any additional evidence we receive together with the evidence we already have.

(1) We may recontact your treating physician, psychologist, or other medical source. We may choose not to seek additional evidence or clarification from a medical source if we know from experience that the source either cannot or will not provide the necessary evidence. If we obtain medical evidence over the telephone, we will send the telephone report to the source for review, signature, and return;

(2) We may request additional existing records (see § 404.1512);

(3) We may ask you to undergo a consultative examination at our expense (see §§ 404.1517 through 404.1519t); or

(4) We may ask you or others for more information.

(d) When there are inconsistencies in the evidence that we cannot resolve or when, despite efforts to obtain

additional evidence, the evidence is insufficient to determine whether you are disabled, we will make a determination or decision based on the evidence we have.

6. Amend § 404.1527 as follows:

a. Revise paragraph (b);

b. Remove paragraph (c);

c. Redesignate paragraphs (d) through (f) as (c) through (e);

d. In newly redesignated paragraph (c) remove "(d)(2)" and add in its place "(c)(2)";

e. In newly redesignated paragraph (c)(2) remove "(d)(2)(i) and (d)(2)(ii)" and add in its place "(c)(2)(i) and (c)(2)(ii)" and remove "(d)(3) through (d)(6)" and add in its place "(c)(3) through (c)(6)";

f. In newly redesignated paragraph (d)(3) remove "(e)(1) and (e)(2)" and add in its place "(d)(1) and (d)(2)";

g. In newly redesignated paragraph (e) remove "(a) through (e)" and add in its place "(a) through (d)";

h. In newly redesignated paragraph (e)(2)(ii) remove "(a) through (e)" and add in its place "(a) through (d)"; and

i. In newly redesignated paragraph (e)(2)(iii) remove "(a) through (e)" and add in its place "(a) through (d)".

The revision reads as follows:

§ 404.1527 Evaluating opinion evidence.

* * * * *

(b) *How we consider medical opinions.* In determining whether you are disabled, we will always consider the medical opinions in your case record together with the rest of the relevant evidence we receive. See § 404.1520b.

* * * * *

7. Amend § 404.1545 by revising the fifth sentence of paragraph (a)(3) to read as follows:

§ 404.1545 Your residual functional capacity.

(a) * * *

(3) * * * (*See* §§ 404.1512(d) through (e).) * * *

* * * * *

PART 416—SUPPLEMENTAL SECURITY INCOME FOR THE AGED, BLIND, AND DISABLED

Subpart I—[Amended]

8. The authority citation for subpart I of part 416 continues to read as follows:

Authority: Secs. 221(m), 702(a)(5), 1611, 1614, 1619, 1631(a), (c), (d)(1), and (p) and 1633 of the Social Security Act (42 U.S.C. 421(m), 902(a)(5), 1382, 1382c, 1382h, 1383(a), (c), (d)(1), and (p), and 1383(b); secs. 4(c) and 5, 6(c)–(e), 14(a), and 15, Pub. L. 98–460, 98 Stat. 1794, 1801, 1802, and 1808 (42 U.S.C. 421 note, 423 note, and 1382h note).

9. Amend § 416.912 by:

a. Revising the third sentence of paragraph (a),

b. In paragraph (b)(6), removing the phrase (see § 416.927(f)(1)(ii)); and adding in its place the phrase "See § 416.927(e)(2)–(3)",

c. By removing paragraph (e),

d. Redesignating paragraph (f) as (e),

e. Revising the heading and first sentence of the newly redesignated paragraph (e), and

f. Redesignating paragraph (g) as (f).

The revisions read as follows:

§ 416.912 Evidence.

(a) * * * If material to the determination whether you are disabled, medical and other evidence must be furnished about the effects of your impairment(s) on your ability to work, or if you are a child, on your functioning, on a sustained basis. * * *

* * * * *

(e) *Obtaining a consultative examination.* We may ask you to attend one or more consultative examinations at our expense. * * *

* * * * *

10. Amend § 416.919a by:

a. Redesignating paragraph (a)(1) as (a) and revising the newly redesignated paragraph (a),

b. Removing paragraph (a)(2),

c. Revising paragraph (b) introductory text,

d. Adding "or" after the semi-colon in paragraph (b)(3),

e. Removing paragraph (b)(4), and

f. Redesignating paragraph (b)(5) as (b)(4).

The revisions read as follows:

§ 416.919a When we will purchase a consultative examination and how we will use it.

(a) *General.* If we cannot get the information we need from your medical sources, we may decide to purchase a consultative examination. See § 416.912 for the procedures we will follow to obtain evidence from your medical sources and § 416.920b for how we consider evidence. Before purchasing a consultative examination, we will consider not only existing medical reports, but also the disability interview form containing your allegations as well as other pertinent evidence in your file.

(b) *Situations which may require a consultative examination.* We may purchase a consultative examination to try to resolve an inconsistency in the evidence or when the evidence as a whole is insufficient to support a determination or decision on your claim. Some examples of when we might purchase a consultative examination to secure needed medical evidence, such as clinical findings, laboratory tests, a diagnosis, or prognosis, include but are not limited to:

* * * * *

11. Amend § 416.920 by adding a sentence to the end of paragraph (a)(3) to read as follows:

§ 416.920 Evaluation of disability in general.

(a) * * *

(3) * * * See § 416.920b.

* * * * *

12. Add § 416.920b to read as follows:

§ 416.920b How we consider evidence.

After we review all of the evidence relevant to your claim, including medical opinions (see § 416.927), we make findings about what the evidence shows. In some situations, we may not be able to make these findings because the evidence in your case record is insufficient or inconsistent. We consider evidence to be insufficient when it does not contain all the information we need to make our determination or decision. We consider evidence to be inconsistent when it conflicts with other evidence, contains an internal conflict, is ambiguous, or when the medical evidence does not appear to be based on medically acceptable clinical or laboratory diagnostic techniques. If the evidence in your case record is insufficient or inconsistent, we may need to take additional actions, as we explain in paragraphs (b) and (c) of this section.

(a) If all of the evidence we receive, including all medical opinion(s), is consistent and there is sufficient evidence for us to determine whether you are disabled, we will make our determination or decision based on that evidence.

(b) If any of the evidence in your case record, including any medical opinion(s), is inconsistent, we will weigh the relevant evidence and see whether we can determine whether you are disabled based on the evidence we have.

(c) If the evidence is consistent but we have insufficient evidence to determine whether you are disabled or if after weighing the evidence we determine we cannot reach a conclusion about whether you are disabled, we will determine the best way to resolve the inconsistency or insufficiency. The action(s) we take will depend on the nature of the inconsistency or insufficiency. We will try to resolve the inconsistency or insufficiency by taking any one or more of the actions listed in paragraphs (c)(1) through (c)(4) of this section. We might not take all of the

actions listed below. We will consider any additional evidence we receive together with the evidence we already have.

(1) We may recontact your treating physician, psychologist, or other medical source. We may choose not to seek additional evidence or clarification from a medical source if we know from experience that the source either cannot or will not provide the necessary evidence. If we obtain medical evidence over the telephone, we will send the telephone report to the source for review, signature, and return;

(2) We may request additional existing records (see § 416.912);

(3) We may ask you to undergo a consultative examination at our expense (see §§ 416.917 through 416.919t); or

(4) We may ask you or others for more information.

(d) When there are inconsistencies in the evidence that we cannot resolve or when, despite efforts to obtain additional evidence, the evidence is insufficient to determine whether you are disabled, we will make a determination or decision based on the evidence we have.

13. Amend § 416.927 as follows:

a. Revise paragraph (b);

b. Remove paragraph (c);

c. Redesignate paragraphs (d) through (f) as (c) through (e);

d. In newly redesignated paragraph (c) remove "(d)(2)" and add in its place "(c)(2)";

e. In newly redesignated paragraph (c)(2) remove "(d)(2)(i) and (d)(2)(ii)" and add in its place "(c)(2)(i) and (c)(2)(ii)" and remove "(d)(3) through (d)(6)" and add in its place "(c)(3) through (c)(6)";

f. In newly redesignated paragraph (d)(3) remove "(e)(1) and (e)(2)" and add in its place "(d)(1) and (d)(2)";

g. In newly redesignated paragraph (e) remove "(a) through (e)" and add in its place "(a) through (d)";

h. In newly redesignated paragraph (e)(2)(ii) remove "(a) through (e)" and add in its place "(a) through (d)"; and

i. In newly redesignated paragraph (e)(2)(iii) remove "(a) through (e)" and add in its place "(a) through (d)".

The revision reads as follows:

§ 416.927 Evaluating opinion evidence.

* * * * *

(b) *How we consider medical opinions.* In determining whether you are disabled, we will always consider the medical opinions in your case record together with the rest of the relevant evidence we receive. See § 416.920b.

* * * * *

14. Amend § 416.945 by revising the fifth sentence of paragraph (a)(3) to read as follows:

§ 416.945 Your residual functional capacity.

(a) * * *

(3) * * * (*See* §§ 416.912(d) through (e).) * * *

* * * * *

[FR Doc. 2011–8388 Filed 4–11–11; 8:45 am]

BILLING CODE 4191–02–P

DEPARTMENT OF THE INTERIOR

Bureau of Indian Affairs

25 CFR Chapter I

No Child Left Behind School Facilities and Construction Negotiated Rulemaking Committee

AGENCY: Bureau of Indian Affairs, Interior.

ACTION: Notice of meeting.

SUMMARY: In accordance with the Federal Advisory Committee Act, the Bureau of Indian Affairs is announcing that the No Child Left Behind School Facilities and Construction Negotiated Rulemaking Committee will hold its sixth meeting in Albuquerque, New Mexico. The purpose of the meeting is to continue working on reports and recommendations to Congress and the Secretary as required under the No Child Left Behind Act of 2001.

DATES: The Committee's sixth meeting will begin at 8 a.m. on April 27, 2011, and end at 12 p.m. on April 29, 2011.

ADDRESSES: The meeting will be held at the National Indian Program Training Center, second floor, 1011 Indian School Road, NW., Albuquerque, New Mexico 87104.

FOR FURTHER INFORMATION CONTACT: The Designated Federal Official, Michele F. Singer, Director, Office of Regulatory Affairs and Collaborative Action, Office of the Assistant Secretary—Indian Affairs, 1001 Indian School Road, NW., Suite 312, Albuquerque, NM 87104; telephone (505) 563–3805; fax (505) 563–3811.

SUPPLEMENTARY INFORMATION: The No Child Left Behind School Facilities and Construction Negotiated Rulemaking Committee was established to prepare and submit to the Secretary a catalog of the conditions at Bureau-funded schools, and to prepare reports covering: The school replacement and new construction needs at Bureau-funded school facilities; a formula for the equitable distribution of funds to address those needs; a list of major and minor renovation needs at those facilities; and a formula for equitable distribution of funds to address those needs. The reports are to be submitted to Congress and to the Secretary. The Committee also expects to draft proposed regulations covering construction standards for heating, lighting, and cooling in home-living (dormitory) situations.

The following items will be on the agenda:

- Review and approve February 2011 meeting summary;
- Reach consensus on unresolved issues in the draft report;
- Finalize draft report language and prepare for tribal consultation;
- Agree on a schedule, standard agenda and presentation material for tribal consultation sessions;
- Discuss and clarify next steps for synthesizing and sharing comments received from tribal consultation and highlighting key topics for final committee meeting; and
- Public comments.

Written comments may be sent to the Designated Federal Official listed in the **FOR FURTHER INFORMATION CONTACT** section above. All meetings are open to the public; however, transportation, lodging, and meals are the responsibility of the participating public.

Dated: April 5, 2011.

Paul Tsosie,

Chief of Staff, Assistant Secretary—Indian Affairs.

[FR Doc. 2011–8649 Filed 4–11–11; 8:45 am]

BILLING CODE 4310–W7–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Parts 110 and 165

[Docket No. USCG–2010–1119]

RIN 1625–AA01; 1625–AA11

Superfund Site, New Bedford Harbor, New Bedford, MA: Anchorage Ground and Regulated Navigation Area

AGENCY: Coast Guard, DHS.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Coast Guard proposes to amend an existing anchorage ground which currently overlaps a pilot underwater cap ("pilot cap") in the U.S. Environmental Protection Agency's (EPA) New Bedford Harbor Superfund Site in New Bedford, MA. The Coast Guard also proposes to establish a regulated navigation area (RNA) prohibiting activities that disturb the

seabed around the site. The proposed RNA would not affect transit or navigation of the area.

DATES: Comments and related material must be received by the Coast Guard on or before May 12, 2011. Requests for public meetings must be received by the Coast Guard on or before April 27, 2011.

ADDRESSES: You may submit comments identified by docket number USCG–2010–1119 using any one of the following methods:

(1) *Federal eRulemaking Portal: http://www.regulations.gov.*

(2) *Fax:* 202–493–2251.

(3) *Mail:* Docket Management Facility (M–30), U.S. Department of Transportation, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue, SE., Washington, DC 20590–0001.

(4) *Hand delivery:* Same as mail address above, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The telephone number is 202–366–9329.

To avoid duplication, please use only one of these four methods. *See* the "Public Participation and Request for Comments" portion of the **SUPPLEMENTARY INFORMATION** section below for instructions on submitting comments.

FOR FURTHER INFORMATION CONTACT: If you have questions on this proposed rule, call or e-mail Lieutenant Junior Grade Isaac Slavitt, Waterways Management Branch, First Coast Guard District; telephone 617–223–8385, e-mail *Isaac.M.Slavitt@uscg.mil.* If you have questions on viewing or submitting material to the docket, call Renee V. Wright, Program Manager, Docket Operations, telephone 202–366–9826.

SUPPLEMENTARY INFORMATION:

Public Participation and Request for Comments

We encourage you to participate in this rulemaking by submitting comments and related materials. All comments received will be posted without change to *http://www.regulations.gov* and will include any personal information you have provided.

Submitting Comments

If you submit a comment, please include the docket number for this rulemaking (USCG–2010–1119), indicate the specific section of this document to which each comment applies, and provide a reason for each suggestion or recommendation. You may submit your comments and material online (via *http://www.regulations.gov*) or by fax, mail, or hand delivery, but please use only one of these means. If you submit a comment online via *http://www.regulations.gov,* it will be considered received by the Coast Guard when you successfully transmit the comment. If you fax, hand deliver, or mail your comment, it will be considered as having been received by the Coast Guard when it is received at the Docket Management Facility. We recommend that you include your name and a mailing address, an e-mail address, or a telephone number in the body of your document so that we can contact you if we have questions regarding your submission.

To submit your comment online, go to *http://www.regulations.gov,* click on the "submit a comment" box, which will then become highlighted in blue. In the "Document Type" drop down menu select "Proposed Rule" and insert "USCG–2010–1119" in the "Keyword" box. Click "Search" then click on the balloon shape in the "Actions" column. If you submit your comments by mail or hand delivery, submit them in an unbound format, no larger than 8½ by 11 inches, suitable for copying and electronic filing. If you submit comments by mail and would like to know that they reached the Facility, please enclose a stamped, self-addressed postcard or envelope. We will consider all comments and material received during the comment period and may change the rule based on your comments.

Viewing Comments and Documents

To view comments, as well as documents mentioned in this preamble as being available in the docket, go to *http://www.regulations.gov,* click on the "read comments" box, which will then become highlighted in blue. In the "Keyword" box insert "USCG–2010–1119" and click "Search." Click the "Open Docket Folder" in the "Actions" column. You may also visit the Docket Management Facility in Room W12–140 on the ground floor of the Department of Transportation West Building, 1200 New Jersey Avenue, SE., Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. We have an agreement with the Department of Transportation to use the Docket Management Facility.

Privacy Act

Anyone can search the electronic form of comments received into any of our dockets by the name of the individual submitting the comment (or signing the comment, if submitted on behalf of an association, business, labor union, *etc.*). You may review a Privacy Act notice regarding our public dockets in the January 17, 2008, issue of the **Federal Register** (73 FR 3316).

Public Meeting

We do not now plan to hold a public meeting. But you may submit a request for one on or before April 27, 2011 using one of the four methods specified under **ADDRESSES**. Please explain why you believe a public meeting would be beneficial. If we determine that one would aid this rulemaking, we will hold one at a time and place announced by a later notice in the **Federal Register.**

Basis and Purpose

The legal basis for the proposed rule is 33 U.S.C. 471, 1221–1236, 2030, 2035, and 2071; 46 U.S.C. chapter 701; 50 U.S.C. 191, 195; 33 CFR 1.05–1(g), 6.04–1, 6.04–6, and 160.5; and Department of Homeland Security Delegation No. 0170.1, which collectively authorize the Coast Guard to define regulatory anchorage grounds and RNAs.

The purpose of the proposed rule is to minimize the potential for human exposure to contamination and to help protect the integrity of the EPA's remedy at a portion of the New Bedford Harbor Superfund Site by reducing an existing anchorage ground so that it no longer overlaps the pilot cap, and by placing the pilot cap in a RNA that would protect the site from damage by mariners, and protect mariners and the general public from contaminants in the site.

The New Bedford Superfund cleanup site is an urban tidal estuary with sediments contaminated by polychlorinated biphenyls (PCBs) and heavy metals. An extensive history and background of the cleanup project can be found on the EPA's Web site, at *http://www.epa.gov/nbh/.*

The specific cleanup project and surrounding area addressed by this regulation is the pilot cap, which is located south of the New Bedford Harbor hurricane barrier in the outer harbor. The pilot cap consists of sand and gravel covering approximately 20 acres of contaminated sediments. Based on data collected in 2010, the thickness of the cap is predominantly one to two feet (98% of the cap area has a thickness greater than one foot; 68% greater than two feet; and in a few isolated areas, the thickness is up to 6.4 feet). A copy of the latest data for the pilot cap area can be found on EPA's Web site for New Bedford Harbor. While the pilot cap is protective of human health and the environment, it remains vulnerable to human actions that tend to disturb the seabed.

Several maritime practices that involve physical contact with the seabed (*e.g.*, anchoring, dragging, trawling, and spudding) pose a specific threat to the pilot cap. It is also conceivable that PCBs or heavy metals could stick to gear penetrating the seabed; any contaminants that come up with gear could create a threat to human health and the environment. The proposed RNA would prohibit these specific activities without in any way inhibiting surface navigation.

Discussion of Proposed Rule

Presently, anchorage ground "B" designated in 33 CFR 110.140 directly overlaps the pilot cap, which is particularly susceptible to damage by anchoring. To avoid that damage we propose amending anchorage ground "B" by moving its northern boundary sufficiently southward such that it no longer overlaps with the pilot cap. Although this would reduce the anchorage ground's area by roughly half, we do not expect this to pose a significant inconvenience to mariners because anchorage "A" is located nearby and is much larger.

Additionally, we propose establishing a RNA around the pilot cap. Anchoring, dragging, trawling, spudding, or any other action making contact with the seabed would be prohibited without the express permission of the Captain of the Port (COTP) Coast Guard Sector Southeastern New England, in consultation with the EPA; waivers could be requested in writing. Transit or navigation activities that do not make contact with the seabed would not be affected.

Regulatory Analyses

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

Executive Order 12866 and Executive Order 13563

This proposed rule is not a significant regulatory action under section 3(f) of Executive Order 12866, Regulatory Planning and Review, as supplemented by Executive Order 13563, and does not require an assessment of potential costs and benefits under section 6(a)(3) of that Order. The Office of Management and Budget has not reviewed it under that Order.

We expect minimal additional cost impacts to industry because this rule would not affect normal surface navigation. Although this regulation may have some impact on the public, the potential impact will be minimized for the following reasons: normal surface navigation will not be affected; approximately half of the existing anchorage area will still be available for use; the number of vessels using the anchorage is limited due to depth (less than or equal to 18 feet); and anchoring over the pilot cap could pose a risk to human health and the environment, making it an already unattractive option.

Small Entities

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

The Coast Guard certifies under 5 U.S.C. 605(b) that this proposed rule would not have a significant economic impact on a substantial number of small entities. This proposed rule would affect the following entities, some of which might be small entities: The owners or operators of recreational and small fishing vessels intending to anchor in New Bedford's outer harbor.

The proposed rule would not have a significant economic impact on a substantial number of small entities for the following reasons: Normal surface navigation will not be affected; approximately half of the existing anchorage area will still be available for use, and there is another, much larger anchorage nearby; the number of vessels using the anchorage is limited due to draft (less than or equal to 18 feet); and anchoring over the pilot cap could pose a risk to human health and the environment, making it an already unattractive option.

If you think that your business, organization, or governmental jurisdiction qualifies as a small entity and that this rule would have a significant economic impact on it, please submit a comment (*see* **ADDRESSES**) explaining why you think it qualifies and how and to what degree this rule would economically affect it.

Assistance for Small Entities

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Pub. L. 104–121), we want to assist small entities in understanding this proposed rule so that they can better evaluate its effects on them and participate in the rulemaking. If the rule would affect your small business, organization, or governmental jurisdiction and you have questions concerning its provisions or options for compliance, please contact Lieutenant Junior Grade Isaac Slavitt, Waterways Management Branch, First Coast Guard District; telephone 617–223–8385, e-mail *Isaac.M.Slavitt@uscg.mil*. The Coast Guard will not retaliate against small entities that question or complain about this proposed rule or any policy or action of the Coast Guard.

Collection of Information

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

Federalism

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

Unfunded Mandates Reform Act

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

Taking of Private Property

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

Civil Justice Reform

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

Protection of Children

We have analyzed this proposed rule under Executive Order 13045, Protection of Children from

Environmental Health Risks and Safety Risks. This rule is not an economically significant rule and would not create an environmental risk to health or risk to safety that might disproportionately affect children.

Indian Tribal Governments

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

Energy Effects

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

Technical Standards

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

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

Environment

We have analyzed this proposed rule under Department of Homeland Security Management Directive 023–01 and Commandant Instruction M16475.lD, which guide the Coast Guard in complying with the National Environmental Policy Act of 1969 (NEPA) (42 U.S.C. 4321–4370f), and have made a preliminary determination that this action is one of a category of actions which do not individually or cumulatively have a significant effect on the human environment. Preliminary NEPA documentation is available in the docket for this proposed rule. We believe the proposed rule would be categorically excluded, under figure 2–1, paragraphs (34)(f) and (34)(g) of the Instruction because it involves shrinking an existing anchorage ground, and establishing an RNA prohibiting activities that disturb the seabed. We seek any comments or information that may lead to the discovery of a significant environmental impact from this proposed rule.

List of Subjects

33 CFR Part 110

Anchorage grounds.

33 CFR Part 165

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

For the reasons discussed in the preamble, the Coast Guard proposes to amend 33 CFR parts 110 and 165 as follows:

PART 110—ANCHORAGE REGULATIONS

1. The authority citation for part 110 continues to read as follows:

Authority: 33 U.S.C. 471, 1221 through 1236, 2030, 2035, 2071; 33 CFR 1.05–1; Department of Homeland Security Delegation No. 0170.1.

2. Amend § 110.140, by revising paragraph (a)(2) to read as follows:

§ 110.140 Buzzards Bay, Nantucket Sound, and adjacent waters, Mass.

(a) * * *

(2) Anchorage B. All waters bounded by a line beginning at 41°36′42.3″ N, 070°54′24.9″ W; thence to 41°36′55.5″ N, 070°54′06.6″ W; thence to 41°36′13.6″ N, 070°53′40.2″ W; thence to 41°36′11.1″ N, 070°54′07.6″ W; thence along the shoreline to the beginning point.

* * * * *

PART 165—REGULATED NAVIGATION AREAS AND LIMITED ACCESS AREAS

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

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

4. Add § 165.125 to read as follows:

§ 165.125 Regulated Navigation Area; EPA Superfund Site, New Bedford Harbor, Massachusetts.

(a) *Location.* The regulated navigation area encompasses all waters bounded by a line beginning at 41°37′22.5″ N, 070°54′34.1″ W; thence to 41°37′14.4″ N, 070°54′19.6″ W; thence to 41°36′58.5″ N, 070°54′08.1″ W; thence to 41°36′45.0″ N, 070°54′26.9″ W; thence along the shoreline and south side of the hurricane barrier to the beginning point.

(b) *Regulations.* (1) All vessels and persons are prohibited from activities that would disturb the seabed within the regulated navigation area, including but not limited to, anchoring, dragging, trawling, and spudding. Vessels may otherwise transit or navigate within this area without reservation.

(2) The prohibition described in paragraph (b)(1) of this section shall not apply to vessels or persons engaged in activities associated with remediation efforts in the New Bedford Harbor Superfund Site, provided that the Coast Guard Captain of the Port Southeastern New England (COTP) is given advance notice of those activities by the U.S. Environmental Protection Agency (EPA).

(c) *Waivers.* The COTP may, in consultation with the U.S. EPA, authorize a waiver from this section if he or she determines that the proposed activity can be performed without undue risk to environmental remediation efforts. Requests for waivers should be submitted in writing to Commander, U.S. Coast Guard Sector Southeastern New England, 1 Little Harbor Road, Woods Hole, MA, 02543, with a copy to the U.S. Environmental Protection Agency, Region 1, New Bedford Harbor Remedial Project Manager, 5 Post Office Square, Suite 100 (OSRR07), Boston, MA 02109, to facilitate review by the EPA and U.S. Coast Guard.

Dated: March 24, 2011.

J.A. Servidio,

Captain, U.S. Coast Guard, Acting Commander, First Coast Guard District.

[FR Doc. 2011–8518 Filed 4–11–11; 8:45 am]

BILLING CODE 9110–04–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R04–OAR–2011–0316–201117; FRL–9293–3]

Approval and Promulgation of Implementation Plans and Designations of Areas for Air Quality Planning Purposes; Alabama: Birmingham; Determination of Attaining Data for the 1997 Annual Fine Particulate Matter Standards

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: EPA is proposing to determine that the Birmingham, Alabama, fine particulate ($PM_{2.5}$) nonattainment area (hereafter referred to as the "Birmingham Area" or "Area") has attained the 1997 annual average $PM_{2.5}$ National Ambient Air Quality Standards (NAAQS). The Birmingham Area is comprised of Jefferson and Shelby Counties in their entireties, and a portion of Walker County in Alabama. This proposed determination of attaining data is based upon complete, quality-assured and certified ambient air monitoring data for the 2008–2010 period showing that the Area has monitored attainment of the 1997 annual $PM_{2.5}$ NAAQS. If EPA finalizes this proposed determination of attaining data, the requirements for the Area to submit an attainment demonstration and associated reasonably available control measures (RACM), a reasonable further progress (RFP) plan, contingency measures, and other planning State Implementation Plan (SIP) revisions related to attainment of the standard shall be suspended so long as the Area continues to attain the annual $PM_{2.5}$ NAAQS.

DATES: Comments must be received on or before May 12, 2011.

ADDRESSES: Submit your comments, identified by Docket ID No. EPA–R04–OAR–2011–0316, by one of the following methods:

1. *http://www.regulations.gov*: Follow the on-line instructions for submitting comments.
2. *E-mail: benjamin.lynorae@epa.gov.*
3. *Fax:* (404) 562–9040.
4. *Mail:* EPA–R04–OAR–2011–0316, Regulatory Development Section, Air Planning Branch, Air, Pesticides and Toxics Management Division, U.S. Environmental Protection Agency, Region 4, 61 Forsyth Street, SW, Atlanta, Georgia 30303–8960.
5. *Hand Delivery:* Lynorae Benjamin, Chief, Regulatory Development Section, Air Planning Branch, Air, Pesticides and Toxics Management Division, U.S. Environmental Protection Agency, Region 4, 61 Forsyth Street, SW., Atlanta, Georgia 30303–8960. Such deliveries are only accepted during the Regional Office normal hours of operation, and special arrangements should be made for deliveries of boxed information. The Regional Office official hours of business are Monday through Friday, 8:30 to 4:30, excluding federal holidays.

Instructions: Direct your comments to Docket ID No. EPA–R04–OAR–2011–0316. EPA's policy is that all comments received will be included in the public docket without change and may be made available online at *http://www.regulations.gov*, including any personal information provided, unless the comment includes information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Do not submit through *http://www.regulations.gov* or e-mail, information that you consider to be CBI or otherwise protected. The *http://www.regulations.gov* Web site is an "anonymous access" system, which means EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an e-mail comment directly to EPA without going through *http://www.regulations.gov*, your e-mail address will be automatically captured and included as part of the comment that is placed in the public docket and made available on the Internet. If you submit an electronic comment, EPA recommends that you include your name and other contact information in the body of your comment and with any disk or CD–ROM you submit. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses. For additional information about EPA's public docket visit the EPA Docket Center homepage at *http://www.epa.gov/epahome/dockets.htm.*

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

FOR FURTHER INFORMATION CONTACT: Sara Waterson or Joel Huey, Regulatory Development Section, Air Planning Branch, Air, Pesticides and Toxics Management Division, U.S. Environmental Protection Agency, Region 4, 61 Forsyth Street, SW., Atlanta, Georgia 30303–8960. Ms. Waterson may be reached by phone at (404) 562–9061 or via electronic mail at *waterson.sara@epa.gov*. Mr. Huey may be reached by phone at (404) 562–9104. Mr. Huey can also be reached via electronic mail at *huey.joel@epa.gov*.

SUPPLEMENTARY INFORMATION:

I. What action is EPA taking?

EPA is proposing to determine that the Birmingham Area (comprised of Jefferson and Shelby Counties in their entireties, and a portion of Walker County) has attaining data for the 1997 annual $PM_{2.5}$ NAAQS. The proposal is based upon complete, quality-assured and certified ambient air monitoring data for the 2008–2010 monitoring period that show that the Area has monitored attainment of the 1997 annual $PM_{2.5}$ NAAQS.

II. What is the background for this action?

On July 18, 1997 (62 FR 36852), EPA established an annual $PM_{2.5}$ NAAQS at 15.0 micrograms per cubic meter ($\mu g/m^3$) based on a 3-year average of annual mean $PM_{2.5}$ concentrations. At that time, EPA also established a 24-hour NAAQS of 65 $\mu g/m^3$. See 40 CFR 50.7. On January 5, 2005 (70 FR 944), EPA published its air quality designations and classifications for the 1997 $PM_{2.5}$ NAAQS based upon air quality monitoring data from those monitors for calendar years 2001–2003. These designations became effective on

April 5, 2005. The Birmingham Area was designated nonattainment for the 1997 annual $PM_{2.5}$ NAAQS. See 40 CFR 81.301.

On October 17, 2006 (71 FR 61144), EPA retained the 1997 annual $PM_{2.5}$ NAAQS at 15.0 μg/m³ based on a 3-year average of annual mean $PM_{2.5}$ concentrations, and promulgated a 24-hour NAAQS of 35 μg/m³ based on a 3-year average of the 98th percentile of 24-hour concentrations. On November 13, 2009, EPA designated the Birmingham Area as nonattainment for the 2006 24-hour NAAQS (74 FR 58688).[1] In that action, EPA also clarified the designations for the NAAQS promulgated in 1997, stating that the Birmingham Area was designated as nonattainment for the annual NAAQS but attainment for the 24-hour NAAQS. Thus, today's action does not address attainment of either the 1997 24-hour NAAQS.

In response to legal challenges of the annual NAAQS promulgated in 2006, the U.S. Court of Appeals for the District of Columbia Circuit (DC Circuit) remanded this NAAQS to EPA for further consideration. *See American Farm Bureau Federation and National Pork Producers Council, et al.* v. *EPA,* 559 F.3d 512 (D.C. Cir. 2009). However, given that the 1997 and 2006 annual NAAQS are essentially identical, attainment of the 1997 annual NAAQS would also indicate attainment of the remanded 2006 annual NAAQS.

On April 25, 2007 (72 FR 20664), EPA promulgated its $PM_{2.5}$ implementation rule, codified at 40 CFR part 51, subpart Z, in which the Agency provided guidance for state and tribal plans to implement the 1997 $PM_{2.5}$ NAAQS. This rule, at 40 CFR 51.1004(c), specifies some of the regulatory consequences of attaining the NAAQS, as discussed below.

III. Does the Birmingham area meet the annual $PM_{2.5}$ NAAQS?

A. Criteria

Today's rulemaking proposes to find that the Birmingham Area is attaining the 1997 annual $PM_{2.5}$ NAAQS, and provides a basis for that final action. The Birmingham Area is comprised of Jefferson and Shelby Counties in their entireties, and a portion of Walker County in Alabama.

Under EPA regulations at 40 CFR 50.7, the annual primary and secondary $PM_{2.5}$ NAAQS are met when the annual arithmetic mean concentration, as determined in accordance with 40 CFR part 50, Appendix N, is less than or equal to 15.0 μg/m³ at all relevant monitoring sites in the Area.

B. Birmingham Area Air Quality

EPA has reviewed the ambient air monitoring data for the Birmingham Area in accordance with the provisions of 40 CFR part 50, Appendix N. All data considered have been quality-assured, certified, and recorded in EPA's Air Quality System database. This review addresses air quality data collected in the 3-year period from 2008–2010.

The following table provides the annual average concentrations averaged over 2008–2010 at all the sites in the Birmingham Area with at least 75 percent complete data in each quarter of each of those 3 years:

TABLE 1—ANNUAL AVERAGE $PM_{2.5}$ CONCENTRATIONS FOR MONITORS IN THE BIRMINGHAM, ALABAMA NONATTAINMENT AREA

Location	Site No.	2008 98th Percentile (μg/m³)	2009 98th Percentile (μg/m³)	2010 98th Percentile (μg/m³)	2008–2010 Design value (μg/m³)
North Birmingham	01–073–0023	15.5	11.7	13.8	13.7
McAdory	01–073–1005	12.2	10.4	11.8	11.5
Bruce Shaw Road	01–073–1009	10.8	9.6	10.1	10.2
Asheville Road	01–073–1010	13.2	10.3	12.1	11.9
Wylam	01–073–2003	14.4	11.3	12.4	12.7
Hoover	01–073–2006	12.1	10.3	11.8	11.4
Pinson High School	01–073–5002	11.9	9.9	10.9	10.9
Corner School Road	01–073–5003	11.5	9.7	10.7	10.6
Pelham High School	01–117–0006	11.6	9.8	[2] 11.3	10.9
Highland Avenue	01–127–0002	11.7	10.1	11.3	11.0

[2] The Pelham High School monitor did not meet data completeness in the 3rd quarter of 2010.

The Pelham High School monitor did not meet data completeness for the 3rd quarter of 2010. The 2010 average annual concentration for Pelham High School monitor without data substitution is 11.3 μg/m³. The 2010 average annual concentrations for 2008–2010 with data substitution is 13.9 μg/m³. The 3-year 2008–2010 design value with data substitution is 11.8 μg/m³; therefore, the monitor passes the data substitution test. The official design value for the monitor is 10.9 μg/m³. The complete procedure for the maximum value data substitution test can be found in the EPA guidance document "Guideline on Data Handling Conventions for the PM NAAQS," dated April 1999. The highest 3-year average annual concentration for 2008–2010 is 13.7 μg/m³ at the North Birmingham monitor.

EPA believes that the Birmingham Area is now meeting the 1997 annual $PM_{2.5}$ NAAQS. Since few data are available for 2011, the 2008–2010 data represent the most recent available data for EPA to use in its assessment. On the basis of this review, EPA is proposing to determine that the Birmingham Area has attained the 1997 annual $PM_{2.5}$ NAAQS. EPA is soliciting public comments on its proposal to determine that the Birmingham Area has attained the 1997 annual $PM_{2.5}$ NAAQS.

IV. What is the effect of this action?

If this proposed determination of attaining data is made final, the requirements for the Birmingham Area to submit an attainment demonstration and associated RACM, a RFP plan, contingency measures, and any other planning SIPs related to attainment of the 1997 annual $PM_{2.5}$ NAAQS would be suspended for so long as the Area continues to attain the $PM_{2.5}$ NAAQS. *See* 40 CFR 51.1004(c). Notably, as

[1] Although the Birmingham Area is designated nonattainment for the 2006 $PM_{2.5}$ NAAQS, EPA finalized a determination that the Area is currently attaining the 2006 $PM_{2.5}$ NAAQS. *See* 75 FR 57186.

described below, any such determination would not be equivalent to the redesignation of the Area to attainment for the annual $PM_{2.5}$ NAAQS.

If this proposed rulemaking is finalized and EPA subsequently determines, after notice-and-comment rulemaking in the **Federal Register**, that the Area has violated the annual $PM_{2.5}$ NAAQS, the basis for the suspension of the specific requirements would no longer exist for the Birmingham Area, and the Area would thereafter have to address the applicable requirements. *See* 40 CFR 51.1004(c).

Finalizing this proposed action would not constitute a redesignation of the Area to attainment of the annual $PM_{2.5}$ NAAQS under section 107(d)(3) of the Clean Air Act (CAA). Further, finalizing this proposed action does not involve approving a maintenance plan for the Area as required under section 175A of the CAA, nor would it find that the Area has met all other requirements for redesignation. Even if EPA finalizes the proposed action, the designation status of the Birmingham Area would remain nonattainment for the 1997 annual $PM_{2.5}$ NAAQS until such time as EPA determines that the Area meets the CAA requirements for redesignation to attainment and takes action to redesignate the Area.

This action is only a proposed determination of attaining data that the Birmingham Area has attained the 1997 annual $PM_{2.5}$ NAAQS. Today's action does not address the 24-hour $PM_{2.5}$ NAAQS.

If the Birmingham Area continues to monitor attainment of the annual $PM_{2.5}$ NAAQS, the requirements for the Birmingham Area to submit an attainment demonstration and associated RACM, a RFP plan, contingency measures, and any other planning SIPs related to attainment of the annual $PM_{2.5}$ NAAQS will remain suspended.

V. Statutory and Executive Order Reviews

This action proposes to make a determination of attainment based on air quality, and would, if finalized, result in the suspension of certain federal requirements, and it would not impose additional requirements beyond those imposed by state law. For that reason, this proposed action:

- Is not a "significant regulatory action" subject to review by the Office of Management and Budget under Executive Order 12866 (58 FR 51735, October 4, 1993);
- Does not impose an information collection burden under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*);
- Is certified as not having a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*);
- Does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4);
- Does not have Federalism implications as specified in Executive Order 13132 (64 FR 43255, August 10, 1999);
- Is not an economically significant regulatory action based on health or safety risks subject to Executive Order 13045 (62 FR 19885, April 23, 1997);
- Is not a significant regulatory action subject to Executive Order 13211 (66 FR 28355, May 22, 2001);
- Is not subject to requirements of Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) because application of those requirements would be inconsistent with the CAA; and
- Does not provide EPA with the discretionary authority to address, as appropriate, disproportionate human health or environmental effects, using practicable and legally permissible methods, under Executive Order 12898 (59 FR 7629, February 16, 1994). In addition, this proposed 1997 annual average $PM_{2.5}$ NAAQS data determination for the Birmingham Area does not have tribal implications as specified by Executive Order 13175 (65 FR 67249, November 9, 2000), because the SIP is not approved to apply in Indian country located in the state, and EPA notes that it will not impose substantial direct costs on tribal governments or preempt tribal law.

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Particulate matter, Reporting and recordkeeping requirements.

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

Dated: April 4, 2011.

A. Stanley Meiburg,

Acting Regional Administrator, Region 4.

[FR Doc. 2011–8702 Filed 4–11–11; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R04–OAR–2011–0029–201103; FRL–9293–2]

Approval and Promulgation of Implementation Plans and Designations of Areas for Air Quality Planning Purposes; Charlotte-Gastonia-Rock Hill, North Carolina and South Carolina: Determination of Attainment for the 1997 8-Hour Ozone Standards

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: EPA is proposing to determine that the Charlotte-Gastonia-Rock Hill, North Carolina-South Carolina nonattainment area has attained the 1997 8-hour ozone national ambient air quality standards (NAAQS) based on quality assured, quality controlled monitoring data from 2008–2010. The Charlotte-Gastonia-Rock Hill, North Carolina-South Carolina 1997 8-hour ozone nonattainment area (hereafter referred to as the "bi-state Charlotte Area") is comprised of Cabarrus, Gaston, Lincoln, Mecklenburg, Rowan, Union and a portion of Iredell (Davidson and Coddle Creek Townships) Counties in North Carolina; and a portion of York County in South Carolina. If this proposed determination is made final, the requirement for the States of North Carolina and South Carolina to submit an attainment demonstration and associated reasonably available control measures (RACM) analyses, reasonable further progress (RFP) plans, contingency measures, and other planning State Implementation Plans (SIPs) related to attainment of the 1997 8-hour ozone NAAQS for the bi-state Charlotte Area, shall be suspended for as long as the Area continues to meet the 1997 8-hour ozone NAAQS.

DATES: Written comments must be received on or before May 12, 2011.

ADDRESSES: Submit your comments, identified by Docket ID No. EPA–R04–OAR–2011–0029 by one of the following methods:

1. *http://www.regulations.gov:* Follow the on-line instructions for submitting comments.
2. *E-mail: benjamin.lynorae@epa.gov.*
3. *Fax:* (404) 562–9019.
4. *Mail:* "EPA–R04–OAR–2011–0029," Regulatory Development Section, Air Planning Branch, Air, Pesticides and Toxics Management Division, U.S. Environmental Protection Agency,

Region 4, 61 Forsyth Street, SW., Atlanta, Georgia 30303–8960.

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

Instructions: Direct your comments to Docket ID No. EPA–R04–OAR–2011–0029. EPA's policy is that all comments received will be included in the public docket without change and may be made available online at *http://www.regulations.gov,* including any personal information provided, unless the comment includes information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Do not submit through *http://www.regulations.gov* or by e-mail information that you consider to be CBI or otherwise protected. The *http://www.regulations.gov* Web site is an "anonymous access" system, which means EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an e-mail comment directly to EPA without going through *http://www.regulations.gov,* your e-mail address will be automatically captured and included as part of the comment that is placed in the public docket and made available on the Internet. If you submit an electronic comment, EPA recommends that you include your name and other contact information in the body of your comment and with any disk or CD–ROM you submit. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses. For additional information about EPA's public docket visit the EPA Docket Center homepage at *http://www.epa.gov/epahome/dockets.htm.*

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

FOR FURTHER INFORMATION CONTACT: Jane Spann or Zuri Farngalo, Regulatory Development Section, Air Planning Branch, Air, Pesticides and Toxics Management Division, U.S. Environmental Protection Agency, Region 4, 61 Forsyth Street, SW., Atlanta, Georgia 30303–8960. Ms. Spann may be reached by phone at (404) 562–9029 or via electronic e-mail at *spann.jane@epa.gov.* Mr. Farngalo may be reached by phone at (404) 562–9152 or via electronic mail at *farngalo.zuri@epa.gov.*

SUPPLEMENTARY INFORMATION:

I. What action is EPA taking?

EPA is proposing to determine that the bi-state Charlotte Area has attained the 1997 8-hour ozone NAAQS. Today's proposal is based upon complete, quality assured, quality controlled, and certified ambient air monitoring data for the years 2008–2010 showing that the bi-state Charlotte Area has monitored attainment of the 1997 8-hour ozone NAAQS. EPA is in the process of establishing a new 8-hour ozone NAAQS, and expects to finalize the reconsidered NAAQS by July 2011. Today's action, however, relates only to the 1997 8-hour ozone NAAQS. Requirements for the bi-state Charlotte Area under the 2011 NAAQS will be addressed in the future.

II. What is the effect of this action?

If this determination is made final, under the provisions of EPA's ozone implementation rule (see 40 CFR 51.918), it would suspend the requirement to submit attainment demonstrations and associated RACM analyses, RFP plans, contingency measures,[1] and any other planning SIPs related to attainment of the 1997 8-hour ozone NAAQS. The clean data determination would continue until such time, if any, that EPA subsequently determines that the bi-state Charlotte Area has violated the 1997 8-hour ozone NAAQS. The clean data determination is separate from any future designation determination or requirements for the bi-state Charlotte Area based on the revised or reconsidered ozone NAAQS, and would remain in effect regardless of whether EPA designates the bi-state Charlotte Area as a nonattainment area for purposes of a future revised or reconsidered 8-hour ozone NAAQS.[2] Furthermore, as described below, a final clean data determination is not equivalent to the redesignation of the bi-state Charlotte Area to attainment for the 1997 8-hour ozone NAAQS. If this rulemaking is finalized and EPA subsequently determines, after notice-and-comment rulemaking in the **Federal Register**, that the bi-state Charlotte Area has violated the 1997 8-hour ozone NAAQS, the basis for the suspension of the specific requirements, set forth at 40 CFR 51.918, would no longer exist, and the bi-state Charlotte Area would thereafter have to address pertinent requirements.

As mentioned above, finalizing this proposed action would not constitute a redesignation of the bi-state Charlotte Area to attainment of the 1997 8-hour ozone NAAQS under section 107(d)(3) of the CAA. Finalizing this proposed action does not involve approving maintenance plans for the bi-state Charlotte Area as required under section 175A of the CAA, or affirm that the Area has met all other requirements for redesignation. The designation status of the bi-state Charlotte Area would remain nonattainment for the 1997 8-hour ozone NAAQS until such time as EPA determines that it meets the CAA requirements for redesignation to attainment. The States of North Carolina and South Carolina are currently working on a redesignation request and maintenance plan to change the bi-state Charlotte Area's status from nonattainment to attainment for the 1997 8-hour ozone NAAQS. EPA will consider North Carolina and South Carolina's redesignation request and maintenance plan for the bi-state

[1] Contingency measures associated with a maintenance plan (such as if the States opt to redesignate this Area to attainment for the 1997 8-hour ozone NAAQS) would still be required.

[2] As noted above, at this time the proposed determination of attainment, if finalized, would suspend only those requirements related to attainment that are currently applicable to the bi-state Charlotte Area.

Charlotte Area in a rulemaking separate from today's proposed action.

This proposed action, if finalized, is limited to a determination that the bi-state Charlotte Area has attained the 1997 8-hour ozone NAAQS. As noted above, the 1997 8-hour ozone NAAQS became effective on July 18, 1997 (62 FR 38894), and are set forth at 40 CFR 50.10. On March 12, 2008, EPA promulgated revised 8-hour ozone NAAQS. Subsequently, on January 19, 2010, EPA published a proposed rule to reconsider the 2008 8-hour ozone NAAQS (75 FR 2938) and to propose a revised ozone NAAQS. Today's proposed determination for the bi-state Charlotte Area, and any final determination, will have no effect on, and is not related to, any future designation determination that EPA may make based on the revised or reconsidered ozone NAAQS for the Bi-state Charlotte Area.

If this proposed determination is made final and the bi-state Charlotte Area continues to demonstrate attainment with the 1997 8-hour ozone NAAQS, the obligation for the States of North Carolina and South Carolina to submit for the bi-state Charlotte Area an attainment demonstrations and associated RACM analyses, RFP plans, contingency measures, and any other planning SIPs related to attainment of the 1997 8-hour ozone NAAQS will remain suspended regardless of whether EPA designates the bi-state Charlotte Area as a nonattainment area for purposes of the revised or reconsidered ozone NAAQS. Once the bi-state Charlotte Area is designated for the revised or reconsidered ozone NAAQS, it will have to meet all applicable requirements for that designation.

III. What is the background for this action?

On July 18, 1997 (62 FR 38894), EPA promulgated a revised 8-hour ozone NAAQS of 0.08 parts per million (ppm) for both the primary and secondary standards. These NAAQS are more stringent than the previous 1-hour ozone NAAQS. Under EPA regulations at 40 CFR part 50, the 8-hour ozone NAAQS is attained when the 3-year average of the annual fourth-highest daily maximum 8-hour average ambient air quality ozone concentration is less than or equal to 0.08 ppm (i.e., 0.084 ppm when rounding is considered). Ambient air quality monitoring data for the 3-year period must meet a data completeness requirement. The ambient air quality monitoring data completeness requirement is met when the average percent of days with valid ambient monitoring data is greater than 90 percent, and no single year has less than 75 percent data completeness as determined in Appendix I of part 50. Specifically, section 2.3 of 40 CFR part 50, Appendix I, "*Comparisons with the Primary and Secondary Ozone Standards*" states:

> "The primary and secondary ozone ambient air quality standards are met at an ambient air quality monitoring site when the 3-year average of the annual fourth-highest daily maximum 8-hour average ozone concentration is less than or equal to 0.08 ppm. The number of significant figures in the level of the standard dictates the rounding convention for comparing the computed 3-year average annual fourth-highest daily maximum 8-hour average ozone concentration with the level of the standard. The third decimal place of the computed value is rounded, with values equal to or greater than 5 rounding up. Thus, a computed 3-year average ozone concentration of 0.085 ppm is the smallest value that is greater than 0.08 ppm."

On April 30, 2004 (69 FR 23857), EPA published its air quality designations and classifications for the 1997 8-hour ozone NAAQS based upon air quality monitoring data from those monitors for calendar years 2001–2003. These designations became effective on June 15, 2004. The bi-state Charlotte Area is comprised of Cabarrus, Gaston, Lincoln, Mecklenburg, Rowan, Union and a portion of Iredell (Davidson and Coddle Creek Townships) Counties in North Carolina; and a portion of York County, South Carolina and was designated nonattainment for the 1997 8-hour ozone NAAQS. *See* 40 CFR part 81.

IV. What is EPA's analysis of the relevant air quality data?

EPA has reviewed the three most recent years of complete, certified, quality assured and quality controlled ambient air monitoring data for the 1997 8-hour ozone NAAQS, consistent with the requirements contained in 40 CFR part 50, as recorded in the EPA Air Quality System (AQS) database for the bi-state Charlotte Area. Based on that review, EPA has preliminarily concluded that the bi-state Charlotte Area attained the 1997 8-hour ozone NAAQS during the 2008–2010 monitoring period. Under EPA regulations at 40 CFR 50.10, the 1997 8-hour primary and secondary ozone ambient air quality NAAQS are met at an ambient air quality monitoring site when the three-year average of the annual fourth-highest daily maximum 8-hour average concentration is less than or equal to 0.08 ppm, as determined in accordance with appendix I of 40 CFR part 50.

Table 1 shows the design values (the metrics calculated in accordance with 40 CFR part 50, appendix I, for determining compliance with the NAAQS) for the 1997 8-hour ozone NAAQS for the bi-state Charlotte Area monitors for the years 2008–2010.

TABLE 1—DESIGN VALUES FOR COUNTIES IN THE BI-STATE CHARLOTTE, NORTH AND SOUTH CAROLINA NONATTAINMENT AREA FOR THE 1997 8-HOUR OZONE NAAQS

Location	AQS site ID	2008 (ppm)	2009 (ppm)	2010 (ppm)	2008–2010 Design value (ppm)
Lincoln County (NC)	1487 Riverview Rd. (37–109–0004)	0.079	0.065	0.072	0.072
Mecklenburg County (NC)	1130 Eastway Dr. (37–119–0041)	0.085	0.069	0.082	0.078
Mecklenburg County (NC)	400 Westinghouse Blvd. (37–119–1005)	0.073	0.068	0.078	0.073
Mecklenburg County (NC)	29 N @ Mecklenburg Cab Co. (37–119–1009)	0.093	0.071	0.082	0.082
Rowan County (NC)	301 West St. & Gold Hill Ave. (37–159–0021)	0.084	0.071	0.077	0.077
Rowan County (NC)	925 N Enochville Ave. (37–159–0022)	0.082	0.073	0.078	0.077
Union County (NC)	701 Charles St. (37–179–0003)	0.08	0.067	0.071	0.072

Table 2 shows the data completeness percentages for the 1997 8-hours ozone NAAQS for the Atlanta Area monitors for the years 2008–2010.

TABLE 2—COMPLETENESS PERCENTAGES FOR COUNTIES IN THE BI-STATE CHARLOTTE, NORTH AND SOUTH CAROLINA NONATTAINMENT AREA OR THE 1997 8-HOUR OZONE NAAQS

Location	AQS site ID	2008 (%)	2009 (%)	2010 (%)	2008–2010 Completeness average (%)
Lincoln County (NC)	1487 Riverview Rd. (37–109–0004)	97	98	96	97
Mecklenburg County (NC)	1130 Eastway Dr (37–119–0041)	100	97	99	99
Mecklenburg County (NC)	400 Westinghouse Blvd. (37–119–1005)	100	97	99	99
Mecklenburg County (NC)	29 N @ Mecklenburg Cab Co. (37–119–1009)	98	98	98	98
Rowan County (NC)	301 West St & Gold Hill Ave. (37–159–0021)	93	91	95	93
Rowan County (NC)	925 N Enochville Ave. (37–159–0022)	99	97	93	96
Union County (NC)	701 Charles St. (37–179–0003)	98	96	98	97

EPA's review of these data indicate that the bi-state Charlotte Area has met and continues to meet the 1997 8-hour ozone NAAQS. EPA is soliciting public comments on the issues discussed in this document. These comments will be considered before taking final action.

V. Proposed Action

EPA is proposing to determine that the Charlotte-Gastonia-Rock Hill, North Carolina-South Carolina 1997 8-hour nonattainment area has attained the 1997 8-hour ozone NAAQS based on 2008–2010 complete, quality-assured, quality-controlled and certified monitoring data. As provided in 40 CFR 51.918, if EPA finalizes this determination, it would suspend the requirements for the States of North and South Carolina to submit, for the bi-state Charlotte Area, an attainment demonstrations and associated RACM analyses, RFP plans, contingency measures, and any other planning SIPs related to attainment of the 1997 8-hour ozone NAAQS as long as the Area continues to attain the 1997 8-hour ozone NAAQS.

VI. Statutory and Executive Order Reviews

This action proposes to make a determination of attainment based on air quality, and would, if finalized, result in the suspension of certain federal requirements, and it would not impose additional requirements beyond those imposed by state law. For that reason, this proposed action:

- Is not a "significant regulatory action" subject to review by the Office of Management and Budget under Executive Order 12866 (58 FR 51735, October 4, 1993);
- Does not impose an information collection burden under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*);
- Is certified as not having a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*);
- Does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4);
- Does not have Federalism implications as specified in Executive Order 13132 (64 FR 43255, August 10, 1999);
- Is not an economically significant regulatory action based on health or safety risks subject to Executive Order 13045 (62 FR 19885, April 23, 1997);
- is not a significant regulatory action subject to Executive Order 13211 (66 FR 28355, May 22, 2001);
- Is not subject to requirements of Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) because application of those requirements would be inconsistent with the CAA; and
- Does not provide EPA with the discretionary authority to address, as appropriate, disproportionate human health or environmental effects, using practicable and legally permissible methods, under Executive Order 12898 (59 FR 7629, February 16, 1994). In addition, this proposed 1997 8-hour ozone clean NAAQS data determination for the bi-state Charlotte Area does not have tribal implications as specified by Executive Order 13175 (65 FR 67249, November 9, 2000), because the SIP is not approved to apply in Indian country located in the state, and EPA notes that it will not impose substantial direct costs on tribal governments or preempt tribal law.

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Intergovernmental relations, Oxides of nitrogen, Ozone, Reporting and recordkeeping requirements, Volatile organic compounds.

Dated: March 31, 2011.

A. Stanley Meiburg,

Acting Regional Administrator, Region 4.

[FR Doc. 2011–8705 Filed 4–11–11; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R04–OAR–2006–0130–201111(b); FRL–9293–5]

Approval and Promulgation of Implementation Plans: Florida; Prevention of Significant Deterioration

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: EPA is proposing to convert a conditional approval of provisions in the Florida State Implementation Plan (SIP) to a full approval under the federal Clean Air Act (CAA). On June 17, 2009, the State of Florida, through the Florida Department of Environmental Protection, submitted a SIP revision in response to the conditional approval of its New Source Review (NSR) permitting program. The revision includes changes to certain parts of the Prevention of Significant Deterioration construction permit program in Florida, including the definition of "new emissions unit," "regulated air pollutant" and "significant emissions rate" as well as recordkeeping requirements. In addition, Florida provided a clarification that the significant emissions rate for mercury in the Florida regulations is intended to apply as a state-only provision. EPA has determined that this revision addresses the conditions identified in the

conditional approval, and is therefore approvable. In the Final Rules section of this **Federal Register**, EPA is approving the State's SIP revision as a direct final rule without prior proposal because the Agency views this as a noncontroversial submittal and anticipates no adverse comments. This proposed action is being taken pursuant to section 110 of the CAA.

DATES: Written comments must be received on or before May 12, 2011.

ADDRESSES: Submit your comments, identified by Docket ID No. EPA–R04–OAR–2006–0130, by one of the following methods:

1. *http://www.regulations.gov:* Follow the on-line instructions for submitting comments.
2. *E-mail: adams.yolanda@epa.gov.*
3. *Fax:* (404) 562–9019.
4. *Mail:* EPA–R04–OAR–2006–0130 Air Planning Branch, Air, Pesticides and Toxics Management Division, U.S. Environmental Protection Agency, Region 4, 61 Forsyth Street, SW., Atlanta, Georgia 30303–8960.
5. *Hand Delivery or Courier:* Ms. Yolanda Adams, Air Planning Branch, Air, Pesticides and Toxics Management Division, U.S. Environmental Protection Agency, Region 4, 61 Forsyth Street, SW., Atlanta, Georgia 30303–8960. Such deliveries are only accepted during the Regional Office's normal hours of operation. The Regional Office's official hours of business are Monday through Friday, 8:30 to 4:30, excluding federal holidays.

Please see the direct final rule which is located in the Rules section of this **Federal Register** for detailed instructions on how to submit comments.

FOR FURTHER INFORMATION CONTACT: For information regarding the Florida SIP, contact Twunjala Bradley, Regulatory Development Section, Air Planning Branch, Air, Pesticides and Toxics Management Division, U.S. Environmental Protection Agency, Region 4, 61 Forsyth Street, SW., Atlanta, Georgia 30303–8960. Ms. Bradley may also be reached via telephone or electronic mail at (404) 562–9352 and *bradley.twunjala@epa.gov.* For information regarding NSR, contact Yolanda Adams, Air Permits Section, at the same address above. Ms. Adams may also be reached via telephone or electronic mail at (404) 562–9214 and *adams.yolanda@epa.gov.*

SUPPLEMENTARY INFORMATION: For additional information see the direct final rule which is published in the Rules Section of this **Federal Register.** A detailed rationale for the approval is set forth in the direct final rule. If no adverse comments are received in response to this rule, no further activity is contemplated. If EPA receives adverse comments, the direct final rule will be withdrawn and all public comments received will be addressed in a subsequent final rule based on this proposed rule. EPA will not institute a second comment period on this document. Any parties interested in commenting on this document should do so at this time.

Dated: March 31, 2011.

A. Stanley Meiburg,

Acting Regional Administrator, Region 4.

[FR Doc. 2011–8700 Filed 4–11–11; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Parts 1, 6, 7, and 8

[CG Docket No. 10–213; WT Docket No. 96–198; CG Docket No. 10–145; DA 11–595]

Implementing the Provisions of the Communications Act of 1934, as Enacted by the Twenty-First Century Communications and Video Accessibility Act of 2010

AGENCY: Federal Communications Commission.

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

SUMMARY: In this document, the Commission extends the comment and reply comment period deadlines. This action is taken in order to provide a limited extension to serve the public interest by allowing parties additional time to fully and carefully analyze the *Notice of Proposed Rulemaking* proposing to adopt rules that implement provisions in section 104 of the "Twenty-first Century Communications and Video Accessibility Act of 2010."

DATES: Submit comments on or before April 25, 2011. Submit reply comments on or before May 23, 2011.

ADDRESSES: Federal Communications Commission, 445 12th Street, SW., Washington, DC 20554. You may submit comments, identified by DA 11–595, or by CG Docket No. 10–213, WT Docket No. 96–198, CG Docket No. 10–145, by any of the following methods:

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

FOR FURTHER INFORMATION CONTACT: Jeffrey Tignor, Broadband Division, Wireless Telecommunications Bureau, FCC at (202) 418–0774 or via the Internet to *Jeffrey.Tignor@fcc.gov* or Rosaline Crawford, Disability Rights Office, Consumer and Governmental Affairs Bureau, FCC at (202) 418–2075 or via the Internet to *Rosaline.Crawford@fcc.gov.*

SUPPLEMENTARY INFORMATION: This is a summary of an *Order*, DA 11–595, adopted and released by the FCC on April 4, 2011, in CG Docket No. 10–213; WT Docket No. 96–198; CG Docket No. 10–145; FCC 11–37. The full text of this document is available for inspection and copying during normal business hours in the FCC Reference Information Center, Room CY–A257, 445 12th Street, SW., Washington, DC 20554. The complete text may be purchased from the Commission's duplicating contractor, Best Copy and Printing, Inc. (BCPI), Portals II, 445 12th Street, SW., Room CY–B402, Washington, DC 20554, (202) 488–5300, facsimile (202) 488–5563, or via e-mail at *fcc@bcpiweb.com.* The complete text is also available on the Commission's Web site at *http://wireless.fcc.gov/edocs—public/attachment/DA 11-595A1doc.* This full text may also be downloaded at: *http://wireless.fcc.gov/releases.html.* Alternative formats (computer diskette, large print, audio cassette, and Braille) are available by contacting Brian Millin at (202) 418–7426, TTY (202) 418–7365, or via e-mail to *bmillin@fcc.gov.*

Summary

This Order extends the deadlines for filing comments and reply comments concerning the Commission's *Notice of Proposed Rulemaking* proposing to adopt rules that implement provisions in Section 104 of the "Twenty-First Century Communications and Video Accessibility Act of 2010" (hereinafter referred to as the "CVAA"). *See Implementation of Sections 716 and 717 of the Communications Act of 1934, as Enacted by the Twenty-First Century Communications and Video Accessibility Act of 2010,* CG Docket No. 10–213, *Amendments to the Commission's Rules Implementing Sections 255 and 251(a)(2) of the Communications Act of 1934, as Enacted by the Telecommunications Act of 1996,* WT Docket No. 96–198,

Accessible Mobile Phone Options for People who are Blind, Deaf-Blind, or Have Low Vision, CG Docket No. 10–145, Notice of Proposed Rulemaking, FCC 11–37 (March 3, 2011), as published in the **Federal Register** at 76 FR 13800 (March 14, 2011).

2. On April 1, 2011, the American Foundation for the Blind, Consumer Electronics Association, Information Technology Industry Council, and Telecommunications Industry Association filed a request with Joel Gurin, Chief of the Consumer & Governmental Affairs Bureau, and Ruth Milkman, Chief of the Wireless Telecommunications Bureau, for a thirty day extension of the time period to file comments in this rulemaking. The parties stated that the extension was needed to ensure that "stakeholders have adequate time to fully and carefully analyze the Commission's proposed rules" and develop comprehensive recommendations. *See* Letter from Paul W. Schroeder, American Foundation for the Blind, Julie Kearney, Consumer Electronics Association, John Neuffer, Information Technology Industry Council, and Danielle Coffey, Telecommunications Industry Association, to Joel Gurin, Chief, Consumer & Governmental Affairs Bureau, and Ruth Milkman, Wireless Telecommunications Bureau, CG Docket No. 10–213, WT Docket No. 96–198, CG Docket No. 10–145 (filed April 1, 2011). Comments and reply comments were due on April 13, and May 13, 2011, respectively.

3. Congress mandated that the Commission promulgate regulations as necessary to implement section 104 of the CVAA within one year of the legislation's date of enactment—October 8, 2011. *See* 47 U.S.C. 617(e)(1). Given this deadline, a thirty day extension is not feasible. In light of the number and complexity of the issues in this proceeding, however, we will grant ten-day extensions of the comment and reply comment deadlines.

4. It is the policy of the Commission that extensions of time are not routinely granted. *See* 47 CFR 1.46(a). In the instant case, however, we find that providing a limited extension will serve the public interest by allowing parties to discuss the complex issues at stake and develop consensus approaches where possible. Accordingly, we are extending the deadline for all comments and reply comments to April 25, and May 23, 2011, respectively.

Ordering Clauses

5. It is ordered that, pursuant to section 4(i) of the Communications Act of 1934, as amended, 47 U.S.C. 154(i), and section 1.46 of the Commission's rules, 47 CFR 1.46, the joint request of the American Foundation for the Blind, Consumer Electronics Association, Information Technology Industry Council, and Telecommunications Industry Association, filed on April 1, 2011, is granted to the extent described herein, and the deadline for filing comments in response to the *Notice of Proposed Rulemaking* is extended to April 25, 2011, and the deadline for filing reply comments is extended to May 23, 2011.

6. This action is taken under delegated authority pursuant to sections 0.131 and 0.331 of the Commission's rules, 47 CFR 0.131, 0.331.

Federal Communications Commission.

Jane Jackson,

Associate Chief, Wireless Telecommunications Bureau.

[FR Doc. 2011–8751 Filed 4–11–11; 8:45 am]

BILLING CODE 6712–01–P

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

49 CFR Part 544

[Docket No. NHTSA–2011–0016]

RIN 2127–AK90

Insurer Reporting Requirements; List of Insurers; Required To File Reports

AGENCY: National Highway Traffic Safety Administration (NHTSA), Department of Transportation (DOT).

ACTION: Notice of proposed rulemaking.

SUMMARY: This document proposes to amend appendices to NHTSA regulations on Insurer Reporting Requirements. The appendices list those passenger motor vehicle insurers that are required to file reports on their motor vehicle theft loss experiences. An insurer included in any of these appendices would be required to file three copies of its report for the 2008 calendar year before October 25, 2011. If the passenger motor vehicle insurers remain listed, they must submit reports by each subsequent October 25. We are proposing to add and remove several insurers from relevant appendices.

DATES: Comments must be submitted not later than June 13, 2011. Insurers listed in the appendices are required to submit reports on or before October 25, 2011.

ADDRESSES: You may submit comments, identified by DOT Docket No. NHTSA–2011–0016 by any of the following methods:

- *Federal eRulemaking Portal:* Go to *http://www.regulations.gov*. Follow the online instructions for submitting comments.
- *Mail:* Docket Management Facility: U.S. Department of Transportation, 1200 New Jersey Avenue, SE., West Building, Ground Floor, Room W12–140, Washington, DC 20590–0001.
- *Hand Delivery or Courier:* West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue, SE., Washington, DC, between 9 a.m. and 5 p.m. ET, Monday through Friday, except Federal holidays.
- *Fax:* 1–202–493–2251.

Instructions: For detailed instructions on submitting comments and additional information on the rulemaking process, see the Public Participation heading of the Supplementary Information section of this document. Note that all comments received will be posted without change to *http://www.regulations.gov*, including any personal information provided. Please see the Privacy Act heading below.

Privacy Act: Anyone is able to search the electronic form of all comments received into any of our dockets by the name of the individual submitting the comment (or signing the comment, if submitted on behalf of an association, business, labor union, etc.). You may review DOT's complete Privacy Act Statement in the **Federal Register** published on April 11, 2000 (65 FR 19477–78) or you may visit *http://DocketInfo.dot.gov*.

Docket: For access to the docket to read background documents or comments received, go to the street address listed above. The internet access to the docket will be at *http://www.regulations.gov*. Follow the online instructions for accessing the dockets.

FOR FURTHER INFORMATION CONTACT: Carlita Ballard, Office of International Policy, Fuel Economy and Consumer Programs, NHTSA, 1200 New Jersey Avenue, SE., Washington, DC 20590, by electronic mail to *Carlita.Ballard@dot.gov*. Ms. Ballard's telephone number is (202) 366–0846. Her fax number is (202) 493–2990.

SUPPLEMENTARY INFORMATION:

I. Background

Pursuant to 49 U.S.C. 33112, *Insurer reports and information*, NHTSA requires certain passenger motor vehicle insurers to file an annual report with the agency. Each insurer's report includes information about thefts and recoveries of motor vehicles, the rating rules used by the insurer to establish premiums for comprehensive coverage, the actions taken by the insurer to reduce such

premiums, and the actions taken by the insurer to reduce or deter theft. Under the agency's regulation, 49 CFR part 544, the following insurers are subject to the reporting requirements:

(1) Issuers of motor vehicle insurance policies whose total premiums account for 1 percent or more of the total premiums of motor vehicle insurance issued within the United States;

(2) Issuers of motor vehicle insurance policies whose premiums account for 10 percent or more of total premiums written within any one state; and

(3) Rental and leasing companies with a fleet of 20 or more vehicles not covered by theft insurance policies issued by insurers of motor vehicles, other than any governmental entity.

Pursuant to its statutory exemption authority, the agency exempted certain passenger motor vehicle insurers from the reporting requirements.

A. Small Insurers of Passenger Motor Vehicles

Section 33112(f)(2) provides that the agency shall exempt small insurers of passenger motor vehicles if NHTSA finds that such exemptions will not significantly affect the validity or usefulness of the information in the reports, either nationally or on a state-by-state basis. The term "small insurer" is defined, in Section 33112(f)(1)(A) and (B), as an insurer whose premiums for motor vehicle insurance issued directly or through an affiliate, including pooling arrangements established under state law or regulation for the issuance of motor vehicle insurance, account for less than 1 percent of the total premiums for all forms of motor vehicle insurance issued by insurers within the United States. However, that section also stipulates that if an insurance company satisfies this definition of a "small insurer," but accounts for 10 percent or more of the total premiums for all motor vehicle insurance issued in a particular state, the insurer must report about its operations in that state.

In the final rule establishing the insurer reports requirement (52 FR 59; January 2, 1987), 49 CFR Part 544, NHTSA exercised its exemption authority by listing in Appendix A each insurer that must report because it had at least 1 percent of the motor vehicle insurance premiums nationally. Listing the insurers subject to reporting, instead of each insurer exempted from reporting because it had less than 1 percent of the premiums nationally, is administratively simpler since the former group is much smaller than the latter. In Appendix B, NHTSA lists those insurers required to report for particular states because each insurer had a 10 percent or greater market share of motor vehicle premiums in those states. In the January 1987 final rule, the agency stated that it would update Appendices A and B annually. NHTSA updates the appendices based on data voluntarily provided by insurance companies to A.M. Best.[1] A.M. Best publishes in its *State/Line Report* each spring. The agency uses the data to determine the insurers' market shares nationally and in each state.

B. Self-Insured Rental and Leasing Companies

In addition, upon making certain determinations, NHTSA grants exemptions to self-insurers, i.e., any person who has a fleet of 20 or more motor vehicles (other than any governmental entity) used for rental or lease whose vehicles are not covered by theft insurance policies issued by insurers of passenger motor vehicles, 49 U.S.C. 33112(b)(1) and (f). Under 49 U.S.C. 33112(e)(1) and (2), NHTSA may exempt a self-insurer from reporting, if the agency determines:

(1) The cost of preparing and furnishing such reports is excessive in relation to the size of the business of the insurer; and 33112(e)(1) and (2),

(2) The insurer's report will not significantly contribute to carrying out the purposes of Chapter 331.

In a final rule published June 22, 1990 (55 FR 25606), the agency granted a class exemption to all companies that rent or lease fewer than 50,000 vehicles, because it believed that the largest companies' reports sufficiently represent the theft experience of rental and leasing companies. NHTSA concluded that smaller rental and leasing companies' reports do not significantly contribute to carrying out NHTSA's statutory obligations and that exempting such companies will relieve an unnecessary burden on them. As a result of the June 1990 final rule, the agency added Appendix C, consisting of an annually updated list of the self-insurers subject to part 544. Following the same approach as in Appendix A, NHTSA included, in Appendix C, each of the self-insurers subject to reporting instead of the self-insurers which are exempted.

NHTSA updates Appendix C based primarily on information from *Automotive Fleet Magazine* and *Auto Rental News*.[2]

C. When a Listed Insurer Must File a Report

Under Part 544, as long as an insurer is listed, it must file reports on or before October 25 of each year. Thus, any insurer listed in the appendices must file a report before October 25, and by each succeeding October 25, absent an amendment removing the insurer's name from the appendices.

II. Proposal

1. Insurers of Passenger Motor Vehicles

Appendix A lists insurers that must report because each had 1 percent of the motor vehicle insurance premiums on a national basis. The list was last amended in a final rule published on September 3, 2010 (75 FR 54041). Based on the 2008 calendar year data market shares from A. M. Best, NHTSA proposes to remove California State Auto Group and Safeco Insurance Group from Appendix A.

Each of the 17 insurers listed in Appendix A are required to file a report before October 25, 2011, setting forth the information required by Part 544 for each State in which it did business in the 2008 calendar year. As long as these 17 insurers remain listed, they will be required to submit reports by each subsequent October 25 for the calendar year ending slightly less than 3 years before.

Appendix B lists insurers required to report for particular States for calendar year 2008, because each insurer had a 10 percent or greater market share of motor vehicle premiums in those States. Based on the 2008 calendar year data for market shares from A.M. Best, we propose to remove Balboa Insurance Group of South Dakota from Appendix B.

The eight remaining insurers listed in Appendix B are required to report on their calendar year 2008 activities in every State where they had a 10 percent or greater market share. These reports must be filed by October 25, 2011, and set forth the information required by Part 544. As long as these eight insurers remain listed, they would be required to submit reports on or before each subsequent October 25 for the calendar year ending slightly less than 3 years before.

2. Rental and Leasing Companies

Appendix C lists rental and leasing companies required to file reports. NHTSA proposes to make no change to Appendix C.

Each of the remaining five companies (including franchisees and licensees)

[1] A.M. Best Company is a well-recognized source of insurance company ratings and information. 49 U.S.C. 33112(i) authorizes NHTSA to consult with public and private organizations as necessary.

[2] Automotive Fleet Magazine and Auto Rental News are publications that provide information on the size of fleets and market share of rental and leasing companies.

listed in Appendix C are required to file reports for calendar year 2008 no later than October 25, 2011, and set forth the information required by Part 544. As long as those five companies remain listed, they would be required to submit reports before each subsequent October 25 for the calendar year ending slightly less than 3 years before.

III. Regulatory Impacts

1. Costs and Other Impacts

This notice has not been reviewed under Executive Order 12866. NHTSA has considered the impact of this proposed rule and determined that the action is not "significant" within the meaning of the Department of Transportation's regulatory policies and procedures. This proposed rule implements the agency's policy of ensuring that all insurance companies that are statutorily eligible for exemption from the insurer reporting requirements are in fact exempted from those requirements. Only those companies that are not statutorily eligible for an exemption are required to file reports.

NHTSA does not believe that this proposed rule, reflecting current data, affects the impacts described in the final regulatory evaluation prepared for the final rule establishing Part 544 (52 FR 59; January 2, 1987). Accordingly, a separate regulatory evaluation has not been prepared for this rulemaking action. The cost estimates in the 1987 final regulatory evaluation should be adjusted for inflation, using the Bureau of Labor Statistics Consumer Price Index for 2011 (*see http://www.bls.gov/cpi*). The agency estimates that the cost of compliance is $50,000 (1987 dollars) for any insurer added to Appendix A, $20,000 (1987 dollars) for any insurer added to Appendix B, and $5,770 (1987 dollars) for any insurer added to Appendix C. If this proposed rule is made final, for Appendix A, the agency would propose to remove two companies; for Appendix B, the agency would propose to remove one company; and for Appendix C, the agency would propose to make no change. The agency estimates that the net effect of this proposal, if made final, would be a cost decrease of approximately $120,000 (1987 dollars) to insurers as a group.

Interested persons may wish to examine the 1987 final regulatory evaluation. Copies of that evaluation were placed in Docket No. T86–01; Notice 2. Any interested person may obtain a copy of this evaluation by writing to NHTSA, Technical Reference Division, 1201 New Jersey Avenue, SE., East Building, Ground Floor, Room E12–100, Washington, DC 20590, or by calling (202) 366–2588.

2. Paperwork Reduction Act

The information collection requirements in this proposed rule were submitted to the Office of Management and Budget (OMB) pursuant to the requirements of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*). This collection of information is assigned OMB Control Number 2127–0547 ("Insurer Reporting Requirements"). This collection of information is approved for use through April 30, 2012 and the agency will seek to extend the approval afterwards. The existing information collection indicates that the number of respondents for this collection is thirty, however, the actual number of respondents fluctuates from year to year. Therefore, because the number of respondents required to report for this final rule does not exceed the number of respondents indicated in the existing information collection, the agency does not believe that an amendment to the existing information collection is necessary.

3. Regulatory Flexibility Act

The agency also considered the effects of this rulemaking under the Regulatory Flexibility Act (RFA) (5 U.S.C. 601 *et seq.*). I certify that this proposed rule will not have a significant economic impact on a substantial number of small entities. The rationale for the certification is that none of the companies proposed for Appendices A, B, or C are construed to be a small entity within the definition of the RFA. "Small insurer" is defined, in part under 49 U.S.C. 33112, as any insurer whose premiums for all forms of motor vehicle insurance account for less than 1 percent of the total premiums for all forms of motor vehicle insurance issued by insurers within the United States, or any insurer whose premiums within any State, account for less than 10 percent of the total premiums for all forms of motor vehicle insurance issued by insurers within the State. This notice would exempt all insurers meeting those criteria. Any insurer too large to meet those criteria is not a small entity. In addition, in this rulemaking, the agency proposes to exempt all "self insured rental and leasing companies" that have fleets of fewer than 50,000 vehicles. Any self-insured rental and leasing company too large to meet that criterion is not a small entity.

4. Federalism

This action has been analyzed according to the principles and criteria contained in Executive Order 12612, and it has been determined that the proposed rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

5. Environmental Impacts

In accordance with the National Environmental Policy Act, NHTSA has considered the environmental impacts of this proposed rule and determined that it would not have a significant impact on the quality of the human environment.

6. Regulation Identifier Number (RIN)

The Department of Transportation assigns a regulation identifier number (RIN) to each regulatory action listed in the Unified Agenda of Federal Regulations. The Regulatory Information Service Center publishes the Unified Agenda in April and October of each year. You may use the RIN contained in the heading, at the beginning of this document to find this action in the Unified Agenda.

7. Plain Language

Executive Order 12866 and the President's memorandum of June 1, 1998, require each agency to write all rules in plain language. Application of the principles of plain language includes consideration of the following questions:

- Have we organized the material to suit the public's needs?
- Are the requirements in the proposal clearly stated?
- Does the proposal contain technical language or jargon that is not clear?
- Would a different format (grouping and order of sections, use of headings, paragraphing) make the rule easier to understand?
- Would more (but shorter) sections be better?
- Could we improve clarity by adding tables, lists, or diagrams?
- What else could we do to make the proposal easier to understand?

If you have any responses to these questions, you can forward them to me several ways:

a. *Mail:* Carlita Ballard, Office of International Policy, Fuel Economy and Consumer Programs, NHTSA, 1200 New Jersey Avenue, SE., (West Building) Washington, DC 20590;

b. *E-mail: Carlita.Ballard@dot.gov;* or

c. *Fax:* (202) 493–2990.

IV. Comments

Submission of Comments

1. How can I influence NHTSA's thinking on this proposed rule?

In developing our rules, NHTSA tries to address the concerns of all our

stakeholders. Your comments will help us improve this rule. We invite you to provide views on our proposal, new data, a discussion of the effects of this proposal on you, or other relevant information. We welcome your views on all aspects of this proposed rule. Your comments will be most effective if you follow the suggestions below:

- Explain your views and reasoning clearly.
- Provide solid technical and cost data to support your views.
- If you estimate potential costs, explain how you derived the estimate.
- Provide specific examples to illustrate your concerns.
- Offer specific alternatives.
- Include the name, date, and docket number with your comments.

2. How do I prepare and submit comments?

Your comments must be written in English. To ensure that your comments are correctly filed in the Docket, please include the docket number of this document in your comments.

Your comments must not exceed 15 pages long (49 CFR 553.21). We established this limit to encourage you to write your primary comments concisely. You may attach necessary documents to your comments. We have no limit on the attachments' length.

Please submit two copies of your comments, including the attachments, to Docket Management at the address given above under **ADDRESSES**.

Comments may also be submitted to the docket electronically by logging onto the Federal eRulemaking Portal Web site at *http://www.regulation.gov*. Follow the online instructions for submitting comments.

3. How can I be sure that my comments were received?

If you wish Docket Management to notify you, upon its receipt of your comments, enclose a self-addressed, stamped postcard in the envelope containing your comments. Upon receiving your comments, Docket Management will mail the postcard.

4. How do I submit confidential business information?

If you wish to submit any information under a confidentiality claim, you should submit three copies of your complete submission, including the information you claim as confidential business information, to the Chief Counsel, Office of Chief Counsel, NHTSA, 1200 New Jersey Avenue, SE., West Building, Washington, DC 20590. In addition, you should submit two copies, from which you have deleted the claimed confidential business information, to Docket Management at the address given above under **ADDRESSES**. When you send a comment containing information claimed to be confidential business information, you should include a cover letter addressing the information specified in our confidential business information regulation (49 CFR part 512).

5. Will the agency consider late comments?

NHTSA will consider all comments that Docket Management receives before the close of business on the comment closing date indicated above under **DATES**. To the extent possible, we will also consider comments that Docket Management receives after that date. If Docket Management receives a comment too late for us to consider, in developing a final rule (assuming that one is issued), we will consider that comment as an informal suggestion for future rulemaking action.

6. How can I read the comments submitted by other people?

You may read the comments received by Docket Management at the address given above under **ADDRESSES**. The hours of the Docket are indicated above, in the same location. You may also see the comments on the Internet. To read the comments on the Internet, log onto the Federal eRulemaking Portal at *http://www.regulation.gov*.

V. Conclusion

Based on the foregoing, we are proposing to amend Appendices B and C of 49 CFR 544, Insurer Reporting Requirements. We are also amending § 544.5 to revise the example given the recent update to the reporting requirements.

List of Subjects in 49 CFR Part 544

Crime insurance, Insurance, Insurance companies, Motor vehicles, Reporting and recordkeeping requirements.

In consideration of the foregoing, 49 CFR Part 544 is proposed to be amended as follows:

PART 544—[AMENDED]

1. The authority citation for part 544 continues to read as follows:

Authority: 49 U.S.C. 33112; delegation of authority at 49 CFR 1.50.

2. Paragraph (a) of § 544.5 is revised to read as follows:

§ 544.5 General requirements for reports.

(a) Each insurer to which this part applies shall submit a report annually before October 25, beginning on October 25, 1986. This report shall contain the information required by § 544.6 of this part for the calendar year 3 years previous to the year in which the report is filed (e.g., the report due by October 25, 2011, will contain the required information for the 2008 calendar year).

* * * * *

3. Appendix A to part 544 is revised to read as follows:

Appendix A—Insurers of Motor Vehicle Insurance Policies Subject to the Reporting Requirements in Each State in Which They Do Business

Allstate Insurance Group
American Family Insurance Group
American International Group
Auto Club Enterprise Insurance Group
Auto-Owners Insurance Group
Berkshire Hathaway/GEICO Corporation Group
Erie Insurance Group
Farmers Insurance Group
Hartford Insurance Group
Liberty Mutual Insurance Companies
Metropolitan Life Auto & Home Group
Mercury General Group
Nationwide Group
Progressive Group
State Farm Group
Travelers Companies
USAA Group

4. Appendix B to part 544 is revised to read as follows:

Appendix B—Issuers of Motor Vehicle Insurance Policies Subject to the Reporting Requirements Only in Designated States

Alfa Insurance Group (Alabama)
Auto Club (Michigan)
Commerce Group, Inc. (Massachusetts)
Kentucky Farm Bureau Group (Kentucky)
New Jersey Manufacturers Group (New Jersey)
Safety Group (Massachusetts)
Southern Farm Bureau Group (Arkansas, Mississippi)
Tennessee Farmers Companies (Tennessee)

5. Appendix C to part 544 is revised to read as follows:

Appendix C—Motor Vehicle Rental and Leasing Companies (Including Licensees and Franchisees) Subject to the Reporting Requirements of Part 544

Avis Budget Group (*subsidiary of Cendant*)
Dollar Thrifty Automotive Group
Enterprise Holding Inc./Enterprise Rent-A-Car Company
Hertz Rent-A-Car Division (*subsidiary of The Hertz Corporation*)
U-Haul International, Inc. (*subsidiary of AMERCO*)

Issued on: April 7, 2011.

Joseph S. Carra,

Acting, Associate Administrator for Rulemaking.

[FR Doc. 2011–8729 Filed 4–11–11; 8:45 am]

BILLING CODE 4910–59–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Parts 223 and 224

[Docket No. 110328226–1228–02]

RIN 0648–XA272

Listing Endangered and Threatened Species; 90-Day Finding on a Petition To List Chinook Salmon

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

ACTION: Notice of 90-day petition finding; request for information.

SUMMARY: We, NMFS, announce a 90-day finding for a petition to list the Chinook salmon (*Oncorhynchus tshawytscha*) in the Upper Klamath and Trinity Rivers Basin as threatened or endangered and designate critical habitat under the Endangered Species Act (ESA). We find that the petition presents substantial scientific information indicating the petitioned actions may be warranted. We will conduct a status review of the Chinook salmon in the Upper Klamath and Trinity Rivers Basin to determine if the petitioned actions are warranted. To ensure that the review is comprehensive, we solicit information pertaining to this species and its habitat from all interested parties.

DATES: Information related to this petition finding must be received by June 13, 2011.

ADDRESSES: You may submit comments, identified by RIN 0648–XA272, by any of the following methods:

- *Electronic Submissions:* Submit all electronic public comments via the Federal eRulemaking Portal *http// www.regulations.gov*. Follow the instructions for submitting comments.
- *Mail or hand-delivery:* Assistant Regional Administrator, Protected Resources Division, Attn: Rosalie del Rosario, National Marine Fisheries Service, 501 West Ocean Blvd., Suite 4200, Long Beach, CA 90802–4213.

Instructions: All comments received are a part of the public record and will generally be posted to *http:// www.regulations.gov* shortly after receipt. All personal identifying information (*e.g.*, name, address, *etc.*) voluntarily submitted by the commenter may be publically accessible. Do not submit confidential business information or otherwise sensitive or protected information. We will accept anonymous comments (if you wish to remain anonymous enter N/A in the required fields). Attachments to electronic comments will be accepted in Microsoft Word, Excel, WordPerfect, or Adobe PDF file formats only. If your submission is made via hardcopy that includes personal identifying information, you may request at the top of your document that we withhold this information from public review to the extent consistent with applicable law. However, we cannot guarantee that we will be able to do so. The petition and other pertinent information are also available electronically at the NMFS Southwest Region Web site at *http:// swr.nmfs.noaa.gov/*.

FOR FURTHER INFORMATION CONTACT: Rosalie del Rosario, NMFS, Southwest Region Office, (562) 980–4085; or Lisa Manning, NMFS, Office of Protected Resources, (301) 713–1401.

SUPPLEMENTARY INFORMATION:

Background

On January 28, 2011, the Secretary of Commerce received a petition from the Center for Biological Diversity, Oregon Wild, Environmental Protection Information Center, and The Larch Company (hereafter, the Petitioners), requesting that we list Chinook salmon (*Oncorhynchus tshawytscha*) in the Upper Klamath Basin under the Endangered Species Act (ESA) (16 U.S.C. 1531 *et seq.*). In their petition, the Petitioners used various phrases as well as "Upper Klamath Basin" to describe the area in which they are requesting that we list Chinook salmon. Because their request is generally made in reference to the Upper Klamath and Trinity Rivers evolutionarily significant unit (ESU) of Chinook salmon, we will use the description of the currently defined ESU to describe the area in which they are requesting that we list Chinook salmon, and we will hereinafter refer to that area as the Upper Klamath and Trinity Rivers Basin. NMFS described all Klamath River Basin populations of Chinook salmon from the Trinity River and Klamath River upstream from the confluence of the Trinity River as the Upper Klamath and Trinity Rivers ESU, which includes both spring-run and fall-run fish (63 FR 11487; March 9, 1998).

The Petitioners recommend three alternatives for listing Chinook salmon: (1) List spring-run only as a separate ESU; (2) list spring-run as a distinct population segment (DPS) within the Upper Klamath and Trinity Rivers ESU; or (3) list the currently defined Upper Klamath and Trinity Rivers ESU, which includes both spring-run and fall-run. The petitioners also request designation of critical habitat for the Chinook salmon populations that are found to warrant listing.

ESA Statutory Provisions and Policy Considerations

Section 4(b)(3)(A) of the ESA (16 U.S.C. 1533(b)(3)(A)) requires that we make a finding as to whether a petition to list, delist, or reclassify a species presents substantial scientific or commercial information indicating the petitioned action may be warranted. ESA implementing regulations define substantial information as the amount of information that would lead a reasonable person to believe the measure proposed in the petition may be warranted (50 CFR 424.14(b)(1)). In determining whether substantial information exists for a petition to list a species, we take into account several factors, including information submitted with, and referenced in, the petition and all other information readily available in our files. To the maximum extent practicable, this finding is to be made within 90 days of the receipt of the petition (16 U.S.C. 1533(b)(3)(A)), and the finding is to be published promptly in the **Federal Register**. If we find that a petition presents substantial information indicating that the requested action may be warranted, section 4(b)(3)(A) of the ESA (16 U.S.C. 1533(b)(3)(A)) requires the Secretary of Commerce (Secretary) to conduct a status review of the species. Section 4(b)(3)(B) (16 U.S.C. 1533(b)(3)(B)) requires the Secretary to make a finding as to whether or not the petitioned action is warranted within 12 months of receipt of the petition (12-month finding). The Secretary has delegated the authority for these actions to the NOAA Assistant Administrator for Fisheries.

Under the ESA, a listing determination can address a species, subspecies, or a DPS of a vertebrate species (16 U.S.C. 1532(16)). In 1991, we issued the Policy on Applying the Definition of Species Under the Endangered Species Act to Pacific Salmon (ESU Policy; 56 FR 58612; November 20, 1991), which explains that Pacific salmon populations will be considered a DPS, and hence a "species" under the ESA, if it represents an "evolutionarily significant unit" of the biological species. The two criteria for delineating an ESU are: It is substantially reproductively isolated from other conspecific populations, and it represents an important component in the evolutionary legacy of the species. The ESU Policy was used to define the Upper Klamath and Trinity Rivers Chinook salmon ESU in 1998 (63 FR

11482, 11493; March 9, 1998), and we use it exclusively for defining distinct population segments of Pacific salmon. In 1996, the U.S. Fish and Wildlife Service (USFWS) and NMFS published the Policy Regarding the Recognition of Distinct Vertebrate Population Segments Under the Endangered Species Act (DPS Policy; 61 FR 4722; February 7, 1996) to clarify the interpretation of the phrase "distinct population segment." This policy provides two criteria for identifying DPSs: Discreteness from other populations and significance to its taxon. In announcing this policy, USFWS and NMFS indicated that the ESU Policy for Pacific salmon was consistent with the DPS Policy and that NMFS would continue to use the ESU Policy for Pacific salmon.

The ESA defines an endangered species as "any species which is in danger of extinction throughout all or a significant portion of its range" (16 U.S.C. 1532(6)). A threatened species is defined as a species that is "likely to become an endangered species within the foreseeable future throughout all or a significant portion of its range" (16 U.S.C. 1532(20)). Under section 4(a)(1) of the ESA (16 U.S.C. 1533(a)(1)), a species may be determined to be threatened or endangered as a result of any of the following factors: (1) Present or threatened destruction, modification, or curtailment of habitat or range; (2) over-utilization for commercial, recreational, scientific, or educational purposes; (3) disease or predation; (4) inadequacy of existing regulatory mechanisms; or (5) other natural or manmade factors affecting its continued existence. Listing determinations are made solely on the basis of the best scientific and commercial data available after conducting a review of the status of the species and taking into account efforts made by any state or foreign nation to protect such species.

Upper Klamath and Trinity Rivers Chinook Salmon ESU

In 1998, we completed a status review of west coast Chinook salmon populations that defined the Upper Klamath and Trinity Rivers Chinook salmon ESU as including all spring-run and fall-run populations from the Trinity River and the Klamath River upstream from the confluence of the Trinity River (NMFS, 1998). Based on the health of the fall-run populations within the ESU, we concluded the ESU was not at significant risk of extinction nor likely to become endangered in the foreseeable future, and therefore, did not warrant listing under the ESA (63 FR 11482, 11493; March 9, 1998). The Petitioners essentially request NMFS to revisit our previous conclusion based on more recent information and the current status of this ESU.

Analysis of Petition

The Petition contains information and arguments in support of listing Chinook salmon under the three alternatives recommended by the Petitioners. The Petitioners also include information on spring-run and fall-run Chinook salmon, including life history and physiology, diet, associated fish species, habitat requirements, historic and current distribution, and population status and trends.

Under the first recommended alternative, the Petitioners present new genetic evidence to suggest the spring-run Chinook salmon populations in the Upper Klamath and Trinity Rivers ESU may qualify as a separate ESU from the fall-run populations. They also present information indicating the spring-run Chinook salmon may meet the ESU criteria: (1) They are substantially reproductively isolated, and (2) represent an important component in the evolutionary legacy of the species. The Petitioners also argue that the genetic differentiation in the Upper Klamath and Trinity Rivers ESU runs is scaled similarly to the Central Valley Chinook salmon runs, and that the designation of Central Valley spring and fall runs as separate ESUs sets a precedent for the Upper Klamath and Trinity Rivers ESU Chinook salmon runs to be managed separately.

Under the second recommended listing alternative, the Petitioners present arguments that spring-run Chinook salmon in the Upper Klamath and Trinity Rivers ESU meet the two criteria to be considered a DPS: Discreteness and significance. As we described above, NMFS' policy is to list Pacific salmon stocks, such as Chinook salmon, as an ESU under the criteria described in the ESU Policy (56 FR 58612; November 20, 1991) rather than a DPS under the criteria described in the DPS Policy (61 FR 4722; February 7, 1996).

Under the third recommended listing alternative, the Petitioners argue spring-run populations are important to the overall viability of the Upper Klamath and Trinity Rivers Chinook salmon ESU and their status justifies listing the entire ESU.

The Petitioners also present substantial information on the status of spring-run and fall-run Chinook salmon populations in the Upper Klamath and Trinity Rivers Basin. They cite numerous reports describing the significant decline and low numbers in the populations of the two runs of fish that additionally are increasingly dominated by hatchery fall-run Chinook salmon (*e.g.*, Moyle *et al.* 2008; National Research Council 2004). The Petitioners also provide a detailed description and an analysis of the five listing factors in support of their contention that spring-run or the entire Upper Klamath and Trinity Rivers Chinook salmon ESU warrants listing. According to the petition, a history of dams, mining, water diversions, habitat degradation, disease, and fisheries, among other factors, have played a key role in the decline of the populations.

Petition Finding

Based on the information contained in the petition, which is summarized above, and the criteria specified in 50 CFR 424.14(b)(2), we find that the petition presents substantial scientific and commercial information indicating that the petitioned actions concerning listing spring-run Chinook salmon in the Upper Klamath and Trinity Rivers Basin as a separate ESU or listing the entire Upper Klamath and Trinity Rivers Chinook salmon ESU may be warranted. Accordingly, we will convene a biological review team (BRT) to assess the status of Upper Klamath and Trinity Rivers Chinook salmon and evaluate the petitioned actions. The BRT will: (1) Compile and evaluate biological and ecological information necessary to assess whether the spring-run component of the currently defined ESU should be a separate ESU, and if so, compile and evaluate biological information necessary to assess its status; and (2) if the spring-run component does not warrant delineation as a separate ESU, it will compile and evaluate biological and ecological information necessary to assess the status of the currently defined ESU. In addition, the BRT will evaluate Chinook salmon hatchery stocks and programs in the Upper Klamath and Trinity Rivers Basin to assess the level of divergence between hatchery and naturally spawning stocks. We will use the results of this status review in making a determination as to whether or not the petitioned actions are warranted.

Under section 4(b)(3)(A) of the ESA (16 U.S.C. 1533(b)(3)(A)), this finding requires NMFS to commence a status review of the species. We are now initiating this review, and thus, the Upper Klamath and Trinity Rivers Chinook salmon ESU is considered a candidate species (50 CFR 424.02(b)). Within 12 months of the receipt of the petition (by January 28, 2012), we will make a finding as to whether the petitioned actions are warranted as required by section 4(b)(3)(B) of the ESA

(16 U.S.C. 1533(b)(3)(B)). If any of the petitioned actions are warranted, we will publish a proposed rule and solicit public comments before preparing a final rule.

Information Solicited for Status Review

To ensure the status review is based on the best available scientific and commercial data, we are soliciting information on Chinook salmon in the Upper Klamath and Trinity Rivers Basin. We request information from the public, concerned governmental agencies, Native American Tribes, the scientific community, agricultural and forestry groups, conservation groups, fishing groups, industry, and any other interested parties concerning the current and/or historical status of Chinook salmon in the Upper Klamath and Trinity Rivers Basin. Specifically, we request information on: (1) Historic and current distribution, presence, and abundance of this species throughout its range; (2) historic and current life history traits of spring-run and fall-run populations; (3) historic and current Chinook salmon habitat conditions; (4) population status and trends; (5) genetic population structure of spring-run and fall-run; (6) reproductive isolation of spring-run and fall-run; (7) information on any current or planned activities that may adversely impact the species, including but not limited to commercial, recreational, and Tribal harvest, especially as related to the five factors specified in section 4(a)(1) of the ESA (16 U.S.C. 1533(a)(1)) and listed above; and (8) ongoing efforts to protect and restore the species and its habitat.

We request that all information be accompanied by: (1) Supporting documentation such as maps, bibliographic references, or reprints of pertinent publications; and (2) the submitter's name, address, and any association, institution, or business that the person represents. Please note that submissions merely stating support for or opposition to the action under consideration without providing supporting information, although noted, will not be considered in making a determination based on the best available scientific and commercial data.

Critical Habitat

Section 3(5) of the ESA (16 U.S.C. 1532(5)) defines critical habitat as: (1) Specific areas within the geographical area occupied by the species at the time of listing, on which are found those physical or biological features that are essential to the conservation of the listed species and that may require special management considerations or protection; and (2) specific areas outside the geographical area occupied by the species at the time of listing that are essential for the conservation of a listed species. Critical habitat shall be specified to the maximum extent prudent and determinable at the time the species is proposed for listing. If designation of critical habitat is not prudent or determinable, the reasons will be stated in the 12-month finding.

We also request information on areas that may qualify as critical habitat for Chinook salmon in the Upper Klamath and Trinity Rivers Basin. Areas that include the physical and biological features essential to the conservation of the species should be identified. Areas outside the present range should also be identified if such areas are essential to the conservation of the species. Essential features may include, but are not limited to: (1) Space for individual and population growth and for normal behavior; (2) food, water, air, light, minerals, or other nutritional and physiological requirements; (3) cover or shelter; (4) sites for breeding, reproduction, or rearing of offspring; and (5) habitats that are protected from disturbance or are representative of the historic geographical and ecological distributions of the species (50 CFR 424.12(b)).

For areas having physical and biological features that may be essential to conservation, We request information describing: (1) The activities that affect the essential features or that could be affected by the designation; and (2) the economic costs and benefits of management measures likely to result from the designation. NMFS is required to consider the probable economic and other impacts on proposed or ongoing activities in making a final critical habitat designation (50 CFR 424.19).

Peer Review

On July 1, 1994, NMFS and USFWS (the Services) jointly published a series of policies regarding listings under the ESA, including a policy for peer review of scientific data (59 FR 34270). In addition, on January 14, 2005, the Office of Management and Budget (OMB) published its Final Information Quality Bulletin for Peer Review (70 FR 2664). The purpose of the Services' peer review policy is to ensure listings are based on the best scientific and commercial data available. The purpose of the OMB Bulletin is to enhance the quality and credibility of the government's scientific information. We are soliciting the names of recognized experts in the field that could take part in the peer review process for this status review. Independent peer reviewers can be selected from the academic and scientific community, Tribal and other Native American groups, Federal and State agencies, the private sector, and public interest groups.

Authority: 16 U.S.C. 1531 *et seq.*

Dated: April 6, 2011.

Samuel D. Rauch III,

Deputy Assistant Administrator for Regulatory Programs, National Marine Fisheries Service.

[FR Doc. 2011–8736 Filed 4–11–11; 8:45 am]

BILLING CODE 3510–22–P

Notices

Federal Register
Vol. 76, No. 70
Tuesday, April 12, 2011

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

DEPARTMENT OF AGRICULTURE

Office of the Secretary

USDA Reassigns Domestic Cane Sugar Allotments and Increases the Fiscal Year 2011 Raw Sugar Tariff-Rate Quota

AGENCY: Office of the Secretary, USDA.

ACTION: Notice.

SUMMARY: The Secretary of Agriculture today announced a reassignment of surplus sugar under domestic cane sugar allotments of 325,000 short tons raw value (STRV) to imports, and increased the fiscal year (FY) 2011 raw sugar tariff-rate quota (TRQ) by the same amount.

DATES: Effective: April 12, 2011.

FOR FURTHER INFORMATION CONTACT: Angel F. Gonzalez, Import Policies and Export Reporting Division, Foreign Agricultural Service, AgStop 1021, U.S. Department of Agriculture, Washington, DC 20250–1021; or by telephone (202) 720–2916; or by fax to (202) 720–0876; or by e-mail to *angel.f.gonzalez@fas.usda.gov*.

SUPPLEMENTARY INFORMATION: USDA's Commodity Credit Corporation (CCC) today announces the reassignment of projected surplus cane sugar marketing allotments under the FY 2011 (October 1, 2010–September 30, 2011) Sugar Marketing Allotment Program. The FY 2011 cane sector allotment and cane state allotments are larger than can be fulfilled by domestically-produced cane sugar, so the surplus was reassigned to raw sugar imports as required by law. Upon review of the domestic sugarcane processors' sugar marketing allocations relative to their FY 2011 expected raw sugar supplies, CCC determined that all sugarcane processors had surplus allocation. Therefore, all sugarcane states' sugar marketing allotments are reduced with this reassignment. The new cane state allotments are Florida, 1,856,850 STRV; Louisiana, 1,577,810 STRV; Texas, 173,016 STRV; and Hawaii, 283,216 STRV. The FY 2011 sugar marketing allotment program will not prevent any domestic sugarcane processors from marketing all of their FY 2011 sugar supply.

On August 5, 2010, USDA established the FY 2011 TRQ for raw cane sugar at 1,231,497 STRV (1,117,195 metric tons raw value, MTRV*), the minimum the United States is committed under the World Trade Organization (WTO) Uruguay Round Agreements. Pursuant to Additional U.S. Note 5 to Chapter 17 of the U.S. Harmonized Tariff Schedule (HTS) and Section 359k of the Agricultural Adjustment Act of 1938, as amended, the Secretary of Agriculture today increased the quantity of raw cane sugar imports of the HTS subject to the lower tier of duties during FY 2011 by 325,000 STRV. With this increase, the overall FY 2011 raw sugar TRQ is now 1,556,497 STRV (1,412,030 MTRV). Raw cane sugar under this quota must be accompanied by a certificate for quota eligibility and may be entered under subheading 1701.11.10 of the HTS until September 30, 2011. The Office of the U.S. Trade Representative will allocate this increase among supplying countries and customs areas.

This action is being taken after a determination that additional supplies of raw cane sugar are required in the U.S. market. USDA will closely monitor stocks, consumption, imports and all sugar market and program variables on an ongoing basis, and may make further program adjustments during FY 2011 if needed.

* Conversion factor: 1 metric ton = 1.10231125 short tons.

Dated: April 6, 2011.

Karis T. Gutter,

Acting Under Secretary, Farm and Foreign Agricultural Services.

[FR Doc. 2011–8570 Filed 4–11–11; 8:45 am]

BILLING CODE 3410–10–P

DEPARTMENT OF AGRICULTURE

Foreign Agricultural Service

Notice of Funding Availability: Inviting Applications for McGovern-Dole International Food for Education and Child Nutrition Program's Micronutrient-Fortified Food Aid Products Pilot; Correction

AGENCY: Foreign Agricultural Service.

ACTION: Notice; correction.

SUMMARY: The Foreign Agricultural Service (FAS) published a notice in the **Federal Register** on March 14, 2011, inviting proposals for the McGovern-Dole International Food for Education and Child Nutrition (McGovern-Dole) Program Micronutrient-Fortified Food Aid Products Pilot (MFFAPP). The notice stated that eligible applicants could submit proposals through June 10, 2011. This date was incorrect and, by this notice, FAS is correcting the due date to June 15, 2011.

DATES: Effective on April 12, 2011

FOR FURTHER INFORMATION CONTACT: Paul Alberghine, or by *phone:* (202) 720–2235; or by *e-mail: Paul.Alberghine@fas.usda.gov*.

SUPPLEMENTARY INFORMATION: FAS published a notice in the **Federal Register** on March 14, 2011 (76 FR 13598) that indicated that the application due date for proposals for funding under the MFFAPP was June 10, 2011. This date, which was incorrect, appeared in the **SUMMARY** section, the **DATES** section, and subsection IV.C. of the **SUPPLEMENTARY INFORMATION** section.

The correct application due date is June 15, 2011. By this notice, FAS informs applicants for funding under the MFFAPP that all applications must be received by 5 p.m. Eastern Daylight Time, June 15, 2011. Applications received after this date will not be considered.

Dated: April 4, 2011.

John D. Brewer,

Administrator, Foreign Agricultural Service.

[FR Doc. 2011–8584 Filed 4–11–11; 8:45 am]

BILLING CODE 3410–10–P

DEPARTMENT OF AGRICULTURE

Foreign Agricultural Service

Consultative Group To Eliminate the Use of Child Labor and Forced Labor in Imported Agricultural Products

AGENCY: Foreign Agricultural Service, USDA.

ACTION: Request for Comment on Guidelines for Eliminating Child and Forced Labor in Agricultural Supply Chains.

SUMMARY: Notice is hereby given that the U.S. Department of Agriculture

(USDA) invites public comment on the guidelines included at the end of this notice for a voluntary initiative to enable entities to reduce the likelihood that agricultural products or commodities imported into the United States are produced by forced labor or child labor. In addition to accepting written comments, USDA will be holding a public meeting of the Consultative Group to Eliminate the Use of Child Labor and Forced Labor in Imported Agricultural Products (Consultative Group) on May 12, 2011 to hear oral comments on the guidelines.

The Notice sets forth the guidelines, as well as the process for submitting written comments and for requesting to appear at the public meeting. Issuance of these guidelines and creation of the Consultative Group were provided for in The Food, Conservation, and Energy Act of 2008 (the Act), also known as the 2008 Farm Bill.

DATES:

- *April 29, 2011*—Due date for submission of requests to make an oral statement at the Public Meeting. (See Requirements for Submissions and Meeting Procedures below.)
- *May 6, 2011*—Due date to notify intention to attend the Public Meeting without making a statement or to request special accommodations.
- *May 12, 2011*—Public Meeting of Consultative Group to Eliminate the Use of Child Labor and Forced Labor in Imported Agricultural Products, Room 104–A, Jamie L. Whitten Building, 12th and Jefferson Drive, SW., Washington, DC 20250, beginning at 8:30 a.m.
- *July 11, 2011*—Final date for submission of written statements.

ADDRESSES: You may make written submissions by any of the following methods: by mail to the Office of Agreements and Scientific Affairs, Foreign Agricultural Service, U.S. Department of Agriculture, Stop 1040, 1400 Independence Ave., SW., Washington, DC 20250; by hand (including DHL, FedEx, UPS, etc.) to the Office of Agreements and Scientific Affairs, Foreign Agricultural Service, U.S. Department of Agriculture, Room 4133–S, 1400 Independence Ave., SW., Washington, DC 20250; by e-mail to: *Steffon.Brown@fas.usda.gov;* or by fax to (202) 720–0340.

FOR FURTHER INFORMATION CONTACT: The Office of Agreements and Scientific Affairs by phone on (202) 720–6219; by email addressed to *Steffon.Brown@fas.usda.gov;* or by mail addressed to the Office of Agreements and Scientific Affairs, Foreign Agricultural Service, U.S. Department of Agriculture, Stop 1040, 1400 Independence Ave., SW., Washington, DC 20250.

SUPPLEMENTARY INFORMATION: Section 3205 of the Food, Conservation, and Energy Act of 2008 (Farm Bill, Public Law 110–246) created *the Consultative Group to Eliminate the Use of Child Labor and Forced Labor in Imported Agricultural Products* (Consultative Group) to develop recommendations relating to a standard set of practices for independent, third-party monitoring and verification for the production, processing, and distribution of agricultural products or commodities to reduce the likelihood that agricultural products or commodities imported into the United States are produced with the use of forced labor or child labor. As required by the statute, the Consultative Group is made up of officials from the Departments of Agriculture, Labor and State as well as representatives of agricultural enterprises, non-governmental organizations, academic and research institutions and a third party certification body. Within one year after receiving the Consultative Group's recommendations, the Secretary of Agriculture is required to release guidelines for a voluntary initiative to enable entities to address issues raised by the Trafficking Victims Protection Act of 2000 (22 U.S.C. 7101 *et seq.*). These guidelines must be published in the **Federal Register** and made available for public comment for a period of 90 days. The Consultative Group will terminate on December 31, 2012.

On December 21, 2010, the Consultative Group presented its recommendations to Secretary Vilsack. On January 31, 2011, USDA reported the recommendations to Congress. They are now available on USDA's Web site at the following URL: *http://www.fas.usda.gov/info/Child_labor/Childlabor.asp*. The Secretary has elected to issue guidelines based on the Consultative Group's recommendations without change. Those guidelines are reproduced at the end of this notice.

As there are a wide variety of circumstances and relationships in commercial systems in the agricultural sector, the Guidelines focus on essential elements for credible, up-to-date monitoring and verification systems rather than prescribing specific detailed steps for all companies to use. There are many ways companies and other entities could implement these guidelines to fit their specific circumstances, and the methods which are suggested in the text are certainly not exhaustive. USDA hopes that these guidelines will serve to advance the cause of eliminating the use of forced labor and the worst forms of child labor in agricultural supply chains. We are interested to receive comments and particularly to engage interested parties in further discussions on ways these guidelines might be used.

Following are some questions to help respondents in framing their comments:

(a) How do the guidelines compare to current practices of companies, industry groups, and certification/accreditation organizations that are interested in making use of these guidelines? What challenges do you see for incorporating the guidelines into existing or new programs? Are there additional market-based incentives or government actions that would help in overcoming these challenges?

(b) Are there areas of the guidelines that need to be more fully developed in order to: (1) Make them useful for a particular industry; (2) increase public confidence in the integrity of programs that utilize the guidelines or (3) adequately address victim protection concerns?

(c) What additional steps by the U.S. Government would be helpful to aid entities in adopting and implementing the guidelines?

Requirements for Written Comment Submissions

Written submissions in response to this notice must be made in English and should not exceed 30 single-spaced standard letter-size pages in 12-point type, including attachments. Comments may be submitted by any of the methods described in the **ADDRESSES** section of this notice, but should be submitted no later than July 11, 2011. All comments will be posted on the FAS Web site.

Requirements for Participation in the Public Meeting

By April 29, 2011, all interested parties wishing to make an oral statement at the public meeting must submit the name, address, telephone number, facsimile number and e-mail address of the attendee(s) representing their organization by e-mail to: *Steffon.Brown@fas.usda.gov*. Requests to present oral statements must be accompanied by a written statement which, at a minimum, identifies key issues to be addressed in the oral statement. Depending on the number of identified participants, oral statements before the Consultative Group may be subject to time limits in order to accommodate all participants. The meeting will be open to the public and all submissions will be posted on the FAS Web site. USDA is a controlled access facility. Therefore, individuals who wish to attend the meeting without

making a statement must also register with the Consultative Group so that arrangements can be made for them to be allowed to enter the facility. Persons who wish to register or to request special accommodations for a disability or other reasons must submit a notification by e-mail to: *Steffon.Brown@fas.usda.gov* by May 6, 2011. No electronic media coverage will be allowed. Press inquiries should be directed to the USDA Office of Communications at (202) 720–4623.

Guidelines

The following program elements should be part of any program intended to reduce the likelihood that imported agricultural products are produced with the use of forced labor or child labor. Section I. below provides relevant definitions for the guidelines that follow; section II outlines the elements that should be included in company programs; and section III describes the role of independent third-party reviewers.

I. Definitions

Given the variety of existing programs and the varying use of terms from one to another, the Group agreed on the following operating definitions for its recommended program:

Agricultural Products—Goods in chapters 1–24 of the Harmonized System, other than fish, as well as a few additional products outside of those chapters, including raw cotton, raw wool, hides, skins, proteins, and essential oils.

Child Labor—The worst forms of child labor as defined in ILO Convention 182, the Convention Concerning the Prohibition and Immediate Action for the Elimination of the Worst Forms of Child Labor.

Company—An entity involved in the production, processing and distribution of agricultural products or commodities; or an entity which uses such products or commodities as inputs into further processed goods.

Forced Labor—All work or service that is exacted from any individual under menace of any penalty for nonperformance of the work or service, and for which the work or service is not offered voluntarily; or the work or service is performed as a result of coercion, debt bondage, or involuntary servitude (as those terms are defined in section 103 of the Trafficking Victims Protection Act of 2000 (22 U.S.C. 7102); and by 1 or more individuals who, at the time of performing the work or service, were being subjected to a severe form of trafficking in persons (as that term is defined in that section).

Independent Third Party Monitoring—Process of evaluating the implementation of standards on child labor and forced labor by a company's supplier(s) through announced and unannounced audits conducted on randomly selected suppliers carried out by independent monitors.

Producer—Source(s) of raw agricultural materials used by companies; could be individual farms or groups of farms organized into an association or cooperative.

Remediation—Activities or systems that a company puts in place to address non-compliance with the child labor and forced labor standards identified through monitoring and/or verification. The remedies may apply to individuals adversely affected by the non-compliant conduct or to address broader systematic processes and/or those of its suppliers.

Supplier—Any organization or individual in the supply chain of a particular agricultural product or commodity.

Supply Chain—All organizations and individuals involved in producing, processing, and/or distributing an agricultural product or commodity from its point of origin to the company.

Verification—Process by which a company is evaluated to determine compliance with its documented program, including standards on child labor and forced labor. Includes an evaluation of (1) data gathered through monitoring activities to ensure results are reliable and process is credible; and (2) the system established to remediate violations to determine if remediation is implemented and effective.

Violation—An instance where the use of child labor and/or forced labor has been identified and/or non-compliance with the company's standards on child labor and forced labor.

II. Company Program Elements

Company programs should include the elements outlined below. Once a company has implemented its program, it should seek independent third-party monitoring and verification in accordance with section III.

Company programs should be based upon management systems, capable of supporting and demonstrating consistent achievement of the elements outlined below. Companies can find information on the requirements for such systems in recognized ISO Standards, such as ISO 17021, ISO Guide 65, ISO 9001, and ISO 19011, or other relevant standards. These standards cover issues such as, impartiality and confidentiality, documentation and record control, management reviews, personnel qualification criteria, audit procedures, appeals, and complaints.

Additionally, companies adopting the Guidelines are expected to engage with governments, international organizations, and/or local communities to promote the provision of social safety nets that prevent child and forced labor and provide services to victims and persons at risk. Companies may also carry out activities that may not be included in these Guidelines but would nonetheless help them achieve their goal of reducing the likelihood of child labor and forced labor in their supply chains. For example, companies may choose to partner with other companies in their industry to share standards, tools, audit reports, or to pool remediation resources for greater potential impact.

A. Foundation Elements

1. Standards on Child Labor and Forced Labor

a. Standards should meet or exceed ILO standards as summarized below:

i. No person shall be involved in the worst forms of child labor, which include child slavery; sale/trafficking of children; debt bondage; serfdom; forced/compulsory labor; child soldering; all forms of commercial sexual exploitation; use of children in illicit activities; and work which harms the health, safety or morals of children. For purposes of this definition, a child is anyone under the age of 18.

ii. No person shall be subjected to work or service exacted under the menace of any penalty and for which the person has not offered himself voluntarily.

iii. No person shall be subjected to work imposed as a means of political coercion or education; as a punishment for holding or expressing political views; as a method of mobilizing labor for economic development; as a means of labor discipline; as a punishment for participation in strikes; or as a means of racial, social, national or religious discrimination.

b. Where national laws on child labor are equal to or more stringent than ILO standards, company standards should meet or exceed national laws.

c. Standards may be articulated through a variety of means, such as codes of conduct, multi-stakeholder codes in which the company participates, labor/human rights policies, collective bargaining agreements, framework agreements and others.

d. Standards should be made available to the public.

e. Company may choose to set additional standards relevant to its operations, such as standards on non-working children accompanying parents to worksites or treatment of foreign contract workers.

2. Supply Chain Mapping and Risk Assessment

a. Company should map its supply chain(s), beginning with the producer.

b. Company should identify areas of child/forced labor risk along chains; this may be done by:

i. Collecting available information on child/forced labor prevalence in industry in areas where product is sourced.

ii. Consulting with local stakeholders on social, economic and cultural factors, crop cycles, migration patterns, labor recruitment practices, access to judicial systems and processes, government policies and policy gaps, producer financial exposure, and any other relevant issues.

iii. Examining impact of company's own pricing and procurement policies on child/forced labor risks.

c. Company should focus its program efforts (Monitoring, Continuous Improvement and Accountability) on those areas identified to be most at risk for child and/or forced labor.

d. Company should update its risk assessment periodically based on experience operating its program.

e. Companies should implement systems to trace commodities to the producer level where feasible.

B. Communications and Monitoring

1. Communications

a. Company should communicate child labor and forced labor standards, rights, expectations, monitoring and verification programs, remediation policies, and complaint process and process for redress to:

i. Suppliers through training for managers, supervisors and other staff.

ii. Workers (including unions where they exist) and producers.

iii. Other levels of supply chain as appropriate (traders, middlemen, processors, exporters).

iv. Civil society groups and other relevant stakeholders in the country/geographic locations of sourcing.

b. Company should ensure that a safe and accessible channel is available to workers and other stakeholders to lodge complaints, including through independent monitors or verifiers. Company should also ensure that a transparent and accessible communications protocol is in place to notify victims and other affected stakeholders of complaints received and outcomes, with appropriate safeguards to protect victim's privacy.

c. All communications should include regular consultation as well as clear channels for reporting of immediate issues, and be conducted in a language(s) and manner that is understood by workers.

2. Monitoring

a. Company should develop monitoring tools based on its standards on child labor and forced labor (*see* Section II.A.).

b. Company may have internal staff of auditors and/or hire a credible organization to carry out monitoring activities.

c. Auditors should be competent, should have knowledge of local contexts and languages, and should have the skills and knowledge appropriate for evaluating and responding to child and forced labor situations.

d. First round of monitoring should be used to establish baseline data on incidence of child/forced labor throughout the company's supply chain.

e. Monitoring should occur on a continuous basis, as well as in response to any whistleblower allegations, with special emphasis on those areas identified to be most at risk.

f. Monitoring results should be tracked and updated to identify trends and persistent challenges.

g. Monitors should check that suppliers are maintaining appropriate traceability documentation.

h. When violations found, company should remediate (*see* Section II.C.1.).

C. Continuous Improvement and Accountability

1. Remediation

a. In consultation with relevant stakeholders, company should develop and put in place a remediation policy/plan that addresses remediation for individual victims as well as remediation of broader patterns of non-compliance caused by deficiencies in the company's and/or suppliers' systems and/or processes.

b. Company remediation plan should take into consideration all findings reported by independent third party monitors and verifiers.

c. Remediation for individual victims:

i. Should include protocols for appropriate immediate actions, such as referral to law enforcement or appropriate authorities in cases where, auditors discover specific violations of applicable child or forced labor laws.

ii. Should also include resources for victim services such as rehabilitation, education and training, employment, appropriate housing, counseling, restitution for lost wages and other material assistance.

d. Remediation of company's and/or suppliers' systems and processes:

i. Should include working with suppliers in situations where non-compliance with child labor and/or forced labor standards have been found to develop and implement systems to correct these violations and to build systems aimed at reducing child and/or forced labor on a systematic basis.

ii. Could include provision of technical assistance to help suppliers with known violations to address specific issues; can also include technical assistance on broader labor issues that underlie child/forced labor (e.g. workplace cooperation, quality assurance, health and safety, productivity, working conditions, and human resource management).

iii. Could include positive incentives for suppliers in appropriate cases such as creation of a preferred suppliers list, a price premium, purchase guarantees, access to financing, inclusion in national or country of origin trade promotion/registries, and/or regular public reporting that rewards compliance.

iv. Could include negative incentives in cases where suppliers have performed poorly and have had repeated non-compliance with company child and/or forced labor standards. The negative incentives may include termination, suspension or reduction of contracts. These steps should only be taken after other remediation and engagement efforts have been explored and failed to achieve the desired results.

2. Internal Process Review

a. Company should periodically check its own progress against its program goals including determining the effectiveness of its program to reduce the overall incidence of child labor or forced labor in its supply chain.

b. Company should address areas where goals have not been met.

c. Where remediation has been undertaken, company should confirm that remediation has been implemented and is effective.

d. Company should make information available to the public on its monitoring program and process to remediate/improve performance;

III. Independent Third-Party Review

Companies developing programs in accordance with the Guidelines should seek independent, third party review of their program implementation. Independent review assures the

company's customers that the company is meeting the standards on child labor and forced labor and relevant requirements outlined within its own program. There are two possible methods of conducting independent review. The *independent third-party monitoring* model utilizes independent external monitoring organizations and monitors to evaluate conditions at the facilities of the company and its suppliers. The *independent third-party verification* model utilizes accredited certification bodies to verify the company's ability to implement and maintain a program that ensures its suppliers meet its standards on child labor and forced labor. There are advantages and disadvantages with each of these models. For example:

—Independent third-party monitoring may include unannounced and announced on-site visits to evaluate a company's suppliers to determine compliance with child labor and forced labor standards. The monitor identifies violations of child labor and forced labor when observed. However, independent third-party monitoring will not necessarily include an evaluation of the company's entire documented program.

—Independent third-party verification includes an evaluation of the company's entire documented program to determine compliance to the program as well as to the standards for child labor and forced labor. It includes witnessing the company evaluating its suppliers. The verifier does not conduct independent evaluations of suppliers. However, the verifier does identify violations of child labor and forced labor when observed.

Companies may choose whichever model is most appropriate for their circumstances; however, a comprehensive program should include a combination of the two models. It should be noted that, while these review methods can verify that companies have robust systems in place to reduce the likelihood that child or forced labor is being used in their supply chains, neither model guarantees the absence of child or forced labor. Key elements of the two models are described below:

A. Independent Third Party Monitoring

1. Monitors should be accredited to conduct independent, third party monitoring. Monitors should have expertise on labor standards and possess knowledge of local workplace conditions and prevailing industry practices. Monitors should have experience and demonstrate competence in the execution of onsite evaluations of labor standards compliance in an agricultural setting.

2. Independent monitoring should be conducted by an entity external to the company and should demonstrate independence and impartiality as a precondition for participating in the monitoring process.

3. Monitoring should consist of on-site visits to a representative sample of farms and/or agricultural worksites and should occur on a continuous basis focusing on times of higher risk of use of child labor and/or forced labor in order to determine if child labor and forced labor standards are being respected and enforced. Unannounced visits are necessary to carry out this function fully. Announced visits may also be useful when it is necessary to have access to specific personnel or documentation.

4. Suppliers should be randomly selected. However, such selection should focus on suppliers that are identified to be at most risk.

5. Monitors should provide the company (ies) with a report outlining the findings and may make recommendations for remediation measures a company should take to address any incidences where the supplier did not implement the company's standards on child labor and/or forced labor.

B. Independent Third Party Verification

1. Verifiers should be accredited certification bodies, complying with either ISO/IEC 17021:2006 or ISO/IEC Guide 65:1996 or other relevant systems. ISO/IEC 17021 contains principles and requirements for the competence, consistency, and impartiality of an audit and the certification of management systems of all types and for bodies providing these activities. ISO/IEC Guide 65 contains the general requirements that a third party operating a product or service certification system shall meet in order to be recognized as competent and reliable. Verifiers should have qualified and competent personnel with the appropriate skills and knowledge in child labor and forced labor standards.

2. Third Party verification should be conducted at least annually.

3. Audits should include testing of audit data to confirm that company data systems are reliable.

4. Audits should include witness audits where the Verifier observes the company's monitoring activities.

5. Announced audits are important when it is necessary to have access to specific personnel or documentation. Unannounced audits may also be useful in verifying that company policies are being implemented appropriately. Verifiers should provide the company with a report identifying weaknesses found in the company's program and program implementation.

6. Verifiers should require the company to implement remediation measures to address the weaknesses, and these remediation efforts should then be audited to confirm that they were implemented and effective.

7. Verifiers should approve companies whose programs and program implementation are found to be in conformance to the requirements of the Guidelines.

8. Each verifier auditing companies to the Guidelines should provide the public a list of companies under review, approved, suspended, and/or withdrawn.

Signed at Washington, DC, on April 4th, 2011.

John D. Brewer,

Administrator, Foreign Agricultural Service.

[FR Doc. 2011–8587 Filed 4–11–11; 8:45 am]

BILLING CODE 3410–10–P

DEPARTMENT OF AGRICULTURE

Forest Service

Tuolumne-Mariposa Counties Resource Advisory Committee

AGENCY: Forest Service, USDA.

ACTION: Notice of meeting.

SUMMARY: The Tuolumne-Mariposa Counties Resource Advisory Committee (RAC) will meet on May 9, 2011 at the City of Sonora Fire Department, in Sonora, California. The primary purpose of the meeting is to review new project proposals, and to decide which project proponents to invite to make presentations at the June 13 and July 11 RAC meetings.

DATES: The meeting will be held May 9, 2011, from 12 p.m. to 3 p.m.

ADDRESSES: The meeting will be held at the City of Sonora Fire Department located at 201 South Shepherd Street, in Sonora, California (CA 95370).

FOR FURTHER INFORMATION CONTACT: Beth Martinez, Committee Coordinator, USDA, Stanislaus National Forest, 19777 Greenley Road, Sonora, CA 95370 (209) 532–3671, extension 320; E-mail *bethmartinez@fs.fed.us.*

SUPPLEMENTARY INFORMATION: Agenda items include: (1) Review new project proposals; (2) determine which project proponents to invite to make presentations at the June and July RAC meetings, (3) Public comment. This meeting is open to the public.

Dated: April 5, 2011.

Susan Skalski,

Forest Supervisor.

[FR Doc. 2011–8645 Filed 4–11–11; 8:45 am]

BILLING CODE 3410–ED–P

DEPARTMENT OF AGRICULTURE

Forest Service

Uinta-Wasatch-Cache National Forest Resource Advisory Committee.

AGENCY: Forest Service, USDA.

ACTION: Notice of meeting.

SUMMARY: The Uinta-Wasatch-Cache National Forest Resource Advisory Committee will conduct a meeting in Salt Lake City, Utah. The committee is meeting as authorized under the Secure Rural Schools and Community Self-Determination Act (Pub. L. 110–343) and in compliance with the Federal Advisory Committee Act. The purpose is to continue the review of project submittals.

DATES: The meeting will be held on April 28, from 3 p.m. to 5:30 p.m.

ADDRESSES: The meeting will be held at the Salt Lake County Government Center, Room S1002, 2001 South State Street, Salt Lake City, Utah. Written comments should be sent to Loyal Clark, Uinta-Wasatch-Cache National Forest, 88 West 100 North, Provo, Utah 84601. Comments may also be sent via email to *lfclark@fs.fed.us,* via facsimile to 801–342–5144.

All comments, including names and addresses when provided, are placed in the record and are available for inspection and copying. The public may inspect comments received at the Uinta-Wasatch-Cache National Forest, 88 West 100 North, Provo, Utah 84601.

FOR FURTHER INFORMATION CONTACT: Loyal Clark, RAC Coordinator, USDA, Uinta-Wasatch-Cache National Forest, 88 West 100 North, Provo, Utah 84601; 801–342–5117; *lfclark@fs.fed.us.*

SUPPLEMENTARY INFORMATION: The meeting is open to the public. The following business will be conducted: (1) Review new projects, and (2) recommend final projects to the Forest Service. Persons who wish to bring related matters to the attention of the Committee may file written statements with the Committee staff before or after the meeting.

Dated: April 6, 2011.

Cheryl Probert,

Deputy Forest Supervisor.

[FR Doc. 2011–8655 Filed 4–11–11; 8:45 am]

BILLING CODE P

DEPARTMENT OF AGRICULTURE

Forest Service

Ketchikan Resource Advisory Committee

AGENCY: Forest Service, USDA.

ACTION: Notice of meeting.

SUMMARY: The Ketchikan Resource Advisory Committee will meet in Ketchikan, Alaska, June 28, 2011. The purpose of this meeting is to discuss potential projects under the Secure Rural Schools and Community Self-Determination Act of 2008.

DATES: The meeting will be held at the Ketchikan-Misty Fiords Ranger District, 3031 Tongass Avenue, Ketchikan, Alaska. Send written comments to Ketchikan Resource Advisory Committee, c/o District Ranger, USDA Forest Service, 3031 Tongass Ave., Ketchikan, AK 99901, or electronically to Diane Daniels, RAC Coordinator at *ddaniels@fs.fed.us.*

FOR FURTHER INFORMATION CONTACT: Diane Daniels, RAC Coordinator Ketchikan-Misty Fiords Ranger District, Tongass National Forest, (907) 228–4105.

SUPPLEMENTARY INFORMATION: The meeting is open to the public. Committee discussion is limited to Forest Service staff and Committee members. However, public input opportunity will be provided and individuals will have the opportunity to address the Committee at that time.

Dated: April 4, 2011.

Jeff DeFreest,

District Ranger.

[FR Doc. 2011–8672 Filed 4–11–11; 8:45 am]

BILLING CODE 3410–11–M

DEPARTMENT OF AGRICULTURE

Forest Service

Tehama County Resource Advisory Committee

AGENCY: Forest Service, USDA.

ACTION: Notice of Meeting.

SUMMARY: The Tehama County Resource Advisory Committee (RAC) will meet in Red Bluff, California. Agenda items to be covered include: (1) Introductions, (2) Approval of Minutes, (3) Public Comment, (4) Chairman's Perspective, (5) Project Presentations, (6) General Project Discussion, (7) Next Agenda.

DATES: The meeting will be held on April 28, 2011 from 9 a.m. and end at approximately 12 p.m.

ADDRESSES: The meeting will be held at the Lincoln Street School, Pine Room, 1135 Lincoln Street, Red Bluff, CA. Individuals wishing to speak or propose agenda items must send their names and proposals to Randy Jero, Committee Coordinator, 825 N. Humboldt Ave., Willows, CA 95988.

FOR FURTHER INFORMATION CONTACT: Randy Jero, Committee Coordinator, USDA, Mendocino National Forest, Grindstone Ranger District, 825 N. Humboldt Ave., Willows, CA 95988. (530) 934–1269; e-mail *rjero@fs.fed.us.*

SUPPLEMENTARY INFORMATION: The meeting is open to the public. Committee discussion is limited to Forest Service staff and Committee members. However, persons who wish to bring matters to the attention of the Committee may file written statements with the Committee staff before or after the meeting. Public input sessions will be provided and individuals who made written requests by April 25, 2011 will have the opportunity to address the committee at those sessions.

Dated: April 5, 2011.

Eduardo Olmedo,

Designated Federal Official.

[FR Doc. 2011–8671 Filed 4–11–11; 8:45 am]

BILLING CODE 3410–11–P

DEPARTMENT OF AGRICULTURE

Forest Service

Snohomish County Resource Advisory Committee

AGENCY: Forest Service, USDA.

ACTION: Notice of meeting.

SUMMARY: The Snohomish County Resource Advisory Committee (RAC) will meet in Everett, Washington on May 12, 2011. The committee is meeting to review and prioritize 2011 and 2012 Snohomish County RAC Project Proposals for funding.

DATES: The meeting will be held on Thursday, May 12, 2011, from 9 a.m. to 5 p.m.

ADDRESSES: The meeting will be held in the Mt. Baker-Snoqualmie National Forest 4th floor Conference Room, located at the Wall Street Building, 2930 Wetmore Ave., Everett, Washington 98201.

FOR FURTHER INFORMATION CONTACT: Peter Forbes, District Ranger, Darrington Ranger District, phone (360) 436–2301, e-mail *pforbes@fs.fed.us.*

Individuals who use telecommunication devices for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339

between 8 a.m. and 8 p.m., Eastern Standard Time, Monday through Friday.

SUPPLEMENTARY INFORMATION: The meeting is open to the public. More information will be posted on the Mt. Baker-Snoqualmie National Forest Web site at *http://www.fs.fed.us/r6/mbs/projects/rac.shtml.*

Comments may be sent via e-mail to *pforbes@fs.fed.us* or via facsimile to (360) 436–1309. All comments, including names and addresses when provided, are placed in the record and are available for public inspection and copying. The public may inspect comments received at the Darrington Ranger District office at 1405 Emens Avenue, Darrington, Washington, during regular office hours (Monday through Friday 8 a.m.–4:30 p.m.).

Dated: April 5, 2011.

Renee Bodine,

Acting Forest Supervisor.

[FR Doc. 2011–8647 Filed 4–11–11; 8:45 am]

BILLING CODE 3410–11–P

DEPARTMENT OF AGRICULTURE

Rural Utilities Service

Basin Electric Power Cooperative: Notice of Intent To Hold Public Scoping Meetings and Prepare an Environmental Assessment

AGENCY: Rural Utilities Service, USDA.

ACTION: Notice of Intent to hold public scoping meetings and prepare an Environmental Assessment (EA).

SUMMARY: The Rural Utilities Service (RUS) intends to hold public scoping meetings and prepare an Environmental Assessment with Scoping (EA) to meet its responsibilities under the National Environmental Policy Act (NEPA) and 7 CFR part 1794 in connection with potential impacts related to a proposed project by Basin Electric Power Cooperative (Basin Electric). The proposed Big Bend to Witten Transmission Line Project (proposed action) consists of an approximately 70-mile long 230-kV single-circuit transmission line, a new Western Area Power Administration (Western) substation called Lower Brule Substation, an addition to the existing Witten Substation, and approximately two miles of 230-kV double-circuit transmission line between Big Bend Dam and the new Lower Brule Substation. It is anticipated that some communication facility additions or enhancements may be necessary for the project including radio towers and buildings at Lower Brule Substation, Witten Substation, and one or two intermediate sites. Basin Electric is requesting RUS financial assistance for the proposed action.

DATES: RUS will conduct public scoping meetings in an open house format to provide information and solicit comments for the preparation of the EA. The scoping meetings will be held on the following dates: The American Legion Post 179, 109 North 5th Avenue, Reliance, SD, on Tuesday April 26, 2011, 4–7 p.m.; The Holiday Inn Express and Suites, 1360 East Highway 44, Winner, SD, on Wednesday April 27, 2011, 4–7 p.m.

ADDRESSES: To send comments or request additional information, contact: Mr. Richard Fristik, Senior Environmental Protection Specialist, USDA, Rural Utilities Service, 1400 Independence Avenue, SW., Stop 1571, Washington, DC 20250–1571. *Telephone:* (202) 720–5093 or *e-mail: richard.fristik@wdc.usda.gov.*

A Macro Corridor and Alternative Evaluation Study has been prepared for the proposed project. The document is available for public review prior to and during the public scoping meetings. The report is available at the RUS address provided in this notice and on the agency's Web site at: *http://www.usda.gov/rus/water/ees/ea.htm,* the offices of Basin Electric and the following repositories:

Kennebec Public Library, 203 S Main, Kennebec, SD 57544

Tripp County Library—Grossenburg Memorial, 442 Monroe Street, Winner, SD 57580

SUPPLEMENTARY INFORMATION: The network transmission system in South Dakota is not able to accommodate projected load growth by 2014. The major impact is the addition of the pumping station loads associated with the proposed Keystone XL pipeline. Seven pumping stations are proposed to be located in South Dakota. The two pumping stations to be connected to the Witten Substation and Gregory Substation would have a large impact on the network transmission system. These substations are located in a relatively remote area from a network transmission perspective and therefore do not have a strong redundant transmission connection. The existing Western 115-kV line between the Mission Substation and the Fort Randall Substation is not able to reliably accommodate the ultimate pump station build-out load level. An outage of the Fort Randall to Gregory 115-kV line would result in operating voltage criteria violations in the areas of Mission and Gregory, SD. The addition of the Big Bend to Witten 230-kV transmission line would provide an increase in the load serving capacity such that the delivery needs of the projected network load can be met in a reliable manner.

The proposed action consists of an approximately 70-mile long 230-kV single circuit transmission line, a new Western Substation called Lower Brule Substation, an addition to the existing Witten Substation, and approximately two miles of 230-kV double-circuit transmission line between Big Bend Dam and the new Lower Brule Substation. Lower Brule Substation would be a new facility, to be built by Western, near Big Bend Dam on the Missouri River. Western would also construct, own, and operate approximately two miles of double circuit transmission line between Big Bend Dam and the new Lower Brule Substation. The Witten Substation is owned by Rosebud Electric Cooperative and is near the town of Witten, SD. Basin Electric would build and own the addition to the Witten Substation. It is anticipated that some communication facility additions or enhancements may be necessary for the project including radio towers and buildings at Lower Brule Substation, Witten Substation, and one or two intermediate sites.

Basin Electric is seeking financing from RUS for its ownership of the proposed project. Before making a decision to provide financing, RUS is required to conduct an environmental review under NEPA in accordance with RUS's Environmental Policies and Procedures (7 CFR Part 1794). Western has agreed to be a cooperating agency in preparation of the EA. Government agencies, private organizations, and the public are invited to participate in the planning and analysis of the proposed action. Representatives from RUS, Western and Basin Electric will be available at the scoping meetings to discuss the environmental review process, describe the proposed action, discuss the scope of environmental issues to be considered, answer questions, and accept comments. Comments regarding the proposed action may be submitted (orally or in writing) at the public scoping meetings or in writing by May 27, 2011, at the Rural Utilities Service address provided in this notice. From information provided in the Macro Corridor and Alternatives Evaluation Study Report, from government agencies, private organizations, and the public, Basin Electric Power Cooperative will prepare an environmental analysis to be submitted to RUS for review. RUS will review the environmental analysis and determine the significance of the

impacts of the proposal. If accepted, the document will be adopted as the environmental assessment (EA) for the proposal. RUS's EA would be available for review and comment for 45 days. Should RUS determine, based on the EA for the proposal, that impacts associated with the construction and operation of the proposal would not have a significant environmental impact, it will prepare a finding of no significant impact (FONSI). Public notification of a FONSI would be published in the **Federal Register** and in newspapers with circulation in the proposal area.

If at any point in the preparation of an EA, RUS determines that the proposed action will have a significant effect on the quality of the human environment, the preparation of an Environmental Impact Statement will be required. Any final action by RUS related to the proposed action will be subject to, and contingent upon, compliance with all relevant Federal, State, and local environmental laws and regulations and completion of the environmental review requirements as prescribed in RUS's Environmental Policies and Procedures.

Dated: April 5, 2011.

Mark S. Plank,

Director, Engineering and Environmental, Staff, Rural Utilities Service.

[FR Doc. 2011–8719 Filed 4–11–11; 8:45 am]

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DEPARTMENT OF COMMERCE

International Trade Administration

[A–403–801, C–403–802]

Fresh and Chilled Atlantic Salmon From Norway: Extension of Time Limits for Preliminary and Final Results of Full Third Antidumping and Countervailing Duty Sunset Reviews

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

DATES: *Effective Date:* April 12, 2011.

FOR FURTHER INFORMATION CONTACT: Kristen Johnson for (CVD) at 202–482–4793 and Eric Greynolds for (AD) at 202–482–6071, AD/CVD Operations, Office 3, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230.

Background

On January 3, 2011, the Department of Commerce (the Department) initiated the third sunset reviews of the antidumping (AD) and countervailing duty (CVD) orders on fresh and chilled Atlantic salmon from Norway, pursuant to section 751(c) of the Tariff Act of 1930, as amended (the Act). *See Initiation of Five-Year ("Sunset") Review,* 76 FR 89 (January 3, 2011). Within the deadline specified in 19 CFR 351.218(d)(1)(i), the Department received a notice of intent to participate, in both the AD and CVD sunset reviews, on behalf of Phoenix Salmon U.S., Inc. (Phoenix Salmon), a domestic interested party. Phoenix Salmon claimed interested party status under section 771(9)(C) of the Act, as a producer of subject merchandise.

The Department received timely substantive responses from Phoenix Salmon and the following respondent interested parties: the Government of Norway, Norwegian Seafood Federation (NSF), and the Aquaculture Division of the Norwegian Seafood Association (ADNSA). The domestic and respondent interested parties also submitted to the Department timely rebuttal comments.

On April 6, 2011, after analyzing the submissions from the interested parties and finding that NSF and ADNSA have standing as foreign interested parties and that the substantive responses submitted by all of the interested parties are adequate, the Department determined to conduct full sunset reviews of the AD and CVD orders on fresh and chilled Atlantic salmon from Norway. *See* Memorandum to Gary Taverman, Acting Deputy Assistant Secretary for Antidumping and Countervailing Duty Operations, from Melissa Skinner, Director, Antidumping and Countervailing Duty Operations, Office 3, regarding "Adequacy Determination: Third Sunset Reviews of the Antidumping and Countervailing Duty Orders on Fresh and Chilled Atlantic Salmon From Norway," (April 6, 2011).

Extension of Time Limits

In accordance with section 751(c)(5)(B) of the Act, the Department may extend the period of time for making its determination by not more than 90 days, if it determines that the review is extraordinarily complicated. We determine that the AD and CVD sunset reviews are extraordinarily complicated, pursuant to section 751(c)(5)(C) of the Act, because of a large number of complex issues in each review that the Department must analyze.

The preliminary results of the full sunset reviews of the AD and CVD orders on fresh and chilled Atlantic salmon from Norway are scheduled for April 23, 2011, and the final results of these reviews are scheduled for August 31, 2011. The Department is extending the deadlines for both the preliminary and final results of the full sunset reviews.

As a result, the Department intends to issue the preliminary results of the full sunset reviews of the AD and CVD orders on fresh and chilled Atlantic salmon from Norway on July 22, 2011, and the final results of the reviews on November 29, 2011. These dates are 90 days from the original scheduled dates of the preliminary and final results of these full sunset reviews.

This notice is issued in accordance with sections 751(c)(5)(B) and (C)(v) of the Act.

Dated: April 6, 2011.

Gary Taverman,

Acting Deputy Assistant Secretary for Antidumping and Countervailing Duty Operations.

[FR Doc. 2011–8735 Filed 4–11–11; 8:45 am]

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DEPARTMENT OF COMMERCE

International Trade Administration

[A–489–805]

Certain Pasta From Turkey: Extension of Time Limit for the Preliminary Results of Antidumping Duty Administrative Review

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

FOR FURTHER INFORMATION CONTACT: Stephanie Moore, AD/CVD Operations, Office 3, Import Administration, U.S. Department of Commerce, 14th Street and Constitution Ave., NW., Washington, DC 20230; (202) 482–3692.

Background

On July 24, 1996, the Department published in the Federal Register the antidumping duty order on certain pasta from Turkey. See Notice of Antidumping Duty Order and Amended Final Determination of Sales at Less Than Fair Value: Certain Pasta From Turkey, 61 FR 38545 (July 24, 1996). On July 1, 2010, we published in the **Federal Register** the notice of "Opportunity to Request Administrative Review" of this order for the period July 1, 2009, through June 30, 2010. See Antidumping or Countervailing Duty Order, Finding, or Suspended Investigation; Opportunity To Request Administrative Review, 75 FR 38074 (July 1, 2010). On July 30, 2010, we received a request from petitioners [1] to

[1] New World Pasta Company, American Italian Pasta Company, and Dakota Growers Pasta Company (collectively, petitioners).

review Marsan Gida Sanayi ve Ticaret A.S. (Marsan), in accordance with 19 CFR 351.213(b)(1). On August 31, 2010, we published the notice of initiation of review of Marsan. *See* Initiation of Antidumping and Countervailing Duty Administrative Reviews and Deferral of Initiation of Administrative Review, 75 FR 53274 (August 31, 2010). The preliminary results of review are currently due April 4, 2011.

Extension of Time Limit of Preliminary Results

Section 751(a)(3)(A) of the Tariff Act of 1930, as amended (the "Act"), requires that the Department make a preliminary determination within 245 days after the last day of the anniversary month of an order for which a review is requested. Section 751(a)(3)(A) of the Act further states that, if it is not practicable to complete the review within the time period specified, the administering the authority may extend the 245-day period to issue its preliminary results to up to 365 days.

We determine that completion of the preliminary results of this review within the 245-day period is not practicable for the following reasons. The Department needs additional time to analyze complex issues regarding affiliation and knowledge of U.S. destination. Given the complexity of these issues, and in accordance with section 751(a)(3)(A) of the Act, we are extending the time period for issuing the preliminary results of this review by 30 days. Therefore, the preliminary results are now due no later than May 4, 2011. The final results continue to be due 120 days after publication of the preliminary results.

This notice is published pursuant to sections 751(a)(3)(A) and 777(i)(1) of the Act.

Dated: April 4, 2011.

Christian Marsh,

Deputy Assistant Secretary for Antidumping and Countervailing Duty Operations.

[FR Doc. 2011–8566 Filed 4–11–11; 8:45 am]

BILLING CODE 3510–DS–M

DEPARTMENT OF COMMERCE

International Trade Administration

[A–201–834]

Purified Carboxymethylcellulose From Mexico: Notice of Preliminary Results of Antidumping Duty Administrative Review

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

SUMMARY: In response to a request from petitioner Aqualon Company, a unit of Hercules Incorporated (Aqualon), the Department of Commerce (the Department) is conducting an administrative review of the antidumping duty order on purified carboxymethylcellulose (CMC) from Mexico. The review covers exports of the subject merchandise to the United States produced and exported by Quimica Amtex S.A. de C.V. (Amtex); the period of review (POR) is July 1, 2009, through June 30, 2010.

We preliminarily find that Amtex has made sales at less than normal value (NV) during the POR. If these preliminary results are adopted in our final results of this review, we will instruct U.S. Customs and Border Protection (CBP) to assess antidumping duties based on differences between the export price (EP) or constructed export price (CEP) and NV.

Interested parties are invited to comment on these preliminary results. Parties who submit arguments in this proceeding are requested to submit with the arguments: (1) A statement of the issues, (2) a brief summary of the arguments, and (3) a table of authorities.

DATES: *Effective Date:* April 12, 2011.

FOR FURTHER INFORMATION CONTACT: Mark Flessner or Robert James, AD/CVD Operations, Office 7, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230; *telephone:* (202) 482–6312 or (202) 482–0649, respectively.

SUPPLEMENTARY INFORMATION:

Background

The Department published the antidumping duty order on CMC from Mexico on July 11, 2005. *See Notice of Antidumping Duty Orders: Purified Carboxymethylcellulose from Finland, Mexico, the Netherlands, and Sweden*, 70 FR 39734 (July 11, 2005). On July 1, 2010, the Department published the notice of opportunity to request an administrative review of CMC from Mexico for the period of July 1, 2009, through June 30, 2010. *See Antidumping or Countervailing Duty Order, Finding, or Suspended Investigation: Opportunity To Request Administrative Review*, 75 FR 38074 (July 1, 2010). On July 26, 2010, petitioner Aqualon requested an administrative review of Amtex. On August 31, 2010, the Department published in the **Federal Register** a notice of initiation of this antidumping duty administrative review. *See Initiation of Antidumping and Countervailing Duty Administrative Reviews and Deferral of Initiation of Administrative Review*, 75 FR 53274 (August 31, 2010).

On September 21, 2010, the Department issued its standard antidumping duty questionnaire to Amtex. Amtex submitted its response to section A of the Department's questionnaire on October 15, 2010 (Amtex Section A Response). Amtex submitted corrections to its section A response on October 18, 2010. Amtex submitted its response to sections B and C of the Department's questionnaire on November 29, 2010 (Amtex Sections B and C Response). On March 7, 2011, the Department issued a supplemental section A, B, and C questionnaire to Amtex. Amtex timely submitted its response to the Department's supplemental section A, B, and C questionnaire on March 14, 2011 (Amtex Supplemental Response).

Period of Review

The POR is July 1, 2009, through June 30, 2010.

Scope of the Order

The merchandise covered by this order is all purified carboxymethylcellulose (CMC), sometimes also referred to as purified sodium CMC, polyanionic cellulose, or cellulose gum, which is a white to off-white, non-toxic, odorless, biodegradable powder, comprising sodium CMC that has been refined and purified to a minimum assay of 90 percent. Purified CMC does not include unpurified or crude CMC, CMC Fluidized Polymer Suspensions, and CMC that is cross-linked through heat treatment. Purified CMC is CMC that has undergone one or more purification operations which, at a minimum, reduce the remaining salt and other by-product portion of the product to less than ten percent. The merchandise subject to this order is classified in the Harmonized Tariff Schedule of the United States at subheading 3912.31.00. This tariff classification is provided for convenience and customs purposes; however, the written description of the scope of the order is dispositive.

Date of Sale

The Department's regulations state that it will normally use the date of invoice, as recorded in the exporter's or producer's records kept in the ordinary course of business, as the date of sale. *See* 19 CFR 351.401(i). However, if the Department is satisfied that "a different date * * * better reflects the date on which the exporter or producer establishes the material terms of sale,"

the Department may choose a different date. *Id.* Amtex has reported the commercial invoice (as differentiated from *pro forma* invoice) as the invoice date. *See* Amtex Section A Response at A22. With regard to the invoice date, Amtex bills some of its sales via "delayed invoices" in both the home and U.S. markets. *Id.* In these instances, delivery is made to the customer and a *pro forma* invoice is issued. However, the subject merchandise remains in storage and continues to be the property of Amtex until withdrawn for consumption by the customer (usually at the end of a regular, monthly billing cycle), at which time a definitive invoice is issued. *Id.* In Amtex's normal books and records, it is this definitive invoice date (not the *pro forma* invoice date) that is recorded as the date of sale. *Id.* Therefore, the Department preliminarily determines that the definitive invoice date is the date of sale provided that the definite invoice is issued on or before the shipment date. We have used the shipment date as the date of sale where the invoice is issued after the shipment date. *See* Purified Carboxymethylcellulose from Mexico: Preliminary Results Analysis Memorandum for Quimica Amtex, S.A. de C.V., dated April 2, 2011 (Analysis Memorandum), for further discussion of date of sale. A public version of this memorandum is on file in the Department's Central Records Unit (CRU) located in Room 7046 of the main Department of Commerce Building, 14th Street and Constitution Avenue, NW., Washington, DC 20230.

Fair Value Comparisons

To determine whether sales of CMC in the United States were made at less than NV, we compared U.S. price to NV, as described in the "Export Price," "Constructed Export Price," and "Normal Value" sections of this notice. In accordance with section 777A(d)(2) of the Tariff Act of 1930, as amended (the Act), we calculated monthly weighted-average NVs and compared these to individual U.S. transactions. Because we determined Amtex made both EP and CEP sales during the POR, we used both EP and CEP as the basis for U.S. price in our comparisons.

Product Comparisons

In accordance with section 771(16) of the Act, we considered all products produced by Amtex covered by the description in the "Scope of the Order" section, above, and sold in the home market during the POR, to be foreign like products for purposes of determining appropriate product comparisons to U.S. sales. We relied on five characteristics to match U.S. sales of subject merchandise to comparison sales of the foreign like product (listed in order of priority): (1) Grade; (2) viscosity; (3) degree of substitution; (4) particle size; and (5) solution gel characteristics. Where there were no sales of identical merchandise in the home market to compare to U.S. sales, we compared U.S. sales to the next most similar foreign like product on the basis of these product characteristics and the reporting instructions listed in the Department's September 21, 2010, questionnaire. Because there were contemporaneous sales of identical or similar merchandise in the home market suitable for comparison to all U.S. sales, we did not compare any U.S. sales to constructed value (CV). However, in accordance with our normal practice, the CV calculation was performed in case NV is based on CV for the final results. *See* the CV section below.

Export Price (EP)

Section 772(a) of the Act defines EP as "the price at which the subject merchandise is first sold (or agreed to be sold) before the date of importation by the producer or exporter of subject merchandise outside of the United States to an unaffiliated purchaser in the United States or to an unaffiliated purchaser for exportation to the United States," as adjusted under section 772(c) of the Act. In accordance with section 772(a) of the Act, we used EP for a number of Amtex's U.S. sales because these sales were made before the date of importation and were sales directly to unaffiliated customers in the United States, and because CEP methodology was not otherwise indicated.

We based EP on the packed, delivered duty paid, cost and freight (C&F) or free on board (FOB) prices to unaffiliated customers in the United States. We made deductions for movement expenses in accordance with section 772(c)(2)(A) of the Act, which included, where appropriate, foreign inland freight from the mill to the U.S. border, inland freight from the border to the customer or warehouse, and U.S. brokerage and handling. We made an adjustment for direct selling expenses (credit expenses) in accordance with section 772(c)(2)(A) of the Act.

Constructed Export Price (CEP)

In accordance with section 772(b) of the Act, CEP is "the price at which the subject merchandise is first sold (or agreed to be sold) in the United States before or after the date of importation by or for the account of the producer or exporter of such merchandise, or by a seller affiliated with the producer or exporter, to a purchaser not affiliated with the producer or exporter," as adjusted under sections 772(c) and (d) of the Act. In accordance with section 772(b) of the Act, we used CEP for a number of Amtex's U.S. sales because Amtex sold merchandise to its affiliate in the United States, Amtex Chemicals LLC (Amtex Chemicals or ACUS), which, in turn, sold subject merchandise to unaffiliated U.S. customers. *See, e.g.,* Amtex's Section A Response at A2–A3, A10–A11, and Exhibit A–6. We preliminarily find these U.S. sales are properly classified as CEP sales because they occurred in the United States and were made through Amtex's U.S. affiliate, Amtex Chemicals, to unaffiliated U.S. customers.

We based CEP on the packed, delivered duty paid or FOB warehouse prices to unaffiliated purchasers in the United States. We made deductions for movement expenses in accordance with section 772(c)(2)(A) of the Act, which included, where appropriate, foreign inland freight to the border, foreign brokerage and handling, customs duties, U.S. brokerage, U.S. inland freight, and U.S. warehousing expenses. In accordance with section 772(d)(1) of the Act, we deducted those selling expenses associated with economic activities occurring in the United States, including direct selling expenses (credit costs), inventory carrying costs, and indirect selling expenses. We made an adjustment for CEP profit as set forth in the Analysis Memorandum. *See* Analysis Memorandum at 11.

Normal Value

A. Selection of Comparison Market

In order to determine whether there was a sufficient volume of sales in the home market to serve as a viable basis for calculating NV, we compared the respondent's volume of home market sales of the foreign like product to the volume of U.S. sales of the subject merchandise, in accordance with section 773(a) of the Act. Because Amtex's aggregate volume of home market sales of the foreign like product was greater than five percent of its aggregate volume of U.S. sales of the subject merchandise, we determined the home market was viable. *See* section 773(a)(1)(B) of the Act. Therefore, we based NV on home market sales in the usual commercial quantities and in the ordinary course of trade.

B. Price-to-Price Comparisons

We calculated NV based on prices to unaffiliated customers. Amtex reported no billing adjustments, discounts or

rebates in the home market. We made deductions for movement expenses including, where appropriate, foreign inland freight and insurance, pursuant to section 773(a)(6)(B) of the Act. In addition, when comparing sales of similar merchandise, we made adjustments for differences in cost attributable to differences in physical characteristics of the merchandise (*i.e.*, DIFMER) pursuant to section 773(a)(6)(C)(ii) of the Act and 19 CFR 351.411. We also made adjustments for differences in circumstances of sale (COS) in accordance with section 773(a)(6)(C)(iii) of the Act and 19 CFR 351.410. We made COS adjustments for imputed credit expenses. Finally, we deducted home market packing costs and added U.S. packing costs in accordance with sections 773(a)(6)(A) and (B) of the Act.

Level of Trade

In accordance with section 773(a)(1)(B)(i) of the Act, to the extent practicable, we base NV on sales made in the comparison market at the same level of trade (LOT) as the export transaction. The NV LOT is based on the starting price of sales in the home market or, when NV is based on CV, on the LOT of the sales from which SG&A expenses and profit are derived. With respect to CEP transactions in the U.S. market, the CEP LOT is defined as the level of the constructed sale from the exporter to the importer. *See* section 19 CFR 351.412(c)(1)(ii).

To determine whether NV sales are at a different LOT than CEP sales, we examine stages in the marketing process and selling functions along the chain of distribution between the producer and the customer. *See* 19 CFR 351.412(c)(2). If the comparison-market sales are at a different LOT, and the difference affects price comparability, as manifested in a pattern of consistent price differences between the sales on which NV is based and comparison-market sales at the LOT of the export transaction, we make a LOT adjustment under section 773(a)(7)(A) of the Act. For CEP sales, if the NV level is more remote from the factory than the CEP level and there is no basis for determining whether the difference in the levels between NV and CEP affects price comparability, we adjust NV under section 773(a)(7)(B) of the Act (the CEP offset provision). *See, e.g., Certain Hot-Rolled Flat-Rolled Carbon Quality Steel Products from Brazil; Preliminary Results of Antidumping Duty Administrative Review*, 70 FR 17406, 17410 (April 6, 2005), unchanged in *Notice of Final Results of Antidumping Duty Administrative Review: Certain Hot-Rolled Flat-Rolled Carbon Quality Steel Products from Brazil*, 70 FR 58683 (October 7, 2005); *see also Final Determination of Sales at Less Than Fair Value: Greenhouse Tomatoes From Canada*, 67 FR 8781 (February 26, 2002), and accompanying Issues and Decisions Memorandum at Comment 8. For CEP sales, we consider only the selling activities reflected in the price after the deduction of expenses and CEP profit under section 772(d)(3) of the Act. *See Micron Technology, Inc.* v. *United States*, 243 F.3d 1301, 1314–15 (Fed. Cir. 2001). We expect that if the claimed LOTs are the same, the functions and activities of the seller should be similar. Conversely, if a party claims that the LOTs are different for different groups of sales, the functions and activities of the seller should be dissimilar. *See Porcelain-on-Steel Cookware from Mexico: Final Results of Antidumping Duty Administrative Review*, 65 FR 30068 (May 10, 2000), and accompanying Issues and Decisions Memorandum at Comment 6.

Amtex reported it sold CMC to end-users and distributors in the home market and to end-users and distributors in the United States. For the home market, Amtex identified two channels of distribution: End users (channel 1) and distributors (channel 2). *See* Amtex's Section A Response at A14. Amtex claimed a single level of trade in the home market, stating that it performs virtually the same selling functions to either category of customer. *Id.*

We obtained information from Amtex regarding the marketing stages involved in making its reported home market and U.S. sales. Amtex provided a table listing all selling activities it performs, and comparing the levels of trade among each channel of distribution in each market. *See* Amtex's Section A Response at Exhibit A–7. We reviewed Amtex's claims concerning the intensity to which all selling functions were performed for each home market channel of distribution and customer category. For virtually all selling functions, the selling activities of Amtex were identical in both channels, including sales forecasting, personnel training, sales promotion, direct sales personnel, technical assistance, warranty service, after-sales service and arranging delivery. *Id.* Amtex described the level of activity as independent of channel of distribution. *See* Amtex's Section A Response at A15–A16.

While we find some differences in the selling functions performed between the home market end-user and distributor channels of distribution, such differences are minor in that they are not the principal selling functions but rather specific to a few customers and rarely performed. *See* Amtex's Section A Response at Exhibit A–7. Based on our analysis of all of Amtex's home market selling functions, we agree with Amtex's characterization of all its home market sales as being made at the same level of trade, the NV LOT.

In the U.S. market, Amtex reported a single level of trade for EP sales and a single level of trade for CEP sales through two channels of distribution (*i.e.*, end-users and distributors) in each. *See* Amtex Section C Response at C26. We examined the record with respect to Amtex's EP sales and find that for all EP sales, Amtex performed such selling functions as sales forecasting, sales promotion, U.S. sales personnel, technical assistance, warranties, after-sales services and arranging delivery. *See* Amtex's Section A Response at Exhibit A–7. In terms of the number and intensity of selling functions performed on EP sales, these were indistinguishable between sales from Amtex to end users and to distributors. *Id.* Accordingly, we agree with Amtex and preliminarily determine that all EP sales were made at the same LOT.

We compared Amtex's EP level of trade to the single NV level of trade found in the home market. However, while we find differences in the levels of intensity performed for some of these functions between the home market NV level of trade and the EP level of trade, such differences are minor (specific to a few customers and rarely performed) and do not establish distinct levels of trade between the home market and the U.S. market. Based on our analysis of all of Amtex's home market and EP selling functions, we find these sales were made at the same level of trade.

For CEP sales, Amtex claims that the number and intensity of selling functions performed by Amtex in making its sales to Amtex Chemicals are lower than the number and intensity of selling functions Amtex performed for its EP sales, and further claims that CEP sales are at a less advanced stage than home market sales. *See* Amtex's Section A Response at A18. Amtex specifically states that Amtex "made no sales in the home market or other markets at the same level of trade as its CEP sales for the U.S." *Id.* However, we find that the CEP LOT is more advanced than the NV LOT. Amtex's Section C Response indicates that Amtex's CEP sales are at a more advanced marketing stage than are its home market sales. *See* Amtex Sections B and C Response at C48. Amtex reports that many of the principal functions in both markets are carried out by a single employee in the

Mexico office. While U.S. employees of Amtex Chemicals do perform important selling functions, such as contacting customers and negotiating prices, the preponderance of overall selling functions are, in fact, performed by the Amtex employee in Mexico City. The record indicates this employee devotes a disproportionate amount of his efforts on CEP sales, despite the fact that both the Mexican home market and Amtex's EP market are considerably larger than Amtex's CEP market. From our analysis of Amtex's overall selling functions, it is evident that the intensity of activity for the principal functions is greater for CEP sales than other sales. *Id.; see also* Exhibit A–1. Accordingly, we preliminarily determine that the CEP LOT (that is, sales from Amtex to its U.S. affiliate) involves a much more advanced stage of distribution than the NV LOT. *See* Analysis Memorandum at 4–7.

Because we found the home market and U.S. CEP sales were made at different LOTs, we examined whether a LOT adjustment or a CEP offset may be appropriate in this review. As we found only one LOT in the home market, it was not possible to make a LOT adjustment to home market sales prices, because such an adjustment is dependent on our ability to identify a pattern of consistent price differences between the home market sales on which NV is based and home market sales at the CEP LOT. *See* 19 CFR 351.412(d)(1)(ii). Furthermore, because the CEP LOT involves a much more advanced stage of distribution than the NV LOT, it is not possible to make a CEP offset to NV in accordance with section 773(a)(7)(B) of the Act.

Currency Conversions

Amtex reported certain home market and U.S. sales prices and adjustments in both U.S. dollars and Mexican pesos. Therefore, we made peso-U.S. dollar currency conversions, where appropriate, based on the exchange rates in effect on the date of the sale, as certified by the Federal Reserve Board, in accordance with section 773A(a) of the Act.

Preliminary Results of Review

As a result of our review, we preliminarily find the following weighted-average dumping margin exists for the period July 1, 2009, through June 30, 2010:

Producer/Exporter	Weighted-average margin (percentage)
Quimica Amtex, S.A. de C.V	0.80

The Department will disclose calculations performed within five days of the date of publication of this notice in accordance with 19 CFR 351.224(b). An interested party may request a hearing within thirty days of publication. *See* 19 CFR 351.310(c). Requests should contain the party's name, address, and telephone number, the number of participants, and a list of the issues to be discussed. At the hearing, each party may make an affirmative presentation only on issues raised in that party's case brief, and may make rebuttal presentations only on arguments included in that party's rebuttal brief. Any hearing, if requested, will be held 37 days after the date of publication, or the first business day thereafter, unless the Department alters the date pursuant to 19 CFR 351.310(d). Interested parties may submit case briefs no later than 30 days after the date of publication of these preliminary results of review. *See* 19 CFR 351.309(c)(1)(ii). Rebuttal briefs, limited to issues raised in the case briefs, may be filed no later than 35 days after the date of publication of this notice. *See* 19 CFR 351.309(d)(1). Parties who submit arguments in these proceedings are requested to submit with the argument: (1) A statement of the issue; (2) a brief summary of the argument; and (3) a table of authorities. Further, parties submitting written comments must provide the Department with an additional copy of the public version of any such comments on diskette. The Department will issue final results of this administrative review, including the results of our analysis of the issues in any such written comments or at a hearing, within 120 days of publication of these preliminary results.

The Department shall determine, and CBP shall assess, antidumping duties on all appropriate entries. Upon completion of this administrative review, pursuant to 19 CFR 351.212(b), the Department will calculate an assessment rate on all appropriate entries. Amtex has reported entered values for all of its sales of subject merchandise to the United States during the POR. Therefore, in accordance with 19 CFR 351.212(b)(1), we will calculate importer-specific duty assessment rates on the basis of the ratio of the total amount of antidumping duties calculated for the examined sales to the total entered value of the examined sales of that importer. These rates will be assessed uniformly on all entries the respective importers made during the POR if these preliminary results are adopted in the final results of review. Where the assessment rate is above *de minimis*, we will instruct CBP to assess duties on all entries of subject merchandise by that importer. In accordance with 19 CFR 356.8(a), the Department intends to issue appropriate assessment instructions directly to CBP on or after 41 days following the publication of the final results of review.

The Department clarified its "automatic assessment" regulation on May 6, 2003. *See Antidumping and Countervailing Duty Proceedings: Assessment of Antidumping Duties*, 68 FR 23954 (May 6, 2003). This clarification will apply to entries of subject merchandise during the POR produced by the company included in these preliminary results that the company did not know were destined for the United States. In such instances we will instruct CBP to liquidate unreviewed entries at the "all others" rate if there is no rate for the intermediate company or companies involved in the transaction.

Cash Deposit Requirements

Furthermore, the following cash deposit requirements will be effective for all shipments of CMC from Mexico entered, or withdrawn from warehouse, for consumption on or after the publication date of the final results of this administrative review, as provided by section 751(a)(1) of the Act: (1) The cash deposit rate for Amtex will be the rate established in the final results of review, unless that rate is less than 0.50 percent (*de minimis* within the meaning of 19 CFR 351.106(c)(1)), in which case the cash deposit rate will be zero; (2) if the exporter is not a firm covered in this review or the less-than-fair-value (LTFV) investigation, but the manufacturer is, the cash deposit rate will be the rate established for the most recent period for the manufacturer of the merchandise; and (3) if neither the exporter nor the manufacturer is a firm covered in this or any previous review conducted by the Department, the cash deposit rate will be the all-others rate of 12.61 percent from the LTFV investigation. *See Notice of Antidumping Duty Orders: Purified Carboxymethylcellulose from Finland, Mexico, the Netherlands and Sweden*, 70 FR 39734 (July 11, 2005).

This notice also serves as a preliminary reminder to importers of their responsibility under 19 CFR 351.402(f) to file a certificate regarding

the reimbursement of antidumping duties prior to liquidation of the relevant entries during this review period. Failure to comply with this requirement could result in the Secretary's presumption that reimbursement of antidumping duties occurred and the subsequent assessment of double antidumping duties.

We are issuing and publishing this notice in accordance with sections 751(a)(1) and 777(i)(1) of the Act and 19 CFR 351.221(b)(4).

Dated: April 4, 2011.

Paul Piquado,

Acting Deputy Assistant Secretary for Import Administration.

[FR Doc. 2011–8741 Filed 4–11–11; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–570–900]

Diamond Sawblades and Parts Thereof From the People's Republic of China: Final Rescission of Antidumping Duty New Shipper Review

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

SUMMARY: On March 9, 2011, the Department of Commerce ("Department") issued its preliminary intent to rescind the new shipper review ("NSR") of Pujiang Talent Diamond Tools Co., Ltd. ("PTDT").[1] We gave interested parties an opportunity to comment on the Preliminary Intent to Rescind and, based upon our analysis of the comments and rebuttal comments received, we continue to determine that PTDT has failed to meet the minimum requirements for entitlement to an NSR.

DATES: *Effective Date:* April 12, 2011.

FOR FURTHER INFORMATION CONTACT: Alan Ray, AD/CVD Operations, Office 9, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230; *telephone:* (202) 482–5403.

SUPPLEMENTARY INFORMATION:

Case History

The Department received a timely request from PTDT, in what at the time appeared to be in accordance with 19 CFR 351.214(c), for an NSR of the antidumping duty order on diamond sawblades and parts thereof from the People's Republic of China ("PRC"). On June 28, 2010, the Department published the initiation of the NSR with a January 23, 2009, through April 30, 2010 period of review ("POR").[2]

On March 9, 2011, the Department issued its preliminary intent to rescind this NSR based on the sale of subject merchandise to the United States during the POR that had been produced by a company that had exported subject merchandise to the United States during the period of investigation ("POI"). *See* Preliminary Intent to Rescind.

On March 16, 2011, the Department received affirmative comments from PTDT, requesting that the Department not terminate the NSR. The Department received rebuttal comments from Petitioners, the Diamond Sawblades Manufacturers Coalition, on March 23, 2011, requesting that the Department terminate the NSR.

Scope of the Order

The products covered by the order are all finished circular sawblades, whether slotted or not, with a working part that is comprised of a diamond segment or segments, and parts thereof, regardless of specification or size, except as specifically excluded below. Within the scope of the order are semifinished diamond sawblades, including diamond sawblade cores and diamond sawblade segments. Diamond sawblade cores are circular steel plates, whether or not attached to non-steel plates, with slots. Diamond sawblade cores are manufactured principally, but not exclusively, from alloy steel. A diamond sawblade segment consists of a mixture of diamonds (whether natural or synthetic, and regardless of the quantity of diamonds) and metal powders (including, but not limited to, iron, cobalt, nickel, tungsten carbide) that are formed together into a solid shape (from generally, but not limited to, a heating and pressing process).

Sawblades with diamonds directly attached to the core with a resin or electroplated bond, which thereby do not contain a diamond segment, are not included within the scope of the order. Diamond sawblades and/or sawblade cores with a thickness of less than 0.025 inches, or with a thickness greater than 1.1 inches, are excluded from the scope of the order. Circular steel plates that have a cutting edge of non-diamond material, such as external teeth that protrude from the outer diameter of the plate, whether or not finished, are excluded from the scope of the order. Diamond sawblade cores with a Rockwell C hardness of less than 25 are excluded from the scope of the order. Diamond sawblades and/or diamond segment(s) with diamonds that predominantly have a mesh size number greater than 240 (such as 250 or 260) are excluded from the scope of the order. Merchandise subject to the order is typically imported under heading 8202.39.00.00 of the Harmonized Tariff Schedule of the United States ("HTSUS"). When packaged together as a set for retail sale with an item that is separately classified under headings 8202 to 8205 of the HTSUS, diamond sawblades or parts thereof may be imported under heading 8206.00.00.00 of the HTSUS. The tariff classification is provided for convenience and customs purposes; however, the written description of the scope of the order is dispositive.

Summary of Comments Received[3]

On March 16, 2011, PTDT submitted comments regarding the Department's Preliminary Intent to Rescind. PTDT raised four main arguments. First, the purpose of the NSR is to determine if PTDT was dumping subject merchandise and then to calculate its antidumping duty margin. To rescind the NSR based on an isolated incident, representing such a low volume, places too much weight on the insignificant incident at issue. To rescind the review would now be a significant waste of already spent time and resources. Second, PTDT exported subject merchandise produced by another company to fill a customer's order, not in an effort to assist that company in circumventing payment of antidumping duties. Third, the Department should exercise its discretion and overlook this technical violation by applying the same kind of logic it employs when it extends the POR of an NSR so as to capture non-entered sales, or the same logic employed in the application of the *de minimis* provision for antidumping duty margins of less than 0.5 percent. Finally, PTDT argues that if the Department determines that rescission is appropriate, it should instead consider

[1] *See* Memorandum to the File, from James C. Doyle, Office Director, through Gary Taverman, Acting Deputy Assistant Secretary for Antidumping and Countervailing Duty Operations, Preliminary Intent to Rescind the New Shipper Review of Pujiang Talent Diamond Tools Co., Ltd., dated March 9, 2011 ("Preliminary Intent to Rescind").

[2] *See Diamond Sawblades and Parts Thereof from the People's Republic of China: Initiation of Antidumping Duty New Shipper Review*, 75 FR 36632 (June 28, 2010).

[3] Certain business proprietary information ("BPI") regarding the rescission of this NSR has been addressed in a public manner in this notice. For an explanation of the BPI relied upon, see Memorandum to the File, from Alan Ray, Case Analyst, Diamond Sawblades and Parts Thereof from the People's Republic of China: BPI Referenced in Final Rescission, dated concurrently with this notice.

conducting this NSR concurrently with the first administrative review.

On March 23, 2011, Petitioners submitted rebuttal comments.[4] With respect to PTDT's argument that the rescission would render significant time and effort a nullity, Petitioners note that this NSR was undertaken at PTDT's request and certification. PTDT's certification at the time of the request for the NSR did not state that PTDT had exported a low volume of subject merchandise produced by a company that exported during the POI. With respect to PTDT's argument that the Department should exercise its discretion and overlook this technical violation, Petitioners note that 19 CFR 351.214(b)(2)(ii) requires in cases where an exporter is not the producer of all merchandise it ships to the United States, a secondary certification that the supplier did not export subject merchandise to the United States during the POI. Petitioners further note that as the Department already stated, the regulations do not require the consideration of relative volumes sourced from a company that exported to the United States during the POI, with respect to the secondary certification requirement. Therefore, Petitioners argue, PTDT is not entitled to an NSR.

Final Rescission of Review

As stated in the Preliminary Intent to Rescind, the Department has determined that PTDT does not meet the minimum requirements for establishing its qualification for an NSR under 19 CFR 351.214(b)(2)(ii)(B) because PTDT sold and exported subject merchandise to the United States during the POR that had been produced by a company that had exported to the United States during the POI. Because PTDT could not produce a certification that none of the merchandise it exported during the POR had been produced by a company that had exported during the POI, PTDT does not meet the minimum requirements for establishing qualification for an NSR. Furthermore, we note that the regulations provide a basis for extending the POR of NSRs[5] and applying the *de minimis* provision for margins of less than 0.5 percent,[6] but there is no basis for overlooking the requirements set forth in 19 CFR 351.214(b)(2)(ii)(B). Accordingly, we are rescinding this NSR. As the Department is rescinding this NSR, we are not calculating a company-specific rate for PTDT, and PTDT will remain part of the PRC-wide entity subject to the PRC-wide rate.

Cash Deposit Requirements

The following cash deposit requirements will be effective upon publication of this final rescission of this NSR for all shipments of subject merchandise by PTDT, entered, or withdrawn from warehouse, for consumption on or after the publication date, as provided by section 751(a)(2)(C) of the Tariff Act of 1930, as amended ("Act"): (1) For subject merchandise produced and exported by PTDT, as part of the PRC-wide entity the cash deposit rate will be 164.09 percent; (2) for subject merchandise exported by PTDT, but not manufactured by PTDT, as part of the PRC-wide entity the cash deposit rate will continue to be the PRC-wide rate of 164.09 percent; and (3) for subject merchandise manufactured by PTDT, but exported by any party other than PTDT, the cash deposit rate will be the rate applicable to the exporter. These cash deposit requirements will remain in effect until further notice.

Administrative Protective Orders

This notice also serves as a reminder to parties subject to administrative protective order ("APO") of their responsibility concerning the return or destruction of proprietary information disclosed under APO in accordance with 19 CFR 351.305, which continues to govern business proprietary information in this segment of the proceeding. Timely written notification of the return/destruction of APO materials or conversion to judicial protective order is hereby requested. Failure to comply with the regulations and terms of an APO is a violation which is subject to sanction.

We are issuing and publishing this determination in accordance with sections 751(a)(2)(B) and 777(i) of the Act, and 19 CFR 351.214(h) and 351.221(b)(5).

Dated: April 6, 2011.

Gary Taverman,

Acting Deputy Assistant Secretary for Antidumping and Countervailing Duty Operations.

[FR Doc. 2011–8742 Filed 4–11–11; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–552–802]

Frozen Warmwater Shrimp From the Socialist Republic of Vietnam: Initiation and Preliminary Results of Changed Circumstances Review

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

SUMMARY: In response to a petition for a changed circumstances review ("CCR") of Grobest & I–Mei Industrial (Vietnam) Co., Ltd. ("Grobest & I–Mei"), the Department of Commerce (the "Department") is initiating a CCR of the antidumping duty order on frozen warmwater shrimp from the Socialist Republic of Vietnam ("Vietnam"). We have preliminarily concluded that Viet I–Mei Frozen Foods Co., Ltd. ("Viet I–Mei") is the successor-in-interest to Grobest & I–Mei, and, as a result, should be accorded the same treatment previously accorded to Grobest & I–Mei, with regard to the antidumping duty order on frozen warmwater shrimp from Vietnam. Interested parties are invited to comment on these preliminary results.

DATES: *Effective Date:* April 12, 2011.

FOR FURTHER INFORMATION CONTACT: Toni Dach at (202) 482–1655, AD/CVD Operations, Office 9, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230.

SUPPLEMENTARY INFORMATION:

Background

The Department published the antidumping duty order on certain frozen warmwater shrimp from Vietnam on February 1, 2005. *See Notice of Amended Final Determination of Sales at Less Than Fair Value and Antidumping Duty Order: Certain Frozen Warmwater Shrimp From the Socialist Republic of Vietnam,* 70 FR 5152 (February 1, 2005) ("*VN Shrimp Order*"). Grobest & I–Mei participated in a new shipper review; the second, third, fourth, and fifth administrative reviews of the *VN Shrimp Order;* and requested an administrative review for the sixth

[4] We note that the deadline for submitting rebuttal comments was March 21, 2011. However, according to Petitioners, although PTDT certified as to service, Petitioners still had not received a service copy of PTDT's submission as of March 23, 2011. Therefore, we find good cause under 19 CFR 351.302(b) to extend the time limit to submit rebuttal comments and, accordingly, accept Petitioners' submission. Moreover, because PTDT certified that it served Petitioners with its submission and subsequently submitted a letter confirming service, we have not rejected PTDT's submission, as requested by Petitioners.

[5] *See* 19 CFR 351.214(f)(2)(ii).

[6] *See* 19 CFR 351.106(c)(1).

administrative review of the *VN Shrimp Order*. On February 28, 2011, Viet I–Mei informed the Department that Grobest & I–Mei had ended their partnership, and petitioned the Department to conduct a CCR to confirm that Viet I–Mei is the successor-in-interest to Grobest & I–Mei, for purposes of determining antidumping duties due as a result of the *VN Shrimp Order*.

Scope of the Order

The scope of the order includes certain frozen warmwater shrimp and prawns, whether wild-caught (ocean harvested) or farm-raised (produced by aquaculture), head-on or head-off, shell-on or peeled, tail-on or tail-off,[1] deveined or not deveined, cooked or raw, or otherwise processed in frozen form.

The frozen warmwater shrimp and prawn products included in the scope of this order, regardless of definitions in the Harmonized Tariff Schedule of the United States ("HTSUS"), are products which are processed from warmwater shrimp and prawns through freezing and which are sold in any count size.

The products described above may be processed from any species of warmwater shrimp and prawns. Warmwater shrimp and prawns are generally classified in, but are not limited to, the *Penaeidae* family. Some examples of the farmed and wild-caught warmwater species include, but are not limited to, whiteleg shrimp (*Penaeus vannemei*), banana prawn (*Penaeus merguiensis*), fleshy prawn (*Penaeus chinensis*), giant river prawn (*Macrobrachium rosenbergii*), giant tiger prawn (*Penaeus monodon*), redspotted shrimp (*Penaeus brasiliensis*), southern brown shrimp (*Penaeus subtilis*), southern pink shrimp (*Penaeus notialis*), southern rough shrimp (*Trachypenaeus curvirostris*), southern white shrimp (*Penaeus schmitti*), blue shrimp (*Penaeus stylirostris*), western white shrimp (*Penaeus occidentalis*), and Indian white prawn (*Penaeus indicus*).

Frozen shrimp and prawns that are packed with marinade, spices, or sauce are included in the scope of this order. In addition, food preparations, which are not "prepared meals," that contain more than 20 percent by weight of shrimp or prawn are also included in the scope of this order.

Excluded from the scope are: (1) Breaded shrimp and prawns (HTS subheading 1605.20.1020); (2) shrimp and prawns generally classified in the *Pandalidae* family and commonly referred to as coldwater shrimp, in any state of processing; (3) fresh shrimp and prawns whether shell-on or peeled (HTS subheadings 0306.23.0020 and 0306.23.0040); (4) shrimp and prawns in prepared meals (HTS subheading 1605.20.0510); (5) dried shrimp and prawns; (6) canned warmwater shrimp and prawns (HTS subheading 1605.20.1040); (7) certain dusted shrimp; and (8) certain battered shrimp. Dusted shrimp is a shrimp-based product: (1) That is produced from fresh (or thawed-from-frozen) and peeled shrimp; (2) to which a "dusting" layer of rice or wheat flour of at least 95 percent purity has been applied; (3) with the entire surface of the shrimp flesh thoroughly and evenly coated with the flour; (4) with the non-shrimp content of the end product constituting between four and 10 percent of the product's total weight after being dusted, but prior to being frozen; and (5) that is subjected to IQF freezing immediately after application of the dusting layer. Battered shrimp is a shrimp-based product that, when dusted in accordance with the definition of dusting above, is coated with a wet viscous layer containing egg and/or milk, and pan-fried.

The products covered by the order are currently classified under the following HTSUS subheadings: 0306.13.0003, 0306.13.0006, 0306.13.0009, 0306.13.0012, 0306.13.0015, 0306.13.0018, 0306.13.0021, 0306.13.0024, 0306.13.0027, 0306.13.0040, 1605.20.1010 and 1605.20.1030. These HTSUS subheadings are provided for convenience and for customs purposes only and are not dispositive, but rather the written description of the scope of the order is dispositive.

Initiation of Changed Circumstances Review

Pursuant to section 751(b)(1) of the Tariff Act of 1930, as amended (the "Act"), and 19 CFR 351.216, the Department will conduct a CCR upon receipt of information concerning, or a request from an interested party for a review of, an antidumping duty order which shows changed circumstances sufficient to warrant a review of the order. The information submitted by Viet I–Mei supporting its claim that Viet I–Mei is the successor-in-interest to Grobest & I–Mei, demonstrates changed circumstances sufficient to warrant such a review. *See* 19 CFR 351.216(d); *see also Notice of Initiation and Preliminary Results of Antidumping Duty Changed Circumstances Review: Carbon and Certain Alloy Steel Wire Rod From Mexico*, 75 FR 67685 (November 3, 2010).

In accordance with the above-referenced regulation, the Department is initiating a CCR to determine whether Viet I–Mei is the successor-in-interest to Grobest & I–Mei. In determining whether one company is the successor-in-interest to another, the Department examines a number of factors including, but not limited to, changes in management, production facilities, supplier relationships, and customer base. *See Industrial Phosphoric Acid From Israel; Final Results of Antidumping Duty Changed Circumstances Review*, 59 FR 6944 (February 14, 1994). Although no single factor will necessarily provide a dispositive indication of succession, generally, the Department will consider one company to be a successor-in-interest to another company if its resulting operation is similar to that of its predecessor. *See Brass Sheet and Strip From Canada; Final Results of Antidumping Duty Administrative Review*, 57 FR 20460 (May 13, 1992). Thus, if the evidence demonstrates that, with respect to the production and sale of the subject merchandise, the new company operates as the same business entity as the prior company, the Department will assign the new company the cash-deposit rate of its predecessor. *Id.; Notice of Final Results of Changed Circumstances Antidumping Duty Administrative Review: Polychloroprene Rubber From Japan*, 67 FR 58 (January 2, 2002); *see also Ball Bearings and Parts Thereof from France: Final Results of Changed-Circumstances Review*, 75 FR 34688 (June 18, 2010) (the Department found successorship where the company changed its ownership structure, but made only minor changes to its operations, management, supplier relationships, and customer base).

In its February 28, 2011, submission, Viet I–Mei provided information to demonstrate that it is the successor-in-interest to Grobest & I–Mei. With respect to management prior to and following the name change, the submission indicates that the Deputy General Manager of Grobest & I–Mei is now the General Manager of Viet I–Mei, and three out of five additional senior managers have retained their management positions. Additionally, Viet I–Mei's submission shows only minor changes to the organizational structure of Viet I–Mei from the structure of Grobest & I–Mei. Specifically, the majority of departments in Viet I–Mei are identical to the departments in Grobest & I–Mei. Thus, the majority of Viet I–Mei's

[1] "Tails" in this context means the tail fan, which includes the telson and the uropods.

managers remain in positions identical to those they held in Grobest & I–Mei. *See* Attachment 3 of Viet I–Mei's February 28, 2011, submission.

In addition, the submission indicates that the production facilities for Viet I–Mei and Grobest & I–Mei are identical. Following the name and investment changes, Viet I–Mei retained the same address and assets as Grobest & I–Mei. *See* Attachments 2 and 4 of Viet I–Mei's February 28, 2011, submission.

In its March 18, 2011, submission, Viet I–Mei identifies Grobest & I–Mei's raw materials suppliers and Viet I–Mei's raw materials suppliers, showing that Viet I–Mei's raw material suppliers are identical to Grobest & I–Mei's. Additionally, Viet I–Mei provides representative invoice samples from raw material suppliers to Grobest & I–Mei and Viet I–Mei. *See* Attachments 1 and 2 of Viet I–Mei's March 18, 2011, submission.

Further, Viet I–Mei addressed changes to its customer base by providing customer lists and representative invoices and packing lists. The lists show that the customers of Viet I–Mei were customers of Grobest & I–Mei. *See* Attachments 3, 4, and 5 of Viet I–Mei's March18, 2011, submission.

Given the few changes noted above, we have preliminarily determined that no major changes have occurred with respect to Viet I–Mei's management, production facilities, suppliers, or customer base as a result of the dissolution of the partnership of Grobest & I–Mei.

When it concludes that expedited action is warranted, the Department may publish the notice of initiation and preliminary results for a CCR concurrently. *See* 19 CFR 351.221(c)(3)(ii); *see also Initiation and Preliminary Results of Antidumping Duty Changed Circumstances Review: Canned Pineapple Fruit From Thailand*, 69 FR 30878 (June 1, 2004). We have determined that expedition of this CCR is warranted because we have the information necessary to make a preliminary finding already on the record. *See Ball Bearings and Parts Thereof from Japan: Initiation and Preliminary Results of Changed-Circumstances Review*, 71 FR 14679 (March 23, 2006). In this case, we preliminarily find that Viet I–Mei is the successor-in-interest to Grobest & I–Mei and, as such, is entitled to Grobest & I–Mei's cash-deposit rate with respect to entries of subject merchandise.

Should our final results remain the same as these preliminary results, effective the date of publication of the final results, we will instruct U.S. Customs and Border Protection to assign entries of merchandise produced or exported by Viet I–Mei the antidumping duty cash-deposit rate applicable to Grobest & I–Mei.

Public Comment

Any interested party may request a hearing within 14 days of publication of this notice. *See* 19 CFR 351.310(c). Any hearing, if requested, will be held 28 days after the date of publication of this notice or the first working day thereafter. Interested parties may submit case briefs and/or written comments no later than 14 days after the date of publication of this notice. Rebuttal briefs and rebuttals to written comments, which must be limited to issues raised in such briefs or comments, may be filed not later than 21 days after the date of publication of this notice. Parties who submit case briefs or rebuttal briefs in this CCR are requested to submit with each argument (1) a statement of the issue and (2) a brief summary of the argument with an electronic version included. Consistent with 19 CFR 351.216(e), we will issue the final results of this CCR no later than 270 days after the date on which this review was initiated or within 45 days of publication of these preliminary results if all parties agree to our preliminary finding.

We are issuing and publishing this initiation and preliminary results notice in accordance with sections 751(b)(1) and 777(i)(1) of the Act and 19 CFR 351.216 and 351.221(c)(3).

Dated: March 31, 2011.

Ronald K. Lorentzen,

Deputy Assistant Secretary for Import Administration.

[FR Doc. 2011–8733 Filed 4–11–11; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

Renewable Energy and Energy Efficiency Executive Business Development Mission

AGENCY: International Trade Administration.

ACTION: Notice.

Mission Description

The United States Department of Commerce, International Trade Administration, U.S. and Foreign Commercial Service (CS) is organizing a Renewable Energy and Energy Efficiency Trade Mission to Turkey on October 23–29, 2011. Led by a senior Department of Commerce official, the mission will include representatives from a variety of U.S. firms specializing in the following product areas:

- Wind Turbines;
- Geothermal Exploration, Drilling and Geophysical Engineering Services;
- Geothermal Power Plant Equipment;
- Biomass Power Generation;
- Hydroelectric Power Plant Equipment Supply;
- Solar Power Generation Systems;
- Cogeneration Systems;
- Energy Efficiency Systems and Solutions;
- Fuel Cells, Heat Pumps Exc.

Mission participants will be introduced to international agents, distributors, and end-users whose capabilities and services are targeted to each participant's needs. This mission will contribute to the National Export Initiative and the Renewable Energy and Energy Efficiency Export Initiative goals through increased sales of U.S. equipment/services in Turkey. The participants will also have a site visit to the Izmir Ataturk Organized Industrial Zone, targeted by the U.S. Department of Energy for a Near-Zero Zone Project (NZZ) to promote industrial energy efficiency and potential U.S. export opportunities. The U.S. Department of Energy (DOE), in coordination with other U.S. agencies, is launching the Near-Zero Zone project. This interagency project has the support of the Turkish government and business organizations, and will help industrial companies operating within the Izmir Ataturk Organized Industrial Zone (IAOSB) reduce their energy usage through a series of cost-effective efficiency upgrades.

One-on-one meetings with NZZ industrial participants will also be included, to follow quickly on an energy efficiency survey to be completed in September 2011. This mission will be an important deliverable for our bilateral Framework for Strategic Economic and Commercial Cooperation mechanism, a new process of engagement with the government of Turkey on economic and trade issues, chaired by Secretary Locke and U.S. Trade Representative, Ron Kirk.

Participants will have an opportunity to meet with major buyers, and potential agents and distributors operating in Ankara, Istanbul, and Izmir, Turkey. The U.S. and Foreign Commercial Service is targeting a minimum of 15 and a maximum of 20 U.S. companies.

Commercial Setting

Turkey is a country offering significant opportunities for foreign investors and exporters with its geographically favorable position to

function as a gateway between Europe, the Middle East and Central Asia. Opportunities exist not only in the dynamic domestic market in Turkey, but also throughout the region.

Hospitality and tolerance being the traditional cornerstones of the Turkish way of life, the country is open to foreign firms. Foreign Direct Investment (FDI) in Turkey slowed to $7.9 billion in 2009 during the height of the world economic crisis, but has reached $20 billion in previous years. There are approximately 24,000 companies with foreign capital in Turkey. Corporate income tax is only 20%, dividends can be transferred, foreign capital companies enjoy the same rights as local companies, international arbitration is possible, and expatriates can be employed.

A treaty between the U.S. and Turkey exists for the protection of foreign investments and another treaty between the U.S. and Turkey exists for the avoidance of double taxation. Turkey has a customs union agreement with the EU that covers trade in all goods, except agriculture goods: The export and import of these industrial goods from the EU have a zero percent customs duty. Turkey has agreed to implement most EU Directives regarding the safety of products and recognizes the CE certification of those types of products.

As announced by the International Monetary Fund, Turkey has the 16th largest economy in the world. In 2010, Turkey's GDP reached $958.3 billion. Turkey has a young, dynamic, well-educated and multi-cultural population of 73 million, the second largest population after Germany in Europe. Sixty percent of the population is under the age of 35.

Turkish imports in 2010 are estimated at $166 billion and Turkish exports about $114 billion for the same period (2010 official results are not announced yet). U.S. exports to Turkey in 2010 will exceed $10 billion and Turkish exports to the U.S. over $4 billion. Total U.S. FDI in Turkey is over $7 billion, a conservative figure given investment by European subsidiaries of U.S. parent corporations.

Turkey is strategically located. Turkey is often referred to as 'The Energy Bridge between East and West'. Seventy-three percent of the world's proven oil reserves and seventy-two percent of the world's proven gas reserves are located in the surrounding regions of Turkey: The Middle East, Caspian Region and Russia. This makes Turkey a crucial bridge between energy rich regions and Europe, which spends approximately $300 billion annually for imported energy resources.

Turkey is a manufacturing center with ambitions to become a regional energy hub. The international image of Turkey in terms of a destination for investment is generally shaped by the diverse market opportunities—both domestic and export-oriented—that Turkey offers. The potential of these markets covers over one billion consumers, including a large and growing domestic market (approx. 72 million people); high-income European markets (600 million people); emerging Russian, Caucasian and Central Asian markets (250 million people); and the expanding Middle East and North Africa markets (160 million people). These markets have approximately $25 trillion in combined GDP.

Turkey emerged from the world economic crisis much better than expected. The banking sector was strong and did not suffer any major crisis. Turkey's economy grew by 7–8% in 2010 and unlike the general trend; this was not a jobless recovery. Throughout the crisis Turkey was the only country whose credit rating was upgraded by two grades. Credit rating agencies and financial markets praised the strong performance and healthy state of the Turkish economy and demonstrated confidence in Turkey's economic policies.

In the 2010–2014 Energy Strategy Paper announced recently by the Turkish Minister of Energy and Natural Resources (MENR) Taner Yildiz, Turkey plans to have 20,000 MW of wind energy and 600 MW of geothermal energy capacity by 2023 (100th year anniversary of the Turkish Republic). Turkey plans to have 5,000 MW new hydroelectric power plants, 10,000 MW wind power farms, 300 MW geothermal power plants come into operation by 2015. As part of the energy efficiency programs, the Turkish government plans to decrease the primary energy intensity by 10% before 2015 and 20% before 2023.

Turkey ranks No. 1 in Europe and No. 7 in the world in terms of geothermal power potential. Power generation from biomass will become more important as large municipalities are considering more efficient methods of disposing of municipal waste. After Spain, Turkey has the second largest potential for solar power development in Europe.

Turkey also has large hydroelectric potential. Currently 30% of Turkey's installed capacity is from hydroelectric resources. Many Turkish private companies are investing in run of river type of electromechanical equipment which is mostly supplied from China, Austria, Norway and Germany. The US&FCS Turkey receives a considerable amount of inquiries from Turkish companies, asking for hydro electromechanical equipment from the U.S. with U.S. Ex-Im Bank financing.

The Government of Turkey has adopted a new legal framework to increase the feed-in tariff for the electricity to be delivered from different types of renewable energy resources. Over the next five years, Turkey's investments on renewable energy are estimated to expand to $20 billion.

U.S.-Turkish relations focus on areas such as strategic energy cooperation, trade and investment, security ties, regional stability, counterterrorism, and human rights progress. President Barack Obama paid a historic visit to Turkey on April 5–7, 2009, as the first bilateral visit of his presidency. During the visit, he spoke before the Turkish Parliament and outlined his vision of a model U.S.-Turkish partnership based on mutual interests and mutual respect. The inaugural Framework for Strategic Economic and Commercial Cooperation meeting was held in Washington, DC in October 2010. In addition to the new framework, the U.S. and Turkey hold annual meetings of the Trade and Investment Framework Agreement (TIFA) Council, which met in Washington, DC in July 2010, and Economic Partnership Commission (EPC), which last convened in Turkey in June 2010.

On May 14, 2010, Under Secretary of Commerce for International Trade, Francisco Sánchez and Undersecretary for Foreign Trade of Turkey Ahmet Yakici signed the Terms of Reference for the establishment of a newly formed U.S.-Turkey Business Council (Council). The Council will bring together U.S. and Turkish business leaders to provide policy recommendations to both governments jointly on ways to strengthen bilateral economic relations.

Mission Goals

The trade mission will assist representatives of U.S. companies in the Renewable Energy and energy efficiency industries responsible for business activity in Europe, Caucasus and Central Asia, the Middle East and North Africa markets with their efforts to identify profitable opportunities and new markets for their respective U.S. companies and to increase their export potential in joint cooperation with Turkish companies.

Mission Scenario

In Turkey, mission members will also be presented with a briefing by the U.S. Embassy Country Team, the Commercial Specialist for the renewable energy sector and other key government and

corporate officials. Participants will take part in business matchmaking appointments with Turkish private sector companies, which may be potential candidates for agent/representative or distributors. The trade mission will visit: Ankara, the capital of Turkey, a growing industrial base and the seat of government; Istanbul, where headquarters of most private sector companies are located; and Izmir, Turkey's third largest city with strong renewable energy and energy efficiency potential.

U.S. participants will be counseled before and after the mission by the domestic mission coordinator. Participation in the mission will include the following:

- Pre-travel webinars on subjects ranging from industry briefings to business practices in Turkey;
- Pre-scheduled meetings with potential partners, distributors, end users, or local industry contacts;
- Transportation to all mission-organized meetings inside the cities (all air transportation within Turkey is the responsibility of the mission participant);
- Meetings with key government decision makers and private sector firms;
- Participation in networking receptions in Turkey; and
- Meetings with CS Turkey's energy specialists in Ankara, Istanbul and Izmir, Turkey.

Mission Timetable

Mission participants will arrive in Ankara on October 23, 2011 and the mission program will take place Oct. 24–28, 2011. Departure to the United States or other onward destinations will be on Oct. 29, 2011.

Sunday, Oct. 23, 2011 Ankara, Turkey	• Arrival in Ankara, Turkey
Day 1: Monday, Oct. 24, 2011, Ankara, Turkey.	• Wreath laying at the Ataturk's Mausoleum (Anitkabir) (optional). • Agenda review and market briefings by U.S. mission officials. • Meeting with Minister of Energy and Natural Resources or designate. • Meeting with State Minister for Foreign Trade or designate. • Briefing by Ministry of Energy, Regulator EMRA and EIE. • Networking reception.
Day 2: Tuesday, Oct 25, 2011, Ankara–Istanbul, Turkey	• Morning 1–1 matchmaking meetings. • Afternoon departure to Istanbul. • Evening Bosporus Cruise (working reception and dinner with American and Turkish business communities).
Day 3: Wednesday, Oct. 26, 2011, Izmir, Turkey	• Morning meeting with the Mayor of Istanbul or designate and site visit to waste-to-energy facilities (optional). • Afternoon 1–1 matchmaking meetings. • Evening departure to Izmir.
Day 4: Thursday, Oct. 27, 2011, Izmir, Turkey	• Morning 1–1 matchmaking meetings. • Afternoon site visit to wind farms in Cesme (optional). • Evening networking reception.
Day 5: Friday, Oct. 28, 2011, Izmir, Turkey	• Site visit to Ataturk Industrial Zone for U.S. DOE-led "Near Zero Zone" Energy Efficiency Project (optional). • 1–1 matchmaking meetings. • Wrap-up session.
Day 6: Saturday, Oct. 29, 2011, Izmir, Turkey	• Departure to the U.S. (same day arrival in U.S.).

Participation Requirements

All parties interested in participating in the Commercial Service Trade Mission 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 15 companies and a maximum of 20 companies will be selected to participate in the mission from the applicant pool. U.S. companies already doing business with Turkey as well as U.S. companies seeking to enter the Turkish market for the first time may apply.

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 $4,055 for large firms and $3,285 for a small or medium-sized enterprise (SME)* or small organization, which will cover one representative.

The fee for each additional firm representative (large firm or SME) is $500.

Expenses for travel, lodging, most meals, and incidentals will be the responsibility of each mission participant. Delegation members will be

* 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/contractingopportunities/sizestandardstopics/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 (*see http://www.export.gov/newsletter/march2008/initiatives.html* for additional information).

able to take advantage of U.S. Mission discounted rates for hotel rooms.

Conditions for Participation

- An applicant must submit in a timely manner 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 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.
- 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/contractingopportunities/sizestandardstopics/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 (*see http://www.export.gov/newsletter/march2008/initiatives.html* for additional information).

Selection Criteria for Participation: Selection will be based on the following criteria:

- Suitability of the company's products or services to the market
- Applicant's potential for business in Turkey and in the region, 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, including posting on the Commerce Department trade missions calendar—*http://www.trade.gov/trade-missions*—and other Internet Web sites, publication in domestic trade publications and association newsletters, direct outreach to internal clients and distribution lists, posting in the **Federal Register**, and announcements at industry meetings, symposia, conferences, and trade shows.

Recruitment for the mission will begin immediately and conclude no later than July 15, 2011. The U.S. Department of Commerce will review all applications immediately after the deadline. We will inform applicants of selection decisions as soon as possible after the deadline. Applications received after this date will be considered only if space and scheduling constraints permit.

Contact Information

U.S. Commercial Service Ankara, Turkey

Michael Lally, Senior Commercial Officer or Serdar Cetinkaya, Senior Commercial Specialist, U.S. Embassy—Ankara, *Tel:* +90 (312) 457–7278 or 457–7203, *Fax:* +90 (312) 457–7302, *E-mail: Michael.Lally@trade.gov* and *Serdar.Cetinkaya@trade.gov.*

U.S. Commercial Service Istanbul, Turkey

Gregory Taevs, Principal Commercial Officer, Ebru Olcay, Commercial Specialist, *Tel:* +90 (212) 335–9302 or 335–9223, *Fax:* +90 (212) 335–9103, *E-mail: Gregory.Taevs@trade.gov* and *Ebru.Olcay@trade.gov.*

U.S. Commercial Service Izmir, Turkey

Berrin Ertürk, Senior Commercial Specialist, U.S. Embassy—Izmir, *Tel:* +90 (232) 441–2446, *Fax:* +90 (232) 489–0267, *E-mail: Berrin.Erturk@trade.gov.*

U.S. Commercial Service Bakersfield, California

Glen Roberts, Director, U.S. Export Assistance Center Bakersfield, *Tel:* 661–637–0136, *Fax:* 661–637–0156, *E-mail: Glen.Roberts@trade.gov.*

Elnora Moye,

Commercial Service Trade Mission Program, U.S. Department of Commerce.

[FR Doc. 2011–8715 Filed 4–11–11; 8:45 am]

BILLING CODE 3510–FP–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

Hydrographic Services Review Panel Meeting

AGENCY: National Ocean Service, National Oceanic and Atmospheric Administration (NOAA), Department of Commerce.

ACTION: Notice of open meeting.

SUMMARY: The Hydrographic Services Review Panel (HSRP) is a Federal Advisory Committee established to advise the Under Secretary of Commerce for Oceans and Atmosphere on matters related to the responsibilities and authorities set forth in section 303 of the Hydrographic Services Improvement Act of 1998, its amendments, and such other appropriate matters that the Under Secretary refers to the Panel for review and advice.

Date and Time: The public meeting will be held on May 4–6, 2011. May 4th from 8 a.m. to 5:30 p.m.; May 5th from 8 a.m. to 5:30 p.m.; and May 6th from 8 a.m. to 3 p.m.

Location: Waikiki Beach Marriott Resort & Spa, 2552 Kalakauna Avenue, Honolulu, Hawaii, tel: (808) 922–6611. Refer to the HSRP Web site listed below for the most current meeting agenda. Times and agenda topics are subject to change.

FOR FURTHER INFORMATION CONTACT: Kathy Watson, HSRP Program Coordinator, National Ocean Service (NOS), Office of Coast Survey, NOAA (NICS), 1315 East West Highway, Silver Spring, Maryland 20910; *Telephone:* 301–713–2770 ext. 158; *Fax:* 301–713–4019; *E-mail: Hydroservices.panel@noaa.gov* or visit the NOAA HSRP Web site at *htto://nauticalcharts.noaa.gov/ocslhsro/hsro.htm.*

SUPPLEMENTARY INFORMATION: The meeting will be open to the public and public comment periods (on-site) will be scheduled at various times throughout the meeting. These comment periods will be included in the final agenda published before April 27, 2011, on the HSRP Web site listed above. Each individual or group making a verbal presentation will be limited to a total time of five (5) minutes. Comments will be recorded. Written comments should be submitted to *Hydroservices.panel@noaa.gov*) by April 27, 2011. Written comments received after April 27, 2011, will be distributed to the HSRP, but may not be reviewed until the meeting. Approximately 30 seats will be available for the public, on a first-come, first-served basis.

Matters to be Considered: Development of strategic advice to: (1) Improve the quality and delivery of navigation products and services; (2) maximize the societal value of navigation services; (3) align navigation services to support National Ocean

Policy priorities; and (4) provide non-navigation constituencies with services, data, products and expertise. Three stakeholder panels will present and identify issues, recommend improvements and/or address concerns related to regional Pacific: Navigation services, vertical and horizontal datum's, and hazards and coastal management. Other matters to be discussed will include NOAA navigation program office updates, NOAA budget process, HSRP meeting administration, and public comments.

Dated: April 6, 2011.

John E. Lowell, Jr.,

Director, Office of Coast Survey, National Ocean Service, National Oceanic and Atmospheric Administration.

[FR Doc. 2011–8728 Filed 4–11–11; 8:45 am]

BILLING CODE 3510–JE–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

Availability of Seats for the Monterey Bay National Marine Sanctuary Advisory Council

AGENCY: Office of National Marine Sanctuaries (ONMS), National Ocean Service (NOS), National Oceanic and Atmospheric Administration (NOAA), Department of Commerce (DOC).

ACTION: Notice to extend application deadline.

SUMMARY: The ONMS is seeking applications for the following vacant seats on the Monterey Bay National Marine Sanctuary Advisory Council: Diving, Education (alternate), Research (alternate), Tourism (alternate) and Agriculture (alternate). Applicants are chosen based upon their particular expertise and experience in relation to the seat for which they are applying; community and professional affiliations; philosophy regarding the protection and management of marine resources; and possibly the length of residence in the area affected by the sanctuary. Applicants who are chosen should expect to serve until February 2014. The Research alternate and Agriculture alternate should expect to serve until February 2013 because the seats were vacated prematurely.

DATES: Applications are due by April 29, 2011.

ADDRESSES: Application kits may be obtained from 299 Foam Street, Monterey, CA 93940 or online at *http://montereybay.noaa.gov/*. Complete applications should be sent to the same address.

FOR FURTHER INFORMATION CONTACT: Nicole Capps, 299 Foam Street, Monterey, CA 93940, (831) 647–4206, *nicole.capps@noaa.gov*.

SUPPLEMENTARY INFORMATION: The MBNMS Advisory Council was established in March 1994 to assure continued public participation in the management of the Sanctuary. Since its establishment, the Advisory Council has played a vital role in decisions affecting the Sanctuary along the central California coast.

The Advisory Council's twenty voting members represent a variety of local user groups, as well as the general public, plus seven local, State and Federal governmental jurisdictions. In addition, the respective managers or superintendents for the four California National Marine Sanctuaries (Channel Islands National Marine Sanctuary, Cordell Bank National Marine Sanctuary, Gulf of the Farallones National Marine Sanctuary and the Monterey Bay National Marine Sanctuary) and the Elkhorn Slough National Estuarine Research Reserve sit as non-voting members.

Four working groups support the Advisory Council: The Research Activity Panel ("RAP") chaired by the Research Representative, the Sanctuary Education Panel ("SEP") chaired by the Education Representative, the Conservation Working Group ("CWG") chaired by the Conservation Representative, and the Business and Tourism Activity Panel ("BTAP") chaired by the Business/Industry Representative, each dealing with matters concerning research, education, conservation and human use. The working groups are composed of experts from the appropriate fields of interest and meet monthly, or bi-monthly, serving as invaluable advisors to the Advisory Council and the Sanctuary Superintendent.

The Advisory Council represents the coordination link between the Sanctuary and the State and Federal management agencies, user groups, researchers, educators, policy makers, and other various groups that help to focus efforts and attention on the central California coastal and marine ecosystems.

The Advisory Council functions in an advisory capacity to the Sanctuary Superintendent and is instrumental in helping develop policies, program goals, and identify education, outreach, research, long-term monitoring, resource protection, and revenue enhancement priorities. The Advisory Council works in concert with the Sanctuary Superintendent by keeping him or her informed about issues of concern throughout the Sanctuary, offering recommendations on specific issues, and aiding the Superintendent in achieving the goals of the Sanctuary program within the context of California's marine programs and policies.

Authority: 16 U.S.C. 1431, *et seq.*

(Federal Domestic Assistance Catalog Number 11.429 Marine Sanctuary Program)

Dated: April 1, 2011.

Daniel J. Basta,

Director, Office of National Marine Sanctuaries, National Ocean Service, National Oceanic and Atmospheric Administration.

[FR Doc. 2011–8614 Filed 4–11–11; 8:45 am]

BILLING CODE M

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

RIN 0648–XA354

Endangered Species; File No. 15606

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

ACTION: Issuance of permit.

SUMMARY: Notice is hereby given that Andre Landry, Ph.D., Texas A&M University at Galveston, Department of Marine Biology, 5007 Avenue U, Galveston, TX 77553, has been issued a permit to take green (*Chelonia mydas*), Kemp's ridley (*Lepidochelys kempii*), loggerhead (*Caretta caretta*), and hawksbill (*Eretmochelys imbricata*) sea turtles for purposes of scientific research.

ADDRESSES: The permit and related documents are available for review upon written request or by appointment in the following offices:

Permits, Conservation and Education Division, Office of Protected Resources, NMFS, 1315 East-West Highway, Room 13705, Silver Spring, MD 20910; phone (301) 713–2289; fax (301) 713–0376; and

Southeast Region, NMFS, 263 13th Ave South, St. Petersburg, FL 33701; phone (727) 824–5312; fax (727) 824–5309.

FOR FURTHER INFORMATION CONTACT: Colette Cairns or Amy Hapeman, (301) 713–2289.

SUPPLEMENTARY INFORMATION: On November 24, 2010, notice was published in the **Federal Register** (75 FR 71670) that a request for a scientific research permit to take green, Kemp's

ridley, loggerhead, and hawksbill sea turtles had been submitted by the above-named individual. The requested permit has been issued under the authority of the Endangered Species Act of 1973, as amended (ESA; 16 U.S.C. 1531 *et seq.*) and the regulations governing the taking, importing, and exporting of endangered and threatened species (50 CFR parts 222–226).

Dr. Landry was issued a 5 year permit to: (1) Examine green sea turtle assemblages in sea grass habitats off of Texas; (2) determine trends in seasonal abundance and movement of green, Kemp's ridley, and loggerhead sea turtles in Texas and Louisiana estuaries; (3) characterize environmental estrogen uptake in green and Kemp's ridley sea turtles at a Texas Superfund site; and (4) document impacts of the Deepwater Horizon oil spill on sea turtle assemblages in the western Gulf of Mexico. Researchers may capture by entanglement or cast net, transport, photograph, measure, weigh, flipper tag, passive integrated transponder tag, blood, fecal, epiphyte and tissue sample, attach satellite transmitters to and release sea turtles.

Issuance of this permit, as required by the ESA, was based on a finding that such permit (1) was applied for in good faith, (2) will not operate to the disadvantage of such endangered or threatened species, and (3) is consistent with the purposes and policies set forth in section 2 of the ESA.

Dated: April 4, 2011.

P. Michael Payne,

Chief, Permits, Conservation and Education Division, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. 2011–8593 Filed 4–11–11; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

RIN 0648–XA314

Takes of Marine Mammals Incidental to Specified Activities; Marine Geophysical Survey in the Pacific Ocean off Costa Rica, April Through June, 2011

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

ACTION: Notice; issuance of an incidental take authorization.

SUMMARY: In accordance with the Marine Mammal Protection Act (MMPA) regulations, notification is hereby given that NMFS has issued an Incidental Harassment Authorization (IHA) to Lamont-Doherty Earth Observatory (L–DEO), a part of Columbia University, to take small numbers of marine mammals, by Level B harassment, incidental to conducting a marine geophysical survey in the eastern tropical Pacific (ETP) Ocean off Costa Rica, April through June, 2011.

DATES: Effective April 7 through June 6, 2011.

ADDRESSES: A copy of the IHA and application are available by writing to P. Michael Payne, Chief, Permits, Conservation and Education Division, Office of Protected Resources, National Marine Fisheries Service, 1315 East-West Highway, Silver Spring, MD 20910 or by telephoning the contacts listed here. A copy of the application containing a list of the references used in this document may be obtained by writing to the above address, telephoning the contact listed here (*see* **FOR FURTHER INFORMATION CONTACT**) or visiting the Internet at: *http://www.nmfs.noaa.gov/pr/permits/incidental.htm#applications.* The following associated documents are also available at the same internet address: Environmental Assessment (EA) prepared by NMFS, and the finding of no significant impact (FONSI). The NMFS Biological Opinion will be available online at: *http://www.nmfs.noaa.gov/pr/consultation/opinions.htm.* Documents cited in this notice may be viewed, by appointment, during regular business hours, at the aforementioned address. Documents cited in this notice may be viewed, by appointment, during regular business hours, at the aforementioned address.

FOR FURTHER INFORMATION CONTACT: Jeannine Cody, Office of Protected Resources, NMFS, (301) 713–2289, ext. 113.

SUPPLEMENTARY INFORMATION:

Background

Section 101(a)(5)(D) of the MMPA (16 U.S.C. 1371 (a)(5)(D)) directs the Secretary of Commerce to authorize, upon request, the incidental, but not intentional, taking of small numbers of marine mammals of a species or population stock, by United States citizens who engage in a specified activity (other than commercial fishing) within a specified geographical region if certain findings are made and, if the taking is limited to harassment, a notice of a proposed authorization is provided to the public for review.

Authorization for the incidental taking of small numbers of marine mammals shall be granted if NMFS finds that the taking will have a negligible impact on the species or stock(s), and will not have an unmitigable adverse impact on the availability of the species or stock(s) for subsistence uses (where relevant). The authorization must set forth the permissible methods of taking, other means of effecting the least practicable adverse impact on the species or stock and its habitat, and requirements pertaining to the mitigation, monitoring and reporting of such takings. NMFS has defined "negligible impact" in 50 CFR 216.103 as "* * * an impact resulting from the specified activity that cannot be reasonably expected to, and is not reasonably likely to, adversely affect the species or stock through effects on annual rates of recruitment or survival."

Section 101(a)(5)(D) of the MMPA established an expedited process by which citizens of the United States can apply for an authorization to incidentally take small numbers of marine mammals by harassment. Section 101(a)(5)(D) of the MMPA establishes a 45-day time limit for NMFS' review of an application followed by a 30-day public notice and comment period on any proposed authorizations for the incidental harassment of small numbers of marine mammals. Within 45 days of the close of the public comment period, NMFS must either issue or deny the authorization. NMFS must publish a notice in the **Federal Register** within 30 days of its determination to issue or deny the authorization.

Except with respect to certain activities not pertinent here, the MMPA defines "harassment" as:

> any act of pursuit, torment, or annoyance which (i) has the potential to injure a marine mammal or marine mammal stock in the wild [Level A harassment]; or (ii) has the potential to disturb a marine mammal or marine mammal stock in the wild by causing disruption of behavioral patterns, including, but not limited to, migration, breathing, nursing, breeding, feeding, or sheltering [Level B harassment].

Summary of Request

NMFS received an application on November 12, 2010, from L–DEO for the taking by harassment, of marine mammals, incidental to conducting a marine geophysical survey in the eastern tropical Pacific Ocean within the Exclusive Economic Zone (EEZ) of Costa Rica. L–DEO, with research funding from the U.S. National Science Foundation (NSF), plans to conduct the seismic survey from April 7, 2011, through May 9, 2011. Upon receipt of additional information, NMFS determined the application complete

and adequate on January 4, 2011. On February 4, 2011 NMFS published a notice in the **Federal Register** (76 FR 6430) disclosing the effects on marine mammals, making preliminary determinations and including a proposed IHA. The notice initiated a 30-day public comment period.

L–DEO plans to use one source vessel, the R/V *Marcus G. Langseth* (*Langseth*) and a seismic airgun array to image the structures along a major plate-boundary fault off in the ETP off Costa Rica using three-dimensional (3–D) seismic reflection techniques. L–DEO will use the 3–D seismic reflection data to determine the fault structure and the properties of the rocks that lie along the fault zone. In addition to the proposed operations of the seismic airgun array, L–DEO intends to operate a multibeam echosounder (MBES) and a sub-bottom profiler (SBP) continuously throughout the survey.

Acoustic stimuli (*i.e.*, increased underwater sound) generated during the operation of the seismic airgun array, has the potential to cause a short-term behavioral disturbance for marine mammals in the survey area. This is the only anticipated means of marine mammal taking associated with these specified activities. L–DEO has requested and NMFS has authorized the incidental take of 19 species marine mammals by Level B harassment. Take is not expected to result from the use of the MBES or SBP, for reasons discussed in this notice. While ship-strike is the cause of take of marine mammals, NMFS believes the possibility of take from collision with the vessel is so remote as to be discountable because it is a single vessel moving at a relatively slow speed during seismic acquisition within the survey for approximately 32 days. It is likely that any marine mammal would be able to avoid the vessel.

Description of the Specified Activity

L–DEO's planned seismic survey in the ETP off Costa Rica is scheduled to commence on April 7, 2011 and continue for approximately 32 days ending on May 9, 2011. L–DEO will operate the *Langseth* to deploy a seismic airgun array and hydrophone streamers to complete the survey. The *Langseth* will depart from Caldera, Costa Rica on April 7, 2011 and transit to the survey area offshore from Costa Rica. Some minor deviation from these dates is possible, depending on logistics, weather conditions, and the need to repeat some lines if data quality is substandard. Therefore, NMFS plans to issue an authorization that extends to June 6, 2011.

Geophysical survey activities will involve 3–D seismic methodologies to determine the fault structure and the properties of the rocks that lie along the fault zone and to assess the property changes along the fault and determine where the large stress accumulations that lead to large earthquakes occur along the fault zone.

To obtain 3–D images of the fault zone which lies two to nine kilometers (km) below the seafloor, the *Langseth* will deploy a two-string subarray of nine airguns each as an energy source. The identical subarrays will fire alternately, so that no more than 18 airguns will fire at any time during the survey. The receiving system will consist of four 6-km-long hydrophone streamers. As the airgun subarrays are towed along the survey lines, the hydrophone streamers will receive the returning acoustic signals and transfer the data to the on-board processing system. L–DEO also plans to use two or three small fishing vessels around the *Langseth* to ensure that other vessels do not entangle the streamers.

The study (*e.g.*, equipment testing, startup, line changes, repeat coverage of any areas, and equipment recovery) will take place in the EEZ of Costa Rica in water depths ranging from less than 100 meters (m) (328 feet (ft)) to greater than 2,500 m (1.55 miles (mi)). The survey will require approximately 32 days (d) to complete approximately 19 transects in a racetrack configuration that will cover an area of approximately 57 x 12 km (35.4 x 7.5 mi). In all, the survey will complete approximately 2,145 km (1,333 mi) of survey lines with an additional 365 km (227 mi) of turns. Data acquisition will include approximately 672 hours (hr) of airgun operation (28 d x 24 hr).

The scientific team consists of Drs. Nathan Bangs, Kirk McIntosh (Institute for Geophysics, University of Texas) and Eli Silver (University of California at Santa Cruz).

NMFS outlined the purpose of the program in a previous notice for the proposed IHA (76 FR 6430, February 4, 2011). The activities to be conducted have not changed between the proposed IHA notice and this final notice announcing the issuance of the IHA. For a more detailed description of the authorized action, including vessel and acoustic source specifications, the reader should refer to the proposed IHA notice (76 FR 6430, February 4, 2011), the application and associated documents referenced above this section.

Comments and Responses

A notice of receipt of the L–DEO application and proposed IHA was published in the **Federal Register** on February 4, 2011 (76 FR 6430). During the 30-day public comment period, NMFS received comments from the Marine Mammal Commission (Commission) only. The Commission's comments are online at: *http://www.nmfs.noaa.gov/pr/permits/incidental.htm*. Following are their comments and NMFS' responses.

Comment 1: The Commission recommends that NMFS require Lamont-Doherty Earth Observatory to: (1) Provide a full description of the Lamont-Doherty Earth Observatory model as it is used to estimate safety and buffer zones; and (2) rerun the model using site-specific information to determine safety and buffer zones and associated takes.

Response: The NSF and L–DEO have revised Appendix A in the draft Environmental Analysis to include information from the calibration study conducted on the *Langseth* in 2007 and 2008. This information is now available in the final Environmental Analysis on NSF's Web site at *http://www.nsf.gov/geo/oce/envcomp/index.jsp*. The revised Appendix A describes the L–DEO modeling process and compares the model results with empirical results of the 2007–2008 *Langseth* calibration experiment in shallow, deep and intermediate water. The conclusions–identified in Appendix A–show that the model represents the actual produced levels, particularly within the first few kilometers, where the predicted safety radii lie. At greater distances, local oceanographic variations begin to take effect, and the model tends to over predict. Further, since the modeling matches the observed measurement data, the authors have concluded that the models can continue to be used for defining exclusion zones, including for predicting mitigation radii for various tow depths. The data results from the studies were peer reviewed and the calibration results, viewed as conservative, were used to determine the cruise-specific exclusion zones.

At present, the L–DEO model does not account for site-specific environmental conditions. The calibration study of the L–DEO model predicted that using site-specific information may actually provide less conservative safety radii at greater distances. As the Commission noted, the Draft Programmatic Environmental Impact Statement/Overseas Environmental Impact Statement (draft PEIS) for Marine Seismic Research Funded by the

National Science Foundation or Conducted by the U.S. Geological Survey (draft PEIS) prepared pursuant to the National Environmental Policy Act (NEPA; 42 U.S.C. 4321 *et seq.*) did incorporate various site-specific environmental conditions in the modeling of the Detailed Analysis Areas. The NEPA process associated with the draft PEIS is still ongoing and the NSF has not yet issued a Record of Decision. Once the NEPA process for the PEIS has concluded, NSF will look at upcoming cruises on a site-specific basis for any impacts not already considered in the draft PEIS.

The IHA issued to L–DEO, under section 101(a)(5)(D) of the MMPA, provides mitigation and monitoring requirements that will protect marine mammals from any injury or mortality. L–DEO is required to comply with the IHA's requirements. These analyses are supported by extensive scientific research and data. NMFS is confident in the peer-reviewed results of the L–DEO seismic equipment calibration studies which, although viewed as conservative, are used to determine cruise-specific exclusion zones and which factor into exposure estimates. NMFS has determined that these reviews are the best scientific data available for review of the IHA application and to support the necessary analyses and determinations under the MMPA, Endangered Species Act of 1973 (ESA; 16 U.S.C. 1531 *et seq.*) and NEPA.

Based on NMFS' analysis of the likely effects of the specified activity on marine mammals and their habitat, and taking into consideration the implementation of the mitigation and monitoring measures, NMFS has determined that the exclusion zones identified in the IHA are appropriate for the survey and that additional field measurement is not necessary at this time. While exposures of marine mammals to acoustic stimuli are difficult to estimate, NMFS is confident that the levels of take authorized herein are estimated based upon the best available scientific information and estimation methodology. The exclusion zones used to estimate exposure are appropriate and sufficient for purposes of supporting NMFS's analyses and determinations required under section 101(a)(5)(D) of the MMPA and its implementing regulations.

Comment 2: The Commission recommends that before issuing the requested IHA, NMFS provide additional justification for its preliminary determination that the planned monitoring program will be sufficient to detect with a high level of confidence, all marine mammals within or entering the identified exclusion zones.

Response: NMFS believes that the planned monitoring program will be sufficient to detect (using visual detection and passive acoustic monitoring (PAM)), with reasonable certainty, marine mammals within or entering identified exclusion zones. This monitoring, along with the required mitigation measures, will result in the least practicable adverse impact on the affected species or stocks and will result in a negligible impact on the affected species or stocks.

At present, NMFS views the combination of visual and passive acoustic monitoring as the most effective mitigation techniques available for detecting marine mammals within or entering the exclusion zone. The final monitoring and mitigation measures are the most effective feasible measures and NMFS is not aware of any additional measures which could meaningfully increase the likelihood of detecting marine mammals in and around the exclusion zone. Further, public comment has not revealed any additional mitigation or monitoring measures that could be feasibly implemented to increase the effectiveness of detection.

L–DEO and NSF (the federal funding agency) are receptive to incorporating proven technologies and techniques to enhance the current monitoring and mitigation program. Until proven technological advances are made, nighttime mitigation measures during operations include combinations of the use of protected species visual observers (PSVOs) for ramp ups, PAM, night vision devices, and continuous shooting of a mitigation gun. Should the airgun array be powered-down, the operation of a single airgun would continue to serve as a sound source deterrent to marine mammals. In the event of a complete airgun array shut down at night for mitigation or repairs, L–DEO suspends the data collection until one half hour after civil dawn (when PSVO's are able to clear the safety zone). L–DEO will not activate the airguns until the entire safety radius is visible for at least 30 minutes.

In cooperation with NMFS, L–DEO will be conducting efficacy experiments of night vision devices (NVD) during a future *Langseth* cruise. In addition, in response to a recommendation from NMFS, L–DEO is evaluating the use of handheld thermal imaging cameras to supplement nighttime mitigation practices. Another federal agency has successfully used these devices while conducting nighttime seismic operations.

Comment 3: The Commission recommends that NMFS propose to L–DEO that it revise its survey design to add pre- and post-seismic survey assessments as a way to assess marine mammal abundance in an area before, during, and after the seismic survey to determine how those numbers differ and to obtain more realistic baseline abundance estimates of marine mammals.

Response: NMFS acknowledges the Commission's concerns and will forward the recommendation to the NSF and L–DEO. Because the cruise's primary focus is marine geophysical research, extending or altering the cruise is not practicable from either an operational or research standpoint for the applicant. Due to the remote location of the survey and the length of time needed to conduct the requested research, there may be little time left for the vessel to operate without the need for refueling and servicing. Second, at sea data collection and analyses to estimate marine mammal abundance are time and resource intensive endeavors—even more so if the intent is to assess abundance in-situ, before, during, and after the seismic survey.

Numerous studies have reported on the distribution of cetaceans inhabiting the ETP and L–DEO has incorporated this data into their analyses. For example, Ferguson and Barlow (2001, 2003) calculated cetacean densities in the ETP based on summer/fall research surveys in 1986–1996; Gerrodette *et al.* (2008) calculated dolphin abundance in the ETP based on summer/fall research surveys in 1986–1990, 1998–2000, 2003, and 2006; and Jackson *et al.*, (2008) described cetacean sightings data collected in a survey area that overlaps with the seismic survey area. NMFS believes that L–DEO's current approach for estimating abundance in the survey area is believed to be the best available approach.

To conclude, there will be significant amounts of transit time during the cruise, which PSVOs will be on watch prior to and after the seismic portions of the survey. The collection of this observational data by PSVOs may provide meaningful baseline data on marine mammals, but it is unlikely that the information would result in any statistically robust conclusions for this particular seismic survey.

Comment 4: The Commission recommends that NMFS require the applicant: (1) To report on the number of marine mammals that were acoustically detected for which a power-down or shutdown of the airguns was initiated; (2) specify if the animals also were visually detected; and (3) compare

the results from the two methods (visual versus acoustic) to help identify their respective weaknesses.

Response: L–DEO reports on the number of acoustic detections made by the PAM system within the post-cruise monitoring reports as required by the IHA. The report also includes a description of any acoustic detections that were concurrent with visual sightings, which allows for a comparison of acoustic and visual detection methods for each cruise.

The post-cruise monitoring reports also include on the following information: the total operational effort in daylight (hours); the total operation effort at night (hours); the total number of hours of visual observations conducted, the total number of sightings, and the total number of hours of acoustic detections conducted.

LGL Ltd., Environmental Research Associates (LGL), a contractor for L–DEO, has processed sighting and density and data, and their publications can be viewed online at: *http://www.lgl.com/index.php?option=com_content&view=article&id=69&Itemid=162&lang=en.* Post-cruise monitoring reports are currently available on the NMFS' MMPA Incidental Take Program website and future reports will also be available on the NSF website should there be interest in further analysis of this data by the public.

Comment 5: The Commission recommends that NMFS condition the authorization to prohibit an eight-minute pause before ramping up after either a power-down or shutdown of the airguns, based on the presence of a marine mammal in the exclusion zone and the *Langseth's* movement. The Commission believes that this limit is inappropriate because it fails to account for the position, swim speed and heading of the observed marine mammal. If a marine mammal sighted in the exclusion zone is moving in the same direction as the *Langseth,* or if it is moving in a different direction but changes its heading, it may remain in the exclusion zone for periods longer than eight minutes.

Response: To clarify, in the instance of a power-down or shutdown based on the presence of a marine mammal in the exclusion zone, L–DEO will restart the airguns to the full operating source level (*i.e.,* 3,300 cubic inches (in^3)) only if the PSVO visually observes the marine mammal exiting the exclusion zone for the full source level within an eight-minute period of the shut-down or power down. The eight-minute period is based on the 180–dB radius for the 18-airgun subarray towed at a depth of seven m (23 ft) in relation to the minimum planned speed of the Langseth while shooting (8.5 km/h; 5.3 mph; 4.6 kts). In the event that a marine mammal would re-enter the exclusion zone after reactivating the airguns, L–DEO would reinitiate a shut-down or power down as required by the IHA.

Should the airguns be inactive or powered down for more than 8 minutes, and the PSVO does not observe the marine mammal leaving the exclusion zone, then L–DEO must wait 15 minutes (for small odontocetes or pinnipeds) or 30 minutes (for mysticetes and large odontocetes) after the last sighting before L–DEO can initiate ramp-up procedures. However, ramp up will not occur as long as a marine mammal is detected within the exclusion zone, which provides more time for animals to leave the exclusion zone, and accounts for the position, swim speed and heading of marine mammals within the exclusion zone.

Finally, L–DEO may need to temporarily perform a shut-down due to equipment failure or maintenance. In this instance, L–DEO will restart the airguns to the full source level within an 8-minute period of the shut-down only if the PSVOs do not observe marine mammals within exclusion zone for the full source level. If the airguns are inactive or powered down for more than eight minutes, then L–DEO would follow the ramp-up procedures required by the IHA. L–DEO would restart the airguns beginning with the smallest airgun in the array and add airguns in a sequence such that the source level of the array does not exceed 6 decibels (dB) per 5-minute period over a total duration of approximately 30 minutes. Again, the PSVOs would monitor the exclusion zones for marine mammals during this time and would initiate a power-down or a shutdown, as required by the IHA.

Comment 6: Extend the monitoring period to at least one hour before initiation of seismic activities and at least one hour before the resumption of airgun activities after a shutdown because of a marine mammal sighting within an exclusion zone.

Response: As the Commission points out, several species of deep-diving cetaceans are capable of remaining underwater for more than 30 minutes; however, for the following reasons NMFS believes that 30 minutes is an adequate length for the monitoring period prior to the start-up of airguns:

(1) Because the *Langseth* is required to monitor before ramp-up of the airgun array, the time of monitoring prior to start-up of any but the smallest array is effectively longer than 30 minutes (ramp-up will begin with the smallest airgun in the array and airguns will be added in sequence such that the source level of the array will increase in steps not exceeding approximately 6 dB per 5-minute period over a total duration of 20 to 30 minutes);

(2) In many cases PSVOs are observing during times when L–DEO is not operating the seismic airguns and would actually observe the area prior to the 30-minute observation period anyway;

(3) The majority of the species that may be exposed do not stay underwater more than 30 minutes; and

(4) All else being equal and if deep-diving individuals happened to be in the area in the short time immediately prior to the pre-start-up monitoring, if an animal's maximum underwater dive time is 45 minutes, then there is only a one in three chance that the last random surfacing would occur prior to the beginning of the required 30-minute monitoring period and that the animal would not be seen during that 30-minute period.

Also, seismic vessels are moving continuously (because of the long, towed array) and NMFS believes that unless the animal submerges and follows at the speed of the vessel (highly unlikely, especially when considering that a significant part of their movements is vertical [deep-diving]), the vessel will be far beyond the length of the exclusion zone radii within 30 minutes, and therefore it will be safe to start the airguns again.

The effectiveness of monitoring is science-based and the requirement that mitigation measures be "practicable." NMFS believes that the framework for visual monitoring will: (1) Be effective at spotting almost all species for which take is requested; and (2) that imposing additional requirements, such as those suggested by the Commission, would not meaningfully increase the effectiveness of observing marine mammals approaching or entering the EZs and thus further minimize the potential for take.

Comment 7: The Commission recommends that, before issuing the requested IHA, NMFS require that observers collect and analyze data on the effectiveness of ramp-up as a mitigation measures during all such procedures.

Response: The IHA requires that PSVOs on the *Langseth* make observations for 30 minutes prior to ramp-up, during all ramp-ups, and during all daytime seismic operations and record the following information when a marine mammal is sighted:

(i) Species, group size, age/size/sex categories (if determinable), behavior

when first sighted and after initial sighting, heading (if consistent), bearing and distance from seismic vessel, sighting cue, apparent reaction to the airguns or vessel (e.g., none, avoidance, approach, paralleling, etc., and including responses to ramp-up), and behavioral pace; and

(ii) Time, location, heading, speed, activity of the vessel (including number of airguns operating and whether in state of ramp-up or power-down), Beaufort wind force sea state, visibility, and sun glare.

One of the primary purposes of monitoring is to result in "increased knowledge of the species" and the effectiveness of monitoring and mitigation measures; the effectiveness of marine mammals reaction to ramp-up would be useful information in this regard. NMFS has asked NSF and L–DEO to gather all data that could potentially provide information regarding the effectiveness of ramp-ups as a mitigation measure. However, considering the low numbers of marine mammal sightings and low numbers of ramp-ups, it is unlikely that the information will result in any statistically robust conclusions for this particular seismic survey. Over the long term, these requirements may provide information regarding the effectiveness of ramp-up as a mitigation measure, provided animals are detected during ramp-up.

Description of the Marine Mammals in the Area of the Specified Activity

Twenty-eight marine mammal species may seasonally occur in the survey area, including 20 odontocetes (toothed cetaceans), 6 mysticetes (baleen whales) and two pinnipeds. Of these, 19 cetacean species are likely to occur in the survey area in the ETP during April through June. Five of these species are listed as endangered under the ESA, including the humpback (*Megaptera novaeangliae*), sei (*Balaenoptera borealis*), fin (*Balaenoptera physalus*), blue (*Balaenoptera musculus*), and sperm (*Physeter macrocephalus*) whale.

The species of marine mammals expected to be most common in the survey area (all delphinids) include the short-beaked common dolphin (*Delphinus delphis*), spinner dolphin (*Stenella longirostris*), pantropical spotted dolphin (*Stenella attenuata*), striped dolphin (*Stenella coeruleoalba*), melon-headed whale (*Peponocephala electra*), and bottlenose dolphin (Tursiops truncatus).

Two pinnipeds, the California sea lion (*Zalophus californianus*) and the Galápagos sea lion (*Zalophus wollebaeki*), have the potential to transit in the vicinity of the seismic survey, although any occurrence would be rare as they are vagrants to the area. Accordingly, the IHA only addresses requested take authorizations for mysticetes and odontocetes.

NMFS has presented a more detailed discussion of the status of these stocks and their occurrence in the northeastern Pacific Ocean, as well as other marine mammal species that occur in area offshore Costa Rica in the notice of the proposed IHA (76 FR 6430, February 4, 2011).

Potential Effects on Marine Mammals

Acoustic stimuli generated by the operation of the airguns, which introduce sound into the marine environment, may have the potential to cause Level B harassment of marine mammals in the survey area. The effects of sounds from airgun operations might include one of the following: tolerance, masking of natural sounds, behavioral disturbance, temporary or permanent impairment, or non-auditory physical or physiological effects (Richardson *et al.*, 1995; Gordon *et al.*, 2004; Nowacek *et al.*, 2007; Southall *et al.*, 2007).

Permanent hearing impairment, in the unlikely event that it occurred, would constitute injury, but temporary threshold shift (TTS) is not an injury (Southall *et al.*, 2007). Although the possibility cannot be entirely excluded, it is unlikely that the project would result in any cases of temporary or permanent hearing impairment, or any significant non-auditory physical or physiological effects. Based on the available data and studies described here, some behavioral disturbance is expected, but NMFS expects the disturbance to be localized and short-term.

The notice of the proposed IHA (76 FR 6430, February 4, 2011) included a discussion of the effects of sounds from airguns on mysticetes and odontocetes including tolerance, masking, behavioral disturbance, hearing impairment, and other non-auditory physical effects. NMFS refers the reader to L–DEO's application, environmental analysis and NMFS' EA for additional information on the behavioral reactions (or lack thereof) by all types of marine mammals to seismic vessels.

Anticipated Effects on Marine Mammal Habitat, Fish and Invertebrates

NMFS included a detailed discussion of the potential effects of this action on marine mammal habitat, including physiological and behavioral effects on marine fish and invertebrates in the notice of the proposed IHA (76 FR 6430, February 4, 2011). While NMFS anticipates that the specified activity may result in marine mammals avoiding certain areas due to temporary ensonification, this impact to habitat is temporary and reversible which NMFS considered in further detail in the notice of the proposed IHA (76 FR 6430, February 4, 2011) as behavioral modification. The main impact associated with the activity would be temporarily elevated noise levels and the associated direct effects on marine mammals.

Mitigation

In order to issue an incidental take authorization (ITA) under section 101(a)(5)(D) of the MMPA, NMFS must set forth the permissible methods of taking pursuant to such activity, and other means of effecting the least practicable adverse impact on such species or stock and its habitat, paying particular attention to rookeries, mating grounds, and areas of similar significance, and the availability of such species or stock for taking for certain subsistence uses.

L–DEO has based the mitigation measures described herein, to be implemented for the seismic survey, on the following:

(1) Protocols used during previous L–DEO seismic research cruises as approved by NMFS;

(2) Previous IHA applications and IHAs approved and authorized by NMFS; and

(3) Recommended best practices in Richardson *et al.* (1995), Pierson *et al.* (1998), and Weir and Dolman, (2007).

To reduce the potential for disturbance from acoustic stimuli associated with the activities, L–DEO and/or its designees would implement the following mitigation measures for marine mammals:

(1) Exclusion zones;

(2) Power-down procedures;

(3) Shutdown procedures; and

(4) Ramp-up procedures.

Exclusion Zones—L–DEO uses safety radii to designate exclusion zones (EZ) and to estimate take for marine mammals. Table 1 shows the distances at which two sound levels (160- and 180-dB) are expected to be received from the 18-airgun subarray and a single airgun. NMFS (1995, 2000) concluded that cetaceans should not be exposed to pulsed underwater noise at received levels exceeding 180 dB re: 1 μPa. NMFS believes that to avoid the potential for permanent physiological damage (Level A harassment), cetaceans should not be exposed to pulsed underwater noise at received levels exceeding 180 dB re: 1 μPa. The 180-dB level is a shutdown criterion applicable

to cetaceans, as specified by NMFS (2000). NMFS also assumes that cetaceans exposed to levels exceeding 160 dB re: 1 μPa (rms) may experience Level B harassment. L–DEO used these levels to establish the EZ.

If the protected species visual observer (PSVO) detects marine mammal(s) within or about to enter the appropriate exclusion zone, the *Langseth* crew will immediately power down the airgun subarrays, or perform a shut down if necessary (see Shut-down Procedures).

TABLE 1—PREDICTED DISTANCES TO WHICH SOUND LEVELS ≥, 180, AND 160 dB RE: 1 μPa_{rms} COULD BE RECEIVED DURING THE SURVEY USING A 18-AIRGUN SUBARRAY, AS WELL AS A SINGLE AIRGUN TOWED AT A DEPTH OF 7 M IN THE ETP DURING APRIL–MAY, 2011

[Distances are based on model results provided by L–DEO.]

Source and volume	Water depth	Predicted RMS distances (m)	
		180 dB	160 dB
Single Bolt airgun (40 in³)	Shallow < 100 m	296	1,050
	Intermediate 100–1,000 m	60	578
	Deep > 1,000 m	40	385
18-Airgun subarray (3,300 in³)	Shallow < 100 m	1,030	*19,500
	Intermediate 100–1,000 m	675	5,700
	Deep > 1,000 m	450	3,800

*This is likely an overestimate, as the measured distance for the 36-airgun array operating in shallow waters of the northern Gulf of Mexico was 17,500 m (17.5 km).

Power-down Procedures—A power-down involves decreasing the number of airguns in use such that the radius of the 180-dB zone is decreased to the extent that marine mammals are no longer in or about to enter the EZ. A power down of the airgun subarray can also occur when the vessel is moving from one seismic line to another. During a power-down for mitigation, L–DEO will operate one airgun. The continued operation of one airgun is intended to alert marine mammals to the presence of the seismic vessel in the area. In contrast, a shut down occurs when the *Langseth* suspends all airgun activity.

If the PSVO detects a marine mammal outside the EZ, but it is likely to enter the EZ, L–DEO will power down the airguns before the animal is within the EZ. Likewise, if a mammal is already within the EZ, when first detected L–DEO will power down the airguns immediately. During a power down of the airgun array, L–DEO will also operate the 40-in³ airgun. If a marine mammal is detected within or near the smaller EZ around that single airgun (Table 1), L–DEO will shut down the airgun (see next section).

Following a power-down, L–DEO will not resume airgun activity until the marine mammal has cleared the safety zone. L–DEO will consider the animal to have cleared the EZ if

- A PSVO has visually observed the animal leave the EZ, or
- A PSVO has not sighted the animal within the EZ for 15 min for small odontocetes, or 30 min for mysticetes and large odontocetes, including sperm, pygmy sperm, dwarf sperm, and beaked whales.

During airgun operations following a power-down (or shut-down) whose duration has exceeded the time limits specified previously, L–DEO will ramp-up the airgun array gradually (see Shut-down Procedures).

Shut-down Procedures—L–DEO will shut down the operating airgun(s) if a marine mammal is seen within or approaching the EZ for the single airgun. L–DEO will implement a shut-down:

(1) If an animal enters the EZ of the single airgun after L–DEO has initiated a power down, or (2) If a an animal is initially seen within the EZ of the single airgun when more than one airgun (typically the full airgun array) is operating.

L–DEO will not resume airgun activity until the marine mammal has cleared the EZ, or until the PSVO is confident that the animal has left the vicinity of the vessel. Criteria for judging that the animal has cleared the EZ will be as described in the preceding section.

Ramp-up Procedures—L–DEO will follow a ramp-up procedure when the airgun subarrays begin operating after a specified period without airgun operations or when a power down has exceeded that period. L–DEO proposes that, for the present cruise, this period would be approximately eight minutes. This period is based on the 180-dB radius for the 18-airgun subarray towed at a depth of seven m (23 ft) in relation to the minimum planned speed of the Langseth while shooting (8.5 km/h; 5.3 mph; 4.6 knots). L–DEO has used similar periods (8–10 min) during previous L–DEO surveys.

Ramp-up will begin with the smallest airgun in the array (40-in³). Airguns will be added in a sequence such that the source level of the array will increase in steps not exceeding six dB per five-minute period over a total duration of approximately 30 min. During ramp-up, the PSVOs will monitor the EZ, and if marine mammals are sighted, L–DEO will implement a power down or shut down as though the full airgun array were operational.

If the complete EZ has not been visible for at least 30 minutes prior to the start of operations in either daylight or nighttime, L–DEO will not commence the ramp-up unless at least one airgun (40-in³ or similar) has been operating during the interruption of seismic survey operations. Given these provisions, it is likely that the airgun array will not be ramped up from a complete shut-down at night or in thick fog, because the outer part of the safety zone for that array will not be visible during those conditions. If one airgun has operated during a power-down period, ramp-up to full power will be permissible at night or in poor visibility, on the assumption that marine mammals will be alerted to the approaching seismic vessel by the sounds from the single airgun and could move away. L–DEO will not initiate a ramp-up of the airguns if a marine mammal is sighted within or near the applicable EZs during the day or close to the vessel at night.

NMFS has carefully evaluated the applicant's proposed mitigation measures and has considered a range of other measures in the context of ensuring that NMFS prescribes the means of effecting the least practicable adverse impact on the affected marine mammal species and stocks and their habitat. Our evaluation of potential measures included consideration of the

following factors in relation to one another: (1) The manner in which, and the degree to which, the successful implementation of the measure is expected to minimize adverse impacts to marine mammals; (2) the proven or likely efficacy of the specific measure to minimize adverse impacts as planned; and (3) the practicability of the measure for applicant implementation.

Based on our evaluation of the applicant's proposed measures, as well as other measures considered by NMFS or recommended by the public, NMFS has determined that the mitigation measures provide the means of effecting the least practicable adverse impacts on marine mammals species or stocks and their habitat, paying particular attention to rookeries, mating grounds, and areas of similar significance.

Monitoring and Reporting

In order to issue an IHA for an activity, section 101(a)(5)(D) of the MMPA states that NMFS must set forth "requirements pertaining to the monitoring and reporting of such taking." The MMPA implementing regulations at 50 CFR 216.104 (a)(13) indicate that requests for IHAs must include the suggested means of accomplishing the necessary monitoring and reporting that will result in increased knowledge of the species and of the level of taking or impacts on populations of marine mammals that are expected to be present in the action area.

Monitoring

L–DEO would sponsor marine mammal monitoring during the present project, in order to implement the mitigation measures that require real-time monitoring, and to satisfy the anticipated monitoring requirements of the IHA. L–DEO's Monitoring Plan is described below this section. The monitoring work described here has been planned as a self-contained project independent of any other related monitoring projects that may be occurring simultaneously in the same regions. L–DEO is prepared to discuss coordination of its monitoring program with any related work that might be done by other groups insofar as this is practical and desirable.

Vessel-based Visual Monitoring

L–DEO's PSVOs will be based aboard the seismic source vessel and will watch for marine mammals near the vessel during daytime airgun operations and during any start-ups at night. PSVOs will also watch for marine mammals near the seismic vessel for at least 30 min prior to the start of airgun operations after an extended shut down.

PSVOs will conduct observations during daytime periods when the seismic system is not operating for comparison of sighting rates and behavior with and without airgun operations and between acquisition periods. Based on PSVO observations, the airguns will be powered down or shut down when marine mammals are observed within or about to enter a designated EZ.

During seismic operations off Costa Rica, at least three PSVOs will be based aboard the *Langseth*. L–DEO will appoint the PSVOs with NMFS' concurrence. During all daytime periods, two PSVOs will be on duty from the observation tower to monitor and PSVOs will be on duty in shifts of duration no longer than four hours.

During mealtimes it is sometimes difficult to have two PSVOs on effort, but at least one PSVO will be on watch during bathroom breaks and mealtimes. Use of two simultaneous observers increases the effectiveness of detecting animals near the source vessel. However, during meal times, only one PSVO may be on duty.

Two PSVOs will also be on visual watch during all nighttime start-ups of the seismic airguns. A third PSVO will monitor the PAM equipment 24 hours a day to detect vocalizing marine mammals present in the action area. In summary, a typical daytime cruise would have scheduled two PSVOs on duty from the observation tower, and a third PSVO on PAM.

L–DEO will also instruct other crew to assist in detecting marine mammals and implementing mitigation requirements (if practical). Before the start of the seismic survey, L–DEO will give the crew additional instruction regarding how to accomplish this task.

The *Langseth* is a suitable platform for marine mammal observations. When stationed on the observation platform, the eye level will be approximately 21.5 m (70.5 ft) above sea level, and the observer will have a good view around the entire vessel. During daytime, the PSVOs will scan the area around the vessel systematically with reticle binoculars (e.g., 7 × 50 Fujinon), Big-eye binoculars (25 × 150), and with the naked eye. During darkness, night vision devices (NVDs) will be available (ITT F500 Series Generation 3 binocular-image intensifier or equivalent), when required. Laser range-finding binoculars (Leica LRF 1200 laser rangefinder or equivalent) will be available to assist with distance estimation. Those are useful in training observers to estimate distances visually, but are generally not useful in measuring distances to animals directly; that is done primarily with the reticles in the binoculars.

Passive Acoustic Monitoring

Passive Acoustic Monitoring (PAM) will complement the visual monitoring program, when practicable. Visual monitoring typically is not effective during periods of poor visibility or at night, and even with good visibility, is unable to detect marine mammals when they are below the surface or beyond visual range.

Besides the three PSVOs, an additional acoustic Protected Species Observer (PSO) with primary responsibility for PAM will also be aboard the vessel. L–DEO can use acoustical monitoring in addition to visual observations to improve detection, identification, and localization of cetaceans. The acoustic monitoring will serve to alert visual observers (if on duty) when vocalizing cetaceans are detected. It is only useful when marine mammals call, but it can be effective either by day or by night, and does not depend on good visibility. It will be monitored in real time so that the visual observers can be advised when cetaceans are detected. When bearings (primary and mirror-image) to calling cetacean(s) are determined, the bearings will be relayed to the visual observer to help him/her sight the calling animal(s).

The PAM system consists of hardware (i.e., hydrophones) and software. The "wet end" of the system consists of a towed hydrophone array that is connected to the vessel by a cable. The lead in from the hydrophone array is approximately 400 m (1,312 ft) long, the active section of the array is approximately 56 m (184 ft) long, and the hydrophone array is typically towed at depths of less than 20 m (66 ft).

The deck cable is connected from the array to a computer in the laboratory where signal conditioning and processing takes place. The digitized signal is then sent to the main laboratory, where the acoustic PSO monitors the system.

The acoustic PSO will monitor the towed hydrophones 24 h per day during airgun operations and during most periods when the *Langseth* is underway while the airguns are not operating. However, PAM may not be possible if damage occurs to both the primary and back-up hydrophone the arrays during operations. The primary PAM streamer on the Langseth is a digital hydrophone streamer. Should the digital streamer fail, back-up systems should include an analog spare streamer and a hull-

mounted hydrophone. Every effort would be made to have a working PAM system during the cruise. In the unlikely event that all three of these systems were to fail, L–DEO would continue science acquisition with the visual-based observer program. The PAM system is a supplementary enhancement to the visual monitoring program. If weather conditions were to prevent the use of PAM then conditions would also likely prevent the use of the airgun array.

One acoustic PSO will monitor the acoustic detection system at any one time, by listening to the signals from two channels via headphones and/or speakers and watching the real-time spectrographic display for frequency ranges produced by cetaceans. Acoustic PSOs monitoring the acoustical data will be on shift for one to six hours at a time. Besides the PSVO, an additional acoustic PSO with primary responsibility for PAM will also be aboard the source vessel. All PSVOs are expected to rotate through the PAM position, although the most experienced with acoustics will be on PAM duty more frequently.

When a vocalization is detected while visual observations are in progress, the acoustic PSO will contact the visual PSVO immediately, to alert him/her to the presence of cetaceans (if they have not already been seen), and to allow a power down or shut down to be initiated, if required. The information regarding the call will be entered into a database. Data entry will include an acoustic encounter identification number, whether it was linked with a visual sighting, date, time when first and last heard and whenever any additional information was recorded, position and water depth when first detected, bearing if determinable, species or species group (e.g., unidentified dolphin, sperm whale), types and nature of sounds heard (e.g., clicks, continuous, sporadic, whistles, creaks, burst pulses, strength of signal, etc.), and any other notable information. The acoustic detection can also be recorded for further analysis.

PSVO Data and Documentation

PSVOs will record data to estimate the numbers of marine mammals exposed to various received sound levels and to document apparent disturbance reactions or lack thereof. Data will be used to estimate numbers of animals potentially 'taken' by harassment (as defined in the MMPA). They will also provide information needed to order a power down or shut down of the airguns when a marine mammal is within or near the EZ.

When a sighting is made, the following information about the sighting will be recorded:

1. Species, group size, age/size/sex categories (if determinable), behavior when first sighted and after initial sighting, heading (if consistent), bearing and distance from seismic vessel, sighting cue, apparent reaction to the airguns or vessel (e.g., none, avoidance, approach, paralleling, etc.), and behavioral pace.

2. Time, location, heading, speed, activity of the vessel, sea state, visibility, and sun glare.

The data listed under (2) will also be recorded at the start and end of each observation watch, and during a watch whenever there is a change in one or more of the variables.

All observations and power downs or shut downs will be recorded in a standardized format. Data will be entered into an electronic database. The accuracy of the data entry will be verified by computerized data validity checks as the data are entered and by subsequent manual checking of the database. These procedures will allow initial summaries of data to be prepared during and shortly after the field program, and will facilitate transfer of the data to statistical, graphical, and other programs for further processing and archiving.

Results from the vessel-based observations will provide:

1. The basis for real-time mitigation (airgun power down or shut down).

2. Information needed to estimate the number of marine mammals potentially taken by harassment, which must be reported to NMFS.

3. Data on the occurrence, distribution, and activities of marine mammals and turtles in the area where the seismic study is conducted.

4. Information to compare the distance and distribution of marine mammals and turtles relative to the source vessel at times with and without seismic activity.

5. Data on the behavior and movement patterns of marine mammals seen at times with and without seismic activity.

L–DEO will submit a report to NMFS and NSF within 90 days after the end of the cruise. The report will describe the operations that were conducted and sightings of marine mammals and turtles near the operations. The report will provide full documentation of methods, results, and interpretation pertaining to all monitoring. The 90-day report will summarize the dates and locations of seismic operations, and all marine mammal sightings (dates, times, locations, activities, associated seismic survey activities). The report will also include estimates of the number and nature of exposures that could result in "takes" of marine mammals by harassment or in other ways.

L–DEO will report all injured or dead marine mammals (regardless of cause) to NMFS as soon as practicable. The report should include the species or description of the animal, the condition of the animal, location, time first found, observed behaviors (if alive) and photo or video, if available.

Estimated Take by Incidental Harassment

Except with respect to certain activities not pertinent here, the MMPA defines "harassment" as:

> any act of pursuit, torment, or annoyance which (i) has the potential to injure a marine mammal or marine mammal stock in the wild [Level A harassment]; or (ii) has the potential to disturb a marine mammal or marine mammal stock in the wild by causing disruption of behavioral patterns, including, but not limited to, migration, breathing, nursing, breeding, feeding, or sheltering [Level B harassment].

Only take by Level B harassment is anticipated and authorized as a result of the marine geophysical survey off Costa Rica. Acoustic stimuli (*i.e.*, increased underwater sound) generated during the operation of the seismic airgun array, may have the potential to cause marine mammals in the survey area to be exposed to sounds at or greater than 160 decibels (dB) or cause temporary, short-term changes in behavior. There is no evidence that the planned activities are likely to result in injury, serious injury or mortality to marine mammals within the specified geographic area for which NMFS has issued the IHA. Take by injury, serious injury or mortality is thus neither anticipated nor authorized. NMFS has determined that the he required mitigation and monitoring measures will minimize any potential risk for injury, serious injury or mortality.

NMFS included an in-depth discussion of the methods used to calculate the densities of the marine mammals in the area of the seismic survey in a previous notice for the proposed IHA (76 FR 6430, February 4, 2011). A summary is included here.

L–DEO's estimates are based on a consideration of the number of marine mammals that could be disturbed appreciably by operations with the 18-airgun subarray to be used during approximately 2,145 km (1,333 mi) of survey lines with an additional 365 km (227 mi) of turns offshore Costa Rica.

Density data on the marine mammal species in the proposed survey area are

available from extensive ship-based surveys for marine mammals in the ETP conducted by NMFS' Southwest Fisheries Science Center (SWFSC). L–DEO used densities from two sources: (1) The SWFSC's habitat models that predict density for 15 cetacean species in the ETP; and (2) densities from the surveys conducted during summer and fall 1986–1996, as summarized by Ferguson and Barlow (2001, 2003) for species sighted in SWFSC surveys whose sample sizes were too small to model density.

For the predictive models, the SWFSC developed habitat modeling as a method to estimate cetacean densities on a finer spatial scale compared to traditional line-transect analyses by using a continuous function of habitat variables, e.g., sea surface temperature, depth, distance from shore, and prey density (Barlow *et al.*, 2009). The SWFSC incorporated the models into a web-based Geographic Information System (GIS) developed by Duke University's Department of Defense Strategic Environmental Research and Development Program (SERDP) team and L–DEO used the GIS to obtain mean and maximum densities for 11 cetacean species in the model in the proposed survey area.

L–DEO also used the densities calculated from Ferguson and Barlow (2003) for 5° x 5° blocks that include the proposed survey area (Block 138) and blocks adjacent to 138 that include coastal waters: Blocks 119, 137, 138, 139, 158, and 159. Those blocks included 18,385 km (11,423 mi) of survey effort in Beaufort sea states 0–5, and 3,899 square kilometers (km^2) (1,505 square miles (mi^2)) of survey effort in Beaufort sea states 0–2. L–DEO also obtained densities for an additional seven species that were sighted in one or more of those blocks.

For two endangered species for which there are only unconfirmed sightings in the region, the sei and fin whales, L–DEO assigned low density values (equal to the density of the species with the lowest calculated density). The false killer whale has been sighted near the survey area but not in the seven blocks of Ferguson and Barlow (2003), so it was also assigned the same low density value.

Oceanographic conditions, including occasional El Niño and La Niña events, influence the distribution and numbers of marine mammals present in the ETP, resulting in considerable year-to-year variation in the distribution and abundance of many marine mammal species (e.g., Escorza-Trevino, 2009). Thus, for some species the densities derived from recent surveys may not be representative of the densities that will be encountered during the proposed seismic survey.

L–DEO's estimates of exposures to various sound levels assume that the proposed surveys will be completed. As is typical during offshore ship surveys, inclement weather and equipment malfunctions are likely to cause delays and may limit the number of useful line-kilometers of seismic operations that can be undertaken. L–DEO has included an additional 25 percent of line transects to account for mission uncertainty and follow a precautionary approach. Furthermore, any marine mammal sightings within or near the designated exclusion zones will result in the power down or shut down of seismic operations as a mitigation measure. Thus, the following estimates of the numbers of marine mammals potentially exposed to sound levels of 160 dB re: 1 µPa are precautionary and probably overestimate the actual numbers of marine mammals that might be involved. These estimates also assume that there will be no weather, equipment, or mitigation delays, which is highly unlikely.

L–DEO estimated the number of different individuals that may be exposed to airgun sounds with received levels greater than or equal to 160 dB re: 1 µPa on one or more occasions by considering the total marine area that would be within the 160-dB radius around the operating airgun array on at least one occasion and the expected density of marine mammals. The number of possible exposures (including repeated exposures of the same individuals) can be estimated by considering the total marine area that would be within the 160-dB radius around the operating airguns, including areas of overlap. In the planned survey, the seismic lines are parallel and in close proximity; thus individuals could be exposed on two or more occasions. The area including overlap is 31.9 times the area excluding overlap. Thus a marine mammal that stayed in the survey area during the entire survey could be exposed 32 times (14 times), on average. Given the pattern of the seismic lines, the interval between exposures of a stationary animal would be approximately 18 hours. Moreover, it is unlikely that a particular animal would stay in the area during the entire survey. The number of different individuals potentially exposed to received levels greater than or equal to 160 re: 1 µPa was calculated by multiplying:

(1) The expected species density, either "mean" (i.e., best estimate) or "maximum", times

(2) The anticipated area to be ensonified to that level during airgun operations excluding overlap, which is approximately 3,225 km^2 (2,003 mi^2).

The area expected to be ensonified was determined by entering the planned survey lines into a MapInfo Geographic Information System (GIS), using the GIS to identify the relevant areas by "drawing" the applicable 160-dB buffer (see Table 1) around each seismic line, and then calculating the total area within the buffers. Areas of overlap were included only once when estimating the number of individuals exposed. Applying this approach, approximately 3,225 km^2 (1,245 mi^2) would be within the 160-dB isopleth on one or more occasions during the survey. Because this approach does not allow for turnover in the mammal populations in the study area during the course of the survey, the actual number of individuals exposed could be underestimated. However, the approach assumes that no cetaceans will move away from or toward the trackline as the *Langseth* approaches in response to increasing sound levels prior to the time the levels reach 160 dB, which will result in overestimates for those species known to avoid seismic vessels.

The total 'maximum estimate' of the number of individual cetaceans that could be exposed to seismic sounds with received levels greater than or equal to 160 dB re: 1 µPa during the proposed survey is 7,078 (*see* Table 2). That total includes 38 species of baleen whales, four of which are endangered including: 18 humpback whales or 1.2 percent of the regional population; one sei whale, one fin whale (less than 0.01 percent); and eight blue whales (0.6 percent). In addition, 40 sperm whales (also listed as endangered under the ESA) or 0.15 percent of the regional population could be exposed during the survey, and 19 beaked whales. Most (97 percent) of the cetaceans that could be potentially exposed are delphinids (e.g., short-beaked common, striped, pantropical spotted, striped and spinner dolphins) with maximum estimates ranging from two to 3,077 exposed to levels greater than or equal to 160 dB re: 1 µPa.

TABLE 2—ESTIMATES OF THE POSSIBLE NUMBERS OF MARINE MAMMALS EXPOSED TO DIFFERENT SOUND LEVELS DURING L–DEO'S SEISMIC SURVEY IN THE ETP DURING APRIL–JUNE, 2011

Species	Estimated number of individuals exposed to sound levels ≥ 160 dB re: 1 μPa (maximum)	Approximate percent of regional population (maximum)	Authorized take
Humpback whale	18	1.29%	18
Bryde's whale	10	0.08%	10
Sei whale	0	Not Available	0
Fin whale	0	0.04%	0
Blue whale	8	0.57%	8
Sperm whale	40	0.15%	40
Pygmy/Dwarf sperm whale	0	0.00%	0
Cuvier's beaked whale	15	0.08%	15
Mesoplodon spp.	4	0.01%	4
Rough-toothed dolphin	45	0.04%	45
Bottlenose dolphin	366	0.11%	366
Pantropical spotted dolphin	954	0.06%	954
Spinner dolphin	1,468	0.08%	1,468
Striped dolphin	622	0.06%	622
Short-beaked common dolphin	3,077	0.10%	3,077
Risso's dolphin	91	0.08%	91
Melon-headed whale	233	0.57%	[2]258
Pygmy killer whale	9	0.08%	[2]30
False killer whale	0	0.00%	0
Killer whale	2	0.06%	52
Short-finned pilot whale	114	0.02%	114

[1] Maximum estimates are based on densities from Table 3 in L–DEO's application. Takes are not anticipated for the minke whale and Fraser's dolphin.

[2] Requested Take Authorization increased to mean group size in the ETP for baleen whales (Jackson *et al.* 2008) and delphinids (Ferguson *et al.* 2006).

Negligible Impact and Small Numbers Analysis and Determination

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." In making a negligible impact determination, NMFS considers:

(1) The number of anticipated mortalities;

(2) The number and nature of anticipated injuries;

(3) The number, nature, and intensity, and duration of Level B harassment; and

(4) The context in which the takes occur.

For reasons stated previously in this document, and in the proposed notice of an IHA (76 FR 6430, February 4, 2011), the specified activities associated with the survey are not likely to cause temporary threshold shift, permanent threshold shift, or other non-auditory injury, serious injury, or death to affected marine mammals because:

(1) The likelihood that, given sufficient notice through relatively slow ship speed, marine mammals are expected to move away from a noise source that is annoying prior to its becoming potentially injurious;

(2) The potential for temporary or permanent hearing impairment is very low and would likely be avoided through the incorporation of the proposed monitoring and mitigation measures;

(3) The fact that cetaceans would have to be closer than 450 m (1,476 ft) in deep water when the 18-airgun subarray is in use at a 7 m (23 ft)) tow depth from the vessel to be exposed to levels of sound believed to have even a minimal chance of causing permanent threshold shift;

(4) The fact that marine mammals would have to be closer than 3,800 m (2.4 mi) in deep water when the full array is in use at a 7 m (23 ft) tow depth from the vessel to be exposed to levels of sound (160 dB) believed to have even a minimal chance at causing hearing impairment; and

(5) The likelihood that marine mammal detection ability by trained observers is high at close proximity from the vessel.

No injuries, serious injuries or mortalities are anticipated to occur as a result of the L–DEO's planned marine geophysical survey, and none are authorized. Only short-term behavioral disturbance is anticipated to occur due to the brief and sporadic duration of the survey activities. Since no injury, serious injury or mortality is expected to occur, and due to the limited nature, degree, and context of behavioral harassment anticipated, the activity is not expected to impact rates of recruitment or survival for any affected stock or species.

While the number of marine mammals potentially incidentally harassed would depend on the distribution and abundance of marine mammals in the vicinity of the survey activity, the number of potential Level B incidental harassment takings (*see* Table 2) is estimated to be small, less than two percent of any of the estimated population sizes based on the data disclosed in Table 2 of this notice.

Based on the analysis contained in this notice of the likely effects of the specified activity on marine mammals and their habitat, and taking into consideration the implementation of the mitigation and monitoring measures, NMFS finds that the total amount of take by Level B harassment authorized by the IHA issued for L–DEO's seismic survey activities described in this notice within the ETP off Costa Rica will have a negligible impact on the affected species or stocks of marine mammals; and that impacts to affected species or stocks of marine mammals have been mitigated to the lowest level practicable.

Impact on Availability of Affected Species or Stock for Taking for Subsistence Uses

There are no relevant subsistence uses of marine mammals in the survey area. Thus, the provision requiring that the activity not have an unmitigable impact on the availability of the affected species or stock of marine mammals for subsistence uses is not implicated for this specified activity.

Endangered Species Act

Of the species of marine mammals that may occur in the proposed survey area, five are listed as endangered under the ESA, including the humpback, sei, fin, blue, and sperm whales. Under section 7 of the ESA, NSF had initiated formal consultation with the NMFS, Office of Protected Resources, Endangered Species Division, on this seismic survey. NMFS' Office of Protected Resources, Permits, Conservation and Education Division, also initiated formal consultation under section 7 of the ESA with NMFS' Office of Protected Resources, Endangered Species Division, to obtain a Biological Opinion (BiOp) evaluating the effects of issuing the IHA on threatened and endangered marine mammals and, if appropriate, authorizing incidental take. April, 2011, NMFS issued a BiOp and concluded that the action and issuance of the IHA are not likely to jeopardize the continued existence of the humpback, sei, fin, blue, and sperm whales and leatherback (*Dermochelys coriacea*), green (*Chelonia mydas*), loggerhead (*Caretta caretta*), hawksbill (*Eretmochelys imbricata*), and olive ridley (*Lepidochelys olivacea*) sea turtles. The BiOp also concluded that designated critical habitat for these species does not occur in the action area and would not be affected by the survey. L–DEO must comply with the Relevant Terms and Conditions of the Incidental Take Statement corresponding to NMFS' BiOp issued to both NSF and NMFS' Office of Protected Resources. L–DEO must also comply with the mitigation and monitoring requirements included in the IHA in order to be exempt under the Incidental Take Statement (ITS) in the BiOp from the prohibition on take of listed endangered marine mammals species otherwise prohibited by Section 9 of the ESA.

National Environmental Policy Act (NEPA)

To meet NMFS' NEPA requirements for the issuance of an IHA to L–DEO, NMFS has prepared an Environmental Assessment (EA) titled "Issuance of an Incidental Harassment Authorization to the Lamont-Doherty Earth Observatory to Take Marine Mammals by Harassment Incidental to a Marine Geophysical Survey on the Shatsky Rise in the Northwest Pacific Ocean, July-September 2010." This EA incorporates the NSF's Environmental Analysis Pursuant To Executive Order 12114 (NSF, 2010) and an associated report (Report) prepared by LGL Limited Environmental Research Associates (LGL) for NSF, titled, "Environmental Assessment of a Marine Geophysical Survey by the R/V Marcus G. Langseth on the Shatsky Rise in the Northwest Pacific Ocean, July—September, 2010, (LGL, 2010)" by reference pursuant to 40 CFR 1502.21 and NOAA Administrative Order (NAO) 216–6 § 5.09(d). NMFS provided relevant environmental information to the public through the notice published on February 4, 2011, and has considered public comments received in response prior to finalizing its EA and deciding whether or not to issue a Finding of No Significant Impact (FONSI). NMFS' EA evaluated the impacts on the human environment of NMFS' authorization of incidental Level B harassment resulting from the specified activity in the specified geographic region. NMFS has concluded that issuance of an IHA would not significantly affect the quality of the human environment and has issued a FONSI. Because the NMFS has made a FONSI, it is not necessary to prepare an environmental impact statement for the issuance of an IHA to L–DEO for this activity. The EA and FONSI for this activity are available upon request (see **ADDRESSES**).

Authorization

NMFS has issued an IHA to L–DEO for the take by Level B harassment of small numbers of marine incidental to conducting a marine geophysical survey in the eastern tropical Pacific (ETP) Ocean off Costa Rica, April through June, 2011, provided the previously mentioned mitigation, monitoring, and reporting requirements are incorporated.

Dated: April 6, 2011.

James H. Lecky,

Director, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. 2011–8734 Filed 4–11–11; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF DEFENSE

Office of the Secretary

Cancellation Notice for the Advisory Council on Dependents' Education Meeting

AGENCY: Department of Defense Education Activity (DoDEA), DoD.

ACTION: Notice.

SUMMARY: The meeting of the Department of Defense Advisory Council on Dependents' Education announced on March 1, 2011 (76 FR 11211) under the provisions of the Federal Advisory Committee Act of 1972 (5 U.S.C., Appendix, as amended), and scheduled to occur on Friday, April 22, 2011, 7 a.m. to 12 p.m. Japan Standard Time has been cancelled.

FOR FURTHER INFORMATION CONTACT: Dr. Steve Schrankel at (703) 588–3109 or *Steve.Schrankel@hq.dodea.edu.*

Dated: April 6, 2011.

Morgan F. Park,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 2011–8634 Filed 4–11–11; 8:45 am]

BILLING CODE 5001–06–P

DEPARTMENT OF DEFENSE

Office of the Secretary

Meeting of the Strategic Environmental Research and Development Program, Scientific Advisory Board

AGENCY: Department of Defense.

ACTION: Notice.

SUMMARY: This Notice is published in accordance with Section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463). The topic of the meeting on June 16, 2011 is to review continuing research and development projects requesting Strategic Environmental Research and Development Program funds in excess of $1M. This meeting is open to the public. Any interested person may attend, appear before, or file statements with the Scientific Advisory Board at the time and in the manner permitted by the Board.

DATES: Thursday, June 16, 2011 from 8 a.m. to 2:30 p.m.

ADDRESSES: SpringHill Suites by Marriott, Pamlico Room, 300 Hotel Drive, New Bern, NC 28562.

FOR FURTHER INFORMATION CONTACT: Mr. Jonathan Bunger, SERDP Office, 901 North Stuart Street, Suite 303, Arlington, VA or by telephone at (703) 696–2126.

Dated: April 7, 2011.

Morgan F. Park,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 2011–8635 Filed 4–11–11; 8:45 am]

BILLING CODE 5001–06–P

DEPARTMENT OF DEFENSE

Office of the Secretary

Defense Audit Advisory Committee (DAAC)

AGENCY: Under Secretary of Defense (Comptroller), DoD.

ACTION: Notice.

SUMMARY: Under the provisions of the Federal Advisory Committee Act of 1972 (5 U.S.C., Appendix, as amended), the Government in the Sunshine Act of 1976 (5 U.S.C. 552b, as amended), and 41 CFR 102–3.150, the Department of Defense announces the following Federal advisory committee meeting of the Defense Audit Advisory Committee will be held.

DATES: Monday, May 16, 2011 beginning at 3 p.m. and ending at 5 p.m.

ADDRESSES: Pentagon, Room 3E754, Washington, DC (escort required, see below).

FOR FURTHER INFORMATION CONTACT: The Committee's Designated Federal Officer (DFO) is Sandra Gregory, Office of the Under Secretary of Defense (Comptroller) (OUSD (C)), 1100 Defense Pentagon, Room 3D150, Washington, DC 20301–1100, *sandra.gregory@osd.mil,* (703) 614–3310. For meeting information please contact Christopher Hamrick, OUSD(C), 1100 Defense Pentagon, Room 3D150, Washington, DC 20301–1100, *Christopher.Hamrick@osd.mil,* (703) 614–4819.

SUPPLEMENTARY INFORMATION:

(a) Purpose

The mission of the DAAC is to provide the Secretary of Defense, through the Under Secretary of Defense (Comptroller)/Chief Financial Officer, independent advice and recommendations on DoD financial management to include financial reporting processes, systems of internal controls, audit processes, and processes for monitoring compliance with relevant laws and regulations.

(b) Agenda

3:00 Opening Remarks
3:15 Use of Service Auditors
3:45 Approach to Full Financial Statement Auditability
4:15 Developing Accounting/Audit Competencies
4:30 DAAC Member Involvement in Service Audit Committees
4:45 Conclusion

(c) Accessibility to the Meeting

Pursuant to 5 U.S.C. 552b and 41 CFR 102–3.140 through 102–3.165, and the availability of space, this meeting is open to the public. Seating is on a first-come basis. Members of the public who wish to attend the meeting must contact Mr. Christopher Hamrick at the number listed in this FR notice no later than noon on Wednesday, May 11, 2011, to arrange a Pentagon escort. Public attendees are required to arrive at the Pentagon Metro Entrance by 2 p.m. and complete security screening by 2:15 p.m. Security screening requires two forms of identification: (1) A government-issued photo I.D., and (2) any type of secondary I.D. which verifies the individual's name (*i.e.* debit card, credit card, work badge, social security card). *Special Accommodations:* Individuals requiring special accommodation to access the public meeting should contact Mr. Hamrick at least five business days prior to the meeting to ensure appropriate arrangements can be made.

(d) Procedures for Providing Written Comments

Pursuant to 41 CFR 102–3.105(j) and 102–3.140, and section 10(a)(3) of the Federal Advisory Committee Act of 1972, the public or interested organizations may submit written comments to the Committee about its mission and topics pertaining to this public session.

Written comments are accepted until the date of the meeting; however, written comments should be received by the Designated Federal Officer at least five business days prior to the meeting date so that the comments may be made available to the Committee members for their consideration prior to the meeting. Written comments should be submitted to the Designated Federal Officer listed in this notice. E-mail submissions should be in one of the following formats (Adobe Acrobat, WordPerfect, or Word format).

Please note: Since the Committee operates under the provisions of the Federal Advisory Committee Act, as amended, all written comments will be treated as public documents and will be made available for public inspection, up to and including being posted on the OUSD (C) Web site.

Dated: April 7, 2011.

Morgan F. Park,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 2011–8636 Filed 4–11–11; 8:45 am]

BILLING CODE 5001–06–P

DEPARTMENT OF DEFENSE

Office of the Secretary

Meeting of Federal Advisory Committee

AGENCY: Department of Defense.

ACTION: Meeting Notice.

SUMMARY: Under the provisions of the Federal Advisory Committee Act of 1972 (5 U.S.C., Appendix, as amended), the Government in the Sunshine Act of 1976 (5 U.S.C. 552b, as amended), and 41 CFR 102–3.150, the Department of Defense announces that the following Federal Advisory Committee meeting will take place:

1. *Name of Committee:* Department of Defense Task Force on the Care, Management, and Transition of Recovering Wounded, Ill, and Injured Members of the Armed Forces (subsequently referred to as the Task Force).

2. *Date:* Wednesday, May 18, 2011, Thursday, May 19, 2011.

3. *Time:* 8 a.m.–5:30 p.m.

4. *Location:* L'Enfant Plaza Hotel, 480 L'Enfant Plaza, SW., Washington, DC 20024.

5. *Purpose of the Meeting:* The purpose of the meeting is for the Task Force Members to convene and gather data from panels and briefers on the Task Force's topics of inquiry.

6. *Agenda:* (Please refer to *http://dtf.defense.gov/rwtf/meetings.html* for the most up-to-date meeting information).

8 a.m.–5:30 p.m. Wednesday 18 May 2011

8—Task Force Review of Installation Visits Conduced During April
9:45—Break
10—Manpower & Reserve Affairs Panel
11:30—Break. Working lunch. Training. Not Open to the Public
12:30—The Deputy Assistant Secretary of Defense for Wounded Warrior Care and Transition Policy (WWTCP), Office of the Under Secretary of Defense for Personnel and Readiness will present the DoD level programs and initiatives for Wounded Warriors. Panel Presentation of the following Topics.

Overview of WWTCP Presented by Mr. John Campbell and/or Principal

Director Mr. Burdette.
Funding and Program management, POM initiatives, Metrics, and systems of accountability for DoD programs in WWTCP portfolio.
Employment Initiatives
Transition Assistance Program
Recovery Care Coordinator Program
Wounded Warrior Information Resources
Status of Integrated Disability Evaluation System
2—Break
2:15 p.m.—Panel for the Centers of Excellence for Hearing, Vision and Traumatic Injury of Extremities
3:15—Break
3:30—Federal Recovery Care Coordination Program
4:30–5:30—Wounded Ill and Injured Satisfaction Surveys
5:30—Close

8 a.m.–5:30 p.m. Thursday 19 May 2011

9—Public Forum
Presented by: Members of the Public who have requested an opportunity to provide a two-minute presentation to the Task Force.
9:15—Employment Panel, Local employers will provide a panel to determine how they feel about the employability of Military Members.
10:30—Break
10:45—Panel on Cognitive Rehabilitation Therapy and TBI.
12—Break. Training working lunch. Not Open to the Public
1—Interagency Program Office
2—Break
2:15—Counter Point Panel
3:15—Break
3:30—Special Operations Command Care Coalition Briefing
4:30–5—Closing

7. *Public's Accessibility to the Meeting:* Pursuant to 5 U.S.C. 552b and 41 CFR 102–3.140 through 102–3.165, and the availability of space, this meeting is open to the public. Seating is on a first-come basis.

8. *Point of Contact:* Denise F. Dailey, Designated Federal Officer, (703) 325–6640, Hoffman Building II, 200 Stovall St, Alexandria, VA 22332–0021, *rwtf@wso.whs.mil.*

SUPPLEMENTARY INFORMATION: Pursuant to 41 CFR 102–3.105(j) and 102–3.140, and section 10(a)(3) of the Federal Advisory Committee Act of 1972, the public or interested organizations may submit written statements to the Department of Defense Task Force on the Care, Management, and Transition of Recovering Wounded, Ill, and Injured Members of the Armed Forces about its mission and functions. Written statements may be submitted at any time or in response to the stated agenda of a planned meeting of the Department of Defense Task Force on the Care, Management, and Transition of Recovering Wounded, Ill, and Injured Members of the Armed Forces.

All written statements shall be submitted to the Designated Federal Officer for the Task Force through the above contact information, and this individual will ensure that the written statements are provided to the membership for their consideration.

Statements being submitted in response to the agenda mentioned in this notice must be received by the Designated Federal Officer at the address listed NLT 5 p.m. EDT, Wednesday May 11, 2011 which is the subject of this notice. Written statements received after this date may not be provided to or considered by the Task Force until its next meeting. Please mark mail correspondence as "Time Sensitive for May Meeting."

The Designated Federal Officer will review all timely submissions with the Task Force Co-Chairs and ensure they are provided to all members of the Task Force before the meeting that is the subject of this notice.

If individuals are interested in making an oral statement during the Public Forum time period, a written statement for a presentation of two minutes must be submitted as above and must identify it is being submitted for an oral presentation by the person making the submission. Identification information must be provided and at a minimum must include a name and a phone number. Determination of who will be making an oral presentation will depend on the submitted topic's relevance to the Task Force's Charter. Individuals may visit the Task Force Web site at *http://dtf.defense.gov/rwtf/* to view the Charter. Individuals making presentations will be notified by Friday May 13, 2011. Oral presentations will be permitted only on Thursday May 19, 2011 from 9:00 a.m. to 9:15 a.m. before the full Task Force. Number of oral presentations will not exceed five, with one minute of questions available to the Task Force members per presenter. Presenters should not exceed their two minutes.

Reasonable accommodations will be made for those individuals with disabilities who request them. Requests for additional services should be directed to Heather Jane Moore, (703) 325–6640, by 5 p.m. EDT, Wednesday May 11, 2011.

FOR FURTHER CONTACT INFORMATION: Mail Delivery service through Recovering Warrior Task Force, Hoffman Building II, 200 Stovall St, Alexandria, VA 22332–0021 "Mark as Time Sensitive for May Meeting". E-mails to *rwtf@wso.whs.mil.* Telephone (703) 325–6640. Fax (703) 325–6710.

Dated: April 7, 2011.

Morgan F. Park,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 2011–8724 Filed 4–11–11; 8:45 am]

BILLING CODE 5001–06–P

DEPARTMENT OF DEFENSE

Office of the Secretary

Meeting of the Board of Regents of the Uniformed Services University of the Health Sciences

AGENCY: Uniformed Services University of the Health Sciences (USU), DoD.

ACTION: Quarterly Meeting Notice.

SUMMARY: Under the provisions of the Federal Advisory Committee Act of 1972 (5 U.S.C., Appendix, as amended) and the Sunshine in the Government Act of 1976 (5 U.S.C. 552b, as amended), this notice announces the following meeting of the Board of Regents of the Uniformed Services University of the Health Sciences.

Name of Committee: Board of Regents of the Uniformed Services University of the Health Sciences.

Date of Meeting: Friday, May 20, 2011; 8 a.m. to 1:30 p.m. (Open Session); 1:30 p.m. to 3:30 p.m. (Closed Session).

Location: Everett Alvarez Jr. Board of Regents Room (D3001), Uniformed Services University of the Health Sciences, 4301 Jones Bridge Road, Bethesda, Maryland 20814.

SUPPLEMENTARY INFORMATION:

Purpose of the Meeting: Meetings of the Board of Regents assure that USU operates in the best traditions of academia. An outside Board is necessary for institutional accreditation.

Agenda: The actions that will take place include the approval of minutes from the Board of Regents Meeting held February 1, 2011; acceptance of reports from working committees; recommendations regarding the approval of faculty appointments and promotions in the School of Medicine, the Graduate School of Nursing, and the Postgraduate Dental College; and recommendations regarding the awarding of post-baccalaureate degrees as follows: Doctor of Medicine, PhD in Nursing Science, Master of Science in Nursing, and master's and doctoral degrees in the biomedical sciences and public health. The President, USU and

the President and CEO, Henry M. Jackson Foundation for the Advancement of Military Medicine will present reports. The Academic Review Subcommittee of the Board of Regents will present its findings and recommendations to the Board for deliberation. These actions are necessary for the University to pursue its mission, which is to provide outstanding health care practitioners and scientists to the uniformed services.

Meeting Accessibility: Pursuant to Federal statute and regulations (5 U.S.C. 552b, as amended, and 41 CFR 102–3.140 through 102–3.165) and the availability of space, most of the meeting is open to the public. Seating is on a first-come basis. Members of the public wishing to attend the meeting should contact Janet S. Taylor at the address and phone number previously noted. The closed portion of this meeting is authorized by 5 U.S.C. 552b(c)(6) as the subject matter involves personal and private observations.

Written Statements: Interested persons may submit a written statement for consideration by the Board of Regents. Individuals submitting a written statement must submit their statement to the Designated Federal Officer at the address listed below. If such statement is not received at least 10 calendar days prior to the meeting, it may not be provided to or considered by the Board of Regents until its next open meeting. The Designated Federal Officer will review all timely submissions with the Board of Regents Chairman and ensure such submissions are provided to Board of Regents Members before the meeting. After reviewing the written comments, submitters may be invited to orally present their issues during the May 2011 meeting or at a future meeting.

FOR FURTHER INFORMATION CONTACT: Janet S. Taylor, Designated Federal Officer, 4301 Jones Bridge Road, Bethesda, Maryland 20814; telephone 301–295–3066. Ms. Taylor can also provide base access procedures.

Dated: April 7, 2011.

Morgan F. Park,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 2011–8676 Filed 4–11–11; 8:45 am]

BILLING CODE 5001–06–P

DEPARTMENT OF DEFENSE

Office of the Secretary

Closed Meeting of the Defense Intelligence Agency Advisory Board

AGENCY: Defense Intelligence Agency, DoD.

ACTION: Meeting notice.

SUMMARY: Under the provisions of the Federal Advisory Committee Act of 1972 (5 U.S.C., Appendix, as amended), the Government in the Sunshine Act of 1976 (5 U.S.C. 552b, as amended), and 41 CFR 102–3.150 the Department of Defense announces that Defense Intelligence Agency Advisory Board and two of its subcommittees will meet on May 9 and 10, 2011. The meetings are closed to the public.

DATES: The meetings will be held on May 9, 2011 (from 08:15 a.m. to 5:30 p.m.) and on May 10, 2011 (from 8:30 a.m. to 4 p.m.).

ADDRESSES: The meeting will be held at Bolling Air Force Base.

FOR FURTHER INFORMATION CONTACT: Mr. Mark Harrison, (703) 647–5102, Alternate Designated Federal Official, DIA Office for Congressional and Public Affairs, Pentagon, 1A874, Washington, DC 20340.

Committee's Designated Federal Official: Mr. William Caniano, (703) 614–4774, DIA Office for Congressional and Public Affairs, Pentagon, 1A874 Washington, DC 20340. *William.Caniano@dia.mil.*

SUPPLEMENTARY INFORMATION:

Purpose of the Meeting

For the Advisory Board and its subcommittee to review and discuss DIA operations and capabilities in support of current operations.

Agenda

May 9, 2011

8:45 a.m.	Convene Subcommittee Meeting	Mr. William Caniano, Designated Federal Official, Mrs. Mary Margaret Graham, Chairman.
10:15 a.m.	Break	
10:30 a.m.	Subcommittee Business	
1 p.m.	Adjourn	
1:30 p.m.	Convene Full Advisory Board and Administrative Issues.	Mr. William Caniano, Designated Federal Official, Mrs. Mary Margaret Graham, Chairman.
1:45 p.m.	Deliberations	
3:15 p.m.	Briefings and Discussion	
5:30 p.m.	Adjournment	

May 10, 2011

8:30 a.m.	Convene Subcommittee Meeting	Mr. William Caniano, Designated Federal Official, Mrs. Mary Margaret Graham, Chairman.
9 a.m.	Reconvene Full Advisory Board for Briefings and Discussion.	
10 a.m.	Briefings and Discussion	
12:15 p.m.	Lunch	
1:15 p.m.	Discussions with LTG Burgess, Director, DIA	Mr. William Caniano, Designated Federal Official, Mrs. Mary Margaret Graham, Chairman.
4 p.m.	Adjourn	

Pursuant to 5 U.S.C. 552b, as amended and 41 CFR 102–3.155, the Defense Intelligence Agency has determined that the all meetings shall be closed to the public. The Director, DIA, in consultation with his General Counsel, has determined in writing that the public interest requires that all sessions of the Board's meetings will be closed to the public because they will be concerned with classified information and matters covered by section 5 U.S.C. 552b(c)(1).

Written Statements

Pursuant to 41 CFR 102–3.105(j) and 102–3.140, and section 10(a)(3) of the

Federal Advisory Board Committee Act of 1972, the public or interested organizations may submit written statements at any time to the DIA Advisory Board regarding its missions and functions. All written statements shall be submitted to the Designated Federal Official for the DIA Advisory Board. He will ensure that written statements are provided to the membership for their consideration. Written statements may also be submitted in response to the stated agenda of planned committee meetings. Statements submitted in response to this notice must be received by the Designated Federal Official at least five calendar days prior to the meeting which is the subject of this notice. Written statements received after that date may not be provided or considered by the Board until its next meeting. All submissions provided before that date will be presented to the Board members before the meeting that is subject of this notice. Contact information for the Designated Federal Official is listed under **FOR FURTHER INFORMATION CONTACT.**

Dated: April 7, 2011.

Morgan F. Park,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 2011–8638 Filed 4–11–11; 8:45 am]

BILLING CODE 5001–06–P

DEPARTMENT OF DEFENSE

Office of the Secretary

[Docket ID DOD–2011–OS–0041]

Privacy Act of 1974; Systems of Records

AGENCY: Defense Logistics Agency, DoD.

ACTION: Notice to Alter a System of Records.

SUMMARY: The Defense Logistics Agency proposes to alter a system of records notice in its existing inventory of records systems subject to the Privacy Act of 1974, (5 U.S.C. 552a), as amended.

DATES: This proposed action will be effective without further notice on May 12, 2011 unless comments are received which result in a contrary determination.

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

* *Federal Rulemaking Portal: http://www.regulations.gov.* Follow the instructions for submitting comments.

* *Mail:* Federal Docket Management System Office, 1160 Defense Pentagon, OSD Mailroom 3C843, Washington, DC 20301–1160.

Instructions: All submissions received must include the agency name and docket number or Regulatory Information Number (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: Ms. Jody Sinkler at (703) 767–5045, or Privacy Act Officer, Headquarters, Defense Logistics Agency, *Attn:* DGA, 8725 John J. Kingman Road, Stop 16443, Fort Belvoir, VA 22060–6221.

SUPPLEMENTARY INFORMATION: The Defense Logistics Agency systems of records notices subject to the Privacy Act of 1974, (5 U.S.C. 552a), as amended, have been published in the **Federal Register** and are available from the **FOR FURTHER INFORMATION CONTACT** address above.

The proposed system reports, as required by 5 U.S.C. 552a (r), of the Privacy Act of 1974, as amended, were submitted on April 6, 2011, to the House Committee on Oversight and Government Reform, the Senate Committee on Homeland Security and Governmental Affairs, and the Office of Management and Budget (OMB) pursuant to paragraph 4c of Appendix I to OMB Circular No. A–130, 'Federal Agency Responsibilities for Maintaining Records About Individuals,' dated February 8, 1996 (February 20, 1996, 61 FR 6427).

Dated: April 7, 2011.

Morgan F. Park,

Alternate OSD Federal Register Liaison Officer, Department of Defense

S800.20

SYSTEM NAME:

Military Clothing Database (January 31, 2008, 73 FR 5826).

CHANGES:

* * * * *

SYSTEM LOCATION:

Delete entry and replace with "Data regarding recruits is located at participating Recruit Induction/Training Centers. Please contact the System Manager for more information."

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Delete entry and replace with "Recruits being inducted at participating Recruit Induction/Training Centers (the Department of the Army, the Department of the Air Force, the U.S. Marine Corps, and the Department of the Navy). These include recruits with special measurement clothing requirements."

CATEGORIES OF RECORDS IN THE SYSTEM:

Delete entry and replace with "Individual's name, Social Security Number (SSN), gender, rank, Military Occupational Specialty, duty station, roster ID, Platoon/Company assigned, records of receipts, sales, exchanges, replacements, and returns of individual clothing items, uniform sizes, quantities of clothing items ordered by individuals and branch of military service cost center data which reflects the funding citation that represents which military service is responsible for the individual recruit's clothing bag costs."

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Delete entry and replace with "10 U.S.C. 136, Under Secretary of Defense for Personnel and Readiness; DoD Directive 1338.5, Armed Forces Clothing Monetary Allowance Policy; and E.O. 9397 (SSN), as amended."

PURPOSE(S):

Delete entry and replace with "To establish a database for the purpose of managing military recruit clothing inventories to forecast future clothing needs; to reduce costs and lead times; and to improve the efficiency of clothing distribution for the participating military services. Records are also used to record receipts, sales, exchanges, replacements, and returns of individual clothing items by the recruit."

* * * * *

RETENTION AND DISPOSAL:

Delete entry and replace with "Database/Master—maintain for 3 years, followed by 2 years in archive, and then destroy.

Input/source records—destroy after 1 year.

Outputs—

a. Hard copies—destroy after 1 year.

b. Source data (electronic) maintain for 3 years online, followed by 2 years in archive, then destroy.

System Documentation—maintain current version and two prior versions for 5 years, then destroy."

SYSTEM MANAGER(S) AND ADDRESS:

Delete entry and replace with "Chief, Process Integration Branch, DLA

Information Operations, Philadelphia, 700 Robbins Avenue, Philadelphia, PA 19111–5062."

NOTIFICATION PROCEDURE:

Delete entry and replace with "Individuals seeking to determine whether information about themselves is contained in this system of records should address written inquiries to the Privacy Office, DLA Troop Support, *Attn:* BPCA, 700 Robbins Avenue, Building 36, Philadelphia, PA 19111–5096.

Written requests must contain the individual's full name, and the Recruit Induction/Training Centers where inducted/trained. Please contact the System Manager for more information."

RECORD ACCESS PROCEDURES:

Delete entry and replace with "Individuals seeking access to information about themselves contained in this system of records should address written inquiries to the Privacy Office, DLA Troop Support, *Attn:* BPCA, 700 Robbins Avenue, Building 36, Philadelphia, PA 19111–5096.

Written requests must contain the individual's full name, and the Recruit Induction/Training Centers where inducted/trained. Please contact the System Manager for more information."

* * * * *

S800.20

SYSTEM NAME:

Military Clothing Database

SYSTEM LOCATION:

Data regarding recruits is located at participating Recruit Induction/Training Centers. Please contact the System Manager for more information

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Recruits being inducted at participating Recruit Induction/Training Centers (the Department of the Army, the Department of the Air Force, the U.S. Marine Corps, and the Department of the Navy). These include recruits with special measurement clothing requirements.

CATEGORIES OF RECORDS IN THE SYSTEM:

Individual's name, Social Security Number (SSN), gender, rank, Military Occupational Specialty, duty station, roster ID, Platoon/Company assigned, records of receipts, sales, exchanges, replacements, and returns of individual clothing items, uniform sizes, quantities of clothing items ordered by individuals and branch of military service cost center data which reflects the funding citation that represents which military service is responsible for the individual recruit's clothing bag costs.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

10 U.S.C. 136, Under Secretary of Defense for Personnel and Readiness; DoD Directive 1338.5, Armed Forces Clothing Monetary Allowance Policy; and E.O. 9397 (SSN), as amended.

PURPOSE(S):

To establish a database for the purpose of managing military recruit clothing inventories to forecast future clothing needs; to reduce costs and lead times; and to improve the efficiency of clothing distribution for the participating military services. Records are also used to record receipts, sales, exchanges, replacements, and returns of individual clothing items by the recruit.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

In addition to those disclosures generally permitted under 5 U.S.C. 552a(b) of the Privacy Act of 1974, these records contained therein may specifically be disclosed outside the DoD as a routine use pursuant to 5 U.S.C. 552a(b)(3) as follows:

Measurement and size information may be disclosed to garment manufacturers for the purpose of producing military clothing in the necessary sizes.

The DoD 'Blanket Routine Uses' as set forth at the beginning of the Defense Logistics Agency's compilation of systems of records notices also apply to this system.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Records are maintained on paper and electronic storage media.

RETRIEVABILITY:

Individual's name and/or Social Security Number (SSN).

SAFEGUARDS:

Records are maintained in secure, limited access, or monitored areas. Database is monitored and access is password protected. Physical entry by unauthorized persons is restricted through the use of locks, guards, passwords, or other administrative procedures. Archived data is stored on discs, or magnetic tapes, which are kept in a locked or controlled access area. Access to personal information is limited to those individuals who require the records to perform their official assigned duties.

RETENTION AND DISPOSAL:

Database/Master—maintain for 3 years, followed by 2 years in archive, and then destroy.

Input/source records—destroy after 1 year.

Outputs—

a. Hard copies—destroy after 1 year.

b. Source data (electronic) maintain for 3 years online, followed by 2 years in archive, then destroy.

System Documentation—maintain current version and two prior versions for 5 years, then destroy.

SYSTEM MANAGER(S) AND ADDRESS:

Chief, Process Integration Branch, DLA Information Operations, Philadelphia, 700 Robbins Avenue, Philadelphia, PA 19111–5062.

NOTIFICATION PROCEDURE:

Individuals seeking to determine whether information about themselves is contained in this system of records should address written inquiries to the Privacy Office, DLA Troop Support, *Attn:* BPCA, 700 Robbins Avenue, Building 36, Philadelphia, PA 19111–5096.

Written requests must contain the individual's full name, and the Recruit Induction/Training Centers where inducted/trained. Please contact the System Manager for more information.

RECORD ACCESS PROCEDURES:

Individuals seeking access to information about themselves contained in this system of records should address written inquiries to the Privacy Office, DLA Troop Support, *Attn:* BPCA, 700 Robbins Avenue, Building 36, Philadelphia, PA 19111–5096.

Written requests must contain the individual's full name, and the Recruit Induction/Training Centers where inducted/trained. Please contact the System Manager for more information.

CONTESTING RECORD PROCEDURES:

The DLA rules for accessing records for contesting contents and appealing initial agency determinations are contained in 32 CFR part 323, or may be obtained from the DLA FOIA/Privacy Act Office, Headquarters, Defense Logistics Agency, *Attn:* DGA, 8725 John J. Kingman Road, Suite 1644, Fort Belvoir, VA 22060–6221.

RECORD SOURCE CATEGORIES:

Information is provided by the recruits being inducted at the participating Recruit Induction/Training Centers and their affiliated Military Service.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

[FR Doc. 2011–8640 Filed 4–11–11; 8:45 am]

BILLING CODE 5001–06–P

DEPARTMENT OF DEFENSE

Office of the Secretary

[Docket ID DOD–2011–OS–0040]

Privacy Act of 1974; Systems of Records

AGENCY: Defense Logistics Agency, DoD.

ACTION: Notice to alter a system of records.

SUMMARY: The Defense Logistics Agency proposes to alter a system of records notice in its existing inventory of records systems subject to the Privacy Act of 1974 (5 U.S.C. 552a), as amended.

DATES: This proposed action will be effective without further notice on May 12, 2011 unless comments are received which result in a contrary determination.

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

* *Federal Rulemaking Portal: http://www.regulations.gov.* Follow the instructions for submitting comments.

* *Mail:* Federal Docket Management System Office, 1160 Defense Pentagon, OSD Mailroom 3C843, Washington, DC 20301–1160.

Instructions: All submissions received must include the agency name and docket number or Regulatory Information Number (RIN) for this **Federal Register** document. The general policy for comments and other submissions from members of the public is of 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: Ms. Jody Sinkler at (703) 767–5045, or Privacy Act Officer, Headquarters, Defense Logistics Agency, *Attn:* DGA, 8725 John J. Kingman Road, Stop 16443, Fort Belvoir, VA 22060–6221.

SUPPLEMENTARY INFORMATION: The Defense Logistics Agency systems of records notices subject to the Privacy Act of 1974, (5 U.S.C. 552a), as amended, have been published in the **Federal Register** and are available from the **FOR FURTHER INFORMATION CONTACT** address above.

The proposed system reports, as required by 5 U.S.C. 552a(r), of the Privacy Act of 1974, as amended, were submitted on April 5, 2011, to the House Committee on Oversight and Government Reform, the Senate Committee on Homeland Security and Governmental Affairs, and the Office of Management and Budget (OMB) pursuant to paragraph 4c of Appendix I to OMB Circular No. A–130, 'Federal Agency Responsibilities for Maintaining Records About Individuals,' dated February 8, 1996 (February 20, 1996, 61 FR 6427).

Dated: April 5, 2011.

Morgan F. Park,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

S190.24

SYSTEM NAME:

Biography File (May 26, 2009, 74 FR 24831).

CHANGES:

* * * * *

SYSTEM LOCATION:

Delete entry and replace with "Headquarters, Defense Logistics Agency (DLA), Public Affairs Office, 8725 John J. Kingman Road, Stop 2533, Fort Belvoir, VA 22060–6221, and the Public Affairs Offices of the DLA Primary Level Field Activities. Official mailing addresses are published as an appendix to DLA's compilation of systems of records notices."

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Delete entry and replace with "Selected civilian and military personnel currently assigned to DLA and former DLA Directors."

* * * * *

SYSTEM MANAGER(S) AND ADDRESS:

Delete entry and replace with "Director, DLA Public Affairs Office, Headquarters, Defense Logistics Agency, 8725 John J. Kingman Road, Stop 2533, Fort Belvoir, VA 22060–6221, and the Heads of the Public Affairs Offices within each DLA Primary Level Field Activity. Official mailing addresses are published as an appendix to DLA's compilation of systems of records notices."

NOTIFICATION PROCEDURE:

Delete entry and replace with "Individuals seeking to determine whether information about themselves is contained in this system of records should address written inquiries to the DLA FOIA/Privacy Act Office, Headquarters, Defense Logistics Agency, *Attn:* DGA, 8725 John J. Kingman Road, Suite 1644, Fort Belvoir, VA 22060–6221.

Written inquiry must contain the subject individual's full name, current address, and telephone number."

RECORD ACCESS PROCEDURES:

Delete entry and replace with "Individuals seeking access to information about themselves contained in this system of records should address written inquiries to the DLA FOIA/ Privacy Act Office, Headquarters, Defense Logistics Agency, *Attn:* DGA, 8725 John J. Kingman Road, Suite 1644, Fort Belvoir, VA 22060–6221.

Written inquiry must contain the subject individual's full name, current address, and telephone number."

CONTESTING RECORD PROCEDURES:

Delete entry and replace with "The DLA rules for accessing records, for contesting contents, and appealing initial agency determinations are contained in 32 CFR part 323, or may be obtained from the DLA FOIA/Privacy Act Office, Headquarters, Defense Logistics Agency, *Attn:* DGA, 8725 John J. Kingman Road, Suite 1644, Fort Belvoir, VA 22060–6221."

* * * * *

S190.24

SYSTEM NAME:

Biography File.

SYSTEM LOCATION:

Headquarters, Defense Logistics Agency (DLA), Public Affairs Office, 8725 John J. Kingman Road, Stop 2533, Fort Belvoir, VA 22060–6221, and the Public Affairs Offices of the DLA Primary Level Field Activities. Official mailing addresses are published as an appendix to DLA's compilation of systems of records notices.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Selected civilian and military personnel currently assigned to DLA and former DLA Directors.

CATEGORIES OF RECORDS IN THE SYSTEM:

Biographical information provided by the individual.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

5 U.S.C. 301, Departmental Regulations and 10 U.S.C. 133, Under Secretary of Defense for Acquisition, Technology, and Logistics.

PURPOSE(S):

Information is maintained as background material for news and feature articles covering activities, assignments, retirements, and

reassignments of key individuals; for use in introductions; in the preparation of speeches for delivery at change of command, retirement, award ceremonies, and community relations events; for congressional functions; and for site visits.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

In addition to those disclosures generally permitted under 5 U.S.C. 552a(b) of the Privacy Act of 1974, these records contained therein may specifically be disclosed outside the DoD as a routine use pursuant to 5 U.S.C. 552a(b)(3) as follows:

To Federal, state, and local agency officials and/or private sector entities for use as background information for introductions, briefings, Congressional testimony, and/or meetings.

The DoD "Blanket Routine Uses" apply to this system of records.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Records are maintained on electronic storage media.

RETRIEVABILITY:

Records are retrieved alphabetically by last name of individual.

SAFEGUARDS:

No specific safeguards required. Biographies are submitted by the subject individual with the understanding that they will be posted to a public facing DLA webpage.

RETENTION AND DISPOSAL:

Files are destroyed 2 years after retirement, transfer, separation, or death of the person concerned.

SYSTEM MANAGER(S) AND ADDRESS:

Director, DLA Public Affairs Office, Headquarters, Defense Logistics Agency, 8725 John J. Kingman Road, Stop 2533, Fort Belvoir, VA 22060–6221, and the Heads of the Public Affairs Offices within each DLA Primary Level Field Activity. Official mailing addresses are published as an appendix to DLA's compilation of systems of records notices.

NOTIFICATION PROCEDURE:

Individuals seeking to determine whether information about themselves is contained in this system of records should address written inquiries to the DLA FOIA/Privacy Act Office, Headquarters, Defense Logistics Agency, *Attn:* DGA, 8725 John J. Kingman Road, Suite 1644, Fort Belvoir, VA 22060–6221.

Written inquiry must contain the subject individual's full name, current address, and telephone number.

RECORD ACCESS PROCEDURES:

Individuals seeking access to information about themselves contained in this system of records should address written inquiries to the DLA FOIA/Privacy Act Office, Headquarters, Defense Logistics Agency, *Attn:* DGA, 8725 John J. Kingman Road, Suite 1644, Fort Belvoir, VA 22060–6221.

Written inquiry must contain the subject individual's full name, current address, and telephone number.

CONTESTING RECORD PROCEDURES:

The DLA rules for accessing records, for contesting contents, and appealing initial agency determinations are contained in 32 CFR part 323, or may be obtained from the DLA FOIA/Privacy Act Office, Headquarters, Defense Logistics Agency, *Attn:* DGA, 8725 John J. Kingman Road, Suite 1644, Fort Belvoir, VA 22060–6221.

RECORD SOURCE CATEGORIES:

The record subject and record subject's employing agency or organization.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

[FR Doc. 2011–8639 Filed 4–11–11; 8:45 am]

BILLING CODE 5001–06–P

DEPARTMENT OF DEFENSE

Office of the Secretary

Renewal of Department of Defense Federal Advisory Committees

AGENCY: DoD.

ACTION: Renewal of Federal Advisory Committee.

SUMMARY: Under the provisions of 10 U.S.C. 175 and 10301, the Federal Advisory Committee Act of 1972, (5 U.S.C. Appendix), the Government in the Sunshine Act of 1976 (5 U.S.C. 552b), and 41 CFR 102–3.50, the Department of Defense gives notice that it is renewing the charter for the Reserve Forces Policy Board (hereafter referred to as the "Board").

The Board is a non-discretionary federal advisory committee that shall provide the Secretary of Defense, through the Under Secretary of Defense (Personnel and Readiness) and the Assistant Secretary of Defense (Reserve Affairs), independent advice and recommendations on matters relating to the Reserve Components. The Board shall act on those matters referred to it by the Chairman and, in addition, on any matter raised by a member of the Board.

The Under Secretary of Defense (Personnel and Readiness) may act upon the Board's advice and recommendations.

The Board, pursuant to 10 U.S.C. 10301(a), shall be composed of:

a. A civilian chairman appointed by the Secretary of Defense;

b. The Assistant Secretary of the Army for Manpower and Reserve Affairs, the Assistant Secretary of the Navy for Manpower and Reserve Affairs, and the Assistant Secretary of the Air Force for Manpower and Reserve Affairs;

c. An officer of the Regular Army designated by the Secretary of the Army;

d. An officer of the Regular Navy and an officer of the Regular Marine Corps each designated by the Secretary of the Navy;

e. An officer of the Regular Air Force designated by the Secretary of the Air Force;

f. Four reserve officers designated by the Secretary of Defense upon the recommendation of the Secretary of the Army, two of whom must be members of the Army National Guard of the United States, and two of whom must be members of the Army Reserve;

g. Four reserve officers designated by the Secretary of Defense upon the recommendation of the Secretary of the Navy, two of whom must be members of the Navy Reserve, and two of whom must be members of the Marine Corps Reserve;

h. Four reserve officers designated by the Secretary of Defense upon the recommendation of the Secretary of the Air Force, two of whom must be members of the Air National Guard of the United States, and two of whom must be members of the Air Force Reserve;

i. A reserve officer of the Army, Navy, Air Force, or Marine Corps who is a general officer or flag officer designated by the Chairman of the Board with the approval of the Secretary of Defense, and who serves without vote as military adviser to the Chairman and as executive officer of the Board; and

j. An officer of the Regular Army, Regular Navy, Regular Air Force, or Regular Marine Corps serving in a position on the Joint Staff who is designated by the Chairman of the Joint Chiefs of Staff.

In addition to the aforementioned Board members, the Secretary of Homeland Security, whenever the U.S. Coast Guard is not operating as a service in the U.S. Navy, may designate two officers of the U.S. Coast Guard, Regular

or Reserve, to serve as voting members of the Board.

Board members appointed by the Secretary of Defense, who are not full-time or permanent part-time federal employees, shall be appointed as experts and consultants under the authority of 5 U.S.C. 3109 and shall serve as special government employees. The Secretary of Defense shall renew their appointments on an annual basis.

With the exception of travel and per diem for official travel, Board members shall serve without compensation.

The Assistant Secretaries of the Military Departments listed above are ex officio members and serve based upon their positions in the Department of Defense.

The regular government employees listed in subparagraphs f, g, h, and i are designated or appointed by the Secretary of Defense and shall be renewed on an annual basis.

With DoD approval, the Board is authorized to establish subcommittees, as necessary and consistent with its mission. These subcommittees shall operate under the provisions of the Federal Advisory Committee Act of 1972, the Government in the Sunshine Act of 1976 (5 U.S.C. 552b), and other governing Federal statutes and regulations.

Such subcommittees shall not work independently of the chartered Board, and shall report all their recommendations and advice to the Board for full deliberation and discussion. Subcommittees have no authority to make decisions on behalf of the chartered Board; nor can they report directly to the Department of Defense or any Federal officers or employees who are not Board members.

Subcommittee members, who are not Board members, shall be appointed in the same manner as the Board members. Such individuals, if not full-time or part-time government employees, shall be appointed to serve as experts and consultants under the authority of 5 U.S.C. 3109, and serve as special government employees, whose appointments must be renewed on an annual basis. With the exception of travel, subcommittee members shall serve without compensation.

SUPPLEMENTARY INFORMATION: The Board pursuant to section 596(c)(2) of Public Law 110–417, shall meet at the call of the Board's Designated Federal Officer, in consultation with the Board's Chairperson and the estimated number of Board meetings is four per year.

The Designated Federal Officer, pursuant to DoD policy, shall be a full-time or permanent part-time DoD employee, and shall be appointed in accordance with governing DoD policies and procedures. In addition, the Designated Federal Officer is required to be in attendance at all Board and subcommittee meetings for the entire duration of each and every meeting; however, in the absence of the Designated Federal Officer, the Alternate Designated Federal Officer shall attend the entire duration of the Board or subcommittee meeting.

Pursuant to 41 CFR 102–3.105(j) and 102–3.140, the public or interested organizations may submit written statements to the Reserve Forces Policy Board's membership about the Board's mission and functions. Written statements may be submitted at any time or in response to the stated agenda of planned meeting of Reserve Forces Policy Board.

All written statements shall be submitted to the Designated Federal Officer for the Reserve Forces Policy Board, and this individual will ensure that the written statements are provided to the membership for their consideration. Contact information for the Reserve Forces Policy Board Designated Federal Officer can be obtained from the GSA's FACA Database—*https://www.fido.gov/facadatabase/public.asp.*

The Designated Federal Officer, pursuant to 41 CFR 102–3.150, will announce planned meetings of the Reserve Forces Policy Board. The Designated Federal Officer, at that time, may provide additional guidance on the submission of written statements that are in response to the stated agenda for the planned meeting in question.

FOR FURTHER INFORMATION CONTACT: Contact Jim Freeman, Deputy Advisory Committee Management Officer for the Department of Defense, 703–601–6128.

Dated: April 7, 2011.

Morgan F. Park,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 2011–8637 Filed 4–11–11; 8:45 am]

BILLING CODE 5001–06–P

DEPARTMENT OF DEFENSE

Department of the Air Force

[Docket ID USAF–2011–0013]

Privacy Act of 1974; System of Records

AGENCY: Department of the Air Force.

ACTION: Notice to Alter a System of Records.

SUMMARY: The Department of the Air Force proposes to alter a system of records in its inventory of record systems subject to the Privacy Act of 1974 (5 U.S.C. 552a), as amended.

DATES: This proposed action will be effective without further notice on May 12, 2011 unless comments are received which result in a contrary determination.

ADDRESSES: You may submit comments, identified by dock number and/RIN number and title, by any of the following methods:

- *Federal Rulemaking Portal: http://www.regulations.gov.* Follow the instructions for submitting comments.
- *Mail:* Federal Docket Management System Office, 1160 Defense Pentagon, OSD Mailroom 3C843, Washington, DC 20301–1160.

Instructions: All submissions received must include the agency name and docket number or Regulatory Information Number (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: Mr. Charles J. Shedrick, 703–696–6488, or Department of the Air Force Privacy Office, Air Force Privacy Act Office, Office of Warfighting Integration and Chief Information officer, *Attn:* SAF/CIO A6, 1800 Air Force Pentagon, Washington, DC 20330–1800.

SUPPLEMENTARY INFORMATION: The Department of the Air Force's notices for systems of records subject to the Privacy Act of 1974 (5 U.S.C. 552a), as amended, have been published in the **Federal Register** and are available from the **FOR FURTHER INFORMATION CONTACT** address above.

The proposed systems reports, as required by 5 U.S.C. 552a(r) of the Privacy Act, were submitted on April 5, 2011 to the House Committee on Oversight and Government Reform, the Senate Committee on Homeland Security and Governmental Affairs, and the Office of Management and Budget (OMB) pursuant to paragraph 4c of Appendix I to OMB Circular No. A–130, "Federal Agency Responsibilities for Maintaining Records About Individuals," dated February 8, 1996, (February 20, 1996, 61 FR 6427).

Dated: April 5, 2011.

Morgan F. Park,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

F036 AFPC J

SYSTEM NAME:

Promotion Documents/Records Tracking (PRODART) and Airman Promotion Historical Records (APHR) System (June 11, 1997, 62 FR 31793).

CHANGES:

* * * * *

SYSTEM NAME:

Delete entry and replace with "Promotion Documents and Records Tracking System (PRODARTS)."

SYSTEM LOCATION:

Delete entry and replace with "Board Support Branch, Selection Board Secretariat, Headquarters Air Force Personnel Center, 1960 1st Street West, Randolph Air Force Base, TX 78150–0000."

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Delete entry and replace with "Active duty officers in grades from Lieutenant (O1) through Lieutenant Colonel (O5) and active duty enlisted personnel in grades Master Sergeant (E7) through Senior Master Sergeant (E8)."

CATEGORIES OF RECORDS IN THE SYSTEM:

Delete entry and replace with "The PRODARTS is made up of six files: active duty enlisted file, active duty officer file, document/record required, document/record receipt file, selection board eligibility file, and derogatory information file. These files contain Enlisted/Officer Performance Reports, training reports, decorations, promotion/retention recommendation forms, individual's name, Social Security Number (SSN), grade data, service data, and selection board eligibility data."

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Delete entry and replace with "10 U.S.C. 8013, Secretary of the Air Force; Air Force Instruction 36–2406, Officer and Enlisted Evaluation System; Air Force Instruction 36–2502, Airman Promotion/Demotion Programs and E.O. 9397 (SSN), as amended."

PURPOSE:

Delete entry and replace with "The PRODARTS system is used to identify documents (Enlisted/Officer Performance Reports, training teports, decorations, promotion/retention recommendation forms) missing from the United States Air Force Selection Records Group and to account for documents received."

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

Delete and replace with "In addition to those disclosures generally permitted under 5 U.S.C. 552a(b) of the Privacy Act of 1974, these records contained therein may be specifically be disclosed outside the DoD as a routine use pursuant to 5 U.S.C. 552a(b) as follows:

The DoD 'Blanket Routine Uses' published at the beginning of the Air Force compilation of systems of records notices apply to this system."

STORAGE:

Delete entry and replace with "Electronic storage media."

RETRIEVABILITY:

Delete entry and replace with "Retrieved by name and/or Social Security Number (SSN)."

SAFEGUARDS:

Delete entry and replace with "Records are accessed by custodian of the record system and by person(s) responsible for servicing the record system in performance of their official duties that are properly screened and cleared for need-to-know. PRODARTS is protected by user identification and password or smart card technology protocols."

RETENTION AND DISPOSAL:

Delete entry and replace with "PRODARTS records are maintained until the member is selected for promotion to Chief Master Sergeant (E9) or Colonel (O6) or when the member is no longer on active duty. Electronic files are destroyed automatically upon obtaining E9 or O6."

SYSTEM MANAGER(S) AND ADDRESS:

Delete entry and replace with "Chief, Board Support Branch, Selection Board Secretariat, Headquarters Air Force Personnel Center, 1960 1st Street West, Randolph Air Force Base, Texas 78150–0000."

NOTIFICATION PROCEDURES:

Delete entry and replace with "Individuals seeking to determine whether information about themselves is contained in this system should address written inquiries to or visit the Chief, Board Support Branch, Selection Board Secretariat, Headquarters Air Force Personnel Center, 1960 1st Street West, Randolph Air Force Base, Texas 78150–0000.

For verification purposes, individual should provide their full name, Social Security Number (SSN), any details which may assist in locating records, and their signature.

In addition, the requester must provide a notarized statement or an unsworn declaration made in accordance with 28 U.S.C. 1746, in the following format:

If executed outside the United States: 'I declare (or certify, verify, or state) under penalty of perjury under the laws of the United State of America that the foregoing is true and correct. Executed on (date). (Signature)'.

If executed within the United States, its territories, possessions, or commonwealths: 'I declare (or certify, verify, or state) under penalty of perjury that the foregoing is true and correct. Executed on (date). (Signature)'."

RECORD ACCESS PROCEDURES:

Delete entry and replace with "Individuals seeking access to information about themselves contained in this system of records should address written inquiries to or visit the Chief, Board Support Branch, Selection Board Secretariat, Headquarters Air Force Personnel Center, 1960 1st Street West, Randolph Air Force Base, Texas 78150–0000.

For verification purposes, individual should provide their full name, Social Security Number (SSN), any details which may assist in locating records, and their signature.

In addition, the requester must provide a notarized statement or an unsworn declaration made in accordance with 28 U.S.C. 1746, in the following format:

If executed outside the United States: 'I declare (or certify, verify, or state) under penalty of perjury under the laws of the United State of America that the foregoing is true and correct. Executed on (date). (Signature)'.

If executed within the United States, its territories, possessions, or commonwealths: 'I declare (or certify, verify, or state) under penalty of perjury that the foregoing is true and correct. Executed on (date). (Signature)'."

CONTESTING RECORD PROCEDURES:

Delete entry and replace with "The Air Force rules for accessing records, and for contesting contents and appealing initial agency determinations are published in Air Force Instruction 33–332, Privacy Act Program; CFR part 806b; or may be obtained from the system manager."

RECORD SOURCE CATEGORIES:

Delete entry and replace with "PRODARTS data is extracted from the

Military Personnel Data System (MilPDS)."

* * * * *

F036 AFPC J

SYSTEM NAME:

Promotion Documents and Records Tracking System (PRODARTS).

SYSTEM LOCATION:

Board Support Branch, Selection Board Secretariat, Headquarters Air Force Personnel Center, 1960 1st Street West, Randolph Air Force Base, TX 78150–0000.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Active duty officers in grades from Lieutenant (O1) through Lieutenant Colonel (O5) and active duty enlisted personnel in grades Master Sergeant (E7) through Senior Master Sergeant (E8).

CATEGORIES OF RECORDS IN THE SYSTEM:

The PRODARTS is made up of six files: active duty enlisted file, active duty officer file, document/record required, document/record receipt file, selection board eligibility file, and derogatory information file. These files contained Enlisted/Officer Performance Reports, training reports, decorations, promotion/retention recommendation forms, individual's name, Social Security Number (SSN), grade data, service data, and selection board eligibility data.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

10 U.S.C. 8013, Secretary of the Air Force; Air Force Instruction 36–2406, Officer and Enlisted Evaluation System; Air Force Manual 36–2622, Base Level Military Personnel System; Air Force Instruction 36–2502, Airman Promotion/Demotion Programs and E.O. 9397 (SSN), as amended.

PURPOSE:

Records technicians use the PRODARTS system to identify documents (Enlisted/Officer Performance Reports, training reports, decorations, promotion/retention recommendation forms) missing from the United States Air Force Selection Records Group and to account for documents received.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

In addition to those disclosures generally permitted under 5 U.S.C. 552a(b) of the Privacy Act of 1974, these records contained therein may be specifically be disclosed outside the DoD as a routine use pursuant to 5 U.S.C. 552a(b) as follows:

The DoD 'Blanket Routine Uses' published at the beginning of the Air Force compilation of systems of records notices apply to this system.

STORAGE:

Electronic storage media.

RETRIEVABILITY:

Retrieved by name and/or Social Security Number (SSN).

SAFEGUARDS:

Records are accessed by custodian of the record system and by person(s) responsible for servicing the record system in performance of their official duties that are properly screened and cleared for need-to-know. PRODARTS is protected by user identification and password or smart card technology protocols.

RETENTION AND DISPOSAL:

PRODARTS records are maintained until the member is selected for promotion to Chief Master Sergeant (E9) or Colonel (O6) or when the member is no longer on active duty. Electronic files are destroyed automatically upon obtaining E9 or O6.

SYSTEM MANAGER(S) AND ADDRESS:

Chief, Board Support Branch, Selection Board Secretariat, Headquarters Air Force Personnel Center, 1960 1st Street West, Randolph Air Force Base, Texas 78150–0000.

NOTIFICATION PROCEDURES:

Individuals seeking to determine whether information about themselves is contained in this system should address written inquiries to or visit the Chief, Board Support Branch, Selection Board Secretariat, Headquarters Air Force Personnel Center, 1960 1st Street West, Randolph Air Force Base, Texas 78150–0000.

For verification purposes, individual should provide their full name, Social Security Number (SSN), any details which may assist in locating records, and their signature.

In addition, the requester must provide a notarized statement or an unsworn declaration made in accordance with 28 U.S.C. 1746, in the following format:

If executed outside the United States: 'I declare (or certify, verify, or state) under penalty of perjury under the laws of the United State of America that the foregoing is true and correct. Executed on (date). (Signature)'.

If executed within the United States, its territories, possessions, or commonwealths: 'I declare (or certify, verify, or state) under penalty of perjury that the foregoing is true and correct. Executed on (date). (Signature)'.

RECORD ACCESS PROCEDURES:

Individuals seeking access to information about themselves contained in this system of records should address written inquiries to or visit the Chief, Board Support Branch, Selection Board Secretariat, Headquarters Air Force Personnel Center, 1960 1st Street West, Randolph Air Force Base, Texas 78150–0000.

For verification purposes, individual should provide their full name, Social Security Number (SSN), any details which may assist in locating records, and their signature.

In addition, the requester must provide a notarized statement or an unsworn declaration made in accordance with 28 U.S.C. 1746, in the following format:

If executed outside the United States: 'I declare (or certify, verify, or state) under penalty of perjury under the laws of the United State of America that the foregoing is true and correct. Executed on (date). (Signature)'.

If executed within the United States, its territories, possessions, or commonwealths: 'I declare (or certify, verify, or state) under penalty of perjury that the foregoing is true and correct. Executed on (date). (Signature)'.

CONTESTING RECORD PROCEDURES:

The Air Force rules for accessing records, and for contesting contents and appealing initial agency determinations are published in Air Force Instruction 33–332, Privacy Act Program; CFR part 806b; or may be obtained from the system manager.

RECORD SOURCE CATEGORIES:

PRODARTS data is extracted from the Military Personnel Data System (MilPDS).

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

[FR Doc. 2011–8641 Filed 4–11–11; 8:45 am]

BILLING CODE 5001–09–P

DEPARTMENT OF DEFENSE

Department of the Navy

Notice of Availability of Government-Owned Inventions; Available for Licensing

AGENCY: Department of the Navy, DoD.

ACTION: Notice.

SUMMARY: The inventions listed below are assigned to the United States

Government as represented by the Secretary of the Navy and are available for domestic and foreign licensing by the Department of the Navy.

The following inventions are available for licensing: Navy Case No. 98,709: ATTITUDE ESTIMATION USING GROUND IMAGERY//Navy Case No. 98,801: APPARATUS AND METHOD FOR GRAZING ANGLE INDEPENDENT SIGNAL DETECTION//Navy Case No. 98,946: APPARATUS AND METHOD FOR COMPENSATING IMAGES FOR DIFFERENCES IN ASPECT//Navy Case No. 98,947: SYSTEM AND METHOD FOR SPATIALLY INVARIANT SIGNAL DETECTION//Navy Case No. 98,984: CORRELATION IMAGE DETECTOR// Navy Case No. 99,033: HOLOGRAPHIC MAP//Navy Case No. 99,067: HOLOGRAPHIC NAVIGATION//Navy Case No. 99,413: COHERENT IMAGE CORRELATION//Navy Case No. 100,287: FACEMASK DISPLAY//.

ADDRESSES: Requests for copies of the patents cited should be directed to Office of Counsel, Naval Surface Warfare Center Panama City Division, 110 Vernon Ave., Panama City, FL 32407–7001.

FOR FURTHER INFORMATION CONTACT: Mr. James Shepherd, Patent Counsel, Naval Surface Warfare Center Panama City Division, 110 Vernon Ave., Panama City, FL 32407–7001, telephone 850–234–4646.

Authority: 35 U.S.C. 207, 37 CFR part 404.

Dated: April 5, 2011.

D. J. Werner,

Lieutenant Commander, Office of the Judge Advocate General, U.S. Navy, Federal Register Liaison Officer.

[FR Doc. 2011–8665 Filed 4–11–11; 8:45 am]

BILLING CODE 3810–FF–P

DEPARTMENT OF DEFENSE

Department of the Navy

Meeting of the Chief of Naval Operations Executive Panel

AGENCY: Department of the Navy, DoD.

ACTION: Notice of Open Meeting.

SUMMARY: The Chief of Naval Operations (CNO) Executive Panel will deliberate on the findings and proposed recommendations of the Agile IT Subcommittee study. The meeting will consist of discussions of current and future Navy strategy and plans in support of the development, assessment, procurement and fielding of Information Technology (IT) capabilities for current and future operations.

DATES: The meeting will be held on April 26, 2011, from 1:30 p.m. to 3:30 p.m.

ADDRESSES: The meeting will be held in the Boardroom at CNA, 4825 Mark Center Drive, Alexandria, VA 22311–1846.

FOR FURTHER INFORMATION CONTACT: LCDR Don Rauch, CNO Executive Panel, 4825 Mark Center Drive, Alexandria, VA 22311–1846, 703–681–4941.

SUPPLEMENTARY INFORMATION: Individuals or interested groups may submit written statements for consideration by the CNO Executive Panel at any time or in response to the agenda of a scheduled meeting. All requests must be submitted to the Designated Federal Officer at the address detailed below.

If the written statement is in response to the agenda mentioned in this meeting notice then the statement, if it is to be considered by the Panel for this meeting, must be received at least five days prior to the meeting in question.

The Designated Federal Officer will review all timely submissions with the CNO Executive Panel Chairperson, and ensure they are provided to members of the CNO Executive Panel before the meeting that is the subject of this notice.

To contact the Designated Federal Officer, write to Executive Director, CNO Executive Panel (N00K), 4825 Mark Center Drive, 2nd Floor, Alexandria, VA 22311–1846.

Dated: April 5, 2011.

D. J. Werner,

Lieutenant Commander, Office of the Judge Advocate General, U.S. Navy, Federal Register Liaison Officer.

[FR Doc. 2011–8660 Filed 4–11–11; 8:45 am]

BILLING CODE 3810–FF–P

DEPARTMENT OF EDUCATION

Notice of Submission for OMB Review

AGENCY: Department of Education.

ACTION: Comment request.

SUMMARY: The Director, Information Collection Clearance Division, Information Management and Privacy Services, Office of Management, invites comments on the submission for OMB review as required by the Paperwork Reduction Act of 1995 (Pub. L. 104–13).

DATES: Interested persons are invited to submit comments on or before May 12, 2011.

ADDRESSES: Written comments should be addressed to the Office of Information and Regulatory Affairs, *Attention:* Education Desk Officer, Office of Management and Budget, 725 17th Street, NW., Room 10222, New Executive Office Building, Washington, DC 20503, be faxed to (202) 395–5806 or e-mailed to *oira_submission@omb.eop.gov* with a cc: to *ICDocketMgr@ed.gov*. Please note that written comments received in response to this notice will be considered public records.

SUPPLEMENTARY INFORMATION: Section 3506 of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35) requires that the Office of Management and Budget (OMB) provide interested Federal agencies and the public an early opportunity to comment on information collection requests. The OMB is particularly interested in comments which: (1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (2) Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (3) Enhance the quality, utility, and clarity of the information to be collected; and (4) Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology.

Dated: April 7, 2011.

Darrin A. King,

Director, Information Collection Clearance Division, Information Management and Privacy Services, Office of Management.

Office of Planning, Evaluation and Policy Development

Type of Review: Pending.

Title of Collection: Language Instruction Educational Programs (LIEPs): Lessons from the Research and Profiles of Promising Programs.

OMB Control Number: 1875–NEW.

Agency Form Number(s): N/A.

Frequency of Responses: On Occasion.

Affected Public: Individuals or households; State, Local, or Tribal Government, State Educational Agencies or Local Educational Agencies.

Total Estimated Number of Annual Responses: 165.

Total Estimated Annual Burden Hours: 165.

Abstract: Language Instruction Educational Program (LIEPs) refers to a systematic approach to the provision of services that support the development of English language proficiency and

academic achievement among English learners. This exploratory study will describe LIEP characteristics that may influence the quality of programs delivered to English Learners (EL) in grades K through 12. The major purpose of this project is to gather data from the field that yields an initial portrait of well-designed and implemented LIEPs, and to provide practical guidance to local educators on selecting, designing, implementing and evaluating LIEPs. This is important because before this, there have been no systematic attempts to determine the characteristics of LIEPs for ELs in kindergarten through grade 12 and to describe contextual factors that contribute to their effectiveness.

Copies of the information collection submission for OMB review may be accessed from the RegInfo.gov Web site at *http://www.reginfo.gov/public/do/PRAMain* or from the Department's Web site at *http://edicsweb.ed.gov*, by selecting the "Browse Pending Collections" link and by clicking on link number 4488. When you access the information collection, click on "Download Attachments " to view. Written requests for information should be addressed to U.S. Department of Education, 400 Maryland Avenue, SW LBJ, Washington, DC 20202–4537. Requests may also be electronically mailed to the Internet address *ICDocketMgr@ed.gov* or faxed to 202–401–0920. Please specify the complete title of the information collection and OMB Control Number when making your request.

Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339.

[FR Doc. 2011–8721 Filed 4–11–11; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF ENERGY

Proposed Agency Information Collection

AGENCY: U.S. Department of Energy.

ACTION: Notice and Request for Comments.

SUMMARY: The Department of Energy (DOE) invites public comment on a proposed collection of information that DOE is developing for submission to the Office of Management and Budget (OMB) pursuant to the Paperwork Reduction Act of 1995. Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (c) ways to enhance the quality, utility, and clarity of the information to be collected; 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.

DATES: Comments regarding this proposed information collection must be received on or before June 13, 2011. If you anticipate difficulty in submitting comments within that period, contact the person listed below as soon as possible.

ADDRESSES: Written comments may be sent to DOE Desk Officer, Office of Information and Regulatory Affairs, Office of Management and Budget. New Executive Office Building, Room 10102, 725 17th Street, NW., Washington, DC 20503; and Keith Dennis, EE–2K, U.S. Department of Energy, 1000 Independence Ave., SW., Washington, DC 20585, *Fax #:* (202) 287–7145, *Keith.Dennis@ee.doe.gov*.

SUPPLEMENTARY INFORMATION: This information collection request contains: (1) *OMB No.* 1910–5156; (2) *Information Collection Request Title:* Utility Billing; (3) *Type of Request:* Extension of Emergency ICR; (4) *Purpose:* The Authorization form will allow an evaluator specified by DOE to obtain grantee project site's energy usage and cost (electricity and natural gas). The purpose of the information collection is to estimate the direct impacts on energy and cost savings of energy efficiency programs; (5) *Annual Estimated Number of Respondents:* 60,629; (6) *Annual Estimated Number of Total Responses:* 60,629; (7) *Annual Estimated Number of Burden Hours:* 29,998; (8) *Annual Estimated Reporting and Recordkeeping Cost Burden:* $41,085.

Statutory Authority: Title IV of the Energy Conservation and Production Act of 1976 (42 U.S.C. 6861 *et seq.*), as amended, authorizes the DOE to administer the Weatherization Assistance Program (WAP). Title III of the Energy Policy and Conservation Act of 1975, (42 U.S.C. 6321 *et seq.*) as amended, authorizes DOE to administer the State Energy Program (SEP). Title V, Subtitle E of the Energy Independence and Security Act of 2007 (42 U.S.C. 17151 *et seq.*) authorizes DOE to administer the Energy Efficiency and Conservation Block Grant Program (EECBG).

Issued in Washington, DC, March 31, 2011.

Henry Kelly,

Acting Assistant Secretary, Energy Efficiency and Renewable Energy.

[FR Doc. 2011–8707 Filed 4–11–11; 8:45 am]

BILLING CODE 6450–01–P

ENVIRONMENTAL PROTECTION AGENCY

[EPA–HQ–OAR–2010–0108; FRL–9292–8]

Release of Draft Integrated Review Plan for the National Ambient Air Quality Standards for Lead

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of availability.

SUMMARY: On or about March 31, 2011, the EPA is making available for public review the draft *Integrated Review Plan for the National Ambient Air Quality Standards for Lead* (draft IRP). This document contains the plans for the review of the air quality criteria and national ambient air quality standards (NAAQS) for lead (Pb). The Pb NAAQS provide for the protection of public health and the environment from Pb in ambient air.

DATES: Comments should be submitted by April 28, 2011.

ADDRESSES: This document will be available primarily via the Internet at the following Web site: *http://www.epa.gov/ttn/naaqs/standards/pb/s_pb_index.html*. Submit your comments, identified by Docket ID No. EPA–HQ–OAR–2010–0108, by one of the following methods:

- *http://www.regulations.gov*: Follow the on-line instructions for submitting comments.
- *E-mail: d-and-r-Docket@epa.gov*.
- *Fax:* 202–566–9744.
- *Mail:* EPA–HQ–OAR–2010–0108, Environmental Protection Agency, Mail code 6102T, 1200 Pennsylvania Ave., NW., Washington, DC 20460. Please include a total of two copies.
- *Hand Delivery:* Environmental Protection Agency, EPA West, 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–OAR–2010–0108. EPA's policy is that all comments received will be included in the public docket without change and may be made available online at *http://www.regulations.gov*, including any personal information provided, unless

the comment includes information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Do not submit information that you consider to be CBI or otherwise protected through *http://www.regulations.gov* (or e-mail). The *http://www.regulations.gov* Web site is an "anonymous access" system, which means EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an e-mail comment directly to EPA without going through *http://www.regulations.gov*, your e-mail address will be automatically captured and included as part of the comment that is placed in the public docket and made available on the Internet. If you submit an electronic comment, EPA recommends that you include your name and other contact information in the body of your comment and with any disk or CD–ROM you submit. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses. For additional information about EPA's public docket, visit the EPA Docket Center homepage at *http://www.epa.gov/epahome/dockets.htm.*

Docket: All documents in the docket are listed in the *http://www.regulations.gov* index. Although listed in the index, some information is not publicly available, e.g., CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, will be publicly available only in hard copy. Publicly available docket materials are available either electronically in *http://www.regulations.gov* or in hard copy at the Air and Radiation Docket and Information Center, EPA/DC, EPA West, Room 3334, 1301 Constitution Ave., NW., Washington, DC. The Public Reading Room is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Public Reading Room is (202) 566–1744, and the telephone number for the Air and Radiation Docket and Information Center is (202) 566–1742.

FOR FURTHER INFORMATION CONTACT: Dr. Deirdre Murphy, Office of Air Quality Planning and Standards (Mail code C504–06), U.S. Environmental Protection Agency, Research Triangle Park, NC 27711; *telephone number:* 919–541–0729; *fax number:* 919–541–0237; *e-mail address:* *murphy.deirdre@epa.gov.*

SUPPLEMENTARY INFORMATION:

I. General Information

A. What should I consider as I prepare my comments for EPA?

1. *Submitting CBI.* Do not submit this information to EPA through *http://www.regulations.gov* or e-mail. Clearly mark the part or all of the information that you claim to be CBI. For CBI information in a disk or CD ROM that you mail to EPA, mark the outside of the disk or CD ROM as CBI and then identify electronically within the disk or CD ROM, the specific information that is claimed as CBI. In addition to one complete version of the comment that includes information claimed as CBI, a copy of the comment that does not contain the information claimed as CBI must be submitted for inclusion in the public docket. Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2.

2. *Tips for Preparing Your Comments.* When submitting comments, remember to:

- Identify the rulemaking by docket number and other identifying information (subject heading, Federal Register date and page number).
- Follow directions—The agency may ask you to respond to specific questions or organize comments by referencing a Code of Federal Regulations (CFR) part or section number.
- Explain why you agree or disagree; suggest alternatives and substitute language for your requested changes.
- Describe any assumptions and provide any technical information and/or data that you used.
- If you estimate potential costs or burdens, explain how you arrived at your estimate in sufficient detail to allow for it to be reproduced.
- Provide specific examples to illustrate your concerns, and suggest alternatives.
- Explain your views as clearly as possible, avoiding the use of profanity or personal threats.
- Make sure to submit your comments by the comment period deadline identified.

II. Information Specific to This Document

Two sections of the Clean Air Act (CAA) govern the establishment and revision of the NAAQS. Section 108 (42 U.S.C. section 7408) directs the Administrator to identify and list certain air pollutants and then to issue air quality criteria for those pollutants. The Administrator is to list those air pollutants that in her "judgment, cause or contribute to air pollution which may reasonably be anticipated to endanger public health or welfare;" "the presence of which in the ambient air results from numerous or diverse mobile or stationary sources;" and "for which * * * [the Administrator] plans to issue air quality criteria * * *" Air quality criteria are intended to "accurately reflect the latest scientific knowledge useful in indicating the kind and extent of all identifiable effects on public health or welfare which may be expected from the presence of [a] pollutant in the ambient air * * *" 42 U.S.C. 7408(b). Under section 109 (42 U.S.C. 7409), EPA establishes primary (health-based) and secondary (welfare-based) NAAQS for pollutants for which air quality criteria are issued. Section 109(d) requires periodic review and, if appropriate, revision of existing air quality criteria. The revised air quality criteria reflect advances in scientific knowledge on the effects of the pollutant on public health or welfare. The EPA is also required to periodically review and revise the NAAQS, if appropriate, based on the revised criteria. Section 109(d)(2) requires that an independent scientific review committee "shall complete a review of the criteria * * * and the national primary and secondary ambient air quality standards * * * and shall recommend to the Administrator any new * * * standards and revisions of existing criteria and standards as may be appropriate * * *." Since the early 1980's, this independent review function has been performed by the Clean Air Scientific Advisory Committee (CASAC).

Presently, EPA is reviewing the NAAQS for Pb.[1] The draft document announced today is being developed as part of the planning phase for the review. This phase began with a science policy workshop to identify issues and questions to frame the review. Drawing from the workshop discussions, a draft integrated review plan (IRP) has been prepared jointly by EPA's National Center for Environmental Assessment, within the Office of Research and Development, and EPA's Office of Air Quality Planning and Standards, within the Office of Air and Radiation. This document will be available on the EPA's Technology Transfer Network (TTN) Web site at *http://www.epa.gov/ttn/naaqs/standards/pb/s_pb_index.html.* The document will be accessible in the

[1] The EPA's call for information for this review was issued on February 26, 2010 (75 FR 8934).

"Documents from Current Review" section under "Planning Documents."

The draft IRP is being made available for consultation with CASAC and for public comment. Comments should be submitted to the docket, as described above, by April 28, 2011. The CASAC consultation on this planning document is scheduled for May 5, 2011. A separate **Federal Register** notice will provide details about this meeting and the process for participation. The final IRP will be prepared in consideration of CASAC and public comments. The draft document announced today presents the current plan and specifies the schedule for the entire review, the process for conducting the review, and the key policy-relevant science issues that will guide the review. This draft document does not represent and should not be construed to represent any final EPA policy, viewpoint, or determination.

. Dated: April 6, 2011.

Mary Henigin,

Acting Director, Office of Air Quality Planning and Standards.

[FR Doc. 2011–8706 Filed 4–11–11; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–9293–1; Docket ID No. EPA–HQ–ORD–2010–0540]

Draft Toxicological Review of Hexavalent Chromium: In Support of Summary Information on the Integrated Risk Information System (IRIS)

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of Peer Review Workshop.

SUMMARY: EPA is announcing that Eastern Research Group, Inc., an EPA contractor for external scientific peer review, will convene an independent panel of experts and organize and conduct an external peer review workshop to review the draft human health assessment titled, "Toxicological Review of Hexavalent Chromium: In Support of Summary Information on the Integrated Risk Information System (IRIS)" (EPA/635/R–10/004C). The draft assessment was prepared by the National Center for Environmental Assessment (NCEA) within the EPA Office of Research and Development.

EPA is releasing this draft assessment solely for the purpose of pre-dissemination peer review under applicable information quality guidelines. This draft assessment has not been formally disseminated by EPA. It does not represent and should not be construed to represent any Agency policy or determination.

Eastern Research Group, Inc. invites the public to register to attend this workshop as observers. In addition, Eastern Research Group, Inc. invites the public to give brief oral comments and/or provide written comments at the workshop regarding the draft assessment under review. Space is limited, and reservations will be accepted on a first-come, first-served basis. In preparing a final report, EPA will consider the Eastern Research Group, Inc., report of the comments and recommendations from the external peer review workshop and any written public comments that EPA receives in accordance with this notice.

DATES: The peer review panel workshop on the draft assessment for Hexavalent Chromium will be held on May 12, 2011, beginning at 8:30 a.m. and end at 5 p.m. Eastern Time.

ADDRESSES: The draft "Toxicological Review of Hexavalent Chromium: In Support of Summary Information on the Integrated Risk Information System (IRIS)" is available primarily via the Internet on the NCEA home page under the Recent Additions and Publications menus at *http://www.epa.gov/ncea*. A limited number of paper copies are available from the Information Management Team (Address: Information Management Team, National Center for Environmental Assessment (*Mail Code:* 8601P), U.S. Environmental Protection Agency, 1200 Pennsylvania Avenue, NW., Washington, DC 20460; *telephone:* 703–347–8561; *facsimile:* 703–347–8691). If you request a paper copy, please provide your name, mailing address, and the draft assessment title.

The peer review workshop on the draft Hexavalent Chromium assessment will be held at Hilton Crystal City Hotel; 2399 Jefferson Davis Highway; Arlington, VA 22202. To attend the workshop, register no later than May 5, 2011, by calling Eastern Research Group, Inc. at 781–674–7374 or toll free at 800–803–2833 (ask for the Hexavalent Chromium peer review coordinator, Laurie Waite); sending a facsimile to 781–674–2906 (reference the "Hexavalent Chromium Peer Review Workshop" and include your name, title, affiliation, full address and contact information), or sending an e-mail to *meetings@erg.com* (reference the "Hexavalent Chromium Peer Review Workshop" and include your name, title, affiliation, full address and contact information). You can also register via the Internet at *https://www2.ergweb.com/projects/conferences/peerreview/register-hexavalent.htm*. There will be a limited time at the peer review workshop for comments from the public. Please inform Eastern Research Group, Inc. if you wish to make comments during the workshop.

Information on Services for Individuals with Disabilities: EPA welcomes public attendance at the "Hexavalent Chromium Peer Review Workshop" and will make every effort to accommodate persons with disabilities. For information on access or services for individuals with disabilities, contact ERG, 110 Hartwell Avenue, Lexington, MA 02421–3136 by calling 781–674–7374 or toll free at 800–803–2833 (ask for the Hexavalent Chromium peer review coordinator, Laurie Waite); sending a facsimile to 781–674–2906 (reference the "Hexavalent Chromium Peer Review Workshop" and include your name and contact information), or sending an e-mail to meetings@erg.com (reference the "Hexavalent Chromium Peer Review Workshop" and include your name and contact information).

Additional Information: For information on the draft assessment, please contact Ted Berner, National Center for Environmental Assessment (8601P), U.S. Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460; *telephone:* 703–347–8583; *facsimile:* 703–347–8699; or *e-mail:* [*FRN_Questions@epa.gov*].

SUPPLEMENTARY INFORMATION:

I. Information About IRIS

EPA's IRIS is a human health assessment program that evaluates quantitative and qualitative risk information on effects that may result from exposure to chemical substances found in the environment. Through the IRIS Program, EPA provides the highest quality science-based human health assessments to support the Agency's regulatory activities. The IRIS database contains information for more than 540 chemical substances that can be used to support the first two steps (hazard identification and dose-response evaluation) of the risk assessment process. When supported by available data, IRIS provides oral reference doses (RfDs) and inhalation reference concentrations (RfCs) for chronic noncancer health effects and cancer assessments. Combined with specific exposure information, government and private entities use IRIS to help characterize public health risks of chemical substances in a site-specific situation and thereby support risk

management decisions designed to protect public health.

Dated: March 31, 2011.

Rebecca Clark,

Acting Director, National Center for Environmental Assessment.

[FR Doc. 2011–8708 Filed 4–11–11; 8:45 am]

BILLING CODE 6560–50–P

FARM CREDIT ADMINISTRATION

Farm Credit Administration Board; Sunshine Act; Regular Meeting

AGENCY: Farm Credit Administration.

SUMMARY: Notice is hereby given, pursuant to the Government in the Sunshine Act (5 U.S.C. 552b(e)(3)), of the regular meeting of the Farm Credit Administration Board (Board).

DATE AND TIME: The regular meeting of the Board will be held at the offices of the Farm Credit Administration in McLean, Virginia, on April 14, 2011, from 3 p.m. until such time as the Board concludes its business.

FOR FURTHER INFORMATION CONTACT: Dale L. Aultman, Secretary to the Farm Credit Administration Board, (703) 883–4009, TTY (703) 883–4056.

ADDRESSES: Farm Credit Administration, 1501 Farm Credit Drive, McLean, Virginia 22102–5090.

SUPPLEMENTARY INFORMATION: Parts of this meeting of the Board will be open to the public (limited space available), and parts will be closed to the public. In order to increase the accessibility to Board meetings, persons requiring assistance should make arrangements in advance. The matters to be considered at the meeting are:

Open Session

A. Approval of Minutes

- March 10, 2011

B. New Business

- Operating and Strategic Business Planning—Proposed Rule
- Farmer Mac Risk-Based Capital Stress Test Version 4.0.—Final Rule

C. Report

- Office of Examination Quarterly Report

Closed Session *

Reports

- Update on Office of Examination Oversight Activities

* Session Closed—Exempt pursuant to 5 U.S.C. 552b(c)(8) and (9).

Dated: April 7, 2011.

Dale L. Aultman,

Secretary, Farm Credit Administration Board.

[FR Doc. 2011–8783 Filed 4–8–11; 11:15 am]

BILLING CODE 6705–01–P

FEDERAL DEPOSIT INSURANCE CORPORATION

FDIC Advisory Committee on Community Banking; Notice of Meeting

AGENCY: Federal Deposit Insurance Corporation (FDIC).

ACTION: Notice of open meeting.

SUMMARY: In accordance with the Federal Advisory Committee Act, notice is hereby given of a meeting of the FDIC Advisory Committee on Community Banking, which will be held in Washington, DC. The Advisory Committee will provide advice and recommendations on a broad range of policy issues that have particular impact on small community banks throughout the United States and the local communities they serve, with a focus on rural areas.

DATES: Wednesday, May 11, 2011, from 8:30 a.m. to 3:30 p.m.

ADDRESSES: The meeting will be held in the FDIC Board Room on the sixth floor of the FDIC Building located at 550 17th Street, NW., Washington, DC.

FOR FURTHER INFORMATION CONTACT: Requests for further information concerning the meeting may be directed to Mr. Robert E. Feldman, Committee Management Officer of the FDIC, at (202) 898–7043.

SUPPLEMENTARY INFORMATION:

Agenda: The agenda will include a discussion of current issues affecting community banking. The agenda is subject to change. Any changes to the agenda will be announced at the beginning of the meeting.

Type of Meeting: The meeting will be open to the public, limited only by the space available on a first-come, first-served basis. For security reasons, members of the public will be subject to security screening procedures and must present a valid photo identification to enter the building. The FDIC will provide attendees with auxiliary aids (*e.g.*, sign language interpretation) required for this meeting. Those attendees needing such assistance should call (703) 562–6067 (Voice or TTY) at least two days before the meeting to make necessary arrangements. Written statements may be filed with the committee before or after the meeting. This Community Banking Advisory Committee meeting will be Webcast live via the Internet at *http://www.vodium.com/goto/fdic/communitybanking.asp*. This service is free and available to anyone with the following systems requirements: *http://www.vodium.com/home/sysreq.html*. Adobe Flash Player is required to view these presentations. The latest version of Adobe Flash Player can be downloaded at *http://www.adobe.com/shockwave/download/download.cgi?P1_Prod_Version=ShockwaveFlash*. Installation questions or troubleshooting help can be found at the same link. For optimal viewing, a high speed Internet connection is recommended. The Community Banking meeting videos are made available on-demand approximately two weeks after the event.

Dated: April 5, 2011.

Federal Deposit Insurance Corporation.

Robert E. Feldman,

Committee Management Officer.

[FR Doc. 2011–8674 Filed 4–11–11; 8:45 am]

BILLING CODE 6714–01–P

FEDERAL RESERVE SYSTEM

Formations of, Acquisitions by, and Mergers of Bank Holding Companies

The companies listed in this notice have applied to the Board for approval, pursuant to the Bank Holding Company Act of 1956 (12 U.S.C. 1841 *et seq.*) (BHC Act), Regulation Y (12 CFR part 225), and all other applicable statutes and regulations to become a bank holding company and/or to acquire the assets or the ownership of, control of, or the power to vote shares of a bank or bank holding company and all of the banks and nonbanking companies owned by the bank holding company, including the companies listed below.

The applications listed below, as well as other related filings required by the Board, are available for immediate inspection at the Federal Reserve Bank indicated. The application also will be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the standards enumerated in the BHC Act (12 U.S.C. 1842(c)). If the proposal also involves the acquisition of a nonbanking company, the review also includes whether the acquisition of the nonbanking company complies with the standards in section 4 of the BHC Act (12 U.S.C. 1843). Unless otherwise noted, nonbanking activities will be conducted throughout the United States.

Unless otherwise noted, comments regarding each of these applications must be received at the Reserve Bank

indicated or the offices of the Board of Governors not later than May 6, 2011.

A. Federal Reserve Bank of Richmond (A. Linwood Gill, III, Vice President) 701 East Byrd Street, Richmond, Virginia 23261–4528:

1. *United Bankshares, Inc.,* Charleston, West Virginia, through its subsidiary, UBC Holding Company, Inc., Parkersburg, West Virginia; to merge with Centra Financial Holdings, Inc., and thereby indirectly acquire Centra Financial Corporation-Martinsburg, Inc.; Centra Financial Corporation-Morgantown, Inc.; Centra Financial Corporation-Uniontown, Inc.; Centra Financial Corporation-Hagerstown, Inc.; and Centra Bank, all located in Morgantown, West Virginia.

B. Federal Reserve Bank of Atlanta (Clifford Stanford, Vice President) 1000 Peachtree Street, NE., Atlanta, Georgia 30309:

1. *SC Acquisition Corporation,* Cullman, Alabama; to become a bank holding company by acquiring 100 percent of the voting shares of First Federal Savings & Loan Association, Cullman, Alabama.

C. Federal Reserve Bank of Kansas City (Dennis Denney, Assistant Vice President) 1 Memorial Drive, Kansas City, Missouri 64198–0001:

1. *Farmers State Bancshares, Inc.,* Dodge, Nebraska; to become a bank holding company by acquiring 100 percent of the voting shares of Farmers State Investment Co., and Farmers State Bank, both in Dodge, Nebraska

Board of Governors of the Federal Reserve System, April 7, 2011.

Robert deV. Frierson,

Deputy Secretary of the Board.

[FR Doc. 2011–8662 Filed 4–11–11; 8:45 am]

BILLING CODE 6210–01–P

FEDERAL RESERVE SYSTEM

Change in Bank Control Notices; Acquisitions of Shares of a Bank or Bank Holding Company

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 shares of 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 offices 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 April 27, 2011.

A. Federal Reserve Bank of Kansas City (Dennis Denney, Assistant Vice President) 1 Memorial Drive, Kansas City, Missouri 64198–0001:

1. *Jeffrey C. Wallace,* Cheyenne, Wyoming, individually; and the Kimberly Ann Sumner Irrevocable Trust Dated 01/10/91, Jeffrey C. Wallace, trustee, individually; to retain control of Farmers State Bankshares, Inc., and thereby indirectly retain control of Wyoming Bank & Trust, both in Cheyenne, Wyoming.

Board of Governors of the Federal Reserve System, April 7, 2011.

Robert deV. Frierson,

Deputy Secretary of the Board.

[FR Doc. 2011–8661 Filed 4–11–11; 8:45 am]

BILLING CODE 6210–01–P

FEDERAL RETIREMENT THRIFT INVESTMENT BOARD

Employee Thrift Advisory Council; Sunshine Act Meeting Notice

TIME AND DATE: 9 a.m. (Eastern Time) April 18, 2011.

PLACE: 2nd Floor Training Room, 1250 H Street, NW., Washington, DC 20005.

STATUS: Parts will be open to the public and parts closed to the public.

Matters To Be Considered

Parts Open to the Public

1. Approval of the minutes of the March 28, 2011 Board member meeting.
2. Approval of the minutes of the October 19, 2009 ETAC meeting.
3. Nomination(s) of ETAC Chairman and election of Vice Chairman.
4. Thrift Savings Plan activity report by the Executive Director.
   a. Monthly Participant Activity Report.
   b. Monthly Investment Policy Report.
   c. Legislative Report.
5. Vendor Financial Review.
6. Audit Report Discussion.
7. Annual Financial Audit Report.

Parts Closed to the Public

8. Confidential Financial Information.

CONTACT PERSON FOR MORE INFORMATION: Thomas J. Trabucco, Director, Office of External Affairs, (202) 942–1640.

Dated: April 8, 2011.

Megan G. Grumbine,

Acting Secretary, Federal Retirement Thrift Investment Board.

[FR Doc. 2011–8989 Filed 4–8–11; 4:15 pm]

BILLING CODE 6760–01–P

DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[OMB Control No. 9000–0157; Docket 2011–0079; Sequence 7]

Federal Acquisition Regulation; Information Collection; Architect-Engineer Qualifications (SF 330)

AGENCIES: Department of Defense (DOD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

ACTION: Notice of request for public comments regarding an extension to an existing OMB clearance (9000–0157).

SUMMARY: Under the provisions of the Paperwork Reduction Act (44 U.S.C. chapter 35), the Regulatory Secretariat (MVCB) will be submitting to the Office of Management and Budget (OMB) a request to review and approve an extension of a currently approved information collection requirement for the Architect–Engineer Qualifications form (SF 330).

Public comments are particularly invited on: Whether this collection of information is necessary for the proper performance of functions of the FAR, and whether it will have practical utility; whether our estimate of the public burden of this collection of information is accurate, and based on valid assumptions and methodology; ways to enhance the quality, utility, and clarity of the information to be collected; and ways in which we can minimize the burden of the collection of information on those who are to respond, through the use of appropriate technological collection techniques or other forms of information technology.

DATES: Submit comments on or before June 13, 2011.

ADDRESSES: Submit comments identified by Information Collection 9000–0157 by any of the following methods:

- *Regulations.gov: http://www.regulations.gov.* Submit comments via the Federal eRulemaking portal by inputting "Information Collection 9000–0157" under the heading "Enter Keyword or ID" and selecting "Search". Select the link "Submit a Comment" that corresponds with "Information Collection 9000–0157". Follow the instructions provided at the "Submit a Comment" screen. Please include your name, company name (if any), and "Information Collection 9000–0157" on your attached document.

- *Fax:* 202–501–4067.
- *Mail:* General Services Administration, Regulatory Secretariat (MVCB), 1275 First Street, NE., Washington, DC 20417. *Attn:* Hada Flowers/IC 9000–0157.

Instructions: Please submit comments only and cite Information Collection 9000–0157, in all correspondence related to this collection. All comments received will be posted without change to *http://www.regulations.gov,* including any personal and/or business confidential information provided.

FOR FURTHER INFORMATION CONTACT: Mr. Curtis Glover, Procurement Analyst, Contract Policy Division, GSA (202) 501–1448 or e-mail *Curtis.glover@gsa.gov.*

SUPPLEMENTARY INFORMATION:

A. Purpose

Standard Form 330, Part I is used by all Executive agencies to obtain information from architect-engineer firms interested in a particular project. The information on the form is reviewed by a selection panel composed of professional people and assists the panel in selecting the most qualified architect-engineer firm to perform the specific project. The form is designed to provide a uniform method for architect-engineer firms to submit information on experience, personnel, capabilities of the architect-engineer firm to perform along with information on the consultants they expect to collaborate with on the specific project.

Standard Form 330, Part II is used by all Executive agencies to obtain general uniform information about a firm's experience in architect-engineering projects. Architect-engineer firms are encouraged to update the form annually. The information obtained on this form is used to determine if a firm should be solicited for architect-engineer projects.

B. Annual Reporting Burden

Respondents: 5,000.

Responses per Respondent: 4.

Total Responses: 20,000.

Hours per Response: 29.

Total Burden Hours: 580,000.

Obtaining Copies of Proposals: Requesters may obtain a copy of the information collection documents from the General Services Administration, Regulatory Secretariat Branch (MVCB), 1275 First Street, NE., Washington, DC, telephone (202) 501–4755. Please cite OMB Control No. 9000–0157, Architect-Engineer Qualifications (SF 330), in all correspondence.

Dated: April 4, 2011.

Millisa Gary,

Acting Director, Office of Governmentwide Acquisition Policy.

[FR Doc. 2011–8646 Filed 4–11–11; 8:45 am]

BILLING CODE 6820–EP–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

Notice of Intent To Award Affordable Care Act (ACA) Funding

Notice of Intent to award Affordable Care Act (ACA) funding to two Emerging Infections Program (EIP) grantees, the Connecticut Department of Public Health and the Georgia Department of Community Health, to increase support for vaccine effectiveness activities for rotavirus vaccine and pneumococcal conjugate vaccine. These activities were proposed in the grantees' Fiscal Year (FY) 2011 non-competitive continuation applications under funding opportunity CI05–026, "Emerging Infections Program (EIP)."

AGENCY: Centers for Disease Control and Prevention (CDC), Department of Health and Human Services (HHS).

ACTION: Notice.

SUMMARY: This notice provides public announcement of CDC's intent to award Affordable Care Act (ACA) appropriations to the Connecticut Department of Public Health and the Georgia Department of Community Health to conduct vaccine effectiveness activities for rotavirus vaccine and 13-valent pneumococcal conjugate vaccine (PCV). These activities were requested by the two grantees in their FY 2011 non-competitive continuation applications submitted under funding opportunity CI05–026, "Emerging Infections Program (EIP)," Catalogue of Federal Domestic Assistance Number (CFDA): 93.283. Due to a lack of funding availability, these activities were either approved but unfunded or only partially funded in the grantee's FY 2011 continuation award.

Only these two EIP sites requested funding for the rotavirus activities and only one site (Georgia) requested funding for the PCV activities. Since no other EIP sites requested funding for these specific activities, Connecticut and Georgia will be the only sites receiving funding for these activities.

Approximately $433,500 in ACA funding will be awarded, which includes $333,500 for Rotavirus and $100,000 for PCV, to increase the amount of funding available to evaluate the effectiveness of new rotavirus and PCV vaccines currently being monitored through the aforementioned participating EIP sites. Funding is appropriated under the Affordable Care Act (PL 111–148), Title IV, Section 4002 (Prevention and Public Health Fund).

Accordingly, CDC adds the following information to the previously published funding opportunity announcement:

—*Authority:* Affordable Care Act (Pub. L. 111–148), Title IV, Section 4002 (Prevention and Public Health Fund).

—*CFDA #:* 93.521—CDC—Investigations, Technical Assistance and Affordable Care Act Projects.

Award Information:

Type of Award: Supplement to existing cooperative agreement.

Approximate Total Current Fiscal Year ACA Funding: $433,500.

Rotavirus (CT & GA): $333,500.

PCV (GA only): $100,000.

Anticipated Number of Awards: 2.

Fiscal Year Funds: 2011.

Anticipated Award Date: June 2011.

Application Selection Process: Funding will be awarded to only those sites that included proposals for the specific rotavirus and PCV vaccine effectiveness activities in their EIP FY 2011 continuation application.

Funding Authority:

CDC will add the ACA Authority to that which is reflected in the published Funding Opportunity CDC–RFA–CI05–026. The revised funding authority language will read:

—This program is authorized under the Public Health Service Act Sections 301(a)[42 U.S.C. 241(a)], 317(k)(1)[42 U.S.C. 247b(k)(1)], and 317(k)(2)[42 U.S.C. 247b(k)(2)], as amended, and *Affordable Care Act (Pub. L. 111–148), Title IV, Section 4002 (Prevention and Public Health Fund).*

DATES: The effective date for this action is the date of publication of this Notice and remains in effect until the expiration of the project period of the ACA funded applications.

FOR FURTHER INFORMATION CONTACT: Elmira Benson, Acting Deputy Director, Centers for Disease Control and Prevention, 2920 Brandywine Road, Atlanta, GA 30341, telephone (770) 488–2802, e-mail *Elmira.Benson@cdc.gov.*

SUPPLEMENTARY INFORMATION: On March 23, 2010, the President signed into law the Affordable Care Act (ACA), Public Law 111–148. ACA is designed to improve and expand the scope of health care coverage for Americans. Cost savings through disease prevention is an

important element of this legislation and ACA has established a Prevention and Public Health Fund (PPHF) for this purpose. Specifically, the legislation states in Section 4002 that the PPHF is to "provide for expanded and sustained national investment in prevention and public health programs to improve health and help restrain the rate of growth in private and public sector health care costs." ACA and the Prevention and Public Health Fund make improving public health a priority with investments to improve public health.

The PPHF states that the Secretary shall transfer amounts in the Fund to accounts within the Department of Health and Human Services to increase funding, over the fiscal year 2008 level, for programs authorized by the Public Health Service Act, for prevention, wellness and public health activities including prevention research and health screenings, such as the Community Transformation Grant Program, the Education and Outreach Campaign for Preventative Benefits, and Immunization Programs.

ACA legislation affords an important opportunity to advance public health across the lifespan and to reduce health disparities by supporting an intensive community approach to chronic disease prevention and control. Therefore, increasing funding available to applicants under this FOA using the PPHF to continue monitoring the effectiveness of vaccines is consistent with the purpose of the PPHF, as stated above, to provide for an expanded and sustained national investment in prevention and public health programs. Further, the Secretary allocated funds to CDC, pursuant to the PPHF, for the types of activities this FOA is designed to carry out.

Dated: March 25, 2011.

Tanja Popovic,

Deputy Associate Director for Science, Centers for Disease Control and Prevention.

[FR Doc. 2011–8653 Filed 4–11–11; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

[30-Day–11–10HC]

Agency Forms Undergoing Paperwork Reduction Act Review

The Centers for Disease Control and Prevention (CDC) publishes a list of information collection requests under review by the Office of Management and Budget (OMB) in compliance with the Paperwork Reduction Act (44 U.S.C. Chapter 35). To request a copy of these requests, call the CDC Reports Clearance Officer at (404) 639–5960 or send an e-mail to *omb@cdc.gov*. Send written comments to CDC Desk Officer, Office of Management and Budget, Washington, DC 20503 or by fax to (202) 395–5806. Written comments should be received within 30 days of this notice.

Proposed Project

HIV/AIDS Awareness Day Programs—New—National Center for HIV/AIDS, Viral Hepatitis, STD, and Tuberculosis Prevention (NCHHSTP), Centers for Disease Control and Prevention (CDC).

Background and Brief Description

CDC is requesting OMB approval to administer surveys to respondents who plan HIV/AIDS day awareness activities during the next 3 years. The name and dates for the annual HIV/AIDS awareness day campaigns are: National Black HIV Awareness Day—February 7th; National Native HIV/AIDS Awareness Day—March 20th; National Asian and Pacific Islander HIV/AIDS Awareness Day—May 19th; and National Latino AIDS Awareness Day—October 15th. The purpose of the surveys is to assess the number and types of HIV/AIDS prevention activities planned and implemented in observance of each of the four noted HIV/AIDS awareness day campaigns.

After the date that each campaign occurs, the event planners will be asked to respond to a computer-based survey to collect qualitative data. They will go to the designated websites to review information about the campaigns and go to the section that allows them to enter information about their particular event. For example, the event planners will be asked to note the kind of events that they planned. The survey results are necessary to understand how and where HIV/AIDS awareness activities are planned and implemented.

These survey results will provide important information that will be used to develop HIV/AIDS prevention activities. The computer-based surveys take up to one hour. The surveys and interviews are one-time only and will not require a follow-up. There is no cost to the respondents other than their time. The estimated annualized burden hours are 375.

ESTIMATED ANNUALIZED BURDEN HOURS

Respondents	Form name	Number of respondents	Responses per respondent	Average burden per response (in hours)
African-American HIV/AIDS awareness day activity planners.	National Black HIV/AIDS Awareness Day Evaluation Report.	200	1	1
Asian and Pacific Islander HIV/AIDS awareness day activity planners.	National Asian & Pacific Islander HIV/AIDS Awareness Day Evaluation Report.	15	1	1
Latino HIV/AIDS awareness day activity planners.	National Latino AIDS Awareness Day Evaluation Report.	125	1	1
Native HIV/AIDS awareness day activity planners.	National Native HIV/AIDS Awareness Day Evaluation Report.	35	1	1

Daniel Holcomb,
Reports Clearance Officer, Centers for Disease Control and Prevention.

[FR Doc. 2011–8650 Filed 4–11–11; 8:45 am]
BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

Notice of Intent To Award Supplemental Affordable Care Act Funding

Notice of Intent to award supplemental Affordable Care Act funding to support enhancement of an existing laboratory fellowship training program through funding opportunity CDC–RFA–HM10–1001, "APHL—CDC Partnership for Quality Laboratory Practice" cooperative agreement.

AGENCY: Centers for Disease Control and Prevention (CDC), Department of Health and Human Services (HHS).

ACTION: Notice.

SUMMARY: This notice provides public announcement of CDC's intent to use Affordable Care Act (ACA) appropriations to expand the Emerging Infectious Diseases (EID) Laboratory Fellowship Program currently supported through Funding Opportunity CDC–RFA–HM10–1001, "APHL–CDC Partnership for Quality Laboratory Practice." Funding is appropriated under the Affordable Care Act (Pub. L. 111–148), Title IV, Section 4002 (Prevention and Public Health Fund). In addition, Under Section 5314, Fellowship Training in Public Health (Part E of title VII of the Public Health Service Act (42 U.S.C. 294n *et seq.*, as amended by section 5206, is further amended by Sec. 778), CDC is authorized to expand existing fellowship training programs in the critical areas of applied public health epidemiology, public health laboratory science and public health informatics. The CFDA Number for this funding opportunity is 93.065.

CDC will add the following ACA Authority to that which is reflected in the published Funding Opportunity CDC–RFA–HM10–1001:

Authority: Funding is appropriated under the Affordable Care Act (Pub. L. 111–148), Title IV, Section 4002 (Prevention and Public Health Fund). In addition, Under Section 5314, Fellowship Training in Public Health (Part E of title VII of the Public Health Service Act (42 U.S.C. 294n *et seq.*, as amended by section 5206, is further amended by Sec. 778), CDC is authorized to expand existing fellowship training programs in the critical areas of applied public health epidemiology, public health laboratory science and public health informatics.

Reporting Requirements

Recipients of the ACA funds through this funding opportunity are required to comply with the reporting requirements, terms and conditions set forth in the published version of Funding Opportunity CDC–RFA–HM10–1001.

Award Information:

Type of Award: Cooperative Agreement.

Approximate Current Fiscal Year Funding: $1,000,000 in Affordable Care Act (ACA) Funding.

Anticipated Number of Awards: 1.

Anticipated Award Date: July 1, 2011.

Fiscal Year Funds: 2011.

DATES: The effective date for this action is April 12, 2011 and remains in effect until the expiration of the project period of the PPHF ACA funded application.

FOR FURTHER INFORMATION CONTACT: Elmira Benson, Acting Deputy Director, Centers for Disease Control and Prevention, 2920 Brandywine Road, Atlanta, GA 30341, telephone (770) 488–2802, e-mail *Elmira.Benson@cdc.gov.*

SUPPLEMENTARY INFORMATION: On March 23, 2010, the President signed into law the Affordable Care Act (ACA), Public Law 111–148. ACA is designed to improve and expand the scope of health care coverage for Americans. Cost savings through disease prevention is an important element of this legislation and ACA has established a Prevention and Public Health Fund (PPHF) for this purpose. Specifically, the legislation states in Section 4002 that the PPHF is to "provide for expanded and sustained national investment in prevention and public health programs to improve health and help restrain the rate of growth in private and public sector health care costs." In addition, under Section 5314, Fellowship training in public health (Part E of title VII of the Public Health Service Act (42 U.S.C. 294n *et seq.*, as amended by section 5206, is further amended by Sec. 778), CDC is authorized to expand existing fellowship training programs in the critical areas of applied public health epidemiology, public health laboratory science and public health informatics. Supplemental ACA funding, as referenced in this notice, will enhance the work of national, state and local public health laboratories in the U.S. through expansion of the Emerging Infectious Diseases (EID) Laboratory Fellowship Program. The EID Fellowship, sponsored by the Association of Public Health Laboratories (APHL) and CDC and funded through a cooperative agreement with APHL, trains and prepares scientists for careers in public health laboratories and supports public health initiatives related to infectious disease research. The program aims to promote quality public health laboratory practice, improve public health laboratory infrastructure, strengthen the public health laboratory system, and develop a well-trained public health laboratory workforce. Activities that promote the development of a well-trained public health laboratory workforce are outlined in section 10 of the cooperative agreement. Therefore, the programmatic activities CDC proposes to support with these ACA funds are consistent with the intent of the Affordable Care Act and Prevention and Public Health Fund (PPHF), Section 4002.

Dated: March 25, 2011.

Tanja Popovic,
Deputy Associate Director for Science, Centers for Disease Control and Prevention.

[FR Doc. 2011–8651 Filed 4–11–11; 8:45 am]
BILLING CODE P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

Advisory Committee to the Director (ACD), Centers for Disease Control and Prevention (CDC)

In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), the Centers for Disease Control and Prevention (CDC) announces the following meeting of the aforementioned committee.

Time and Date: 1 p.m.–3:05 p.m., April 28, 2011.

Place: The meeting will be held by teleconference. Please dial 877–930–8819 and enter code 1579739.

Status: Open to the public, limited only by the lines available. The public is welcome to participate during the public comment period. The public comment period is tentatively scheduled for 2:55 p.m. to 3 p.m.

Purpose: The committee will provide advice to the CDC Director on strategic and other broad issues facing CDC.

Matters to Be Discussed: The Advisory Committee to the Director will review and discuss recommendations and reports from two subcommittees and one workgroup. The Ethics Subcommittee will submit recommendations on Ethical Considerations for Non-communicable Disease Interventions as well as on Ethical Considerations for Decision Making Regarding Allocation of Mechanical Ventilators during a Severe

Influenza Pandemic or Other Public Health Emergency. The National Biosurveillance Advisory Subcommittee will submit their report entitled, "Improving the Nation's Ability to Detect and Respond to 21st Century Urgent Health Threats: Second Report of the National Biosurveillance Advisory Subcommittee," for approval. The State, Tribal, Local and Territorial (STLT) Workgroup will provide Directional Recommendations for Enhancing CDC Support to the STLT Community.

Agenda items are subject to change as priorities dictate.

Contact Person for More Information: Carmen Villar, MSW, Designated Federal Officer, ACD, CDC, 1600 Clifton Road, NE., Mailstop D–14, Atlanta, Georgia 30333, *Telephone:* (404) 639–7000. *E-mail: GHickman@cdc.gov.* The deadline for notification of attendance is April 25, 2011.

The Director, Management Analysis and Services Office, has been delegated the authority to sign **Federal Register** notices pertaining to announcements of meetings and other committee management activities, for both the Centers for Disease Control and Prevention and the Agency for Toxic Substances and Disease Registry.

Dated: April 5, 2011.

Elaine L. Baker,

Director, Management Analysis and Services Office, Centers for Disease Control and Prevention (CDC).

[FR Doc. 2011–8657 Filed 4–11–11; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

Disease, Disability, and Injury Prevention and Control Special Emphasis Panel (SEP): Funding Opportunity Announcement (FOA), Initial Review

The meeting announced below concerns "Conducting Public Health Research in Thailand by the Ministry of Public Health (MOPH) (U01)," FOA GH11–002, initial review.

In accordance with Section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), the Centers for Disease Control and Prevention (CDC) announces the aforementioned meeting:

Time and Date: 1 p.m.–4 p.m., May 26, 2011 (Closed).

Place: Teleconference.

Status: The meeting will be closed to the public in accordance with provisions set forth in Section 552b(c) (4) and (6), Title 5 U.S.C., and the Determination of the Director, Management Analysis and Services Office, CDC, pursuant to Public Law 92–463.

Matiers to be Discussed: The meeting will include the initial review, discussion, and evaluation of applications received in response to "Conducting Public Health Research in Thailand by the Ministry of Public Health (MOPH) (U01)," FOA GH11–002, initial review.

Contact Person for More Information: Susan B. Stanton, D.D.S., Scientific Review Officer, CDC, 1600 Clifton Road, NE., Mailstop D–72, Atlanta, Georgia 30333, *Telephone:* (404) 639–4640.

The Director, Management Analysis and Services Office, has been delegated the authority to sign **Federal Register** notices pertaining to announcements of meetings and other committee management activities, for both the Centers for Disease Control and Prevention and the Agency for Toxic Substances and Disease Registry.

Dated: April 5, 2011.

Elaine L. Baker,

Director, Management Analysis and Services Office, Centers for Disease Control and Prevention.

[FR Doc. 2011–8659 Filed 4–11–11; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

Disease, Disability, and Injury Prevention and Control Special Emphasis Panel (SEP): Funding Opportunity Announcement (FOA) DD11–009, Initial Review

The meeting announced below concerns "Public Health Research for the Prevention of Complications of Bleeding," FOA DD11–009, initial review.

In accordance with Section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), the Centers for Disease Control and Prevention (CDC) announces the aforementioned meeting:

Time and Date: 10 a.m.–5 p.m., May 19, 2011 (Closed).

Place: Teleconference.

Status: The meeting will be closed to the public in accordance with provisions set forth in Section 552b(c)(4) and (6), Title 5 U.S.C., and the Determination of the Director, Management Analysis and Services Office, CDC, pursuant to Public Law 92–463.

Matters to be Discussed: The meeting will include the initial review, discussion, and evaluation of applications received in response to "Public Health Research for the Prevention of Complications of Bleeding," FOA DD11–009, initial review.

Contact Person for More Information: Michael Dalmat, Dr.PH., Scientific Review Officer, Extramural Research Program Office, National Center for Chronic Disease Prevention and Health Promotion, CDC, 4770 Buford Highway, NE., Mailstop K–92, Atlanta, Georgia 30341, *Telephone:* (770) 488–6423, E-mail: *MED1@cdc.gov.*

The Director, Management Analysis and Services Office, has been delegated the authority to sign **Federal Register** notices pertaining to announcements of meetings and other committee management activities, for both the Centers for Disease Control and Prevention and the Agency for Toxic Substances and Disease Registry.

Dated: April 5, 2011.

Elaine L. Baker,

Director, Management Analysis and Services Office, Centers for Disease Control and Prevention.

[FR Doc. 2011–8658 Filed 4–11–11; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

Disease, Disability, and Injury Prevention and Control Special Emphasis Panel (SEP): Funding Opportunity Announcement (FOA), Initial Review

The meeting announced below concerns Muscular Dystrophy Surveillance Tracking and Research Network (MD STARnet); Feasibility of Expansion to Other Muscular Dystrophies (FOA) DD11–006, initial review.

In accordance with Section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), the Centers for Disease Control and Prevention (CDC) announces the aforementioned meeting:

Time and Date: 11 a.m.–5 p.m., May 10, 2011 (Closed).

Place: Teleconference.

Status: The meeting will be closed to the public in accordance with provisions set forth in Section 552b(c)(4) and (6), Title 5 U.S.C., and the Determination of the Director, Management Analysis and Services Office, CDC, pursuant to Public Law 92–463.

Matters To Be Discussed: The meeting will include the initial review, discussion, and evaluation of applications received in response to "Muscular Dystrophy Surveillance Tracking and Research Network (MD STARnet); Feasibility of Expansion to Other Muscular Dystrophies (FOA) DD11–006, initial review."

Contact Person for More Information: Brenda Colley Gilbert, Ph.D., M.P.H., Director, Extramural Research Program Office, National Center for Chronic Disease Prevention and Developmental Disabilities, CDC, 1600 Clifton Road, NE., Mailstop K92, Atlanta, Georgia 30333, *Telephone:* (770) 488–6295.

The Director, Management Analysis and Services Office, has been delegated the authority to sign **Federal Register** notices pertaining to announcements of meetings and other committee management activities, for both the Centers for Disease Control and Prevention and the Agency for Toxic Substances and Disease Registry.

Dated: March 31, 2011.

Elaine L. Baker,

Director, Management Analysis and Services Office, Centers for Disease Control and Prevention.

[FR Doc. 2011–8654 Filed 4–11–11; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Administration for Children and Families

Submission for OMB Review; Comment Request

Title: State Plan for Child Support under IV–D of the Social Security Act.

OMB No.: 0970–0017.

Description: The Office of Child Support Enforcement has approved a IV–D State plan for each State. Federal regulations require States to amend their State plans only when necessary to reflect new or revised Federal statutes or regulations or material change in any State law, organization, policy, or IV–D agency operations. The requirement for submission of a State plan and plan amendments for the Child Support Enforcement program is found in sections 452, 454, and 466 of the Social Security Act.

Respondents: State IV–D Agencies.

ANNUAL BURDEN ESTIMATES

Instrument	Number of respondents	Number of responses per respondent	Average burden hours per response	Total burden hours
State Plan	54	8	0.50	216
OCSE–21–U4	54	8	0.25	108

Estimated Total Annual Burden Hours: 324.

Additional Information: Copies of the proposed collection may be obtained by writing to the Administration for Children and Families, Office of Administration, Office of Information Services, 370 L'Enfant Promenade, SW., Washington, DC 20447, *Attn:* ACF Reports Clearance Officer. All requests should be identified by the title of the information collection. *E-mail address: infocollection@acf.hhs.gov.*

OMB Comment: OMB is required to make a decision concerning the collection of information between 30 and 60 days after publication of this document in the **Federal Register**. Therefore, a comment is best assured of having its full effect if OMB receives it within 30 days of publication. Written comments and recommendations for the proposed information collection should be sent directly to the following: Office of Management and Budget, Paperwork Reduction Project, *Fax:* 202–395–7285, *E-mail: OIRA_SUBMISSION@OMB.EOP.GOV, Attn:* Desk Officer for the Administration for Children and Families.

Robert Sargis,

Reports Clearance Officer.

[FR Doc. 2011–8666 Filed 4–11–11; 8:45 am]

BILLING CODE 4184–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Administration for Children and Families

Submission for OMB Review; Comment Request

Title: Statewide Automated Child Welfare Information System (SACWIS) Assessment Review Guide (SARG).

OMB No.: 0970–0159.

Description: For HHS to fulfill its obligation to effectively serve the nation's Adoption and Foster Care populations, and to report meaningful and reliable information to Congress about the extent of problems facing these children and the effectiveness of assistance provided to this population, the agency must have access to timely and accurate information about child welfare service populations and child welfare services. Section 476(b)of the Social Security Act requires that States submit statistical reports for child welfare populations, and Section 479 of the Act details State responsibilities to report specific information related to child abuse and neglect. CFR 1355.52 provides funding authority for statewide automated child welfare information systems (SACWIS) that meet Federal requirements for child welfare data collection. If a State chooses to implement a SACWIS, that system serves as the primary data source for Federal reporting. Currently, states use their SACWIS to support their efforts to meet the following Federal reporting requirements related to child welfare: the Adoption and Foster Care Analysis and Reporting System (AFCARS) required by section 479(b)(2) of the Social Security Act; the National Child Abuse and Neglect Data System (NCANDS); Child Abuse Prevention and Treatment Act (CAPTA); and the Chafee Independent Living Program's National Youth in Transition Database (NYTD). These systems also support state efforts to provide the information to conduct the Child and Family Service Reviews. Currently, forty-two States and the District of Columbia have developed, or are developing, a SACWIS with Federal financial participation.

45 CFR 1355.55 provides for continuing review, assessment and inspection of SACWIS. The purpose of this review is to determine whether the system, as described in the approved Advance Planning Document has been adequately completed and conforms to applicable regulations and policies.

To initiate a review, States complete and submit the SACWIS Assessment Review Guide (SARG) and other system documentation when they have completed system development and the system is operational statewide. The SARG template provides a format for State description of system functionality, operation, and outputs such as reports. The additional materials submitted as part of this process, such as system design documentation, are typically readily available to the State as a result of good project management practices.

The information collected in the SACWIS Assessment Review Guide will allow Federal reviewers to determine if the State's SACWIS meets the requirements for title IV–E Federal Financial Participation (FFP) defined at 45 CFR 1355.50, and that systems meet the goals and objectives of the approved Advance Planning Documents (APD) and conforms to the schedule, budget,

and other conditions of their approved APDs. Additionally, other States may be able to use the documentation provided as part of their preparation for the review process of their own system development efforts.

Respondents: Title IV–E Agencies.

ANNUAL BURDEN ESTIMATES

Instrument	Number of respondents	Number of responses per respondent	Average burden hours per response	Total burden hours
SACWIS Assessment Review Guide	3	1	250	750

Estimated Total Annual Burden Hours: 750.

Additional Information: Copies of the proposed collection may be obtained by writing to the Administration for Children and Families, Office of Administration, Office of Information Services, 370 L'Enfant Promenade, SW., Washington, DC 20447, *Attn:* ACF Reports Clearance Officer. All requests should be identified by the title of the information collection. *E-mail address: infocollection@acf.hhs.gov.*

OMB Comment: OMB is required to make a decision concerning the collection of information between 30 and 60 days after publication of this document in the **Federal Register**. Therefore, a comment is best assured of having its full effect if OMB receives it within 30 days of publication. Written comments and recommendations for the proposed information collection should be sent directly to the following: Office of Management and Budget, Paperwork Reduction Project, *Fax:* 202–395–7285, *E-mail: OIRA_SUBMISSION@OMB.EOP.GOV, Attn:* Desk Officer for the Administration for Children and Families.

Robert Sargis,

Reports Clearance Officer.

[FR Doc. 2011–8663 Filed 4–11–11; 8:45 am]

BILLING CODE 4184–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2009–P–0256]

Determination That KEFLEX (Cephalexin) Capsule, Equivalent to 333 Milligrams Base, Was Not Withdrawn From Sale for Reasons of Safety or Effectiveness

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) has determined that KEFLEX (cephalexin) capsule, equivalent to (EQ) 333 milligrams (mg) base, was not withdrawn from sale for reasons of safety or effectiveness. This determination will allow FDA to approve abbreviated new drug applications (ANDAs) for cephalexin capsule, EQ 333 mg base, if all other legal and regulatory requirements are met.

FOR FURTHER INFORMATION CONTACT: Patrick Raulerson, Center for Drug Evaluation and Research, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 51, Rm. 6368, Silver Spring, MD 20993–0002, 301–796–3522.

SUPPLEMENTARY INFORMATION: In 1984, Congress enacted the Drug Price Competition and Patent Term Restoration Act of 1984 (Pub. L. 98–417) (the 1984 amendments), which authorized the approval of duplicate versions of drug products approved under an ANDA procedure. ANDA applicants must, with certain exceptions, show that the drug for which they are seeking approval contains the same active ingredient in the same strength and dosage form as the "listed drug," which is a version of the drug that was previously approved. ANDA applicants do not have to repeat the extensive clinical testing otherwise necessary to gain approval of a new drug application (NDA). The only clinical data required in an ANDA are data to show that the drug that is the subject of the ANDA is bioequivalent to the listed drug.

The 1984 amendments include what is now section 505(j)(7) of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 355(j)(7)), which requires FDA to publish a list of all approved drugs. FDA publishes this list as part of the "Approved Drug Products With Therapeutic Equivalence Evaluations," which is known generally as the "Orange Book." Under FDA regulations, a drug is removed from the list if the Agency withdraws or suspends approval of the drug's NDA or ANDA for reasons of safety or effectiveness or if FDA determines that the listed drug was withdrawn from sale for reasons of safety or effectiveness (21 CFR 314.162).

Under § 314.161(a)(1) (21 CFR 314.161(a)(1)), the Agency must determine whether a listed drug was withdrawn from sale for reasons of safety or effectiveness before an ANDA that refers to that listed drug may be approved. FDA may not approve an ANDA that does not refer to a listed drug.

KEFLEX (cephalexin) capsule, EQ 333 mg base, is the subject of NDA 050405 held by Victory Pharma, Inc., and the 333-mg strength was approved on May 12, 2006. KEFLEX is a cephalosporin antibiotic indicated for the treatment of respiratory tract infections caused by *Streptococcus pneumoniae* and *S. pyogenes,* as well as certain other infections caused by susceptible strains of certain designated micro-organisms as described in the product labeling.

KEFLEX (cephalexin) capsule, EQ 333 mg base, has never been marketed. In previous instances (*see* 72 FR 9763, March 5, 2007; 61 FR 25497, May 21, 1996), the Agency has determined that, for purposes of §§ 314.161 and 314.162, never marketing an approved drug product is equivalent to withdrawing the drug from sale.

Lachman Consultant Services, Inc., submitted a citizen petition dated May 29, 2009 (Docket No. FDA–2009–P–0256), under 21 CFR 10.30, requesting that the Agency determine whether KEFLEX (cephalexin) capsule, EQ 333 mg base, was withdrawn from sale for reasons of safety or effectiveness. After considering the citizen petition and reviewing Agency records, FDA has determined under § 314.161 that KEFLEX (cephalexin) capsule, EQ 333 mg base, was not withdrawn for reasons of safety or effectiveness. The petitioner has identified no data or other information suggesting that KEFLEX (cephalexin) capsule, EQ 333 mg base, was withdrawn for reasons of safety or effectiveness. We have carefully reviewed our files for records concerning the withdrawal of KEFLEX (cephalexin) capsule, EQ 333 mg base, from sale. We have also independently evaluated relevant literature and data for possible postmarketing adverse events. We have found no information

that would indicate that this product was withdrawn from sale for reasons of safety or effectiveness.

Accordingly, the Agency will continue to list KEFLEX (cephalexin) capsule, EQ 333 mg base, in the "Discontinued Drug Product List" section of the Orange Book. The "Discontinued Drug Product List" delineates, among other items, drug products that have been discontinued from marketing for reasons other than safety or effectiveness. ANDAs that refer to KEFLEX (cephalexin) capsule, EQ 333 mg base, may be approved by the Agency as long as they meet all other legal and regulatory requirements for the approval of ANDAs. If FDA determines that labeling for this drug product should be revised to meet current standards, the Agency will advise ANDA applicants to submit such labeling.

Dated: April 6, 2011.

Leslie Kux,

Acting Assistant Commissioner for Policy.

[FR Doc. 2011–8617 Filed 4–11–11; 8:45 am]

BILLING CODE 4160–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Diabetes and Digestive and Kidney Diseases Diabetes Mellitus Interagency Coordinating Committee; Notice of Workshop

The Diabetes Mellitus Interagency Coordinating Committee (DMICC) will hold a 2-day workshop on May 5, from 8 a.m. to 6 p.m., and May 6, from 7:30 a.m. to 4 p.m., at the Hilton Washington DC/Rockville Hotel & Executive Meeting Center, 1750 Rockville Pike, Rockville, MD 20852. The workshop will be open to the public, with attendance limited to space available. Non-Federal individuals planning to attend the workshop should register on the workshop Web site (*http://conferences.thehillgroup.com/NIDDK/DMICCworkshop/index.html*) at least 7 days prior to the workshop. Individuals who plan to attend and need special assistance, such as sign language interpretation or other reasonable accommodations, should inform the Contact Person listed below at least 10 days in advance of the workshop.

The DMICC facilitates cooperation, communication, and collaboration on diabetes among government entities. The May 5–6, 2011, DMICC workshop will discuss new and emerging opportunities for type 1 diabetes research supported by the Special Statutory Funding Program for Type 1 Diabetes Research.

Any interested person may file written comments with the Committee by forwarding their statement to the Contact Person listed on this notice. The statement should include the name, address, telephone number and when applicable, the business or professional affiliation of the interested person. Because of time constraints for the workshop, there will not be time on the agenda for oral comments from members of the public.

An agenda for the DMICC workshop will be available on the following Web site: *http://conferences.thehillgroup.com/NIDDK/DMICCworkshop/index.html*. Members of the public who would like to receive e-mail notification about future DMICC meetings could register on a listserv available on the DMICC Web site: *http://www.diabetescommittee.gov*.

For further information concerning this workshop, contact Dr. Sanford Garfield, Executive Secretary of the Diabetes Mellitus Interagency Coordinating Committee, National Institute of Diabetes and Digestive and Kidney Diseases, 6707 Democracy Boulevard, Room 654, MSC 5460, Bethesda, MD 20892–5460, *Telephone:* 301- 594–8803 *Fax:* 301–402–6271, *E-mail: dmicc@mail.nih.gov*.

Dated: April 4, 2011.

Sanford Garfield,

Executive Secretary, DMICC, Division of Diabetes, Endocrinology and Metabolic Diseases, NIDDK, National Institutes of Health.

[FR Doc. 2011–8612 Filed 4–11–11; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Heart, Lung, and Blood Institute; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. App.), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Heart, Lung, and Blood Institute Special Emphasis Panel; Career Enhancement Award for Stem Cell Research.

Date: May 4, 2011.

Time: 12:30 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: William J. Johnson, PhD, Scientific Review Officer, Office of Scientific Review/DERA, National Heart, Lung, and Blood Institute, 6701 Rockledge Drive, Room 7178, Bethesda, MD 20892–7924, 301–435–0725, *johnsonwj@nhlbi.nih.gov*.

(Catalogue of Federal Domestic Assistance Program Nos. 93.233, National Center for Sleep Disorders Research; 93.837, Heart and Vascular Diseases Research; 93.838, Lung Diseases Research; 93.839, Blood Diseases and Resources Research, National Institutes of Health, HHS)

Dated: April 5, 2011.

Jennifer S. Spaeth,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 2011–8610 Filed 4–11–11; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Eunice Kennedy Shriver National Institute of Child Health & Human Development; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. App.), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The concept review and evaluation discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the contract proposals, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Child Health and Human Development Special Emphasis Panel; Folic Acid/Zinc Sulfate Supplementation, Semen Quality, and Ovulation Induction/IVF Outcomes.

Date: April 12, 2011.

Time: 2 p.m. to 3 p.m.

Agenda: To review and evaluate concept review.

Place: National Institutes of Health, 6100 Executive Boulevard, Rockville, MD 20852, (Telephone Conference Call).

Contact Person: Sathasiva B. Kandasamy, PhD, Scientific Review Officer, Division of Scientific Review, Eunice Kennedy Shriver National Institute of Child Health and Human Development, NIH, 6100 Executive Blvd., Room 5B01, Bethesda, MD 20892, 301–435–6680, *skandasa@mail.nih.gov.*

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

(Catalogue of Federal Domestic Assistance Program Nos. 93.864, Population Research; 93.865, Research for Mothers and Children; 93.929, Center for Medical Rehabilitation Research; 93.209, Contraception and Infertility Loan Repayment Program, National Institutes of Health, HHS)

Dated: April 5, 2011.

Jennifer S. Spaeth,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 2011–8609 Filed 4–11–11; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Center for Scientific Review; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. App.), notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: Center for Scientific Review Special Emphasis Panel; Member Conflict: Cardiovascular Sciences.

Date: May 3, 2011.

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: Yuanna Cheng, MD, PhD, Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4138, MSC 7814, Bethesda, MD 20892, (301) 435–1195, *Chengy5@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel; Member Conflict: Cardiovascular Sciences.

Date: May 3, 2011.

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: Lawrence E Boerboom, PhD, Chief, CVRS IRG, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4130, MSC 7814, Bethesda, MD 20892, (301) 435–8367, *boerboom@nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel; RM10–005: Computational Tool Development and Integrative Data Analysis for LINCS.

Date: May 25–26, 2011.

Time: 8 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: Mark Caprara, PhD, Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5156, MSC 7844, Bethesda, MD 20892, 301–435–1042, *capraramg@mail.nih.gov.*

Name of Committee: Immunology Integrated Review Group; Cellular and Molecular Immunology—B Study Section.

Date: May 25–26, 2011.

Time: 8:30 a.m. to 2 p.m.

Agenda: To review and evaluate grant applications.

Place: Residence Inn Bethesda, 7335 Wisconsin Avenue, Bethesda, MD 20814.

Contact Person: Betty Hayden, PhD, Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4206, MSC 7812, Bethesda, MD 20892, 301–435–1223, *haydenb@csr.nih.gov.*

Name of Committee: Immunology Integrated Review Group; Hypersensitivity, Autoimmune, and Immune-mediated Diseases Study Section.

Date: May 26–27, 2011.

Time: 8 a.m. to 4 p.m.

Agenda: To review and evaluate grant applications.

Place: Hilton Crystal City, 2399 Jefferson Davis Highway, Arlington, VA 22202.

Contact Person: Bahiru Gametchu, DVM, PhD, Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4204, MSC 7812, Bethesda, MD 20892, 301–408–9329, *gametchub@csr.nih.gov.*

Name of Committee: Bioengineering Sciences & Technologies Integrated Review Group; Modeling and Analysis of Biological Systems Study Section.

Date: May 26–27, 2011.

Time: 8 a.m. to 4 a.m.

Agenda: To review and evaluate grant applications.

Place: Doubletree Hotel Bethesda, 8120 Wisconsin Avenue, Bethesda, MD 20814.

Contact Person: Malgorzata Klosek, PhD, Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4188, MSC 7849, Bethesda, MD 20892, (301) 435–2211, *klosekm@mail.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel; Member Conflict: Parasites and Vectors.

Date: May 31–June 1, 2011.

Time: 8:30 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: John C. Pugh, PhD, Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3114, MSC 7808, Bethesda, MD 20892, (301) 435–2398, *pughjohn@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: April 4, 2011.

Jennifer S. Spaeth,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 2011–8605 Filed 4–11–11; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Diabetes and Digestive and Kidney Diseases; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. App.), notice is hereby given of the following meetings. The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Diabetes and Digestive and Kidney Diseases Special Emphasis Panel; PA10–067: Stem Cells and Diabetic Skin Wounds.

Date: May 16, 2011.

Time: 2 p.m. to 3:30 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Two Democracy Plaza, 6707 Democracy Boulevard, Bethesda, MD 20892 (Telephone Conference Call).

Contact Person: Najma Begum, PhD, Scientific Review Officer, Review Branch,

DEA, NIDDK, National Institutes of Health, Room 749, 6707 Democracy Boulevard, Bethesda, MD 20892–5452, (301) 594–8894, *begumn@niddk.nih.gov*.

Name of Committee: National Institute of Diabetes and Digestive and Kidney Diseases Special Emphasis Panel; PAR–09–247: NIDDK Ancillary Studies to Major Ongoing Clinical Research Studies in CKD (R01).

Date: May 17, 2011.

Time: 2 p.m. to 3:30 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Two Democracy Plaza, 6707 Democracy Boulevard, Bethesda, MD 20892 (Telephone Conference Call).

Contact Person: Najma Begum, PhD, Scientific Review Officer, Review Branch, DEA, NIDDK, National Institutes of Health, Room 749, 6707 Democracy Boulevard, Bethesda, MD 20892–5452, (301) 594–8894, *begumn@niddk.nih.gov*.

(Catalogue of Federal Domestic Assistance Program Nos. 93.847, Diabetes, Endocrinology and Metabolic Research; 93.848, Digestive Diseases and Nutrition Research; 93.849, Kidney Diseases, Urology and Hematology Research, National Institutes of Health, HHS)

Dated: April 6, 2011.

Jennifer S. Spaeth,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 2011–8717 Filed 4–11–11; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Allergy and Infectious Diseases; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. App.), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Allergy and Infectious Diseases Special Emphasis Panel; Abnormalities in B Cell Function.

Date: May 11, 2011.

Time: 10 a.m. to 1 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6700B Rockledge Drive, Bethesda, MD 20817.

Contact Person: Paul A. Amstad, PhD, Scientific Review Officer, Scientific Review Program, Division of Extramural Activities, NIAID/NIH/DHHS, 6700B Rockledge Drive, MSC 7616, Bethesda, MD 20892–7616, 301–402–7098, *pamstad@niaid.nih.gov*.

(Catalogue of Federal Domestic Assistance Program Nos. 93.855, Allergy, Immunology, and Transplantation Research; 93.856, Microbiology and Infectious Diseases Research, National Institutes of Health, HHS)

Dated: April 6, 2011.

Jennifer S. Spaeth,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 2011–8716 Filed 4–11–11; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Cancer Institute; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. App.), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Cancer Institute Initial Review Group; Subcommittee F—Manpower & Training.

Date: June 28–29, 2011.

Time: 8 a.m. to 5 p.m.

Agenda: To Review and Evaluate Grant Applications.

Place: Hilton Alexandria Old Town, 1767 King Street, Alexandria, VA 22314.

Contact Person: Lynn M. Amende, PhD, Scientific Review Officer, Resources and Training Review Branch, Division of Extramural Activities, National Cancer Institute, NIH, 6116 Executive Blvd., Room 8105, Bethesda, MD 20892, 301–451–4759, *amendel@mail.nih.gov*.

(Catalogue of Federal Domestic Assistance Program Nos. 93.392, Cancer Construction; 93.393, Cancer Cause and Prevention Research; 93.394, Cancer Detection and Diagnosis Research; 93.395, Cancer Treatment Research; 93.396, Cancer Biology Research; 93.397, Cancer Centers Support; 93.398, Cancer Research Manpower; 93.399, Cancer Control, National Institutes of Health, HHS)

Dated: April 6, 2011.

Jennifer S. Spaeth,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 2011–8713 Filed 4–11–11; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute on Aging; Notice of Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. App.), notice is hereby given of a meeting of the National Advisory Council on Aging.

The meeting will be open to the public as indicated below, with attendance limited to space available. Individuals who plan to attend and need special assistance, such as sign language interpretation or other reasonable accommodations, should notify the Contact Person listed below in advance of the meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and/or contract proposals and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications and/or contract proposals, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Advisory Council on Aging.

Date: May 24–25, 2011.

Closed: May 24, 2011, 3 p.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 31 Center Drive, Building 31, C Wing, Conference Room 6, Bethesda, MD 20892.

Open: May 25, 2011, 8 a.m. to 1:45 p.m.

Agenda: Call to order; Director's Status Report; discussion of future meeting dates; consideration of minutes from last meeting; reports from the Task Force on Minority Aging Research, the Working Group on Program; initial report of the Division of Extramural Activities and Scientific Review Branch Council Review; Council speakers; Program highlights; Program Division Directors, NIA and invited speakers.

Place: National Institutes of Health, 31 Center Drive, Building 31, C Wing, Conference Room 6, Bethesda, MD 20892.

Contact Person: Robin Barr, PhD, Director, National Institute On Aging, Office of Extramural Activities, Gateway Building,

7201 Wisconsin Avenue, Bethesda, MD 20814, (301) 496–9322, *barrr@nia.nih.gov*.

Any interested person may file written comments with the committee by forwarding the statement to the Contact Person listed on this notice. The statement should include the name, address, telephone number and when applicable, the business or professional affiliation of the interested person.

In the interest of security, NIH has instituted stringent procedures for entrance onto the NIH campus. All visitor vehicles, including taxicabs, hotel, and airport shuttles will be inspected before being allowed on campus. Visitors will be asked to show one form of identification (for example, a government-issued photo ID, driver's license, or passport) and to state the purpose of their visit. Information is also available on the Institute's/Center's home page: *http://www.nih.gov/nia/naca/*, where an agenda and any additional information for the meeting will be posted when available.

(Catalogue of Federal Domestic Assistance Program Nos. 93.866, Aging Research, National Institutes of Health, HHS)

Dated: April 6, 2011.

Jennifer S. Spaeth,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 2011–8714 Filed 4–11–11; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HOMELAND SECURITY

U.S. Citizenship and Immigration Services

Agency Information Collection Activities: Form I–694, Extension of a Currently Approved Information Collection; Comment Request

ACTION: 60-Day Notice of Information Collection Under Review: Form I–694, Notice of Appeal of Decision Under Section 210 or 245A; OMB Control No. 1615–0034.

The Department of Homeland Security, U.S. Citizenship and Immigration Services (USCIS) will be submitting the following information collection request for review and clearance in accordance with the Paperwork Reduction Act of 1995. The information collection is published to obtain comments from the public and affected agencies. Comments are encouraged and will be accepted for 60 days until June 13, 2011.

During this 60-day period, USCIS will be evaluating whether to revise the Form I–694. Should USCIS decide to revise Form I–694 we will advise the public when we publish the 30-day notice in the **Federal Register** in accordance with the Paperwork Reduction Act. The public will then have 30 days to comment on any revisions to the Form I–694.

Written comments and suggestions regarding items contained in this notice, and especially with regard to the estimated public burden and associated response time should be directed to the Department of Homeland Security (DHS), USCIS, Chief, Regulatory Products Division, Office of the Executive Secretariat, Clearance Officer, 20 Massachusetts Avenue, NW., Washington, DC 20529–2020. Comments may also be submitted to DHS via facsimile to 202–272–0997 or via e-mail at *rfs.regs@dhs.gov*. When submitting comments by e-mail please add the OMB Control Number 1615–0034 in the subject box.

Note: The address listed in this notice should only be used to submit comments concerning this information collection. Please do not submit requests for individual case status inquiries to this address. If you are seeking information about the status of your individual case, please check "My Case Status" online at: *https://egov.uscis.gov/cris/Dashboard.do*, or call the USCIS National Customer Service Center at 1–800–375–5283.

Written comments and suggestions from the public and affected agencies concerning the proposed collection of information should address one or more of the following four points:

(1) Evaluate whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(2) Evaluate the accuracy of the agency's estimate of the burden of the collection of information, including the validity of the methodology and assumptions used;

(3) Enhance the quality, utility, and clarity of the information to be collected; and

(4) Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques, or other forms of information technology, *e.g.*, permitting electronic submission of responses.

Overview of This Information Collection

(1) *Type of Information Collection:* Extension of an existing information collection.

(2) *Title of the Form/Collection:* Notice of Appeal of Decision Under Section 210 or 245A.

(3) *Agency form number, if any, and the applicable component of the Department of Homeland Security sponsoring the collection:* Form I–694, U.S. Citizenship and Immigration Services.

(4) *Affected public who will be asked or required to respond, as well as a brief abstract: Primary:* Individuals and households. USCIS uses the information provided on Form I–694 in considering the appeal from a finding that an applicant is ineligible for legalization under section 210 and 245A of the Act or is ineligible for a related waiver of inadmissibility.

(5) *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond:* 50 responses at 30 minutes (0.50) per response.

(6) *An estimate of the total public burden (in hours) associated with the collection:* 25 annual burden hours.

If you need a copy of the information collection instrument, please visit the Web site at: *http://www.regulations.gov/*.

We may also be contacted at: USCIS, Regulatory Products Division, Office of the Executive Secretariat, 20 Massachusetts Avenue, NW., Room 5012, Washington, DC 20529–2020, Telephone number 202–272–8377.

Dated: April 7, 2011.

Sunday A. Aigbe,

Chief, Regulatory Products Division, Office of the Executive Secretariat, U.S. Citizenship and Immigration Services, Department of Homeland Security.

[FR Doc. 2011–8679 Filed 4–11–11; 8:45 am]

BILLING CODE 9111–97–P

DEPARTMENT OF HOMELAND SECURITY

U.S. Citizenship and Immigration Services

Agency Information Collection Activities: Form I–907, Extension of a Currently Approved Information Collection; Comment Request

ACTION: 60-day notice of information collection under review: Form I–907, Request for Premium Processing Service; OMB Control No. 1615–0048.

The Department of Homeland Security, U.S. Citizenship and Immigration Services (USCIS) will be submitting the following information collection request for review and clearance in accordance with the Paperwork Reduction Act of 1995. The information collection is published to obtain comments from the public and affected agencies. Comments are encouraged and will be accepted for sixty days until June 13, 2011.

During this 60 day period, USCIS will be evaluating whether to revise the

Form I–907. Should USCIS decide to revise Form I–907 we will advise the public when we publish the 30-day notice in the **Federal Register** in accordance with the Paperwork Reduction Act. The public will then have 30 days to comment on any revisions to the Form I–907.

Written comments and suggestions regarding items contained in this notice, and especially with regard to the estimated public burden and associated response time should be directed to the Department of Homeland Security (DHS), USCIS, Chief, Regulatory Products Division, Office of the Executive Secretariat, Clearance Officer, 20 Massachusetts Avenue, NW., Washington, DC 20529–2020. Comments may also be submitted to DHS via facsimile to 202–272–0997 or via e-mail at rfs.regs@dhs.gov. When submitting comments by email please add the OMB Control Number 1615–0048 in the subject box.

Note: The address listed in this notice should only be used to submit comments concerning this information collection. Please do not submit requests for individual case status inquiries to this address. If you are seeking information about the status of your individual case, please check "My Case Status" online at: *https://egov.uscis.gov/cris/Dashboard.do,* or call the USCIS National Customer Service Center at 1–800–375–5283.

Written comments and suggestions from the public and affected agencies concerning the proposed collection of information should address one or more of the following four points:

(1) Evaluate whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(2) Evaluate the accuracy of the agency's estimate of the burden of the collection of information, including the validity of the methodology and assumptions used;

(3) Enhance the quality, utility, and clarity of the information to be collected; and

(4) Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques, or other forms of information technology, *e.g.,* permitting electronic submission of responses.

Overview of This Information Collection

(1) *Type of Information Collection:* Extension of an existing information collection.

(2) *Title of the Form/Collection:* Request for Premium Processing Service.

(3) *Agency form number, if any, and the applicable component of the Department of Homeland Security sponsoring the collection:* Form I–907. U.S. Citizenship and Immigration Services.

(4) *Affected public who will be asked or required to respond, as well as a brief abstract: Primary:* Individuals and households. USCIS uses the information provided on Form I–907 to provide petitioners the opportunity to request faster processing of certain employment-based petitions and applications.

(5) *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond:*

- Filing by Mail: 96,000 responses at 30 minutes (.50) per response.
- Electronically: 4,000 responses at 20 minutes (.333) per response.

(6) *An estimate of the total public burden (in hours) associated with the collection:* 49,332 annual burden hours.

If you need a copy of the information collection instrument, please visit the Web site at: *http://www.regulations.gov/.*

We may also be contacted at: USCIS, Regulatory Products Division, Office of the Executive Secretariat, 20 Massachusetts Avenue, NW., Room 5012, Washington, DC 20529–2020, Telephone number 202–272–8377.

Dated: April 6, 2011.

Stephen Tarragon,

Senior Analyst, Regulatory Products Division, Office of the Executive Secretariat, U.S. Citizenship and Immigration Services, Department of Homeland Security.

[FR Doc. 2011–8681 Filed 4–11–11; 8:45 am]

BILLING CODE 9111–97–P

DEPARTMENT OF HOMELAND SECURITY

U.S. Citizenship and Immigration Services

Agency Information Collection Activities: Form I–905, Extension of a Currently Approved Information Collection; Comment Request

ACTION: 60-Day Notice of Information Collection Under Review: Form I–905, Application for Authorization To Issue Certification for Health Care Workers; OMB Control No. 1615–0086.

The Department of Homeland Security, U.S. Citizenship and Immigration Services (USCIS) will be submitting the following information collection request for review and clearance in accordance with the Paperwork Reduction Act of 1995. The information collection is published to obtain comments from the public and affected agencies. Comments are encouraged and will be accepted for sixty days until June 13, 2011.

During this 60 day period, USCIS will be evaluating whether to revise the Form I–905. Should USCIS decide to revise Form I–905 we will advise the public when we publish the 30-day notice in the **Federal Register** in accordance with the Paperwork Reduction Act. The public will then have 30 days to comment on any revisions to the Form I–905.

Written comments and suggestions regarding items contained in this notice, and especially with regard to the estimated public burden and associated response time should be directed to the Department of Homeland Security (DHS), USCIS, Chief, Regulatory Products Division, Office of the Executive Secretariat, Clearance Office, 20 Massachusetts Avenue, NW., Washington, DC 20529–2020. Comments may also be submitted to DHS via facsimile to 202–272–0997, or via e-mail at *rfs.regs@dhs.gov.* When submitting comments by e-mail please add the OMB Control Number 1615–0086 in the subject box.

Note: The address listed in this notice should only be used to submit comments concerning this information collection. Please do not submit requests for individual case status inquiries to this address. If you are seeking information about the status of your individual case, please check "My Case Status" online at: *https://egov.uscis.gov/cris/Dashboard.do,* or call the USCIS National Customer Service Center at 1–800–375–5283.

Written comments and suggestions from the public and affected agencies concerning the proposed collection of information should address one or more of the following four points:

(1) Evaluate whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(2) Evaluate the accuracy of the agency's estimate of the burden of the collection of information, including the validity of the methodology and assumptions used;

(3) Enhance the quality, utility, and clarity of the information to be collected; and

(4) Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques, or

other forms of information technology, e.g., permitting electronic submission of responses.

Overview of This Information Collection

(1) *Type of Information Collection:* Extension of an existing information collection.

(2) *Title of the Form/Collection:* Application for authorization to Issue Certification for Health Care Workers.

(3) *Agency form number, if any, and the applicable component of the Department of Homeland Security sponsoring the collection:* Form I–905. U.S. Citizenship and Immigration Services.

(4) *Affected public who will be asked or required to respond, as well as a brief abstract: Primary:* Individuals and households. USCIS uses the information provided on Form I–905 to determine whether an organization can issue certificates to health care workers.

(5) *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond:*

- *Request to issue Certificates:* 10 responses at 4 hours per response.
- *Credential Organization:* 14,000 responses at 2 hours per response.
- *Applicants:* 14, 000 responses at 1 hour and 40 minutes (1.66) per response.

(6) *An estimate of the total public burden (in hours) associated with the collection:* 51,280 annual burden hours.

If you need a copy of the information collection instrument, please visit the Web site at: *http://www.regulations.gov/*.

We may also be contacted at: USCIS, Regulatory Products Division, Office of the Executive Secretariat, 20 Massachusetts Avenue, NW., Room 5012, Washington, DC 20529–2020, Telephone number 202–272–8377.

Dated: April 6, 2011.

Stephen Tarragon,

Senior Analyst, Regulatory Products Division, Office of the Executive Secretariat, U.S. Citizenship and Immigration Services, Department of Homeland Security.

[FR Doc. 2011–8682 Filed 4–11–11; 8:45 am]

BILLING CODE 9111–97–P

DEPARTMENT OF HOMELAND SECURITY

U.S. Customs and Border Protection

Accreditation and Approval of Atlantic Product Services, 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 Atlantic Product Services, Inc., as a commercial gauger and laboratory.

SUMMARY: Notice is hereby given that, pursuant to 19 CFR 151.12 and 19 CFR 151.13, Atlantic Product Services, Inc., 2 Terminal Road Building OB2, Carteret, NJ 07008, has been approved to gauge and accredited to test petroleum and petroleum products 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 Atlantic Product Services, Inc., as commercial gauger and laboratory became effective on December 9, 2010. The next triennial inspection date will be scheduled for December 2013.

FOR FURTHER INFORMATION CONTACT: Anthony Malana, Laboratories and Scientific Services, U.S. Customs and Border Protection, 1300 Pennsylvania Avenue, NW., Suite 1500N, Washington, DC 20229, 202–344–1060.

Dated: April 1, 2011.

Ira S. Reese,

Executive Director, Laboratories and Scientific Services.

[FR Doc. 2011–8688 Filed 4–11–11; 8:45 am]

BILLING CODE 9111–14–P

DEPARTMENT OF HOMELAND SECURITY

U.S. Customs and Border Protection

Accreditation and Approval of Camin Cargo Control, 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 Camin Cargo Control, Inc., as a commercial gauger and laboratory.

SUMMARY: Notice is hereby given that, pursuant to 19 CFR 151.12 and 19 CFR 151.13, Camin Cargo Control, Inc., 1550 Industrial Park Drive, Nederland, TX 77627, has been approved to gauge and accredited to test petroleum and petroleum products 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 Camin Cargo Control, Inc., as commercial gauger and laboratory became effective on March 10, 2010. The next triennial inspection date will be scheduled for March 2013.

FOR FURTHER INFORMATION CONTACT: Anthony Malana, Laboratories and Scientific Services, U.S. Customs and Border Protection, 1300 Pennsylvania Avenue, NW., Suite 1500N, Washington, DC 20229, 202–344–1060.

Dated: April 1, 2011.

Ira S. Reese,

Executive Director,

Laboratories and Scientific Services.

[FR Doc. 2011–8680 Filed 4–11–11; 8:45 am]

BILLING CODE 9111–14–P

DEPARTMENT OF HOMELAND SECURITY

U.S. Customs and Border Protection

Accreditation and Approval of Oiltest, 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 Oiltest, Inc., as a commercial gauger and laboratory.

SUMMARY: Notice is hereby given that, pursuant to 19 CFR 151.12 and 19 CFR 151.13, Oiltest, Inc., 109 Aldene Road, Building 7, Roselle, NJ 07203, has been approved to gauge and accredited to test petroleum and petroleum products 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 Oiltest, Inc., as commercial gauger and laboratory became effective on November 22, 2010. The next triennial inspection date will be scheduled for November 2013.

FOR FURTHER INFORMATION CONTACT: Anthony Malana, Laboratories and Scientific Services, U.S. Customs and Border Protection, 1300 Pennsylvania Avenue, NW., Suite 1500N, Washington, DC 20229, 202–344–1060.

Dated: April 1, 2011.

Ira S. Reese,

Executive Director, Laboratories and Scientific Services.

[FR Doc. 2011–8691 Filed 4–11–11; 8:45 am]

BILLING CODE 9111–14–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–5481–N–04]

Notice of Proposed Information Collection: Comment Request; Technical Assistance for Community Planning and Development Programs

AGENCY: Office of the Assistant Secretary for Community Planning And Development, HUD.

ACTION: Notice.

SUMMARY: The proposed information collection requirement described below will be submitted to the Office of Management and Budget (OMB) for review, as required by the Paperwork Reduction Act. The Department is soliciting public comments on the subject proposal.

DATES: *Comments Due Date:* June 13, 2011.

ADDRESSES: Interested persons are invited to submit comments regarding this proposal. Comments should refer to the proposal by name and/or OMB Control Number and should be sent to: Rudene Thomas, Office of Community Planning and Development, Department of Housing Urban and Development, 451 7th Street, SW., Room 7233, Washington, DC 20410.

FOR FURTHER INFORMATION CONTACT: Holly A. Kelly, (202)708–3176 (this is not a toll-free number).

SUPPLEMENTARY INFORMATION: The Department is submitting the proposed information collection to OMB for review, as required by the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35, as Amended).

This Notice is soliciting comments from members of the public and affected agencies concerning the proposed collection of information to: (1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (2) Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information; (3) Enhance the quality, utility, and clarity of the information to be collected; and (4) Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

This Notice also lists the following information:

Title of Proposal: Technical Assistance for Community Planning and Development Program.

OMB Control Number, if applicable: 2506–0166.

Description of the need for the information and proposed use: Application information is needed to determine competition winners, i.e., those technical assistance (TA) providers best able to offer local jurisdictions an ability to shape their CPD resources and other available resources into effective, coordinated, neighborhood and community development strategies to revitalize and to physically, socially and economically strengthen their communities. The application for the competition requires the completion of Standard Forms 424, 424–CB, 424–CBW, LLL (if engaged in lobbying), 2880, 40040 and 40044, as well as supplementary information such as identification of field offices to be served, a narrative statement addressing the factors for award, and a budget summary. After awards are made, providers are required to submit a work plan which includes a planned schedule for accomplishing each of the planned activities/tasks to be accomplished with TA funds, the amount of funds budgeted for each activity/task and the staff and other resources allocated to each activity/task. Narrative quarterly reports are required so that the provider's performance can be evaluated and measured against the workplan. Quarterly reports also require the submission of the SF 425, a financial status report. A narrative final report and final SF 425 are also required.

Agency form numbers, if applicable: 424, 424–CB, 424–CBW, LLL, 2880, 40040 and 40044.

Members of affected public: For-profit and non-profit organizations or State and local governments equipped to provide technical assistance to recipients of CPD programs.

Estimation of the total numbers of hours needed to prepare the information collection including number of respondents, frequency of response, and hours of response.

Status of the proposed information collection: The FY 2009 Notice of Funding Availability (NOFA) for technical assistance providers for CPD programs elicited 161 responses. The Department estimates that each applicant required an average of 60 hours to prepare an application. Each year approximately 50 applicants are chosen for awards. Winners of the competition are required to develop a work plan, requiring approximately 20 hours, submit quarterly reports needing approximately six hours each (including

a final report) and perform record keeping to include submission of vouchers for reimbursement, estimated at 12 hours annually. Because these actions are undertaken for each field office in which the applicant wins funds, the numbers reflect more than the base number of winners. Approximately 177 workplans were developed as a result of the FY 2009 competition and each requires quarterly reports and recordkeeping. The specific numbers are as follows:

	Number of respondents	Number of responses per respondent frequency	Total annual	Hours per response	Total hours
Applications	161	1	161	60	9,660
Workplan Development	177	1	177	20	3,540
Quarterly Reports (include final report)	177	4	708	6	4248
Recordkeeping	177	12	2,124	2	4,248
Total			3,170		21,696

Status of the proposed information collection: Reinstatement

Authority: The Paperwork Reduction Act of 1995, 44 U.S.C. Chapter 35, as amended.

Dated: April 1, 2011.

Clifford D. Taffet,

General Deputy Assistant Secretary for Community Planning and Development.

[FR Doc. 2011–8596 Filed 4–11–11; 8:45 am]

BILLING CODE 4210–67–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–5484–N–08]

Notice of Proposed Information Collection: Comment Request; Interstate Land Sales Full Disclosure Requirements

AGENCY: Office of the Assistant Secretary for Housing, HUD.

ACTION: Notice.

SUMMARY: The proposed information collection requirement described below will be submitted to the Office of Management and Budget (OMB) for review, as required by the Paperwork Reduction Act. The Department is soliciting public comments on the subject proposal.

DATES: *Comments Due Date:* June 13, 2011.

ADDRESSES: Interested persons are invited to submit comments regarding this proposal. Comments should refer to the proposal by name and/or OMB Control Number and should be sent to: Colette Pollard, Reports Management Office, Department of Housing and Urban Development, 451 7th Street, SW., Washington, DC 20410; e-mail *Colette, Pollard@HUD.gov* or telephone (202) 402–3400.

FOR FURTHER INFORMATION CONTACT: Bart Shapiro, Director, Office of RESPA and Interstate Land Sales, Housing and Urban Development, 451 7th Street, SW., Washington, DC 20410, telephone (202) 708–0502 (this is not a toll free number) for copies of the proposed forms and other available information.

SUPPLEMENTARY INFORMATION: The Department is submitting the proposed information collection to OMB for review, as required by the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35, as amended).

This Notice is soliciting comments from members of the public and affected agencies concerning the proposed collection of information to: (1) Evaluate whether the proposed collection is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (2) Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information; (3) Enhance the quality, utility, and clarity of the information to be collected; and (4) Minimize the burden of the collection of information on those who are to respond; including the use of appropriate automated collection techniques or other forms of information technology, *e.g.*, permitting electronic submission of responses.

This Notice also lists the following information:

Title of Proposal: Interstate Land Sales Full Disclosure Requirements.

OMB Control Number, if applicable: 2502–0243.

Description of the need for the information and proposed use: Non-exempt Developers are required by the Interstate Land Sales Full Disclosure Act to register with HUD and provide purchasers with a property report. The information is used to determine the accuracy of the disclosures in the property report. Developers are required to submit an annual report and annual financial statements. HUD investigates developers who do not comply with the regulations.

Agency form numbers, if applicable: n/a.

Estimation of the total numbers of hours needed to prepare the information collection including number of respondents, frequency of response, and hours of response: The number of burden hours is 15,291. The number of respondents is 1,924, the number of responses is 15,291, the frequency of response is on occasion, and the burden hour per response is 2.

Status of the proposed information collection: This is a previously approved collection.

Authority: The Paperwork Reduction Act of 1995, 44 U.S.C., Chapter 35, as amended.

Dated: April 5, 2011.

Ronald Y. Spraker,

Associate General Deputy Assistant Secretary for Housing.

[FR Doc. 2011–8601 Filed 4–11–11; 8:45 am]

BILLING CODE 4210–67–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–5484–N–09]

Notice of Proposed Information Collection: Comment Request; Use Restriction Agreement Monitoring and Compliance

AGENCY: Office of the Assistant Secretary for Housing, HUD.

ACTION: Notice.

SUMMARY: The proposed information collection requirement described below will be submitted to the Office of Management and Budget (OMB) for review, as required by the Paperwork Reduction Act. The Department is soliciting public comments on the subject proposal.

DATES: *Comments Due Date:* June 13, 2011.

ADDRESSES: Interested persons are invited to submit comments regarding this proposal. Comments should refer to the proposal by name and/or OMB

Control Number and should be sent to: Colette Pollard, Reports Management Officer, Department of Housing and Urban Development, 451 7th Street, SW., L'Enfant Building, Room 8202, Washington, DC 20410; telephone (202) 402–3400 (this is not a toll-free number) for copies of the proposed forms and other available information.

FOR FURTHER INFORMATION CONTACT: Harry Messner, Office of Asset Management, Policy and Participation Standards Division, Department of Housing and Urban Development, 451 7th Street, SW., Washington, DC 20410, telephone number (202) 402–2626 (this is not a toll-free number).

SUPPLEMENTARY INFORMATION: The Department is submitting the proposed information collection to OMB for review, as required by the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35, as amended).

This Notice is soliciting comments from members of the public and affected agencies concerning the proposed collection of information to: (1) Evaluate whether the proposed collection is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (2) Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information; (3) Enhance the quality, utility, and clarity of the information to be collected; and (4) Minimize the burden of the collection of information on those who are to respond; including the use of appropriate automated collection techniques or other forms of information technology, *e.g.*, permitting electronic submission of responses.

This Notice also lists the following information:

Title of Proposal: Use Restriction Agreement Monitoring and Compliance.

OMB Control Number, if applicable: 2502–0577.

Description of the need for the information and proposed use: This information is necessary for HUD to ensure that owners of certain multifamily housing projects comply with use restriction requirements once the mortgage agreement is terminated. This information is also used to monitor owner compliance with the Use Restriction Agreement provisions.

Agency form numbers, if applicable: HUD–90060, HUD–90061, HUD–90065, HUD–90066, HUD–93140, HUD–93142, HUD–93143, HUD–93144, HUD–90067, HUD–90068, HUD–90069, HUD–90070, HUD–93150, HUD–93155, HUD–90075.

Estimation of the total numbers of hours needed to prepare the information collection including numberof respondents, frequency of response, and hours of response: The estimated number of respondents is 590; the frequency of responses is on occasion/annual; estimated time to gather and prepare the necessary documents (combined) is 2 hours per submission, and the estimated total annual burden hours are 1,112.

Status of the proposed information collection: Extension of a currently approved collection.

Authority: The Paperwork Reduction Act of 1995, 44 U.S.C., Chapter 35, as amended.

Dated: April 5, 2011.

Ronald Y. Spraker,

Associate General Deputy Assistant Secretary for Housing.

[FR Doc. 2011–8598 Filed 4–11–11; 8:45 am]

BILLING CODE 4210–67–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–5094–C–07]

Changes to the Public Housing Assessment System (PHAS): Management Operations Scoring Notice

AGENCY: Office of the Assistant Secretary for Public and Indian Housing, HUD.

ACTION: Notice; correction.

SUMMARY: HUD published a document in the **Federal Register** of February 23, 2011, concerning request for public comments on the Management Operations interim scoring notice. The document inadvertently omitted a word with respect to the tenant accounts receivable metric.

DATES: *Effective Date:* March 25, 2011.

FOR FURTHER INFORMATION CONTACT: Claudia Yarus, Department of Housing and Urban Development, Office of Public and Indian Housing, Real Estate Assessment Center (REAC), 550 12th Street, SW., Suite 100, Washington, DC 20410 at 202–475–8830 (this is not a toll-free number). Persons with hearing or speech impairments may access this number through TTY by calling the toll-free Federal Information Relay Service at 800–877–8339. Additional information is available from the REAC Internet site at *http://www.hud.gov/offices/reac/.*

SUPPLEMENTARY INFORMATION:

I. Background

The proposed management operations scoring information was published on August 21, 2008 (73 FR 49575). This proposal included a metric for tenant rents collected, in which the highest score would have been given for a successful collection rate of 97 percent of the total rent due; the intermediate score would have been given for a successful collection rate of at least 93 percent but less than 97 percent; and the lowest score would have been given for a collection rate of less than 93 percent. Stated in terms of accounts receivable, these 3 tiers of scoring would be: for the highest score, a 3 percent or .03 ratio of accounts receivable; for the intermediate score, at least 7 percent or .07 ratio of accounts receivable to less than a 3 percent or .03 ratio of accounts receivable; and for the lowest score, less than a 7 percent or .07 ratio of accounts receivable.

The interim Management Operations Scoring Notice was published on February 23, 2011 (76 FR 10050). This interim notice is effective as of March 25, 2011, and HUD is accepting public comments on this notice until April 25, 2011. In this interim notice, the same metric is stated as "tenant accounts receivable" and was intended to be adjusted slightly compared to the proposal.

The interim notice states that "A PHA will receive 5 points if it has a tenant accounts receivable ratio of less than 1.5. It will receive 2 points if it has a tenant accounts receivable ratio of equal to or greater than 1.5 and less than 2.5. It will receive zero points if it has a tenant accounts receivable ratio of equal to or greater than 2.5." (See 76 FR 10051, 3rd column). A chart immediately following this text restates the same figures. Both the paragraph and the chart inadvertently omitted the word "percent" following each of these ratios.

Taken literally on a one-year basis, a tenant accounts receivable ratio of, for example, 1.5 would mean that one-and-one half times the amount of total tenant charges (rents and other charges to the tenants) by a housing authority would be uncollected, an obvious impossibility, or, alternatively, over a 2-year basis, a PHA had failed to collect 100 percent of all tenant charges in a given year, and was still owed 50 percent of all the tenant charges from a previous year, a performance so unlikely as to be virtually impossible, and one having no reasonable relation to the proposal.

HUD submits that the language supports that it was not HUD's intention to give a high score in this metric to such a low-performing PHA even if one existed. What was meant was that 1.5 percent (or .015) of the tenant charges would be uncollected. Stated in the terms that the proposed rule used, PHAS would require PHAs to collect 98.5 percent of the rents rather than 97

percent to receive the highest score, a reasonable adjustment from the proposal. This correction properly conforms the language to the clearly intended meaning.

II. Correction

In the **Federal Register** of February 23, 2011, in FR Doc. 2011–2658, on page 10051, in the third column, the second full paragraph (beginning "A PHA will receive 5 points if * * *") and the subsequent chart should be corrected to add the word "percent" after the figures "1.5" and "2.5" wherever those figures occur, to read as follows:

A PHA will receive 5 points if it has a tenant accounts receivable ratio of less than 1.5 percent. It will receive 2 points if it has a tenant accounts receivable ratio of equal to or greater than 1.5 percent and less than 2.5 percent. It will receive zero points if it has a tenant accounts receivable ratio of equal to or greater than 2.5 percent.

Tenant accounts receivable value	Points
<1.5 percent	5
≥1.5 percent but <2.5 percent	2
≥2.5 percent	0

Dated: April 5, 2011.

Sandra B. Henriquez,

Assistant Secretary for Public and Indian Housing.

[FR Doc. 2011–8597 Filed 4–11–11; 8:45 am]

BILLING CODE 4210–67–P

DEPARTMENT OF THE INTERIOR

Bureau of Ocean Energy Management, Regulation and Enforcement

[Docket No. BOEM–2011–0008]

Commercial Leasing for Wind Power on the Outer Continental Shelf (OCS) Off Delaware, Determination of No Competitive Interest

AGENCY: Bureau of Ocean Energy Management, Regulation and Enforcement (BOEMRE), Interior.

ACTION: Notice.

SUMMARY: This notice provides BOEMRE's determination that no competitive interest exists in acquiring a commercial wind lease in the area offshore Delaware proposed in the January 26, 2011, Notice of Proposed Lease Area and Request for Competitive Interest (RFCI) (76 FR 4716). The location of a proposed lease area was identified through the issuance of a Request for Interest (RFI) in the **Federal Register** on April 26, 2010 (75 FR 21653).

Bluewater Wind Delaware, LLC submitted the only valid expression of commercial interest in response to the April 26, 2010, RFI and BOEMRE received no additional expressions of interest in response to the January 26, 2011, RFCI. BOEMRE will proceed with the noncompetitive lease process for the proposed lease area offshore Delaware as described in the RFCI.

This DNCI is published pursuant to subsection 8(p)(3) of the OCS Lands Act, which was added by section 388 of the Energy Policy Act of 2005 (EPAct) (43 U.S.C. 1337(p)(3)), and the implementing regulations at 30 CFR part 285. Subsection 8(p)(3) of the OCS Lands Act requires that OCS renewable energy leases, easements, and rights-of-way be issued "on a competitive basis unless the Secretary determines after public notice of a proposed lease, easement, or right-of-way that there is no competitive interest." The authority to make such determinations has been delegated to BOEMRE. This DNCI provides notice to the public that BOEMRE has determined that there is no competitive interest in leasing the proposed area.

BOEMRE received public comment submissions from four parties in response to the January 26, 2011, RFCI. A discussion of these comments is found below.

DATES: Effective April 12, 2011.

FOR FURTHER INFORMATION CONTACT: Erin C. Trager, Projects and Coordination Branch, Bureau of Ocean Energy Management, Regulation and Enforcement, Office of Offshore Alternative Energy Programs, 381 Elden Street, Mail Stop 4090, Herndon, Virginia 20170–4817; telephone (703) 787–1713.

SUPPLEMENTARY INFORMATION:

Purpose of This DNCI

This DNCI provides public notice that BOEMRE has determined that there is no competitive interest in acquiring a lease in the area described in the January 26, 2011, RFCI. Bluewater Wind Delaware, LLC submitted the only valid expression of commercial interest in response to the RFI and BOEMRE received no additional expressions of interest in response to the RFCI. As a result, no competitive interest exists in the proposed leasing area. Subsequent to the publication of this determination, BOEMRE may proceed with the noncompetitive lease process outlined at 30 CFR 285.231(d) through (i).

Summary of Public Comments Received in Response to the January 26, 2011, RFCI

On February 10, 2011, the comment period closed for the Delaware RFCI. BOEMRE received four responses during the public comment period, including comments from two groups representing waterway users, one marine waterway operator, and one company associated with the surf clam/ocean quahog fishing industry. Comments received in response to the RFCI are available at the following URL: *http://www.boemre.gov/offshore/RenewableEnergy/stateactivities.htm#Delaware*

Some of the comments received requested a change to the area of interest considered for leasing, and included suggestions such as identifying areas for exclusion, mitigation, or further study. Other comments suggested that BOEMRE undertake a more coordinated outreach effort with public stakeholders, to complement existing coordination efforts with government stakeholders in the BOEMRE/Delaware Renewable Energy Task Force. In addition, other comments expressed concern with navigational safety and socioeconomic impacts to the surf clam/ocean quahog fishery in the proposed lease area as a result of wind facility development.

In identifying a lease area for analysis under the National Environmental Policy Act, BOEMRE will consider excluding the area designated as a potential U.S. Coast Guard vessel anchorage area, first identified by the U.S. Coast Guard in its response to the Delaware RFI. Comments received from waterways operators in response to the Delaware RFCI indicate support for excluding a designated anchorage area from a proposed lease area to replace unofficial anchorage areas currently in use throughout the area of interest, which may be displaced by future development.

In response to concerns regarding the proposed 500-meter buffer between the proposed lease area and the adjacent Traffic Separation Scheme (TSS), BOEMRE has decided that additional information is needed to evaluate whether this proposed buffer should be widened. BOEMRE will collaborate with the U.S. Coast Guard to better quantify the amount and location of vessel activity and research ways to analyze the effects of wind energy facility infrastructure on marine vessel traffic in the area to better inform any future mitigation in a proposed lease area. If data suggest that heavy traffic transits within 0.5 nautical mile of the edge of the TSS, BOEMRE has the discretion to

require a larger buffer either as a stipulation in the lease or as a condition of Construction and Operations Plan approval.

In response to concerns regarding potential impacts to the surf clam/quahog fishery in the area of interest, BOEMRE intends to consider potential impacts to the fishery in a proposed lease area as well as the industry associated with this fishery as part of our compliance process.

In response to requests that BOEMRE conduct outreach to the mariner and fishing communities, BOEMRE will continue its ongoing outreach efforts, including but not limited to, participation in meetings with the Mariners Advisory Committee for the Bay and River Delaware and outreach to the Mid-Atlantic Fishery Management Council and regulators of associated activities offshore Delaware.

Dated: March 29, 2011.

Michael R. Bromwich,

Director, Bureau of Ocean Energy Management, Regulation and Enforcement.

[FR Doc. 2011–8341 Filed 4–11–11; 8:45 am]

BILLING CODE 4310–MR–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

[FWS–R8–R–2011–N042; 1261–0000–80230–W2]

Llano Seco Riparian Sanctuary Unit Restoration and Pumping Plant/Fish Screen Facility Protection Project, California; Intent To Prepare an Environmental Impact Statement

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of intent; request for public comment.

SUMMARY: We, the U.S. Fish and Wildlife Service (Service), in coordination with the California Department of Fish and Game (CDFG), are preparing a joint environmental impact statement/environmental impact report (EIS/EIR) for the proposed Llano Seco Riparian Sanctuary Unit Restoration and Pumping Plant/Fish Screen Facility Protection Project, in Glenn and Butte Counties, California. The proposed project includes riparian restoration and protection of the Princeton-Cordora-Glenn and Provident Irrigation Districts (PCGID–PID) pumping plant and fish screen facility. This notice advises the public that we intend to gather information necessary to prepare an EIS pursuant to the National Environmental Policy Act (NEPA). We encourage the public and other agencies to participate in the NEPA scoping process by sending written suggestions and information on the issues and concerns that should be addressed in the draft EIS/EIR, including the range of alternatives, appropriate mitigation measures, and the nature and extent of potential environmental impacts.

DATES: To ensure that we have adequate time to evaluate and incorporate suggestions and other input, we must receive your comments on or before May 27, 2011. A public scoping meeting will be held on May 10, 2011 from 4 p.m. to 6:30 p.m., at the Ord Bend Community Hall, 3241 Highway 45, Ord Bend, California 95943–9654.

ADDRESSES: Send written comments or requests to be added to our project mailing list to: Daniel W. Frisk, Project Leader, Sacramento National Wildlife Refuge Complex, U.S. Fish and Wildlife Service, 752 County Road 99W, Willows, CA 95988. Alternatively, you may send written comments or requests by fax to (530) 934–7814, or by e-mail to *dan_frisk@fws.gov*. Please indicate that your comments refer to the Riparian Sanctuary Restoration and Pumping Plant/Fish Screen Facility Protection Project.

FOR FURTHER INFORMATION CONTACT: Kelly Moroney, Refuge Manager, (530) 934–2801,

SUPPLEMENTARY INFORMATION:

Background

The Llano Seco Riparian Sanctuary Unit was acquired by the Service in 1991 and added to the Sacramento River National Wildlife Refuge. The Service acquired the Llano Seco Riparian Sanctuary Unit as part of the Joint Management Agreement between Parrot Investment Co., The Nature Conservancy, California Department of Fish and Game, and the Service to cooperatively manage lands on the Llano Seco Ranch. The Llano Seco Riparian Sanctuary Unit is one piece of the larger Llano Seco Ranch, and was cleared of riparian vegetation for agricultural production by the previous landowner during the 1970s. Although the property has been out of agricultural production for close to 15 years, the habitat remains dominated by nonnative and invasive noxious weeds. Currently, just over 200 acres is farmed to dryland row crops to help control nonnative weeds.

Prior to acquisition by the Service, rock revetment was placed on the north end of the Llano Seco Riparian Sanctuary Unit by the Department of Water Resources in 1985 and 1986. The rock was placed in order to lock the Sacramento River in place ensuring that flood flows would continue to be diverted from the Sacramento River through the Goose Lake overflow structure and into the Butte Basin. When the Service acquired the ranch property in 1991, we did so with the understanding that our management activities would not impact the Goose Lake overflow structure that diverts flood water into the Butte Basin.

Since the placement of rock revetment in 1986, the natural riverbank that is south of the revetment has eroded approximately 600 feet. The erosion on refuge property is directly across from the PCGID–PID pumping plant and fish screening facility. In 1999, the PCGID–PID consolidated three pumping plants into one new facility equipped with state-of-the-art fish screens. The fish-screening efficiency of the new PCGID–PID pumping plant is now endangered by the bank erosion on the refuge property and the migration of the Sacramento River. Although the rock revetment on the north edge of refuge property is decades old and eroding, it plays a key role in protecting the PCGID–PID pumping plant. As the bank erodes, the angle of flow and velocity of the water passing the screens will change, trapping fish against the screen rather than sweeping them past. Without some type of protection, it is likely the bank will continue to erode and the pumping plant facility will fail to meet guidelines for operation of the pumping-plant fish screens that were published by the National Marine Fisheries Service of National Oceanic and Atmospheric Administration (Department of Commerce).

To address these issues we are proposing the restoration of approximately 500 acres of the Llano Seco Riparian Sanctuary Unit to improve habitat for wildlife with an emphasis on endangered and threatened species and the protection of the PCGID–PID pumping plant and fish screen facility.

Previous Planning Studies

In 2001, River Partners submitted a planning proposal to the CALFED Bay-Delta Program for grant funding to investigate the following problems:

- River meander may threaten the operation of the PCGID–PID fish screen and pumping plant located across the river from the Llano Seco Riparian Sanctuary (part of the Sacramento River National Wildlife Refuge).
- Current site conditions on much of the 950-acre Llano Seco Riparian Sanctuary have contributed little to endangered species recovery and overall riparian health.

• Few restoration projects integrate an interdisciplinary scientific approach into project implementation, limiting the opportunities to learn restoration.

In 2004, following approval of CALFED Bay-Delta Program grant funding, River Partners and an interdisciplinary team began studies to examine measures to protect the PCGID–PID pumping plant and fish screen facility and develop restoration options for the Llano Seco Riparian Sanctuary Unit.

River Partners initiated a cooperative process with the Service and the PCGID–PID to address complex and potentially controversial issues associated with restoration activities and pumping plant and fish screen facility protection measures. MBK Engineers completed the Llano Seco Unit Sacramento River Mile 178 Pumping Plant Protection Feasibility Study in August 2005 to identify alternatives that meet the PCGID–PID's pumping plant and fish screen protection objectives.

In 2005, River Partners prepared a Riparian Feasibility Study for the Llano Seco Riparian Sanctuary Unit to investigate the feasibility of restoration and other management options for this area. Approximately 500 acres of the site was found to be dominated by nonnative plants, with poor wildlife habitat values, and suitable for restoration.

In 2010, Ayres Associates refined the alternatives identified in the MBK study, identifying the most feasible alternatives that should be considered for protection of the PCGID–PID facility.

Summary of Alternatives

No Action Alternative

Under the No Action alternative, only the ongoing removal and management of invasive plant species would occur at the Riparian Sanctuary, No active restoration of native plants would occur. Maintenance activities for the PCGID–PID pumping plant and fish screens would continue, but no new actions would be taken to prevent river meander.

Action Alternatives

A full range of reasonable alternatives will be developed based on the River Partners 2005 feasibility study, the 2010 Ayres feasibility study, and public input received during this scoping period. The 2005 River Partners study identified restoration measures consisting of full plantings or site-specific plantings of the Llano Seco Riparian Sanctuary Unit. The 2010 Ayres feasibility study identified the following measures to protect the PCGID–PID pumping plant and fish screen facility: Construction of spur dikes, traditional riprap revetment, traditional riprap with a low berm, and traditional riprap with removal of existing revetment. A combination of these measures will be used to develop a range of alternatives.

Public Comment

We are furnishing this notice in accordance with section 1501.7 of the NEPA implementing regulations to obtain suggestions and information from other agencies and the public on the scope of issues to be addressed in the EIS/EIR. We invite written comments from interested parties to ensure identification of the full range of issues.

Written comments we receive become part of the public record associated with this action. Before including your address, phone number, e-mail address, or other personal identifying information in your comment, you should be aware that the entire comment—including your personal identifying information—may be made publicly available at any time. While you can ask us in your comment to withhold your personal identifying information from public review, we cannot guarantee that we will be able to do so.

Public Scoping Meeting

In addition to providing written comments, the public is encouraged to attend a public scoping meeting to provide us with suggestions and information on the scope of issues and alternatives to consider when drafting the EIS/EIR. A public scoping meeting will be held on the date shown in the **DATES** section.

Persons needing reasonable accommodations in order to attend and participate in the public meeting should contact us at the address listed in the **ADDRESSES** section no later than 1 week before the public meeting. Information regarding this proposed action is available in alternative formats upon request. We will accept both oral and written comments at the scoping meeting.

NEPA Compliance

Information gathered through this scoping process will assist us in developing a range of alternatives to address restoration of the Llano Seco Riparian Sanctuary Unit and protection of the PCGID–PID pumping plant and fish screen facility. A detailed description of the proposed action and alternatives will be included in the EIS/EIR. The EIS/EIR will identify the direct, indirect, and cumulative impacts of the alternatives on biological resources, cultural resources, land use, air quality, water quality, water resources, and other environmental resources. It will also identify appropriate mitigation measures for adverse environmental effects.

We will conduct environmental review in accordance with the requirements of NEPA, as amended (42 U.S.C. 4321 *et seq.*), its implementing regulations (40 CFR parts 1500–1508), other applicable regulations, and our procedures for compliance with those regulations. The environmental document will be prepared to meet both the requirements of NEPA and the California Environmental Quality Act (CEQA). The CDFG is the CEQA lead agency. We anticipate that a draft EIS/EIR will be available for public review in the fall of 2011.

Dated: April 6, 2011.

Alexandra Pitts,

Regional Director, Pacific Southwest Region.

[FR Doc. 2011–8664 Filed 4–11–11; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[LLMT921000–11–L13200000–EL0000–P; MTM 101687–MTM 101688]

Notice of Invitation–Coal Exploration License Applications MTM 101687 and MTM 101688

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice.

SUMMARY: Members of the public are hereby invited to participate with the Spring Creek Coal Company on a pro rata cost sharing basis in a program for the exploration of coal deposits owned by the United States of America in lands located in Big Horn County, Montana, encompassing a combined 9,011.61 acres.

DATES: Any party seeking to participate in this exploration program must send written notice to both the Bureau of Land Management and Spring Creek Coal Company as provided in the "**ADDRESSES**" section below no later than May 12, 2011 or 10 calendar days after the last publication of this Notice in the *Sheridan Press* newspaper, whichever is later. This Notice will be published once a week for 2 consecutive weeks in the *Sheridan Press*, Sheridan, Wyoming. Such written notice must refer to serial numbers MTM 101687 or MTM 101688.

ADDRESSES: The proposed exploration license and plan are available for review

from 9 a.m. to 4 p.m., Monday through Friday, in the public room at the BLM Montana State Office, 5001 Southgate Drive, Billings, Montana.

A written notice to participate in the exploration licenses should be sent to the State Director, BLM Montana State Office, 5001 Southgate Drive, Billings, Montana 59101–4669 and Spring Creek Coal Company, P.O. Box 67, Decker, Montana 59025–0067.

FOR FURTHER INFORMATION CONTACT: Robert Giovanini by telephone at 406–896–5084 or by e-mail at *rgiovani@blm.gov;* or Connie Schaff by telephone at 406–896–5060 or by e-mail at *cschaff@blm.gov.*

SUPPLEMENTARY INFORMATION: The exploration activities will be performed pursuant to the Mineral Leasing Act of 1920, as amended, 30 U.S.C. 201(b), and to the regulations at 43 CFR part 3410. The purpose of the exploration program is to gain additional geologic knowledge of the coal underlying the exploration area for the purpose of assessing the coal resources. The exploration program is fully described and will be conducted pursuant to an exploration license and plan approved by the BLM. The exploration plan may be modified to accommodate the legitimate exploration needs of persons seeking to participate.

The lands to be explored for coal deposits in exploration license MTM 101687 are described as follows:

Principal Meridian, Montana

T. 8 S., R. 38 E.,
Sec. 24, E½SE¼;
Sec. 25, E½NE¼ and NE¼SE¼.
T. 8 S., R. 39 E.,
Sec. 4, S½;
Sec. 5, lots 13 thru 26, inclusive, E½SW¼, and SE¼;
Sec. 8, lots 1 thru 4, inclusive, E½, and E½W½;
Sec. 9;
Sec. 13, SW¼NE¼, NE¼NW¼, N½NW¼NW¼, SE¼NW¼NW¼, N½SE¼NW¼, SE¼SE¼NW¼, NE¼SE¼, NE¼NW¼SE¼, and SE¼SE¼;
Sec. 17, lots 1 thru 4, inclusive, E½, and E½W½;
Sec. 20, lots 1 thru 4, inclusive, E½, and E½W½;
Sec. 21, NW¼NW¼, S½N½, and S½;
Sec. 22, SW¼NW¼NE¼, SW¼NE¼, NW¼SE¼NE¼, S½SE¼NE¼, NW¼NE¼NW¼, S½NE¼NW¼, S½NW¼, N½NE¼SW¼, N½SE¼NE¼SW¼, N½NW¼SW¼, SW¼NW¼SW¼, and SW¼SW¼;
Sec. 27, W½NW¼ and W½SE¼NW¼;
Sec. 28, N½NE¼, NW¼, and NW¼SW¼;
Sec. 29, N½NE¼ and NE¼NW¼.
Containing 5,260.16 acres.

The Federal coal within the lands described for exploration license MTM 101667 is currently unleased for development of Federal coal reserves.

The lands to be explored for coal deposits in exploration license MTM 101688 are described as follows:

Principal Meridian, Montana

T. 8 S., R. 39 E.,
Sec. 26, SW¼SW¼ and S½SE¼SW¼;
Sec. 27, NE¼SW¼, SE¼NE¼SW¼, NW¼NW¼SE¼, S½NW¼SE¼, and S½SE¼;
Sec. 35, E½, E½W½, and NW¼NW¼.
T. 9 S., R. 39 E.,
Sec. 1, lots 1 thru 4, inclusive, W½E½, and W½;
Sec. 2, E½ and E½W½;
Sec. 11, NE¼, E½NW¼, NE¼SW¼, and N½SE¼;
Sec. 12, lots 1 thru 4, inclusive, W½E½, NW¼, N½SW¼, and SE¼SW¼.
T. 9 S., R. 40 E.,
Sec. 6, lots 5–7, inclusive, S½SE¼NW¼, E½SW¼, S½NE¼SE¼, NW¼NW¼SE¼, S½NW¼SE¼, and S½SE¼;
Sec. 7, lots 1–4, inclusive, NE¼, E½W½, N½SE¼, and SW¼SE¼.
Containing 3,751.45 acres.

The Federal coal within the lands described for exploration license MTM 101668 is currently unleased for development of Federal coal reserves.

The Spring Creek Coal Company has requested that the BLM's decision associated with exploration license MTM 101688 be deferred for approximately 9 months after the decision on exploration license MTM 101687.

Phillip C. Perlewitz,

Chief, Branch of Solid Minerals.

[FR Doc. 2011–8685 Filed 4–11–11; 8:45 am]

BILLING CODE 4310–DN–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[LLWYD010000–L13110000–EJ0000]

Notice of Intent To Prepare an Environmental Impact Statement for the Proposed Normally Pressured Lance Natural Gas Development Project, Sublette County, WY

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of intent.

SUMMARY: In compliance with the National Environmental Policy Act (NEPA) of 1969, as amended, and the Federal Land Policy and Management Act (FLPMA) of 1976, as amended, the Bureau of Land Management (BLM) Pinedale Field Office (PFO), Pinedale, Wyoming, and the BLM Rock Springs Field Office (RSFO), Rock Springs, Wyoming, intend to prepare an Environmental Impact Statement (EIS) for the Normally Pressured Lance (NPL) Natural Gas Development Project and by this notice are announcing the beginning of the scoping process to solicit public comments and identify issues.

DATES: This notice initiates the public scoping process for the EIS. Comments on issues may be submitted in writing until May 12, 2011. The dates and locations of any scoping meetings will be announced at least 15 days in advance through local news media outlets and through the BLM Web site at: *http://www.blm.gov/wy/st/en/info/NEPA/pfodocs/npl.html.* In order to be included in the Draft EIS, all comments must be received prior to the close of the scoping period or 15 days after the last public meeting, whichever is later. Additional opportunities for public participation will be provided on publication of the Draft EIS.

ADDRESSES: You may submit comments related to the NPL Natural Gas Development Project by any of the following methods:

- *E-mail: NPL_EIS_WY@blm.gov;*
- *Mail:* P.O. Box 768, Pinedale, WY 82941; or
- *Hand delivery:* 1625 W. Pine Street, Pinedale, Wyoming.

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 may 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.

FOR FURTHER INFORMATION CONTACT: Kellie Roadifer, Planning and Environmental Coordinator, Pinedale Field Office, 1625 W. Pine Street, P.O. Box 768, Pinedale, Wyoming 82941; 307–367–5309; *Kellie_Roadifer@blm.gov.* Documents pertinent to this proposal may be examined at the Pinedale Field Office and will be posted online at *http://www.blm.gov/wy/st/en/info/NEPA/pfodocs/npl.html.*

SUPPLEMENTARY INFORMATION: The NPL encompasses an area of 141,080 acres located immediately south and west of the existing Jonah Infill Natural Gas Field. It is located within the BLM PFO and RSFO, High Desert District, in Sublette County, Wyoming. EnCana Oil & Gas (USA) Inc. (EnCana) currently owns leasehold interests on more than 70 percent of this area and proposes to develop up to 3,500 wells ranging from a depth of 6,500 to 13,500 feet and

based on a maximum of 64 wells per 640-acre section of land. These wells are projected to be drilled over a 10-year period to produce gas from the NPL pool. To minimize surface disturbance, wells would be directionally drilled from up to four 18-acre multi-well pad locations per 640-acre section of land. Approximately 10 natural gas drilling rigs would be used. Only drilling muds and cement mixed with fresh water would be used to drill and case through surface water aquifers. About 25,000 barrels of recycled water would be used to drill the majority of each well. Well completion operations would be conducted using EnCana's flare-less flow-back technology to eliminate or reduce emissions and flow-back water would be recycled for a "net-zero" water balance.

In order to minimize air emissions and surface disturbance, a three-phase pipeline gathering system would transport gas, condensate and produced-water to a minimal number of central collection facilities. Pipelines for the gathering system would parallel roads whenever possible and be buried deep enough to avoid freezing conditions. Electric compression would be used to minimize air impacts. Access roads and production infrastructure would be co-located wherever possible. Only a minimum number of access roads and equipment areas needed for on-going production, operation and maintenance activities would be maintained. Remote telemetry technology would reduce truck traffic associated with well servicing. Well pad locations would be constructed so that disturbed areas and haul road distances would be minimized. Topsoil would be conserved for subsequent reclamation. Reclamation efforts would commence as soon as each well pad location is completed and production equipment is operational in accordance with Onshore Order Number 1. Initial surface disturbance is estimated to be 5,429 acres or 3.85 percent of the total NPL area. After reclamation, an estimated 1,411 acres or 1.0 percent of the NPL area would remain in use for production purposes for the life of the gas field.

The purpose of the public scoping process is to determine relevant issues that will influence the scope of the environmental analysis, including alternatives, and guide the process for developing the EIS. At present, the BLM has identified the following potential issues:

- Increased traffic and associated impacts on existing county, state, and BLM roads;
- Socioeconomic impacts to local communities;
- Impacts to surface water and groundwater resources, including floodplains;
- Air quality impacts from emissions resulting from drilling and production activities;
- Impacts related to reclamation of disturbed areas and control of invasive plants;
- Conflicts with livestock management operations in the Project Area;
- Impacts to cultural, historical, and paleontological resources within the Project Area;
- Impacts to wildlife habitats and populations within the Project Area, including big game, raptors, and sage-grouse;
- Impacts to threatened, endangered, or candidate plant and animal species, including potential Green River water depletions and effects on downstream listed fish species;
- Impacts to lands with wilderness characteristics;
- Cumulative effects of drilling and development activities when combined with other ongoing and proposed developments; and
- Conflicts between mineral development activities and recreational opportunities.

The BLM will utilize and coordinate the NEPA public comment process to comply with section 106 of the National Historic Preservation Act (16 U.S.C. 470f) as provided for in 36 CFR 800.2(d)(3). Native American tribal consultations will be conducted in accordance with BLM policy and sites of religious or cultural significance or other tribal concerns will be given due consideration. An updated inventory of lands with wilderness characteristics will be utilized to comply with Secretarial Order 3310. Federal, State, and local agencies, along with other stakeholders interested in or affected by the BLM's decision on this project are invited to participate in the scoping process and, if eligible, may request or be requested by the BLM to participate as a cooperating agency.

Authority: 40 CFR 1501.7

Donald A. Simpson,

State Director.

[FR Doc. 2011–8687 Filed 4–11–11; 8:45 am]

BILLING CODE 4310–22–P

DEPARTMENT OF JUSTICE

Notice of Lodging of Consent Decree Under the Comprehensive Environmental Response, Compensation and Liability Act

Notice is hereby given that on March 31, 2011, a proposed Amendment to Consent Decree was lodged with the United States District Court for the Northern District of Illinois in *United States* v. *City of Waukegan, et al.*, Civil Action No. 04C 5172.

Under a consent decree previously entered by the district court in this action under Sections 106 and 107 of the Comprehensive Environmental Response, Compensation and Liability Act, as amended ("CERCLA"), 42 U.S.C. 9606 and 9607, the former General Motors Corporation, now known as Motors Liquidation Company ("GM"), was one of two Performing Settling Defendants responsible for implementing a remedial action to address releases and threatened releases of hazardous substances at and from the Waukegan Manufactured Gas and Coke Plant Site (the "Site") in Waukegan, Illinois. Pursuant to financial assurance requirements of the consent decree, GM obtained a performance bond from Westchester Fire Insurance Company ("Westchester"). After filing for bankruptcy in 2009, GM stopped participating in implementation of the remedial action at the Site.

Under the proposed Amendment to Consent Decree, Westchester will become a party to the consent decree and become responsible for financing implementation of the remedial action at the Site, up to a $10.5 million limit that corresponds to the outstanding amount of the original performance bond issued by Westchester. Westchester's obligations will include: (1) Reimbursing 50 percent of the response costs incurred by North Shore Gas Company (the other Performing Settling Defendant) between June 1, 2009, when GM stopped participating in implementation of the consent decree, and the effective date of the Amendment to Consent Decree; (2) monthly reimbursement of 50 percent of the ongoing remedial costs incurred by North Shore Gas Company after the effective date of the Amendment to Consent Decree; (3) acceleration of remaining payments (up to the $10.5 million limit on total Westchester payments) in accordance with instructions to be provided by EPA, in the event that EPA takes over implementation of any Work, pursuant to provisions of the previously entered consent decree. In addition, to guarantee

performance of its obligations under the proposed Amendment to Consent Decree, Westchester will establish a trust for the benefit of EPA, and maintain a trust balance that is equal to its outstanding liability relating to the Site.

The Department of Justice will receive comments relating to the Consent Decree for a period of thirty (30) days from the date of this publication. Comments should be addressed to the Assistant Attorney General, Environment and Natural Resources Division, and either e-mailed to *pubcomment-ees.enrd@usdoj.gov* or mailed to P.O. Box 7611, U.S. Department of Justice, Washington, DC 20044–7611, and should refer to *United States* v. *City of Waukegan, et. al.*, DJ # 90–11–3–07051.

The Consent Decree may be examined at the Office of the United States Attorney, Northern District of Illinois, 219 South Dearborn St., Chicago, Illinois 60604, and at U.S. EPA Region 5, 77 W. Jackson Blvd., Chicago, IL 60604. During the public comment period, the Consent Decree may also be examined on the following Department of Justice Web site, *http://www.usdoj.gov/enrd/Consent_Decrees.html*. A copy of the Consent Decrees may also be obtained by mail from the Consent Decree Library, U.S. Department of Justice, P.O. Box 7611, Washington, DC 20044–7611 or by faxing or e-mailing a request to Tonia Fleetwood (*tonia.fleetwood@usdoj.gov*), fax number (202) 514–0097, phone confirmation number (202) 514–1547. In requesting a copy of the Consent Decree from the Consent Decree Library, please enclose a check in the amount of $8.50 (25 cents per page reproduction cost) payable to the U.S. Treasury or, if by e-mail or fax, forward a check in that amount to the Consent Decree Library at the stated address.

Maureen M. Katz,

Assistant Chief, Environmental Enforcement Section, Environment and Natural Resources Division, United States Department of Justice.

[FR Doc. 2011–8709 Filed 4–11–11; 8:45 am]

BILLING CODE 4410–15–P

DEPARTMENT OF JUSTICE

Notice of Lodging of Consent Decree and Settlement Agreement Regarding Natural Resource Damage Claims Between the Debtors, the United States of America, the State of Indiana, the State of New York, and the St. Regis Mohawk Tribe

Notice is hereby given that on March 31, 2011, a proposed Consent Decree and Settlement Agreement (the "NRD Settlement Agreement") in the bankruptcy matter, *Motors Liquidation Corp, et al., f/k/a General Motors Corp., et al.*, Jointly Administered Case No. 09–50026 (REG), was lodged with the United States Bankruptcy Court for the Southern District of New York. The Parties to the NRD Settlement Agreement are debtors Motors Liquidation Corporation, formerly known as General Motors Corporation, Remediation and Liability Management Company, Inc., and Environmental Corporate Remediation Company, Inc. (collectively, "Old GM"); the United States of America; the State of Indiana; the State of New York; and the St. Regis Mohawk Tribe. The NRD Settlement Agreement resolves claims for natural resource damages and assessment costs of the United States Department of the Interior ("DOI") and National Oceanic and Atmospheric Administration ("NOAA"), the State of Indiana, the State of New York, and the St. Regis Mohawk Tribe against Old GM under section 107 of the Comprehensive Environmental Response, Compensation, and Liability Act ("CERCLA"), 42 U.S.C. 9601–9675, with respect to the following sites:

1. The Kin-Buc Landfill Superfund Site in New Jersey;
2. The National Lead Industries Superfund Site in New Jersey;
3. The Diamond Alkali Superfund Site in New Jersey;
4. The General Motors Bedford Site in Indiana; and
5. The Central Foundry Division a/k/a Massena Superfund Site in New York.

Under the NRD Settlement Agreement, the claimants will have allowed general unsecured claims in the combined total amount of $11,571,413, in specified sub-amounts as to each site.

The Department of Justice will receive, for a period of thirty days from the date of this publication, comments relating to the NRD Settlement Agreement. Comments should be addressed to the Assistant Attorney General, Environment and Natural Resources Division, and either e-mailed to *pubcomment-ees.enrd@usdoj.gov* or mailed to P.O. Box 7611, U.S. Department of Justice, Washington, DC 20044–7611, and should refer to *In re Motors Liquidation Corp., et al.*, D.J. Ref. 90–11–3–09754.

The NRD Settlement Agreement may be examined at the following locations: Office of the United States Attorney, 86 Chambers Street, 3rd Floor, New York, New York 10007; Environmental Contaminants/Federal Activities, U.S. Fish and Wildlife Service, 3817 Luker Road, Cortland, New York 13045; U.S. Fish and Wildlife Service, 620 S. Walker St., Bloomington, Indiana 47403; and National Oceanic and Atmospheric Administration, 290 Broadway, Suite 1831, New York, NY 10007. During the public comment period, the NRD Settlement Agreement may also be examined on the following Department of Justice Web site, *http://www.usdoj.gov/enrd/Consent_Decrees.html*. Copies of the NRD Settlement Agreement may also be obtained by mail from the Consent Decree Library, P.O. Box 7611, U.S. Department of Justice, Washington, DC 20044–7611 or by faxing or e-mailing a request to Tonia Fleetwood (*tonia.fleetwood@usdoj.gov*), fax no. (202) 514–0097, phone confirmation number (202) 514–1547. In requesting a copy from the Consent Decree Library, please enclose a check in the amount of $7.00 (25 cents per page reproduction cost) payable to the U.S. Treasury or, if by e-mail or fax, please forward a check in that amount to the Consent Decree Library at the stated address.

Maureen Katz,

Assistant Section Chief, Environmental Enforcement Section, Environment and Natural Resources Division.

[FR Doc. 2011–8619 Filed 4–11–11; 8:45 am]

BILLING CODE 4410–15–P

DEPARTMENT OF LABOR

Office of the Secretary

Agency Information Collection Activities; Submission for OMB Review; Comment Request; Extension of Employee Retirement Income Security Act Prohibited Transaction Exemption 98–54 Relating to Certain Employee Benefit Plan Foreign Exchange Transactions Executed Pursuant to Standing Instructions

ACTION: Notice.

SUMMARY: The Department of Labor (DOL) is submitting the Employee Benefits Security Administration sponsored information collection request (ICR) titled, "Prohibited Transaction Exemption 98–54 Relating to Certain Employee Benefit Plan Foreign Exchange Transactions Executed Pursuant to Standing Instructions," to the Office of Management and Budget (OMB) for review and approval for continued use in accordance with the Paperwork Reduction Act of 1995 (Pub. L. 104–13, 44 U.S.C. chapter 35).

DATES: Submit comments on or before May 12, 2011.

ADDRESSES: A copy of this ICR, with applicable supporting documentation; including a description of the likely respondents, proposed frequency of response, and estimated total burden may be obtained from the RegInfo.gov Web site, *http://www.reginfo.gov/public/do/PRAMain,* on the day following publication of this notice or by contacting Michel Smyth by telephone at 202–693–4129 (this is not a toll-free number) or sending an e-mail to *DOL_PRA_PUBLIC@dol.gov.*

Submit comments about this request to the Office of Information and Regulatory Affairs, Attn: OMB Desk Officer for the Department of Labor Employee Benefits Security Administration (EBSA), Office of Management and Budget, Room 10235, Washington, DC 20503, *Telephone:* 202–395–6929/*Fax:* 202–395–6881 (these are not toll-free numbers), *e-mail: OIRA_submission@omb.eop.gov.*

FOR FURTHER INFORMATION CONTACT: Contact Michel Smyth by telephone at 202–693–4129 (this is not a toll-free number) or by e-mail at *DOL_PRA_PUBLIC@dol.gov.*

SUPPLEMENTARY INFORMATION: Prohibited Transaction Exemption 98–54 permits certain foreign exchange transactions between employee benefit plans and certain banks and broker-dealers that are parties in interest with respect to such plans. In order that such transactions will be consistent with the requirements of Employee Retirement Income Security Act section 408(a), 29 U.S.C. 110/(a), the exemption imposes the following conditions at the time the foreign exchange transaction is entered into: (a) The terms of the transaction must not be less favorable that those available in comparable arm's-length transactions between unrelated parties or those afforded by the bank or the broker-dealer in comparable arm's-length transactions involving unrelated parties; (b) neither the bank nor the broker-dealer has any discretionary authority with respect to the investment of the assets involved in the transaction; (c) the bank or broker-dealer maintains at all times written policies and procedures regarding the handling of foreign exchange transactions for plans for which it is a party in interest which ensure that the party acting for the bank or the broker-dealer knows it is dealing with a plan; (d) the transactions are performed in accordance with a written authorization executed in advance by an independent fiduciary of the plan whose assets are involved in the transaction and who is independent of the bank or broker-dealer engaging in the covered transaction; (e) transactions are executed within one business day of receipt of funds; (f) the bank or the broker-dealer at least once a day at a time specified in written procedures establishes a rate or range of rates of exchange to be used for the transactions covered by this exemption, and executes transactions at either the next scheduled time or no later than 24 hours after receipt of notice of receipt of funds; (g) prior to execution of a transaction, the bank or the broker-dealer provides the authorizing fiduciary with a copy of its written policies and procedures for foreign exchange transactions involving income item conversions and *de minimis* purchase and sale transactions; (h) the bank or the broker-dealer furnishes the authorizing fiduciary a written confirmation statement with respect to each covered transaction within 5 days of execution; (i) the bank or the broker-dealer maintains records necessary for plan fiduciaries, participants, and the DOL and Internal Revenue Service to determine whether the conditions of the exemption have been met for a period of six years from the date of execution of a transaction. *See* 63 FR 63503.

This information collection is subject to the PRA. A Federal agency generally cannot conduct or sponsor a collection of information, and the public is generally not required to respond to an information collection, unless it is approved by the OMB under the PRA and displays a currently valid OMB Control Number. In addition, notwithstanding any other provisions of law, no person shall generally be subject to penalty for failing to comply with a collection of information if the collection of information does not display a valid OMB control number. *See* 5 CFR 1320.5(a) and 1320.6. The DOL obtains OMB approval for this information collection under OMB Control Number 1210–0111. The current OMB approval is scheduled to expire on April 30, 2011; however, it should be noted that information collections submitted to the OMB receive a month-to-month extension while they undergo review. For additional information, see the related notice published in the **Federal Register** on November 10, 2010 (75 FR 69130).

Interested parties are encouraged to send comments to the OMB, Office of Information and Regulatory Affairs at the address shown in the **ADDRESSES** section within 30 days of publication of this notice in the **Federal Register.** In order to ensure appropriate consideration, comments should reference OMB Control Number 1210–0111. The OMB is particularly interested in comments that:

- Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;
- Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
- Enhance the quality, utility, and clarity of the information to be collected; and
- Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

Agency: Employee Benefits Security Administration (EBSA).

Title of Collection: Prohibited Transaction Exemption 98–54 Relating to Certain Employee Benefit Plan Foreign Exchange Transactions Executed Pursuant to Standing Instructions.

OMB Control Number: 1210–0111.

Affected Public: Private sector—Businesses or other for profits.

Total Estimated Number of Respondents: 35.

Total Estimated Number of Responses: 420,000.

Total Estimated Annual Burden Hours: 4200.

Total Estimated Annual Costs Burden: $0.

Dated: April 5, 2011.

Michel Smyth,

Departmental Clearance Officer.

[FR Doc. 2011–8618 Filed 4–11–11; 8:45 am]

BILLING CODE 4510–29–P

LIBRARY OF CONGRESS

Copyright Office

[Docket No. RM 2010–10]

Section 302 Report

AGENCY: Copyright Office, Library of Congress.

ACTION: Notice of inquiry: Extension of comments and reply comments period.

SUMMARY: In Section 302 of the Satellite Television Extension and Localism Act ("STELA"), Congress directed the Copyright Office ("Office") to prepare a report addressing possible mechanisms, methods, and recommendations for phasing out the statutory licensing

requirements set forth in Sections 111, 119, and 122 of the Copyright Act. The Office published a Notice of Inquiry ("NOI") in the **Federal Register** on March 3, 2011, seeking comment on issues related to Section 302. (76 FR 11816). This notice is extending the time in which comments and reply comments can be filed in this proceeding.

DATES: Comments originally due on April 18, 2011, are now due no later than April 25, 2011. Reply comments originally due on May 18, 2011, are now due no later than May 25, 2011.

ADDRESSES: All comments and reply comments shall be submitted electronically. A comment page containing a comment form is posted on the Copyright Office Web site at *http://www.copyright.gov/docs/section302*. The Web site interface requires submitters to complete a form specifying name and organization, as applicable, and to upload comments as an attachment via a browser button. To meet accessibility standards, all comments must be uploaded in a single file in either the Adobe Portable Document File (PDF) format that contains searchable, accessible text (not an image); Microsoft Word; WordPerfect; Rich Text Format (RTF); or ASCII text file format (not a scanned document). The maximum file size is 6 megabytes (MB). The name of the submitter and organization should appear on both the form and the face of the comments. All comments will be posted publicly on the Copyright Office Web site exactly as they are received, along with names and organizations. If electronic submission of comments is not feasible, please contact the Copyright Office at (202) 707–0796 for special instructions.

FOR FURTHER INFORMATION CONTACT: Ben Golant, Assistant General Counsel, and Tanya M. Sandros, Deputy General Counsel, Copyright GC/I&R, P.O. Box 70400, Southwest Station, Washington, DC 20024. *Telephone:* (202) 707–8380. *Telefax:* (202) 707–8366 or by electronic mail at *bgol@loc.gov*.

SUPPLEMENTARY INFORMATION:

I. Background

On May 27, 2010, the President signed the Satellite Television Extension and Localism Act of 2010. *See* Public Law 111–175, 124 Stat. 1218 (2010). The legislation extended the term of the Section 119 license for another five years, updated the statutory license structures to account for changes resulting from the nationwide transition to digital television, and revised the Section 111 and Section 122 licenses in several other respects. In addition, STELA instructed the Copyright Office, the Government Accountability Office ("GAO") and the FCC to conduct studies and report findings to Congress on different structural and regulatory aspects of the broadcast signal carriage marketplace in the United States. Section 302 of STELA, entitled "Report on Market Based Alternatives to Statutory Licensing," charges the Copyright Office with the following:

> Not later than 18 months after the date of the enactment of this Act, and after consultation with the Federal Communications Commission, the Register of Copyrights shall submit to the appropriate Congressional committees a report containing:
>
> (1) Proposed mechanisms, methods, and recommendations on how to implement a phase-out of the statutory licensing requirements set forth in sections 111, 119, and 122 of title 17, United States Code, by making such sections inapplicable to the secondary transmission of a performance or display of a work embodied in a primary transmission of a broadcast station that is authorized to license the same secondary transmission directly with respect to all of the performances and displays embodied in such primary transmission;
>
> (2) any recommendations for alternative means to implement a timely and effective phase-out of the statutory licensing requirements set forth in sections 111, 119, and 122 of title 17, United States Code; and
>
> (3) any recommendations for legislative or administrative actions as may be appropriate to achieve such a phase-out.

In response to these directives, the Office published a Notice of Inquiry ("NOI") in the Federal Register seeking comments and information from the public on several issues that are central to the scope and operation of Section 302 and critical to the Office's analysis of the legal and business landscapes. 79 FR 11816 (March 3, 2011).

II. Notice of Extension of Time

On April 6, 2011, the Copyright Office received a Motion for an Extension of Time to file comments and reply comments in this proceeding from the National Association of Broadcasters ("NAB"). It requests that the Copyright Office grant a seven-day extension of the deadlines for all interested parties to submit comments and reply comments in response to the Notice of Inquiry. Noting that comments are currently due on April 18, 2011 and reply comments are due on May 18, 2011, NAB respectfully requests an extension of these deadlines until April 25, 2011 and May 25, 2011, respectively.

NAB asserts that approval of its motion will enable it and many other concerned parties to help develop a more robust record in response to the NOI, while still permitting them to actively participate in a significant FCC proceeding with coinciding timelines.[1] It also notes that the current deadline immediately follows the 2011 NAB Show in Las Vegas, NV, which many concerned parties—including broadcasters, and their counsel—will be attending.[2] It adds that parties interested in responding to the Notice who also are involved in the NAB Show would lose a significant amount of preparation time and would have only two business days after the Show ends to finalize and file their Comments. NAB concludes that the requested extension will allow the Copyright Office to collect and consider a more complete legal and factual record and will therefore serve the public interest.

The Office finds that NAB has demonstrated good cause for an extension for filing of comments and reply comments and is granting its request. The Office and all interested parties will benefit from a thoughtful, thorough, and complete record in this proceeding. Accordingly, comments are now due on April 25, 2011, one week from the original date of April 18, 2011. In the event of a government wide shutdown, comments will be due the next business day after the Library reopens pursuant to 17 U.S.C. 703. Reply comments will be due on May 25, 2011, one week from the original date of May 18, 2011.

III. Conclusion

The Office hereby extends time for comments and reply comments from the public on the factual and policy matters related to the study mandated by Section 302 of the Satellite Television Extension and Localism Act of 2010. The new filing date for comments is April 25, 2011. The new filing date for reply comments is May 25, 2011.

Dated: April 7, 2011.

Maria A. Pallante,

Acting Register of Copyrights.

[FR Doc. 2011–8730 Filed 4–11–11; 8:45 am]

BILLING CODE 4110–30–P

[1] *Innovation in the Broadcast Television Bands: Allocations, Channel Sharing and Improvements to VHF*, Notice of Proposed Rulemaking, ET Docket No. 10–235, 25 FCC Rcd 16498 (rel. Nov. 30, 2010) (reply comment are due April 18, 2011).

[2] The 2011 NAB Show begins on Saturday, April 9 and ends on Thursday, April 14. *See 2011 NAB Show Web Site*, available at: *http://www.nabshow.com/2011/default.asp*.

NATIONAL FOUNDATION ON THE ARTS AND THE HUMANITIES

Submission for OMB Review; Comment Request

April 6, 2011.

The National Endowment for the Arts, on behalf of the Federal Council on the Arts and the Humanities, has submitted the following public information collection request (ICR) to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995 (Pub. L. 104–13, 44 U.S.C. Chapter 35). Copies of this ICR, with applicable supporting documentation, may be obtained by calling the National Endowment for the Arts' Indemnity Administrator, Alice Whelihan (202/682–5574).

Comments should be sent to Office of Information and Regulatory Affairs, Attn: OMB Desk Officer for the National Endowment for the Arts, Office of Management and Budget, Room 10235, Washington, DC 20503 (202/395–6466), within thirty days of this publication in the **Federal Register**.

The OMB is particularly interested in comments which:

—Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

—Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information including the validity of the methodology and assumptions used;

—Enhance the quality, utility and clarity of the information to be collected; and

—Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical or other technological collection techniques or other forms of information technology, *e.g.*, permitting electronic submissions of responses.

Agency: National Endowment for the Arts.

Title: Application for Domestic Indemnification.

OMB Number: 3135–0123.

Frequency: Every three years.

Affected Public: Non-profit, tax exempt organizations, and governments.

Number of Respondents: Estimate 50 per year.

Estimated Time per Respondent: 44 hours.

Estimate Cost per Respondent: $1,800.

Total Burden Hours: 2,200.

Total Annualized Capital/Startup Costs: 0.

Total Annual Costs (Operating/Maintaining Systems or Purchasing Services): $80,000.

Description: This application form is used by non-profit, tax-exempt organizations (primarily museums), individuals and governmental units to apply to the Federal Council on the Arts and the Humanities (through the National Endowment for the Arts) for indemnification of eligible works of art and artifacts, borrowed from public and private collections in the United States for exhibition in the United States. The indemnity agreement is backed by the full faith and credit of the United States. In the event of loss or damage to an indemnified object, the Federal Council certifies the validity of the claim and requests payment from Congress. 20 U.S.C. 973 *et seq.* requires such an application and specifies information which must be supplied. This statutory requirement is implemented by regulation at 45 CFR 1160.4.

Kathleen Edwards,

Director, Administrative Services.

[FR Doc. 2011–8629 Filed 4–11–11; 8:45 am]

BILLING CODE 7536–01–P

NATIONAL FOUNDATION ON THE ARTS AND THE HUMANITIES

Meetings of Humanities Panel

AGENCY: The National Endowment for the Humanities

ACTION: Notice of additional meeting.

SUMMARY: Pursuant to the provisions of the Federal Advisory Committee Act (Pub. L. 92–463, as amended), notice is hereby given that the following meeting of the Humanities Panel will be held at the Old Post Office, 1100 Pennsylvania Avenue, NW., Washington, DC 20506.

FOR FURTHER INFORMATION CONTACT: Michael P. McDonald, Advisory Committee Management Officer, National Endowment for the Humanities, Washington, DC 20506; telephone (202) 606–8322. Hearing-impaired individuals are advised that information on this matter may be obtained by contacting the Endowment's TDD terminal on (202) 606–8282.

SUPPLEMENTARY INFORMATION: The proposed meeting is for the purpose of panel review, discussion, evaluation and recommendation on applications for financial assistance under the National Foundation on the Arts and the Humanities Act of 1965, as amended, including discussion of information given in confidence to the agency by the grant applicants. Because the proposed meeting will consider information that is likely to disclose trade secrets and commercial or financial information obtained from a person and privileged or confidential and/or information of a personal nature the disclosure of which would constitute a clearly unwarranted invasion of personal privacy, pursuant to authority granted me by the Chairman's Delegation of Authority to Close Advisory Committee meetings, dated July 19, 1993, I have determined that these meetings will be closed to the public pursuant to subsections (c)(4), and (6) of section 552b of Title 5, United States Code.

1. *Date:* April 20, 2011.

Time: 9 a.m. to 5 p.m.

Location: Room 315.

Program: This meeting will review applications for Landmark Workshops for School Teachers and Community College Faculty, submitted to the Division of Education Programs at the March 1, 2011 deadline.

Michael P. McDonald,

Advisory Committee, Management Officer.

[FR Doc. 2011–8686 Filed 4–11–11; 8:45 am]

BILLING CODE 7536–01–P

NATIONAL FOUNDATION ON THE ARTS AND THE HUMANITIES

Meetings of Humanities Panel

AGENCY: The National Endowment for the Humanities.

ACTION: Notice of meetings.

SUMMARY: Pursuant to the provisions of the Federal Advisory Committee Act (Pub. L. 92–463, as amended), notice is hereby given that the following meetings of Humanities Panels will be held at the Old Post Office, 1100 Pennsylvania Avenue, NW., Washington, DC 20506.

FOR FURTHER INFORMATION CONTACT: Michael P. McDonald, Advisory Committee Management Officer, National Endowment for the Humanities, Washington, DC 20506; telephone (202) 606–8322. Hearing-impaired individuals are advised that information on this matter may be obtained by contacting the Endowment's TDD terminal on (202) 606–8282.

SUPPLEMENTARY INFORMATION: The proposed meetings are for the purpose of panel review, discussion, evaluation and recommendation on applications for financial assistance under the National Foundation on the Arts and the Humanities Act of 1965, as amended,

including discussion of information given in confidence to the agency by the grant applicants. Because the proposed meetings will consider information that is likely to disclose trade secrets and commercial or financial information obtained from a person and privileged or confidential and/or information of a personal nature the disclosure of which would constitute a clearly unwarranted invasion of personal privacy, pursuant to authority granted me by the Chairman's Delegation of Authority to Close Advisory Committee meetings, dated July 19, 1993, I have determined that these meetings will be closed to the public pursuant to subsections (c)(4), and (6) of section 552b of Title 5, United States Code.

1. *Date:* May 2, 2011.
Time: 9 a.m. to 5 p.m.
Location: Room 315.
Program: This meeting will review applications for Landmark Workshops for School Teachers and Community College Faculty, submitted to the Division of Education Programs at the March 1, 2011 deadline.

2. *Date:* May 2, 2011.
Time: 9 a.m. to 5 p.m.
Location: Room 402.
Program: This meeting will review applications for Institutes for Advanced Topics in the Digital Humanities, submitted to the Office of Digital Humanities at the February 16, 2011 deadline.

3. *Date:* May 3, 2011.
Time: 9 a.m. to 5 p.m.
Location: Room 315.
Program: This meeting will review applications for Landmark Workshops for School Teachers and Community College Faculty, submitted to the Division of Education Programs at the March 1, 2011 deadline.

4. *Date:* May 4, 2011.
Time: 9 a.m. to 5 p.m.
Location: Room 315.
Program: This meeting will review applications for Landmark Workshops for School Teachers and Community College Faculty, submitted to the Division of Education Programs at the March 1, 2011 deadline.

5. *Date:* May 5, 2011.
Time: 9 a.m. to 5 p.m.
Location: Room 315.
Program: This meeting will review applications for Landmark Workshops for School Teachers and Community College Faculty, submitted to the Division of Education Programs at the March 1, 2011 deadline.

6. *Date:* May 6, 2011.
Time: 9 a.m. to 5 p.m.
Location: Room 315.
Program: This meeting will review applications for Landmark Workshops for School Teachers and Community College Faculty, submitted to the Division of Education Programs at the March 1, 2011 deadline.

7. *Date:* May 17, 2011.
Time: 9 a.m. to 5 p.m.
Location: Room 402.
Program: This meeting will review applications for Digital Humanities Start Up Grants, submitted to the Office of Digital Humanities at the February 23, 2011 deadline.

8. *Date:* May 18, 2011.
Time: 9 a.m. to 5 p.m.
Location: Room 402.
Program: This meeting will review applications for Digital Humanities Start Up Grants, submitted to the Office of Digital Humanities at the February 23, 2011 deadline.

9. *Date:* May 19, 2011.
Time: 9 a.m. to 5 p.m.
Location: Room 402.
Program: This meeting will review applications for Digital Humanities Start Up Grants, submitted to the Office of Digital Humanities at the February 23, 2011 deadline.

10. *Date:* May 23, 2011.
Time: 9 a.m. to 5 p.m.
Location: Room 402.
Program: This meeting will review applications for Digital Humanities Start Up Grants, submitted to the Office of Digital Humanities at the February 23, 2011 deadline.

11. *Date:* May 24, 2011.
Time: 9 a.m. to 5 p.m.
Location: Room 402.
Program: This meeting will review applications for Digital Humanities Start Up Grants, submitted to the Office of Digital Humanities at the February 23, 2011 deadline.

12. *Date:* May 26, 2011.
Time: 9 a.m. to 5 p.m.
Location: Room 402.
Program: This meeting will review applications for Digital Humanities Start Up Grants, submitted to the Office of Digital Humanities at the February 23, 2011 deadline.

Michael P. McDonald,
Advisory Committee Management Officer.
[FR Doc. 2011–8677 Filed 4–11–11; 8:45 am]
BILLING CODE 7537–01–P

NATIONAL SCIENCE FOUNDATION

Advisory Committee for Education and Human Resources; 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: Advisory Committee for Education and Human Resources (#1119).

Date/Time: May 4, 2011; 8:30 a.m. to 5 p.m.; May 5, 2011; 8:30 a.m. to 1 p.m.

Place: The Arlington Hilton, 950 North Stafford Street, Gallery II, Mezzanine Level, Arlington, VA 22203.

Type of Meeting: Open.

Contact Person: James Colby, National Science Foundation, 4201 Wilson Boulevard, Arlington, VA 22230, (703) 292–5331, *jcolby@nsf.gov.*

Purpose of Meeting: To provide advice with respect to the Foundation's science, technology, engineering, and mathematics (STEM) education and human resources programming.

Agenda

May 4, 2011 (Wednesday)

Report from the NSF Assistant Director for Education and Human Resources.

Update on Strategic Vision Working Groups:

- Putting the "STEM" in STEM Education.
- Preparing and Sustaining K–12 STEM Educators.
- Preparing and Shaping the STEM Workforce.

Overview and Discussion: FY 2012 Budget Request.

Visit with NSF Director and Deputy Director.

May 5, 2011 (Thursday)

Receipt of Committee of Visitor Reports for:

- Math and Science Partnership program.
- Federal Cyber Service: Scholarship for Service program.
- NSF Scholarships in Science, Technology, Engineering, and Mathematics.

Discussion of future STEM program planning.

Adjournment.

Dated: April 7, 2011.

Susanne Bolton,
Committee Management Officer.
[FR Doc. 2011–8723 Filed 4–11–11; 8:45 am]
BILLING CODE 7555–01–P

NUCLEAR REGULATORY COMMISSION

[NRC–2011–0068]

Applications and Amendments to Facility Operating Licenses Involving Proposed No Significant Hazards Considerations and Containing Sensitive Unclassified Non-Safeguards Information and Order Imposing Procedures for Access to Sensitive Unclassified Non-Safeguards Information

I. Background

Pursuant to section 189a.(2) of the Atomic Energy Act of 1954, as amended (the Act), the U.S. Nuclear Regulatory Commission (the Commission or NRC) is publishing this notice. The Act requires the Commission to publish notice of any amendments issued, or proposed to be issued and grants the Commission the authority to issue and make immediately effective any amendment to an operating license upon a determination by the Commission that such amendment involves no significant hazards consideration, notwithstanding the pendency before the Commission of a request for a hearing from any person.

This notice includes notices of amendments containing sensitive unclassified non-safeguards information (SUNSI).

Notice of Consideration of Issuance of Amendments to Facility Operating Licenses, Proposed No Significant Hazards Consideration Determination, and Opportunity for a Hearing

The Commission has made a proposed determination that the following amendment requests involve no significant hazards consideration. Under the Commission's regulations in Title 10 of the *Code of Federal Regulations* (10 CFR), Section 50.92(c), this means that operation of the facility in accordance with the proposed amendment would not (1) involve a significant increase in the probability or consequences of an accident previously evaluated; (2) create the possibility of a new or different kind of accident from any accident previously evaluated; or (3) involve a significant reduction in a margin of safety. The basis for this proposed determination for each amendment request is shown below.

The Commission is seeking public comments on this proposed determination. Any comments received within 30 days after the date of publication of this notice will be considered in making any final determination.

Normally, the Commission will not issue the amendment until the expiration of 60 days after the date of publication of this notice. The Commission may issue the license amendment before expiration of the 60-day period provided that its final determination is that the amendment involves no significant hazards consideration. In addition, the Commission may issue the amendment prior to the expiration of the 30-day comment period should circumstances change during the 30-day comment period such that failure to act in a timely way would result, for example, in derating or shutdown of the facility. Should the Commission take action prior to the expiration of either the comment period or the notice period, it will publish in the **Federal Register** a notice of issuance. Should the Commission make a final No Significant Hazards Consideration Determination, any hearing will take place after issuance. The Commission expects that the need to take this action will occur very infrequently.

Written comments may be submitted by mail to the Chief, Rules, Announcements and Directives Branch (RADB), TWB–05–B01M, Division of Administrative Services, Office of Administration, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, and should cite the publication date and page number of this **Federal Register** notice. Written comments may also be faxed to the RADB at 301–492–3446. Documents may be examined, and/or copied for a fee, at the NRC's Public Document Room (PDR), located at One White Flint North, Public File Area O1 F21, 11555 Rockville Pike (first floor), Rockville, Maryland.

Within 60 days after the date of publication of this notice, any person(s) whose interest may be affected by this action may file a request for a hearing and a petition to intervene with respect to issuance of the amendment to the subject facility operating license. Requests for a hearing and a petition for leave to intervene shall be filed in accordance with the Commission's "Rules of Practice for Domestic Licensing Proceedings" in 10 CFR Part 2. Interested person(s) should consult a current copy of 10 CFR 2.309, which is available at the Commission's PDR, located at One White Flint North, Public File Area 01 F21, 11555 Rockville Pike (first floor), Rockville, Maryland, or at *http://www.nrc.gov/reading-rm/doc-collections/cfr/part002/part002–0309.html*. Publicly available records will be accessible from the Agencywide Documents Access and Management System's (ADAMS) Public Electronic Reading Room on the Internet at the NRC Web site, *http://www.nrc.gov/reading-rm/adams.html*. If a request for a hearing or petition for leave to intervene is filed within 60 days, the Commission or a presiding officer designated by the Commission or by the Chief Administrative Judge of the Atomic Safety and Licensing Board Panel, will rule on the request and/or petition; and the Secretary or the Chief Administrative Judge of the Atomic Safety and Licensing Board will issue a notice of a hearing or an appropriate order.

As required by 10 CFR 2.309, a petition for leave to intervene shall set forth with particularity the interest of the petitioner in the proceeding, and how that interest may be affected by the results of the proceeding. The petition should specifically explain the reasons why intervention should be permitted with particular reference to the following general requirements: (1) The name, address, and telephone number of the requestor or petitioner; (2) the nature of the requestor's/petitioner's right under the Act to be made a party to the proceeding; (3) the nature and extent of the requestor's/petitioner's property, financial, or other interest in the proceeding; and (4) the possible effect of any decision or order which may be entered in the proceeding on the requestor's/petitioner's interest. The petition must also set forth the specific contentions which the requestor/petitioner seeks to have litigated at the proceeding.

Each contention must consist of a specific statement of the issue of law or fact to be raised or controverted. In addition, the requestor/petitioner shall provide a brief explanation of the bases for the contention and a concise statement of the alleged facts or expert opinion which support the contention and on which the requestor/petitioner intends to rely in proving the contention at the hearing. The requestor/petitioner must also provide references to those specific sources and documents of which the petitioner is aware and on which the requestor/petitioner intends to rely to establish those facts or expert opinion. The petition must include sufficient information to show that a genuine dispute exists with the applicant on a material issue of law or fact. Contentions shall be limited to matters within the scope of the amendment under consideration. The contention must be one which, if proven, would entitle the requestor/petitioner to relief. A requestor/petitioner who fails to satisfy these requirements with respect to at least one

contention will not be permitted to participate as a party.

Those permitted to intervene become parties to the proceeding, subject to any limitations in the order granting leave to intervene, and have the opportunity to participate fully in the conduct of the hearing. If a hearing is requested, and the Commission has not made a final determination on the issue of no significant hazards consideration, the Commission will make a final determination on the issue of no significant hazards consideration. The final determination will serve to decide when the hearing is held. If the final determination is that the amendment request involves no significant hazards consideration, the Commission may issue the amendment and make it immediately effective, notwithstanding the request for a hearing. Any hearing held would take place after issuance of the amendment. If the final determination is that the amendment request involves a significant hazards consideration, any hearing held would take place before the issuance of any amendment.

All documents filed in NRC adjudicatory proceedings, including a request for hearing, a petition for leave to intervene, any motion or other document filed in the proceeding prior to the submission of a request for hearing or petition to intervene, and documents filed by interested governmental entities participating under 10 CFR 2.315(c), must be filed in accordance with the NRC E-Filing rule (72 FR 49139, August 28, 2007). The E-Filing process requires participants to submit and serve all adjudicatory documents over the Internet, or in some cases to mail copies on electronic storage media. Participants may not submit paper copies of their filings unless they seek an exemption in accordance with the procedures described below.

To comply with the procedural requirements of E-Filing, at least ten (10) days prior to the filing deadline, the participant should contact the Office of the Secretary by e-mail at *hearing.docket@nrc.gov*, or by telephone at 301–415–1677, to request (1) a digital ID certificate, which allows the participant (or its counsel or representative) to digitally sign documents and access the E-Submittal server for any proceeding in which it is participating; and (2) advise the Secretary that the participant will be submitting a request or petition for hearing (even in instances in which the participant, or its counsel or representative, already holds an NRC-issued digital ID certificate). Based upon this information, the Secretary will establish an electronic docket for the hearing in this proceeding if the Secretary has not already established an electronic docket.

Information about applying for a digital ID certificate is available on NRC's public Web site at *http://www.nrc.gov/site-help/e-submittals/apply-certificates.html*. System requirements for accessing the E-Submittal server are detailed in NRC's "Guidance for Electronic Submission," which is available on the agency's public Web site at *http://www.nrc.gov/site-help/e-submittals.html*. Participants may attempt to use other software not listed on the Web site, but should note that the NRC's E-Filing system does not support unlisted software, and the NRC Meta System Help Desk will not be able to offer assistance in using unlisted software.

If a participant is electronically submitting a document to the NRC in accordance with the E-Filing rule, the participant must file the document using the NRC's online, Web-based submission form. In order to serve documents through EIE, users will be required to install a Web browser plug-in from the NRC Web site. Further information on the Web-based submission form, including the installation of the Web browser plug-in, is available on the NRC's public Web site at *http://www.nrc.gov/site-help/e-submittals.html*.

Once a participant has obtained a digital ID certificate and a docket has been created, the participant can then submit a request for hearing or petition for leave to intervene. Submissions should be in Portable Document Format (PDF) in accordance with NRC guidance available on the NRC public Web site at *http://www.nrc.gov/site-help/e-submittals.html*. A filing is considered complete at the time the documents are submitted through the NRC's E-Filing system. To be timely, an electronic filing must be submitted to the E-Filing system no later than 11:59 p.m. Eastern Time on the due date. Upon receipt of a transmission, the E-Filing system time-stamps the document and sends the submitter an e-mail notice confirming receipt of the document. The E-Filing system also distributes an e-mail notice that provides access to the document to the NRC's Office of the General Counsel and any others who have advised the Office of the Secretary that they wish to participate in the proceeding, so that the filer need not serve the documents on those participants separately. Therefore, applicants and other participants (or their counsel or representative) must apply for and receive a digital ID certificate before a hearing request/petition to intervene is filed so that they can obtain access to the document via the E-Filing system.

A person filing electronically using the agency's adjudicatory E-Filing system may seek assistance by contacting the NRC Meta System Help Desk through the "Contact Us" link located on the NRC Web site at *http://www.nrc.gov/site-help/e-submittals.html*, by e-mail at *MSHD.Resource@nrc.gov*, or by a toll-free call at 866–672–7640. The NRC Meta System Help Desk is available between 8 a.m. and 8 p.m., Eastern Time, Monday through Friday, excluding government holidays.

Participants who believe that they have a good cause for not submitting documents electronically must file an exemption request, in accordance with 10 CFR 2.302(g), with their initial paper filing requesting authorization to continue to submit documents in paper format. Such filings must be submitted by: (1) First class mail addressed to the Office of the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, Attention: Rulemaking and Adjudications Staff; or (2) courier, express mail, or expedited delivery service to the Office of the Secretary, Sixteenth Floor, One White Flint North, 11555 Rockville Pike, Rockville, Maryland, 20852, *Attention:* Rulemaking and Adjudications Staff. Participants filing a document in this manner are responsible for serving the document on all other participants. Filing is considered complete by first-class mail as of the time of deposit in the mail, or by courier, express mail, or expedited delivery service upon depositing the document with the provider of the service. A presiding officer, having granted an exemption request from using E-Filing, may require a participant or party to use E-Filing if the presiding officer subsequently determines that the reason for granting the exemption from use of E-Filing no longer exists. Documents submitted in adjudicatory proceedings will appear in NRC's electronic hearing docket which is available to the public at *http://ehd1.nrc.gov/EHD/*, unless excluded pursuant to an order of the Commission, or the presiding officer. Participants are requested not to include personal privacy information, such as social security numbers, home addresses, or home phone numbers in their filings, unless an NRC regulation or other law requires submission of such information. With respect to copyrighted works, except for limited

excerpts that serve the purpose of the adjudicatory filings and would constitute a Fair Use application, participants are requested not to include copyrighted materials in their submission.

Petitions for leave to intervene must be filed no later than 60 days from the date of publication of this notice. Non-timely filings will not be entertained absent a determination by the presiding officer that the petition or request should be granted or the contentions should be admitted, based on a balancing of the factors specified in 10 CFR 2.309(c)(1)(i)–(viii).

For further details with respect to this amendment action, see the application for amendment which is available for public inspection at the Commission's PDR, located at One White Flint North, Public File Area 01 F21, 11555 Rockville Pike (first floor), Rockville, Maryland. Publicly available records will be accessible electronically from the ADAMS Public Electronic Reading Room on the Internet at the NRC Web site, *http://www.nrc.gov/reading-rm/adams.html*. If you do not have access to ADAMS or if there are problems in accessing the documents located in ADAMS, contact the PDR Reference staff at 1–800–397–4209, 301–415–4737, or by e-mail to *pdr.resource@nrc.gov*.

Exelon Generation Company, LLC, Docket Nos. STN 50–456 and STN 50–457, Braidwood Station, Units 1 and 2, Will County, Illinois

Exelon Generation Company, LLC, Docket Nos. STN 50–454 and STN 50–455, Byron Station, Units 1 and 2, Ogle County, Illinois

Exelon Generation Company, LLC, Docket No. 50–461, Clinton Power Station, Unit 1, DeWitt County, Illinois

Exelon Generation Company, LLC, Docket Nos. 50–237 and 50–249, Dresden Nuclear Power Station, Units 2 and 3, Grundy County, Illinois

Exelon Generation Company, LLC, Docket Nos. 50–373 and 50–374, LaSalle County Station, Units 1 and 2, LaSalle County, Illinois

Exelon Generation Company, LLC, Docket Nos. 50–352 and 50–353, Limerick Generating Station, Units 1 and 2, Montgomery County, Pennsylvania

Exelon Generation Company, LLC, et al., Docket No. 50–219, Oyster Creek Nuclear Generating Station, Ocean County, New Jersey Exelon Generation Company, LLC, and PSEG Nuclear LLC, Docket Nos. 50–277 and 50–278, Peach Bottom Atomic Power Station, Units 2 and 3, York and Lancaster Counties, Pennsylvania

Exelon Generation Company, LLC, Docket Nos. 50–254 and 50–265, Quad Cities Nuclear Power Station, Units 1 and 2, Rock Island County, Illinois

Exelon Generation Company, LLC, Docket No. 50–289, Three Mile Island Nuclear Station, Unit 1 (TMI–1), Dauphin County, Pennsylvania

Date of amendment request: November 23, 2009, as supplemented by letters dated January 15, July 23, August 18, November 18, September 24 and December 21, 2010.

Description of amendment request: This amendment request contains sensitive unclassified non-safeguards information (SUNSI). This proposed amendment requests approval of the Exelon Cyber Security Plan, provides an Implementation Schedule, and adds a sentence to the existing Facility Operating License (FOL) Physical Protection license condition to require Exelon to fully implement and maintain in effect all provisions of the approved Cyber Security Plan. This proposed amendment is intended to conform to the model application contained in NEI 08–09, Revision 6, "Cyber Security Plan for Nuclear Power Reactors."

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

(1) Does the proposed amendment involve a significant increase in the probability or consequences of an accident previously evaluated?

Response: No.

The proposed amendment incorporates a new requirement in the Facility Operating License (FOL) to implement and maintain a Cyber Security Plan as part of the facility's overall program for physical protection. Inclusion of the Cyber Security Plan in the FOL itself does not involve any modifications to the safety-related structures, systems or components (SSCs). Rather, the Cyber Security Plan describes how the requirements of 10 CFR 73.54 are to be implemented to identify, evaluate, and mitigate cyber attacks up to and including the design basis cyber attack threat, thereby achieving high assurance that the facility's digital computer and communications systems and networks are protected from cyber attacks. The Cyber Security Plan will not alter previously evaluated Final Safety Analysis Report (FSAR) design basis accident analysis assumptions, add any accident initiators, or affect the function of the plant safety-related SSCs. Any plant modifications or changes resulting from implementation of the Cyber Security Plan will be evaluated per 10 CFR 50.59 to determine if a License Amendment is required. Changes will be evaluated per 10 CFR 50.54(q) to determine if the effectiveness of the site Emergency Plan is reduced. Changes will be evaluated per 10 CFR 50.54(p) to determine if the effectiveness of the site Security Plan is reduced. Prior NRC approval will be obtained if required by these evaluations.

In addition, an editorial change to correct two typographical errors as part of the Braidwood FOL revisions for Unit 1 and Unit 2 is administrative in nature and has no impact on the probability or consequences of an accident previously evaluated.

Therefore, the proposed amendment does not involve a significant increase in the probability or consequences of an accident previously evaluated.

(2) Does the proposed amendment create the possibility of a new or different kind of accident from any accident previously evaluated?

Response: No.

This proposed amendment provides assurance that safety-related SSCs are protected from cyber attacks. Implementation of 10 CFR 73.54 and the inclusion of a plan in the FOL do not result in the need for any new or different FSAR design basis accident analysis. It does not introduce new equipment that could create a new or different kind of accident, and no new equipment failure modes are created. As a result, no new accident scenarios, failure mechanisms, or limiting single failures are introduced as a result of this proposed amendment. In addition, an editorial change to correct two typographical errors as part of the Braidwood FOL revisions for Unit 1 and Unit 2 is administrative in nature and does not create the possibility of a new or different kind of accident.

Therefore, the proposed amendment does not create a possibility for an accident of a new or different type than those previously evaluated.

(3) Does the proposed amendment involve a significant reduction in a margin of safety?

Response: No.

The margin of safety is associated with the confidence in the ability of the fission product barriers (i.e., fuel cladding, reactor coolant pressure boundary, and containment structure) to limit the level of radiation to the public. The proposed amendment would not alter the way any safety-related SSC functions and would not alter the way the plant is operated. The amendment provides assurance that safety-related SSCs are protected from cyber attacks. The proposed amendment would not introduce any new uncertainties or change any existing uncertainties associated with any safety limit. The proposed amendment would have no impact on the structural integrity of the fuel cladding, reactor coolant pressure boundary, or containment structure. In addition, an editorial change to correct two typographical errors as part of the Braidwood FOL revisions for Unit 1 and Unit 2 is administrative in nature and has no impact on the margin of safety. Based on the above considerations, the proposed amendment would not degrade the confidence in the ability of the fission product barriers to limit the level of radiation to the public.

Therefore, the proposed change does not involve a significant reduction in a margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the requested amendments involve no significant hazards consideration.

Attorney for licensee: Mr. Bradley Fewell, Associate General Counsel, Exelon Generation Company, LLC, 4300 Winfield Road, Warrenville, IL 60555.

NRC Branch Chief: Robert D. Carlson.

NextEra Energy Point Beach, LLC, Docket Nos. 50–266 and 50–301, Point Beach Nuclear Plant (PBNP), Units 1 and 2, Town of Two Creeks, Manitowoc County, Wisconsin

Date of amendment request: July 8, 2010, as supplemented by letters dated September 28, November 12, and November 23, 2010.

Description of amendment request: This amendment request contains Sensitive Unclassified Non-Safeguards Information (SUNSI). The proposed amendment includes three parts: The proposed PBNP Cyber Security Plan, an implementation schedule, and a proposed sentence to be added to the Renewed Facility Operating License Physical Protection license condition for NextEra Energy (the licensee) to fully implement and maintain in effect all provisions of the Commission-approved PBNP Cyber Security Plan as required by Title 10 of the *Code of Federal Regulations* (10 CFR) Section 73.54. The **Federal Register** notice dated March 27, 2009, issued the final rule that amended 10 CFR Part 73. The regulations in 10 CFR 73.54, "Protection of Digital Computer and Communication Systems and Networks", establish the requirements for a Cyber Security Program. This regulation specifically requires each licensee currently licensed to operate a nuclear power plant under Part 50 to submit a Cyber Security Plan that satisfies the requirements of the Rule. The regulation also requires that each submittal include a proposed implementation schedule, and the implementation of the licensee's Cyber Security Program must be consistent with the approved schedule. The background for this application is addressed by the Nuclear Regulatory Commission's (NRC) Notice of Availability published on March 27, 2009 (74 FR 13926).

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

(1) Does the proposed amendment involve a significant increase in the probability or consequences of an accident previously evaluated?

Response: No.

The proposed amendment incorporates a new requirement in the Renewed Facility Operating License to implement and maintain a Cyber Security Plan as part of the facility's overall program for physical protection. Inclusion of the Cyber Security Plan in the Renewed Facility Operating License itself does not involve any modifications to the safety-related structures, systems, or components (SSCs). Rather, the Cyber Security Plan describes how the requirements of 10 CFR 73.54 are to be implemented to identify, evaluate, and mitigate cyber attacks up to and including the design basis cyber attack threat, thereby achieving high assurance that the facility's digital computer and communications systems and networks are protected from cyber attacks. The Cyber Security Plan will not alter previously evaluated Final Safety Analysis Report (FSAR) design basis accident analysis assumptions, add any accident initiators, or affect the function of the plant safety-related SSCs as to how they are operated, maintained, modified, tested, or inspected.

Therefore, the proposed amendment does not involve a significant increase in the probability or consequences of an accident previously evaluated.

(2) Does the proposed amendment create the possibility of a new or different kind of accident from any accident previously evaluated?

Response: No.

This proposed amendment provides assurance that safety-related SSCs are protected from cyber attacks. Implementation of 10 CFR 73.54 and the inclusion of a plan in the Renewed Facility Operating License do not result in the need of any new or different FSAR design basis accident analysis. It does not introduce new equipment that could create a new or different kind of accident, and no new equipment failure modes are created. As a result, no new accident scenarios, failure mechanisms, or limiting single failures are introduced as a result of this proposed amendment.

Therefore, the proposed amendment does not create a possibility for an accident of a new or different type than those previously evaluated.

(3) Does the proposed amendment involve a significant reduction in a margin of safety?

Response: No.

The proposed amendment would not alter the way any safety-related SSC functions and would not alter the way the plant is operated. The amendment provides assurance that safety-related SSCs are protected from cyber attacks. The proposed amendment would not introduce any new uncertainties or change any existing uncertainties associated with any safety limit. The proposed amendment would have no impact on the structural integrity of the fuel cladding, reactor coolant pressure boundary, or containment structure. Based on the above considerations, the proposed amendment would not degrade the confidence in the ability of the fission product barriers to limit the level of radiation to the public.

Therefore, the proposed change does not involve a significant reduction in a margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Attorney for licensee: William Blair, Senior Attorney, NextEra Energy Point Beach, LLC,. P. O. Box 14000, Juno Beach, FL 33408–0420.

NRC Branch Chief: Robert J. Pascarelli.

South Carolina Electric and Gas Company, South Carolina Public Service Authority, Docket No. 50–395, Virgil C. Summer Nuclear Station (VCSNS), Unit 1, Fairfield County, South Carolina

Date of amendment request: August 5, 2010, as supplemented on November 30, 2010.

Description of amendment request: This amendment request contains sensitive unclassified non-safeguards information (SUNSI). The proposed change requests to incorporate a new requirement into the facility operating license (FOL) to implement and maintain a cyber security plan (CSP). The CSP describes how the requirements of Title 10 of the *Code of Federal Regulations* (10 CFR), Section 73.54 will be implemented in order to protect the health and safety of the public from radiological sabotage as a result of a cyber attack. The plan provides a description of how the requirements of 10 CFR 73.54 will be implemented at VCSNS Unit 1. The CSP establishes the licensing basis for the cyber security program for VCSNS Unit 1. The CSP establishes how to achieve high assurance that nuclear power plant digital computer and communication systems and networks associated with certain systems are adequately protected against cyber attacks up to and including the design basis threat.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

Criterion 1: The Proposed Change Does Not Involve a Significant Increase in the Probability or Consequences of an Accident Previously Evaluated

The proposed change incorporates a new requirement, in the Operating License, to implement and maintain a cyber security plan as part of the facility's overall program for physical protection. The Cyber Security Plan itself does not require any plant modifications. Rather, the Cyber Security Plan describes how the requirements of 10 CFR 73.54 are implemented in order to identify, evaluate, and mitigate cyber attacks up to and including the design basis threat, thereby achieving high assurance that the facility's digital computer and communications systems and networks are protected from cyber attacks. The proposed change requiring the implementation and maintenance of a Cyber Security Plan does not alter the plant configuration, require new plant equipment to be installed, alter accident analysis assumptions, add any accident initiators, or affect the function of plant systems or the manner in which systems are operated, maintained, modified, tested, or inspected.

Therefore, the inclusion of the Cyber Security Plan as a part of the facility's other physical protection programs specified in the facility's operating license has no impact on the probability or consequences of an accident previously evaluated.

Criterion 2: The Proposed Change Does Not Create the Possibility of a New or Different Kind of Accident From Any Accident Previously Evaluated

The proposed change incorporates a new requirement, in the Operating License, to implement and maintain a cyber security plan as part of the facility's overall program for physical protection. The creation of the possibility of a new or different kind of accident requires creating one or more new accident precursors. New accident precursors may be created by modifications of the plant's configuration, including changes in the allowable modes of operation. The Cyber Security Plan itself does not require any plant modifications, nor does the Cyber Security Plan affect the control parameters governing unit operation or the response of plant equipment to a transient condition. Because the proposed change does not change or introduce any new equipment, modes of system operation, or failure mechanisms, no new accident precursors are created.

Therefore, the proposed change does not create the possibility of a new or different kind of accident from any accident previously evaluated.

Criterion 3: The Proposed Change Does Not Involve a Significant Reduction in a Margin of Safety

The proposed change incorporates a new requirement, in the Operating License, to implement and maintain a cyber security plan as part of the facility's overall program for physical protection. Plant safety margins are established through limiting Conditions for Operation, Limiting Safety System Settings, and Safety limits specified in the Technical Specifications. Because the Cyber Security Plan itself does not require any plant modifications and does not alter the operation of plant equipment, the proposed change does not change established safety margins.

Therefore, the proposed change does not involve a significant reduction in a margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Attorney for licensee: J. Hagood Hamilton, Jr., South Carolina Electric & Gas Company, Post Office Box 764, Columbia, South Carolina 29218.

NRC Branch Chief: Gloria Kulesa.

Southern Nuclear Operating Company, Inc. (SNC), Georgia Power Company, Oglethorpe Power Corporation, Municipal Electric Authority of Georgia, City of Dalton, Georgia, Docket Nos. 50–321 and 50–366, Edward I. Hatch Nuclear Plant, Units 1 and 2, Appling County, Georgia;

Southern Nuclear Operating Company, Inc., Docket Nos. 50–348 and 50–364, Joseph M. Farley Nuclear Plant, Units 1 and 2, Houston County, Alabama;

Southern Nuclear Operating Company, Inc. Docket Nos. 50–424 and 50–425, Vogtle Electric Generating Plant, Units 1 and 2, Burke County, Georgia.

Date of amendment request: July 16, 2010.

Description of amendment request: This amendment request contains sensitive unclassified non-safeguards information (SUNSI). The license amendment request (LAR) proposes a revision to the Renewed Facility Operating License (FOL) to require the license to fully implement and maintain in effect all provisions of a Nuclear Regulatory Commission (NRC)-approved cyber security plan (CSP). The LAR was submitted pursuant to Section 73.54 of Title 10 of the *Code of Federal Regulations* (10 CFR) which requires licensees currently licensed to operate a nuclear power plant under 10 CFR Part 50 to submit a CSP for NRC review and approval.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below.

(1) Does the proposed amendment involve a significant increase in the probability or consequences of an accident previously evaluated?

Response: No

The SNC Cyber Security Plan generally conforms to the template provided in [Nuclear Energy Institute] NEI 08–09, Revision 6, and provides a description of how the requirements of § 73.54 will be implemented at Hatch, Farley, and Vogtle. [* * *]. Accordingly, the SNC Cyber Security Plan establishes the licensing basis for the cyber security program for Hatch, Farley, and Vogtle sites. The SNC Cyber Security Plan provides high assurance that nuclear power plant digital computer and communication systems and networks associated with the following are adequately protected against cyber attacks up to and including the design basis threat:

1. Safety-related and important-to-safety functions;

2. Security functions;

3. Emergency preparedness functions, including offsite communications; and

4. Support systems and equipment which, if compromised, would adversely impact safety, security, or emergency preparedness functions. These systems include, in part, all non-safety related balance of plant equipment which if compromised, could result in a reactor scram or actuation of a safety-related system and therefore, impact reactivity.

The SNC Cyber Security Plan itself does not require any plant modifications. However, the plan describes appropriate configuration management requirements to assure plant modifications involving digital computer systems are reviewed to provide adequate protection against cyber attacks, up to and including the design basis threat as defined in § 73.1. The proposed change does not alter the plant configuration, involve the installation of new plant equipment, alter accident analysis assumptions, add any new initiators, or affect the function of plant systems or the manner in which systems are operated, maintained, modified, tested, or inspected. The SNC Cyber Security Plan is designed to provide high assurance that the systems within the scope of § 73.54 are protected from cyber attacks and does not impact the probability or consequences of an accident previously evaluated.

In addition, the proposed change modifies the existing FOL for each SNC-operated facility to incorporate the SNC Cyber Security Plan into the existing condition for physical protection. This change is administrative in nature and does not impact the probability or consequences of an accident previously evaluated.

Based on the above, the proposed change does not involve a significant increase in the probability or consequences of an accident previously evaluated.

2. Does the proposed change create the possibility of a new or different kind of accident from any accident previously evaluated?

Response: No

The SNC Cyber Security Plan generally conforms to the template provided in NEI 08–09, Revision 6. [* * *]. Accordingly, the SNC Cyber Security Plan provides high assurance that digital computer and communication systems and networks associated with the following are adequately

protected against cyber attacks up to and including the design basis threat:

1. Safety-related and important-to-safety functions;

2. Security functions;

3. Emergency preparedness functions, including offsite communications; and,

4. Support systems and equipment which, if compromised, would adversely impact safety, security, or emergency preparedness functions. These systems include, in part, all non-safety related balance of plant equipment which if compromised, could result in a reactor scram or actuation of a safety-related system and therefore, impact reactivity.

The proposed SNC Cyber Security Plan does not alter plant configuration, install new plant equipment, alter accident analysis assumptions, add any initiators, or affect the function of plant systems or the manner in which systems are operated, maintained, tested, or inspected. The proposed SNC Cyber Security Plan includes appropriate configuration management controls to assure modifications do not introduce vulnerability to cyber attacks. The SNC Cyber Security Plan provides high assurance that the systems within the scope of § 73.54 are adequately protected from cyber attacks. Accordingly, the proposed change does not create the possibility of a new or different kind of accident from any previously evaluated.

In addition, the proposed change modifies the existing FOL for each SNC-operated facility to incorporate the SNC Cyber Security Plan by reference. This change is administrative in nature and does not create the possibility of a new or different kind of accident previously evaluated.

3. Does the proposed amendment involve a significant reduction in a margin of safety?

Response: No.

The SNC Cyber Security Plan generally conforms to the template provided by NEI 08–09, Revision 6, and provides a description of how the requirements of § 73.54 will be implemented at Hatch, Farley, and Vogtle. [* * *]. Accordingly, the SNC Cyber Security Plan establishes the licensing basis for the cyber security program for Hatch, Farley, and Vogtle sites. The SNC Cyber Security Plan provides high assurance that nuclear power plant digital computer and communication systems and networks associated with the following are adequately protected against cyber attacks up to and including the design basis threat:

1. Safety-related and important-to-safety functions;

2. Security functions;

3. Emergency preparedness functions, including offsite communications; and

4. Support systems and equipment which, if compromised, would adversely impact safety, security, or emergency preparedness functions. These systems include, in part, all non-safety related balance of plant equipment which if compromised, could result in a reactor scram or actuation of a safety-related system and therefore, impact reactivity.

The proposed SNC Cyber Security Plan does not alter plant configuration, install new plant equipment, alter accident analysis assumptions, add any initiators, or affect the function of plant systems or the manner in which systems are operated, maintained, tested, or inspected. Plant safety margins are established through Limiting Conditions for Operation, Limiting Safety System Settings and Safety Limits specified in the Technical Specifications. Because there is no change to these established safety margins, the proposed change does not involve a reduction in a margin of safety.

In addition, the proposed change modifies the existing FOL for each SNC-operated facility to incorporate the SNC Cyber Security Plan by reference. This change is administrative in nature and does not involve a reduction in margin of safety.

Based on the above, the proposed change does not involve a significant reduction in a margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Attorney for licensee: Arthur H. Domby, Troutman Sanders Nations Bank Plaza, Suite 5200, 600 Peachtree Street, NE., Atlanta, Georgia 30308–2216.

NRC Branch Chief: Gloria Kulesa.

Order Imposing Procedures for Access to Sensitive Unclassified Non-Safeguards Information for Contention Preparation

Exelon Generation Company, LLC, Docket Nos. STN 50–456 and STN 50–457, Braidwood Station, Will County, Illinois

Exelon Generation Company, LLC, Docket Nos. STN 50–454 and STN 50–455, Byron Station, Units 1 and 2, Ogle County, Illinois

Exelon Generation Company, LLC, Docket No. 50–461, Clinton Power Station, Unit 1, DeWitt County, Illinois

Exelon Generation Company, LLC, Docket Nos. 50–237 and 50–249, Dresden Nuclear Power Station, Units 2 and 3, Grundy County, Illinois

Exelon Generation Company, LLC, Docket Nos. 50–373 and 50–374, LaSalle County Station, Units 1 and 2, LaSalle County, Illinois

Exelon Generation Company, LLC, Docket Nos. 50–352 and 50–353, Limerick Generating Station, Units 1 and 2, Montgomery County, Pennsylvania

Exelon Generation Company, LLC, et al., Docket No. 50–219, Oyster Creek Nuclear Generating Station, Ocean County, New Jersey

Exelon Generation Company, LLC, and PSEG Nuclear LLC, Docket Nos. 50–277 and 50–278, Peach Bottom Atomic Power Station, Units 2 and 3, York and Lancaster Counties, Pennsylvania

Exelon Generation Company, LLC, Docket Nos. 50–254 and 50–265, Quad Cities Nuclear Power Station, Units 1 and 2, Rock Island County, Illinois

Exelon Generation Company, LLC, Docket No. 50–289, Three Mile Island Nuclear Station, Unit 1 (TMI–1), Dauphin County, Pennsylvania

NextEra Energy Point Beach, LLC; Docket Nos. 50–266 and 50–301, Point Beach Nuclear Plant (PBNP), Units 1 and 2, Town of Two Creeks, Manitowoc County, Wisconsin

South Carolina Electric & Gas Company, Docket No. 50–395, South Carolina Public Service Authority, Virgil C. Summer Nuclear Station (VCSNS), Unit 1, Fairfield County, South Carolina

Southern Nuclear Operating Company, Inc. (SNC), Georgia Power Company, Oglethorpe Power Corporation, Municipal Electric Authority of Georgia, City of Dalton, Georgia, Docket Nos. 50–321 and 50–366, Edward I. Hatch Nuclear Plant, Units 1 and 2, Appling County, Georgia

Southern Nuclear Operating Company, Inc., Docket Nos. 50–348 and 50–364, Joseph M. Farley Nuclear Plant, Units 1 and 2, Houston County, Alabama

Southern Nuclear Operating Company, Inc., Docket Nos. 50–424 and 50–425, Vogtle Electric Generating Plant, Units 1 and 2, Burke County, Georgia

A. This Order contains instructions regarding how potential parties to this proceeding may request access to documents containing Sensitive Unclassified Non-Safeguards Information (SUNSI).

B. Within 10 days after publication of this notice of hearing and opportunity to petition for leave to intervene, any potential party who believes access to SUNSI is necessary to respond to this notice may request such access. A "potential party" is any person who intends to participate as a party by demonstrating standing and filing an admissible contention under 10 CFR 2.309. Requests for access to SUNSI submitted later than 10 days after publication will not be considered absent a showing of good cause for the late filing, addressing why the request could not have been filed earlier.

C. The requestor shall submit a letter requesting permission to access SUNSI to the Office of the Secretary, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, Attention:

Rulemakings and Adjudications Staff, and provide a copy to the Associate General Counsel for Hearings, Enforcement and Administration, Office of the General Counsel, Washington, DC 20555–0001. The expedited delivery or courier mail address for both offices is: U.S. Nuclear Regulatory Commission, 11555 Rockville Pike, Rockville, Maryland 20852. The e-mail address for the Office of the Secretary and the Office of the General Counsel are *Hearing.Docket@nrc.gov* and *OGCmailcenter@nrc.gov*, respectively.[1] The request must include the following information:

(1) A description of the licensing action with a citation to this **Federal Register** notice;

(2) The name and address of the potential party and a description of the potential party's particularized interest that could be harmed by the action identified in C.(1);

(3) The identity of the individual or entity requesting access to SUNSI and the requestor's basis for the need for the information in order to meaningfully participate in this adjudicatory proceeding. In particular, the request must explain why publicly available versions of the information requested would not be sufficient to provide the basis and specificity for a proffered contention.

D. Based on an evaluation of the information submitted under paragraph C.(3) the NRC staff will determine within 10 days of receipt of the request whether:

(1) There is a reasonable basis to believe the petitioner is likely to establish standing to participate in this NRC proceeding; and

(2) The requestor has established a legitimate need for access to SUNSI.

E. If the NRC staff determines that the requestor satisfies both D.(1) and D.(2) above, the NRC staff will notify the requestor in writing that access to SUNSI has been granted. The written notification will contain instructions on how the requestor may obtain copies of the requested documents, and any other conditions that may apply to access to those documents. These conditions may include, but are not limited to, the signing of a Non-Disclosure Agreement or Affidavit, or Protective Order[2] setting forth terms and conditions to prevent the unauthorized or inadvertent disclosure of SUNSI by each individual who will be granted access to SUNSI.

F. Filing of Contentions. Any contentions in these proceedings that are based upon the information received as a result of the request made for SUNSI must be filed by the requestor no later than 25 days after the requestor is granted access to that information. However, if more than 25 days remain between the date the petitioner is granted access to the information and the deadline for filing all other contentions (as established in the notice of hearing or opportunity for hearing), the petitioner may file its SUNSI contentions by that later deadline.

G. Review of Denials of Access.

(1) If the request for access to SUNSI is denied by the NRC staff either after a determination on standing and need for access, or after a determination on trustworthiness and reliability, the NRC staff shall immediately notify the requestor in writing, briefly stating the reason or reasons for the denial.

(2) The requestor may challenge the NRC staff's adverse determination by filing a challenge within 5 days of receipt of that determination with: (a) The presiding officer designated in this proceeding; (b) if no presiding officer has been appointed, the Chief Administrative Judge, or if he or she is unavailable, another administrative judge, or an administrative law judge with jurisdiction pursuant to 10 CFR 2.318(a); or (c) if another officer has been designated to rule on information access issues, with that officer.

H. Review of Grants of Access. A party other than the requestor may challenge an NRC staff determination granting access to SUNSI whose release would harm that party's interest independent of the proceeding. Such a challenge must be filed with the Chief Administrative Judge within 5 days of the notification by the NRC staff of its grant of access.

If challenges to the NRC staff determinations are filed, these procedures give way to the normal process for litigating disputes concerning access to information. The availability of interlocutory review by the Commission of orders ruling on such NRC staff determinations (whether granting or denying access) is governed by 10 CFR 2.311.[3]

I. The Commission expects that the NRC staff and presiding officers (and any other reviewing officers) will consider and resolve requests for access to SUNSI, and motions for protective orders, in a timely fashion in order to minimize any unnecessary delays in identifying those petitioners who have standing and who have propounded contentions meeting the specificity and basis requirements in 10 CFR Part 2. Attachment 1 to this Order summarizes the general target schedule for processing and resolving requests under these procedures.

It is so ordered.

Dated at Rockville, Maryland, this 4th day of April 2011.

For the Nuclear Regulatory Commission.

Annette L. Vietti-Cook,

Secretary of the Commission.

ATTACHMENT 1—GENERAL TARGET SCHEDULE FOR PROCESSING AND RESOLVING REQUESTS FOR ACCESS TO SENSITIVE UNCLASSIFIED NON-SAFEGUARDS INFORMATION IN THIS PROCEEDING

Day	Event/Activity
0	Publication of **Federal Register** notice of hearing and opportunity to petition for leave to intervene, including order with instructions for access requests.

[1] While a request for hearing or petition to intervene in this proceeding must comply with the filing requirements of the NRC's "E-Filing Rule," the initial request to access SUNSI under these procedures should be submitted as described in this paragraph.

[2] Any motion for Protective Order or draft Non-Disclosure Affidavit or Agreement for SUNSI must be filed with the presiding officer or the Chief Administrative Judge if the presiding officer has not yet been designated, within 30 days of the deadline for the receipt of the written access request.

[3] Requestors should note that the filing requirements of the NRC's E-Filing Rule (72 FR 49139; August 28, 2007) apply to appeals of NRC staff determinations (because they must be served on a presiding officer or the Commission, as applicable), but not to the initial SUNSI request submitted to the NRC staff under these procedures.

ATTACHMENT 1—GENERAL TARGET SCHEDULE FOR PROCESSING AND RESOLVING REQUESTS FOR ACCESS TO SENSITIVE UNCLASSIFIED NON-SAFEGUARDS INFORMATION IN THIS PROCEEDING—Continued

Day	Event/Activity
10	Deadline for submitting requests for access to Sensitive Unclassified Non-Safeguards Information (SUNSI) with information: supporting the standing of a potential party identified by name and address; describing the need for the information in order for the potential party to participate meaningfully in an adjudicatory proceeding.
60	Deadline for submitting petition for intervention containing: (i) Demonstration of standing; (ii) all contentions whose formulation does not require access to SUNSI (+25 Answers to petition for intervention; +7 requestor/petitioner reply).
20	Nuclear Regulatory Commission (NRC) staff informs the requestor of the staff's determination whether the request for access provides a reasonable basis to believe standing can be established and shows need for SUNSI. (NRC staff also informs any party to the proceeding whose interest independent of the proceeding would be harmed by the release of the information.) If NRC staff makes the finding of need for SUNSI and likelihood of standing, NRC staff begins document processing (preparation of redactions or review of redacted documents).
25	If NRC staff finds no "need" or no likelihood of standing, the deadline for requestor/petitioner to file a motion seeking a ruling to reverse the NRC staff's denial of access; NRC staff files copy of access determination with the presiding officer (or Chief Administrative Judge or other designated officer, as appropriate). If NRC staff finds "need" for SUNSI, the deadline for any party to the proceeding whose interest independent of the proceeding would be harmed by the release of the information to file a motion seeking a ruling to reverse the NRC staff's grant of access.
30	Deadline for NRC staff reply to motions to reverse NRC staff determination(s).
40	(Receipt +30) If NRC staff finds standing and need for SUNSI, deadline for NRC staff to complete information processing and file motion for Protective Order and draft Non-Disclosure Affidavit. Deadline for applicant/licensee to file Non-Disclosure Agreement for SUNSI.
A	If access granted: Issuance of presiding officer or other designated officer decision on motion for protective order for access to sensitive information (including schedule for providing access and submission of contentions) or decision reversing a final adverse determination by the NRC staff.
A + 3	Deadline for filing executed Non-Disclosure Affidavits. Access provided to SUNSI consistent with decision issuing the protective order.
A + 28	Deadline for submission of contentions whose development depends upon access to SUNSI. However, if more than 25 days remain between the petitioner's receipt of (or access to) the information and the deadline for filing all other contentions (as established in the notice of hearing or opportunity for hearing), the petitioner may file its SUNSI contentions by that later deadline.
A + 53	(Contention receipt +25) Answers to contentions whose development depends upon access to SUNSI.
A + 60	(Answer receipt +7) Petitioner/Intervenor reply to answers.
>A + 60	Decision on contention admission.

[FR Doc. 2011–8453 Filed 4–11–11; 8:45 am]
BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[NRC–2011–0006]

Sunshine Federal Register Notice

AGENCY HOLDING THE MEETINGS: Nuclear Regulatory Commission.

DATE: Weeks of April 11, 18, 25, May 2, 9, 16, 23, 30, June 6, 13, 2011.

PLACE: Commissioners' Conference Room, 11555 Rockville Pike, Rockville, Maryland.

STATUS: Public and Closed.

Week of April 11, 2011

There are no meetings scheduled for the week of April 11, 2011.

Week of April 18, 2011—Tentative

Tuesday, April 19, 2011

9 a.m. Briefing on Source Security Part 37 Rulemaking—Physical Protection of Byproduct Material (Public Meeting). (*Contact:* Merri Horn, 301–415–8126).

This meeting will be webcast live at the Web address—*http://www.nrc.gov.*

Week of April 25, 2011—Tentative

Thursday, April 28, 2011

9:30 a.m. Briefing on the Status of NRC Response to Events in Japan and Briefing on Station Blackout (Public Meeting). (*Contact:* George Wilson, 301–415–1711).

This meeting will be webcast live at the Web address *http://www.nrc.gov.*

Week of May 2, 2011—Tentative

Tuesday, May 3, 2011

9 a.m. Information Briefing on Emergency Preparedness (Public Meeting). (*Contact:* Robert Kahler, 301–415–7528).

This meeting will be webcast live at the Web address *http://www.nrc.gov.*

Week of May 9, 2011—Tentative

Thursday, May 12, 2011

9:30 a.m. Briefing on the Progress of the Task Force Review of NRC Processes and Regulations Following the Events in Japan (Public Meeting). (*Contact:* Nathan Sanfilippo, 301–415–3951).

This meeting will be webcast live at the Web address *http://www.nrc.gov*

Week of May 16, 2011—Tentative

There are no meetings scheduled for the week of May 16, 2011.

Week of May 23, 2011—Tentative

Friday, May 27, 2011

9 a.m. Briefing on Results of the Agency Action Review Meeting (AARM) (Public Meeting). (*Contact:* Rani Franovich, 301–415–1868).

This meeting will be webcast live at the Web address *http://www.nrc.gov.*

Week of May 30, 2011—Tentative

Thursday, June 2, 2011

9:30 a.m. Briefing on Human Capital and Equal Employment Opportunity (EEO) (Public Meeting) (*Contact:* Susan Salter, 301–492–2206).

This meeting will be webcast live at the Web address *http://www.nrc.go.*

Week of June 6, 2011—Tentative

Monday, June 6, 2011

10 a.m. Meeting with the Advisory Committee on Reactor Safeguards (ACRS) (Public Meeting). (Contact: Tanny Santos, 301–415–7270).

This meeting will be webcast live at the Web address *http://www.nrc.gov*

Week of June 13, 2011—Tentative

Thursday, June 16, 2011

9:30 a.m. Briefing on the Progress of the Task Force Review of NRC Processes and Regulations Following Events in Japan (Public Meeting). (*Contact: Nathan Sanfilippo, 301–415–3951.)*

This meeting will be webcast live at the Web address *http://www.nrc.gov.*

The schedule for Commission meetings is subject to change on short notice. To verify the status of meetings, call (recording)—(301) 415–1292. Contact person for more information: Rochelle Bavol, (301) 415–1651.

The NRC Commission Meeting Schedule can be found on the Internet at: *http://www.nrc.gov/public-involve/public-meetings/schedule.html.*

The NRC provides reasonable accommodation to individuals with disabilities where appropriate. If you need a reasonable accommodation to participate in these public meetings, or need this meeting notice or the transcript or other information from the public meetings in another format (*e.g.* braille, large print), please notify Bill Dosch, Chief, Work Life and Benefits Branch, at 301–415–6200, 301–415–2100, or by e-mail at *william.dosch@nrc.gov.* Determinations on requests for reasonable accommodation will be made on a case-by-case basis.

This notice is distributed electronically to subscribers. If you no longer wish to receive it, or would like to be added to the distribution, please contact the Office of the Secretary, Washington, DC 20555 (301–415–1969), or send an e-mail to *darlene.wright@nrc.gov*

Dated: April 7, 2011.

Rochelle C. Bavol,

Policy Coordinator, Office of the Secretary.

[FR Doc. 2011–8893 Filed 4–8–11; 4:15 pm]
BILLING CODE 7590–01–P

OFFICE OF SCIENCE AND TECHNOLOGY POLICY

President's Council of Advisors on Science and Technology; Notice of Meeting: Partially Closed Meeting of the President's Council of Advisors on Science and Technology

ACTION: Public Notice.

SUMMARY: This notice sets forth the schedule and summary agenda for a partially closed meeting of the President's Council of Advisors on Science and Technology (PCAST), and describes the functions of the Council. Notice of this meeting is required under the Federal Advisory Committee Act (FACA), 5 U.S.C., App.

DATES: May 19, 2011.

ADDRESSES: The meeting will be held at the Marriott Metro Center, 775 12th Street, NW., Ballroom Salon A, Washington, DC.

Type of Meeting: Open and Closed.

Proposed Schedule and Agenda: The President's Council of Advisors on Science and Technology (PCAST) is scheduled to meet in open session on May 19, 2011 from 9 a.m. to 12 p.m.

Open Portion of Meeting: During this open meeting, PCAST is tentatively scheduled to hear presentations on the U.S. patent system. PCAST members will also discuss reports they are developing on the topics of advanced manufacturing. Additional information and the agenda will be posted at the PCAST Web site at: *http://whitehouse.gov/ostp/pcast.*

Closed Portion of the Meeting: PCAST may hold a closed meeting of approximately 1 hour with the President on May 19, 2011, which must take place in the White House for the President's scheduling convenience and to maintain Secret Service protection. This meeting will be closed to the public because such portion of the meeting is likely to disclose matters that are to be kept secret in the interest of national defense or foreign policy under 5 U.S.C. 552b(c)(1).

Public Comments: It is the policy of the PCAST to accept written public

comments of any length, and to accommodate oral public comments whenever possible. The PCAST expects that public statements presented at its meetings will not be repetitive of previously submitted oral or written statements.

The public comment period for this meeting will take place on May 19, 2011 at a time specified in the meeting agenda posted on the PCAST Web site at *http://whitehouse.gov/ostp/pcast.* This public comment period is designed only for substantive commentary on PCAST's work, not for business marketing purposes.

Oral Comments: To be considered for the public speaker list at the meeting, interested parties should register to speak at *http://whitehouse.gov/ostp/pcast,* no later than 12 p.m. Eastern Time on Monday, May 9, 2011. Phone or email reservations will not be accepted. To accommodate as many speakers as possible, the time for public comments will be limited to two (2) minutes per person, with a total public comment period of 30 minutes. If more speakers register than there is space available on the agenda, PCAST will randomly select speakers from among those who applied. Those not selected to present oral comments may always file written comments with the committee. Speakers are requested to bring at least 25 copies of their oral comments for distribution to the PCAST members.

Written Comments: Although written comments are accepted until the date of the meeting, written comments should be submitted to PCAST at least two weeks prior to each meeting date, Wednesday, May 4, 2011, so that the comments may be made available to the PCAST members prior to the meeting for their consideration. Information regarding how to submit comments and documents to PCAST is available at *http://whitehouse.gov/ostp/pcast* in the section entitled "Connect with PCAST."

Please note that because PCAST operates under the provisions of FACA, all public comments and/or presentations will be treated as public documents and will be made available for public inspection, including being posted on the PCAST Web site.

FOR FURTHER INFORMATION: Information regarding the meeting agenda, time, location, and how to register for the meeting is available on the PCAST Web site at: *http://whitehouse.gov/ostp/pcast.* A live video webcast and an archive of the webcast after the event are expected to be available at *http://whitehouse.gov/ostp/pcast.* The archived video will be available within one week of the meeting. Questions about the meeting should be directed to Dr. Deborah D. Stine, PCAST Executive Director, at *dstine@ostp.eop.gov,* (202) 456–6006. Please note that public seating for this meeting is limited and is available on a first-come, first-served basis.

SUPPLEMENTARY INFORMATION: The President's Council of Advisors on Science and Technology (PCAST) is an advisory group of the nation's leading scientists and engineers, appointed by the President to augment the science and technology advice available to him from inside the White House and from cabinet departments and other Federal agencies. See the Executive Order at *http://www.whitehouse.gov/ostp/pcast.* PCAST is consulted about and provides analyses and recommendations concerning a wide range of issues where understandings from the domains of science, technology, and innovation may bear on the policy choices before the President. PCAST is administered by the Office of Science and Technology Policy (OSTP). PCAST is co-chaired by Dr. John P. Holdren, Assistant to the President for Science and Technology, and Director, Office of Science and Technology Policy, Executive Office of the President, The White House; and Dr. Eric S. Lander, President, Broad Institute of MIT and Harvard.

Meeting Accommodations: Individuals requiring special accommodation to access this public meeting should contact Dr. Stine at least ten business days prior to the meeting so that appropriate arrangements can be made.

Ted Wackler,

Deputy Chief of Staff.

[FR Doc. 2011–8750 Filed 4–11–11; 8:45 am]

BILLING CODE P

SECURITIES AND EXCHANGE COMMISSION

Submission for OMB Review; Comment Request

Upon Written Request; Copies Available From: Securities and Exchange Commission, Office of Investor Education and Advocacy, Washington, DC 20549–0213.

Extension:

Rule 163; OMB Control No. 3235–0619; SEC File No. 270–556.

Notice is hereby given that, pursuant to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*), the Securities and Exchange Commission ("Commission") has submitted to the Office of Management and Budget this request for extension of the previously approved collection of information discussed below.

Rule 163 (17 CFR 230.163) provides an exemption from Section 5(c) (15 U.S.C. 77e(c)) under the Securities Act of 1933 (15 U.S.C. 77a *et seq.*) for certain communications by or on behalf of a well-known seasoned issuer. The information filed under Rule 163 is publicly available. We estimate that it takes approximately 0.24 burden hours per response to provide the information required under Rule 163 and that the information is filed by approximately 53 respondents for a total annual reporting burden of approximately 13 hours. We estimate that 25% of 0.24 hours per response (0.06 hours) is prepared by the respondent for a total annual burden of approximately 3 hours (0.06 hours per response × 53 responses).

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid control number.

The public may view the background documentation for this information collection at the following Web site, *http://www.reginfo.gov.* Comments should be directed to: (i) Desk Officer for the Securities and Exchange Commission, Office of Information and Regulatory Affairs, Office of Management and Budget, Room 10102, New Executive Office Building, Washington, DC 20503, or by sending an e-mail to: *Shagufta_Ahmed@omb.eop.gov;* and (ii) Thomas Bayer, Chief Information Officer, Securities and Exchange Commission, c/o Remi Pavlik-Simon, 6432 General Green Way, Alexandria, VA 22312 or send an e-mail to: *PRA_Mailbox@sec.gov.* Comments must be submitted to OMB within 30 days of this notice.

Dated: April 8, 2011.

Cathy H. Ahn,

Deputy Secretary.

[FR Doc. 2011–8580 Filed 4–11–11; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

Proposed Collection; Comment Request

Upon Written Request, Copies Available From: Securities and Exchange Commission, Office of Investor Education and Advocacy, Washington, DC 20549.

Extension:

Investor Form; SEC File No. 270–485; OMB Control No. 3235–0547.

Notice is hereby given pursuant to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*) that the Securities and Exchange Commission ("Commission") is soliciting comments on the collection of information summarized below. The Commission plans to submit this existing collection of information to the Office of Management and Budget for extension and approval.

In both 2009 and 2010, the Commission received over a million contacts from investors on a wide range of investment-related issues. These contacts generally fall into the following three categories:

(a) Complaints against Commission-regulated individuals or entities;

(b) Questions concerning the federal securities laws, companies or firms that the Commission regulates, or other investment-related questions; and

(c) Tips concerning potential violations of the federal securities laws.

Investors who submit complaints, ask questions, or provide tips do so voluntarily. To make it easier for the public to contact the agency electronically, the Commission created a series of online investor forms. Investors may access these forms through the SEC Center for Complaints and Enforcement Tips. The Investor form, asks for the same information as the Enforcement form, (OMB 3235–0672) but also provides options to choose to categorize the investor's complaint, and possibly provide the investor with information about that issue. The investor will have the opportunity to describe their complaint, and they will be free to submit it without their name or contact information.

Although the Investor form provides a structured format for incoming investor correspondence, the Commission does not require that investors use any particular form or format when contacting the agency. To the contrary, investors may submit complaints, questions, and tips through a variety of other means, including telephone, letter, facsimile, or e-mail.

Approximately 20,000 investors each year voluntarily choose to use the complaint and question forms. Investors who choose not to use the Investor Form receive the same level of service as those who do. The dual purpose of the form is to make it easier for the public to contact the agency with complaints, questions, tips, or other feedback and to streamline the workflow of the Commission staff who handle those contacts.

The Commission has used—and will continue to use—the information that investors supply on the Investor Form to review and process the contact (which may, in turn, involve responding to questions, processing complaints, or, as appropriate, initiating enforcement investigations), to maintain a record of contacts, to track the volume of investor complaints, and to analyze trends. Use of the Investor Form is strictly voluntary. The Investor Form asks investors to provide information concerning, among other things, their names, how they can be reached, the names of the individuals or entities involved, the nature of their complaint, question, or tip, what documents they can provide, and what, if any, actions they have taken.

The staff of the Commission estimates that the total reporting burden for using the complaint and question forms is 5,000 hours. The calculation of this estimate depends on the number of investors who use the forms each year and the estimated time it takes to complete the forms: 20,000 respondents × 15 minutes = 5,000 burden hours.

The Commission 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 PRA that does not display a valid Office of Management and Budget (OMB) control number.

Written comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology. Consideration will be given to comments and suggestions submitted in writing within 60 days of this publication.

Please direct your written comments to Thomas Bayer, Chief Information Officer, Securities and Exchange Commission, c/o Remi Pavlik-Simon, 6432 General Green Way, Alexandria, VA, 22312; or send an e-mail to: *PRA_Mailbox@sec.gov.*

Dated: April 5, 2011.

Cathy H. Ahn,

Deputy Secretary.

[FR Doc. 2011–8579 Filed 4–11–11; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

Submission for OMB Review; Comment Request

Upon Written Request; Copies Available From: Securities and Exchange Commission Office of Investor Education and Advocacy Washington, DC 20549–0213.

Extension:

Form CB; OMB Control No. 3235–0518; SEC File No. 270–457.

Notice is hereby given that, pursuant to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*), the Securities and Exchange Commission ("Commission") has submitted to the Office of Management and Budget this request for extension of the previously approved collection of information discussed below.

Form CB (17 CFR 239.800) is a document filed in connection with a tender offer for a foreign private issuer. This form is used to report an issuer tender offer conducted in compliance with Exchange Act Rule 13e–4(h)(8) (17 CFR 240.13e–4(h)(8)) and a third-party tender offer conducted in compliance with Exchange Act Rule 14d–1(c) (17 CFR 240.14d–1(c)). Form CB is also used by a subject company pursuant to Exchange Act Rule 14e–2(d) (17 CFR 240.14e–2(d)). This information is made available to the public. Information provided on Form CB is mandatory. Form CB takes approximately 0.5 hours per response to prepare and is filed by approximately 200 respondents annually. We estimate that 25% of the 0.5 hours per response (0.125 hours) is prepared by the respondent for an annual reporting burden of 25 hours (0.125 hours per response × 200 responses).

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid control number.

The public may view the background documentation for this information collection at the following Web site, *http://www.reginfo.gov.* Comments should be directed to: (i) Desk Officer for the Securities and Exchange Commission, Office of Information and Regulatory Affairs, Office of Management and Budget, Room 10102, New Executive Office Building, Washington, DC 20503, or by sending an e-mail to: *Shagufta_Ahmed@omb.eop.gov;* and (ii) Thomas Bayer, Chief Information Officer, Securities and Exchange Commission, c/o Remi Pavlik-Simon, 6432 General Green Way, Alexandria,

VA 22312 or send an e-mail to: *PRA_Mailbox@sec.gov*. Comments must be submitted to OMB within 30 days of this notice.

Dated: April 8, 2011.

Cathy H. Ahn,

Deputy Secretary.

[FR Doc. 2011–8578 Filed 4–11–11; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[Investment Company Act Release No. 29623; File No. 812–13870]

Russell Investment Company, et al.; Notice of Application

April 6, 2011.

AGENCY: Securities and Exchange Commission ("Commission").

ACTION: Notice of an application under section 6(c) of the Investment Company Act of 1940 ("Act") for an exemption from rule 12d1–2(a) under the Act.

SUMMARY OF APPLICATION: Applicants request an order to permit open-end management investment companies relying on rule 12d1–2 under the Act to invest in certain financial instruments.

APPLICANTS: Russell Investment Company and Russell Investment Funds (each a "Trust and collectively the "Trusts), Russell Investment Management Company ("RIMCo"), and Russell Financial Services, Inc. ("RFS")

DATES: *Filing Dates:* The application was filed on February 17, 2011. Applicants have agreed to file an amendment during the notice period, the substance of which is reflected in this notice.

HEARING OR NOTIFICATION OF HEARING: An order granting the application will be issued unless the Commission orders a hearing. Interested persons may request a hearing by writing to the Commission's Secretary and serving applicants with a copy of the request, personally or by mail. Hearing requests should be received by the Commission by 5:30 p.m. on May 2, 2011 and should be accompanied by proof of service on applicants, in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons who wish to be notified of a hearing may request notification by writing to the Commission's Secretary.

ADDRESSES: Secretary, Securities and Exchange Commission, 100 F Street, NE, Washington, DC 20549–1090; Applicants: 1301 Second Avenue, 18th Floor, Seattle, WA, 98101.

FOR FURTHER INFORMATION CONTACT: Deepak T. Pai, Senior Counsel, at (202) 551–6876, or Dalia Osman Blass, Branch Chief, at (202) 551–6821 (Division of Investment Management, Office of Investment Company Regulation).

SUPPLEMENTARY INFORMATION: The following is a summary of the application. The complete application may be obtained via the Commission's Web site by searching for the file number, or an applicant using the Company name box, at *http://www.sec.gov/search/search.htm* or by calling (202) 551–8090.

Applicants' Representations

1. The Trusts are organized as Massachusetts business trusts and are registered under the Act as open-end management investment companies. RIMCo, a Washington corporation, is an investment adviser registered under the Investment Advisers Act of 1940, as amended (the "Advisers Act") and currently serves as investment adviser to each existing Applicant Fund (as defined below). RFS is a Washington corporation, registered as a broker-dealer under the Securities Exchange Act of 1934, as amended, and serves as the distributor for the Applicant Funds that are series of the Trusts.

2. Applicants request the exemption to the extent necessary to permit any existing or future series of the Trusts and any other existing or future registered open-end investment company or series thereof that (i) Is advised by RIMCo or any person controlling, controlled by or under common control with RIMCo (any such adviser or RIMCo, an "Adviser") [1]; (ii) invests in other registered open-end investment companies ("Underlying Funds") in reliance on section 12(d)(1)(G) of the Act; and (iii) is also eligible to invest in securities (as defined in section 2(a)(36) of the Act) in reliance on rule 12d1–2 under the Act (each an "Applicant Fund"), to also invest, to the extent consistent with its investment objectives, policies, strategies and limitations, in financial instruments that may not be securities within the meaning of section 2(a)(36) of the Act ("Other Investments").[2] Applicants also request that the order exempt any entity controlling, controlled by or under common control with RFS that now or in the future acts as principal underwriter with respect to the transactions described in the application.

3. Consistent with its fiduciary obligations under the Act, each Applicant Fund's board of trustees will review the advisory fees charged by the Applicant Fund's Adviser to ensure that they are based on services provided that are in addition to, rather than duplicative of, services provided pursuant to the advisory agreement of any investment company in which the Applicant Fund may invest.

Applicants' Legal Analysis

1. Section 12(d)(1)(A) of the Act provides that no registered investment company ("acquiring company") may acquire securities of another investment company ("acquired company") if such securities represent more than 3% of the acquired company's outstanding voting stock or more than 5% of the acquiring company's total assets, or if such securities, together with the securities of other investment companies, represent more than 10% of the acquiring company's total assets. Section 12(d)(1)(B) of the Act provides that no registered open-end investment company may sell its securities to another investment company if the sale will cause the acquiring company to own more than 3% of the acquired company's voting stock, or cause more than 10% of the acquired company's voting stock to be owned by investment companies and companies controlled by them.

2. Section 12(d)(1)(G) of the Act provides, in part, that section 12(d)(1) will not apply to securities of an acquired company purchased by an acquiring company if: (i) The acquired company and acquiring company are part of the same group of investment companies; (ii) the acquiring company holds only securities of acquired companies that are part of the same group of investment companies, government securities, and short-term paper; (iii) the aggregate sales loads and distribution-related fees of the acquiring company and the acquired company are not excessive under rules adopted pursuant to section 22(b) or section 22(c) of the Act by a securities association registered under section 15A of the Exchange Act or by the Commission; and (iv) the acquired company has a policy that prohibits it from acquiring securities of registered open-end investment companies or registered unit investment trusts in reliance on section 12(d)(1)(F) or (G) of the Act.

3. Rule 12d1–2 under the Act permits a registered open-end investment

[1] Any other Adviser will also be registered under the Advisers Act.

[2] Every existing entity that currently intends to rely on the requested order is named as an applicant. Any existing or future entity that relies on the requested order will do so only in accordance with the terms and condition in the application.

company or a registered unit investment trust that relies on section 12(d)(1)(G) of the Act to acquire, in addition to securities issued by another registered investment company in the same group of investment companies, government securities, and short-term paper: (i) Securities issued by an investment company that is not in the same group of investment companies, when the acquisition is in reliance on section 12(d)(1)(A) or 12(d)(1)(F) of the Act; (ii) securities (other than securities issued by an investment company); and (iii) securities issued by a money market fund, when the investment is in reliance on rule 12d1–1 under the Act. For the purposes of rule 12d1–2, "securities" means any security as defined in section 2(a)(36) of the Act.

4. Section 6(c) of the Act provides that the Commission may exempt any person, security, or transaction from any provision of the Act, or from any rule under the Act, if such exemption is necessary or appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policies and provisions of the Act.

5. Applicants state that the Applicant Funds will comply with rule 12d1–2 under the Act, but for the fact that the Applicant Funds may invest a portion of their assets in Other Investments. Applicants request an order under section 6(c) of the Act for an exemption from rule 12d1–2(a) to allow the Applicant Funds to invest in Other Investments while investing in Underlying Funds. Applicants assert that permitting the Applicant Funds to invest in Other Investments as described in the application would not raise any of the concerns that the requirements of section 12(d)(1) were designed to address.

Applicants' Condition

Applicants agree that the order granting the requested relief will be subject to the following condition:

Applicants will comply with all provisions of rule 12d1–2 under the Act, except for paragraph (a)(2) to the extent that it restricts any Fund from investing in Other Investments as described in the application.

For the Commission, by the Division of Investment Management, under delegated authority.

Cathy H. Ahn,

Deputy Secretary.

[FR Doc. 2011–8577 Filed 4–11–11; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–64194; File No. SR–CBOE–2011–031]

Self-Regulatory Organizations; Chicago Board Options Exchange, Incorporated; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Related to the Extension of the CBSX Individual Stock Trading Pause Pilot Program

April 5, 2011.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (the "Act"),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on March 31, 2011, 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 Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to extend the individual stock trading pause pilot program pertaining to the CBOE Stock Exchange ("CBSX," the CBOE's stock trading facility). This rule change simply seeks to extend the pilot. No other changes to the pilot are being proposed. 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 Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of those statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant parts of such statements.

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

A. Self-Regulatory Organization's Statement of the Purpose of, and the Statutory Basis for, the Proposed Rule Change

1. Purpose

Rule 6.3C, *Individual Stock Trading Pauses Due to Extraordinary Market Volatility*, was approved by the Commission on June 10, 2010 on a pilot basis. The pilot is currently set to expire on April 11, 2011.[3] The rule was developed in consultation with U.S. listing markets to provide for uniform market-wide trading pause standards for certain individual stocks that experience rapid price movement.[4] As the duration of the pilot expires on April 11, 2011, the Exchange is proposing to extend the effectiveness of Rule 6.3C through the earlier of August 11, 2011 or the date on which a limit up-limit down mechanism to address extraordinary market volatility, if adopted, applies to the pilot stocks.

2. Statutory Basis

Extension of the pilot period will allow the Exchange to continue to operate the pilot on an uninterrupted basis. Accordingly, CBOE believes the proposed rule change is consistent with the Act[5] and the rules and regulations under the Act applicable to a national securities exchange and, in particular, the requirements of Section 6(b) of the Act.[6] Specifically, the Exchange believes the proposed rule change is consistent with the Section 6(b)(5)[7] requirements that the rules of an exchange be designed to promote just and equitable principles of trade, to prevent fraudulent and manipulative acts and, in general, to protect investors and the public interest. The proposed rule change is also designed to support the principles of Section 11A(a)(1)[8] of the Act in that it seeks to assure fair competition among brokers and dealers and among exchange markets. The Exchange believes that the proposed rule meets these requirements in that it promotes transparency and uniformity

[3] *See* Securities Exchange Act Release Nos. 62252 (June 10, 2010), 75 FR 34186 (June 16, 2010) (SR–CBOE–2010–047) (approval order establishing pilot through December 10, 2010) and 63502 (December 9, 2010), 75 FR 78306 (December 15, 2010) (SR–CBOE–2010–112) (extension of pilot through April 11, 2011).

[4] The pilot list of stocks originally included all stocks in the S&P 500 Index, but it has been expanded to also include all stocks in the Russell 1000 Index and a pilot list of Exchange Traded Products. *See* Securities Exchange Act Release No. 62884 (September 10, 2010), 75 FR 56618 (September 16, 2010) (SR–CBOE–2010–065).

[5] 15 U.S.C. 78a *et seq.*

[6] 15 U.S.C. 78(f)(b).

[7] 15 U.S.C. 78(f)(b)(5).

[8] 15 U.S.C. 78k–1(a)(1).

across markets concerning decisions to pause trading in a stock when there are significant price movements.

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 that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

The Exchange 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; and (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 Act [9] and Rule 19b–4(f)(6) thereunder.[10]

A proposed rule change filed under Rule 19b–4(f)(6) normally may not become operative prior to 30 days after the date of filing.[11] However, Rule 19b–4(f)(6) [12] permits the Commission to designate a shorter time if such action is consistent with the protection of investors and the public interest. The Exchange has requested that the Commission waive the 30-day operative delay.

The Commission has considered the Exchange's request to waive the 30-day operative delay. The Commission believes that waiving the 30-day operative delay is consistent with the protection of investors and the public interest, as it will allow the pilot program to continue uninterrupted, thereby avoiding the investor confusion that could result from a temporary interruption in the pilot program.[13] For this reason, the Commission designates the proposed rule change to be operative upon filing.

At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend 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. If the Commission takes such action, the Commission shall institute proceedings to determine whether the proposed rule change should be approved or disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change, as amended, 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–2011–031 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–2011–031. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for Web site viewing and printing in the Commission's Public Reference Room, 100 F Street, NE., Washington, DC 20549, on official business days between the hours of 10 a.m. and 3 p.m. Copies of such filing also will be available for inspection and copying at the principal offices of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly.

All submissions should refer to File Number SR–CBOE–2011–031, and should be submitted on or before May 3, 2011.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[14]

Cathy H. Ahn,

Deputy Secretary.

[FR Doc. 2011–8620 Filed 4–11–11; 8:45 am]

BILLING CODE 8011–01–P

[9] 15 U.S.C. 78s(b)(3)(A).

[10] 17 CFR 240.19b–4(f)(6). When filing a proposed rule change pursuant to Rule 19b–4(f)(6) under the Act, an exchange is required to give the Commission written notice of its intent to file the proposed rule change, along with a brief description and text of the proposed rule change, at least five business days prior to the date of filing of the proposed rule change, or such shorter time as designated by the Commission. The Commission notes that the Exchange has satisfied this requirement.

[11] 17 CFR 240.19b–4(f)(6)(iii).

[12] *Id.*

[13] For the purposes only of waiving the operative delay of this proposal, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. *See* 15 U.S.C. 78c(f).

[14] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–64197; File No. SR–CBOE–2011–034]

Self-Regulatory Organizations; Chicago Board Options Exchange, Incorporated: Notice of Filing and Immediate Effectiveness of Proposed Rule Change Relating to Extension of Waiver of Transaction Fee for Public Customer Orders in SPY Options Executed in Open Outcry or in the Automated Improvement Mechanism

April 6, 2011.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on March 31, 2011, Chicago Board Options Exchange, Incorporated ("CBOE" or the "Exchange") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I, II and III below, which Items have been prepared by CBOE. 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

Chicago Board Options Exchange, Incorporated ("CBOE" or "Exchange")

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

proposes to amend its Fees Schedule to extend through June 30, 2011, a waiver of the transaction fee for public customer orders in options on Standard & Poor's Depositary Receipts that are executed in open outcry or in the Automated Improvement Mechanism. 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.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, CBOE included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. CBOE has prepared summaries, set forth in sections (A), (B), and (C) below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, Proposed Rule Change

(a) Purpose

The Exchange currently waives the $.18 per contract transaction fee for public customer ("C" origin code) orders in options on Standard & Poor's Depositary Receipts ("SPY options") that are executed in open outcry or in the Automated Improvement Mechanism ("AIM").[3] This fee waiver is due to expire on March 31, 2011. The Exchange proposes to extend the fee waiver through June 30, 2011.[4] The proposed fee waiver is intended to attract more customer volume on the Exchange in this product.

(b) Statutory Basis

The Exchange believes the proposed rule change is consistent with Section 6(b) of the Securities Exchange Act of 1934 ("Act"),[5] in general, and furthers the objectives of Section 6(b)(4)[6] of the Act in particular, in that it is designed to provide for the equitable allocation of reasonable dues, fees, and other charges among CBOE Trading Permit Holders and other persons using its facilities. The Exchange believes the proposed extension of the fee waiver is equitable because the fee waiver would apply uniformly to all public customers trading SPY options. The Exchange believes the proposed extension of the fee waiver is reasonable because it would continue to provide cost savings during the extended waiver period for public customers trading SPY options. Further, the Exchange believes the proposed fee waiver is consistent with other fees assessed by the Exchange. Specifically, the Exchange assesses manually executed broker-dealer orders a different rate ($.25 per contract) as compared to electronically executed broker-dealer orders ($.45 per contract).[7] Other exchange fee schedules also distinguish between electronically and non-electronically executed orders.[8]

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 that is not necessary or appropriate in furtherance of purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

No written comments were solicited or received with respect to the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change has become effective pursuant to Section 19(b)(3)(A) of the Act[9] and subparagraph (f)(2) of Rule 19b–4[10] thereunder. At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend 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–2011–034 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.

All submissions should refer to File Number SR–CBOE–2011–034. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for Web site viewing and printing in the Commission's Public Reference Room, 100 F Street, NE., Washington, DC 20549 on official business days between the hours of 10 a.m. and 3 p.m. Copies of such filing also will be available for inspection and copying at the principal office of CBOE. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File

[3] See Securities Exchange Act Release No. 34–62902 (September 14, 2010), 75 FR 57313 (September 20, 2010), Securities Exchange Act Release No. 34–63422 (December 3, 2010), 75 FR 76770 (December 9, 2010) and CBOE Fees Schedule, footnote 8. AIM is an electronic auction system that exposes certain orders electronically in an auction to provide such orders with the opportunity to receive an execution at an improved price. AIM is governed by CBOE Rule 6.74A.

[4] The Exchange notes that transaction fees are also currently waived for customer orders of 99 contracts or less in ETF (including SPY options), ETN and HOLDRs options. See CBOE Fees Schedule, footnote 9.

[5] 15 U.S.C. 78f(b).

[6] 15 U.S.C. 78f(b)(4).

[7] See CBOE Fees Schedule, Section 1.

[8] NASDAQ OMX PHLX, Inc. categorizes its equity options transaction fees for Specialists, ROTs, SQTs, RSQTs and Broker-Dealers as either electronic or non-electronic. See NASDAQ OMX PHLX Fees Schedule, Equity Options Fees. NYSE Amex, Inc. categorizes its options transaction fees for Non-NYSE Amex Options Market Makers, Broker-Dealers, Professional Customers, Non BD Customers and Firms as either electronic or manual. See NYSE Amex Options Fees Schedule, Trade Related Charges. NYSE Arca, Inc. categorizes its options transaction fees for Customers, Firms and Broker-Dealers as either electronic or manual. See NYSE Arca Options Fees Schedule, Trade Related Charges.

[9] 15 U.S.C. 78s(b)(3)(A).

[10] 17 CFR 240.19b–4(f)(2).

Number SR–CBOE–2011–034 and should be submitted on or before May 3, 2011.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[11]

Cathy H. Ahn,

Deputy Secretary.

[FR Doc. 2011–8621 Filed 4–11–11; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–64199; File No. SR–CBOE–2011–035]

Self-Regulatory Organizations; Chicago Board Options Exchange, Incorporated; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change To Amend CBSX Maker and Taker Transaction Fees and Rebates for Transactions in Securities Priced $1 or Greater

April 6, 2011.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on March 31, 2011, the Chicago Board Options Exchange, Incorporated ("Exchange" or "CBOE") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to amend CBOE Stock Exchange ("CBSX") transaction fees. 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.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of those statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant parts of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and the Statutory Basis for, the Proposed Rule Change

1. Purpose

This filing proposes to make changes to the CBSX Fees Schedule. On March 1, 2011, CBOE modified the CBSX Maker and Taker transaction fees and rebates for transactions in securities priced $1 or greater.[3] Following that change, transactions in securities priced $1 or greater in a select group of stocks (BAC, BIL, BGZ, C, CIM, DXD, FAZ, IAU, LVLT, NBG, PVI, QID, SDS, SIRI, SKF, SNV, UDN, UNG, UUP, XLF) became subject to Maker fees of $0.0018 per share and Taker rebates of $0.0014 per share. Transactions in securities priced $1 or greater in another select group of stocks (AA, AMAT, AMD, ATML, BRCD, BSX, CMCSA, COCO, CSCO, CX, DELL, DIA, DOW, DRYS, DUK, EBAY, EMC, EWJ, EWT, FAS, FAX, F, FITB, FLEX, GBG, GDX, GE, GLD, GLW, HBAN, HPQ, IDIX, INTC, IWM, IYR, JPM, KEY, LVS, MDT, MFE, MGM, MO, MRVL, MSFT, MU, NLY, NOK, NVDA, NWSA, ONNN, ORCL, PBR, PFE, PSQ, QCOM, Q, QLD, QQQQ, RF, RFMD, SBUX, S, SH, SLV, SMH, SNDK, SPLS, SPXU, SPY, SSO, SYMC, TBT, T, TLT, TNA,TSM, TWM, TXN, TZA, UCO, USO, UWM, UYG, VALE, VWO, VXX, VZ, WFC, XHB, XLB, XLE, XLI, XLK, XLP, XLU, XLV, XLY, XRT, XRX, YHOO) became subject to Maker fees of $0.0009 per share and Taker rebates of $0.0006 per share. Transactions in securities priced $1 or greater for all other securities became subject to a $0.0001 fee.

The Exchange now proposes to change the specific securities in the groups. Under the proposed rule change, transactions in the following securities priced $1 or greater would be subject to Maker fees of $0.0018 per share and Taker rebates of $0.0014 per share: ALU, BAC, BIL, C, CIM, IAU, LVLT, PVI, SIRI, SNV, UDN, UNG, UUP. Transactions in the following securities priced $1 or greater would be subject to Maker fees of $0.0009 per share and Taker rebates of $0.0006 per share: AA, AMD, BGZ, BRCD, BSX, CSCO, CX, DGZ, DIA, DRYS, DUK, DXD, DZZ, EWJ, FAX, F, GBG, GLD, INTC, IWM, KEY, MSFT, NBG, NOK, PFE, Q, QQQ, RF, RFMD, SDS, S, SH, SLV, SPF, SPXU, SPY, SSO, TBT, TLT, TWM, TZA, UCO, USO, UWM, VXX, XLI, XLP. Transactions in securities priced $1 or greater for all other securities will remain subject to a $0.0001 fee. The Exchange is modifying the securities in the groups and customizing transaction fees by security due to the different liquidity attributes of the different securities and CBSX's experience in trades involving those securities.

The Exchange also proposes to re-add a reference to footnote 4, which defines a "Qualified Contingent Trade". This reference was inadvertently removed in re-organizing the CBSX Fees Schedule in the previous filing.[4]

2. Statutory Basis

The proposed rule change is consistent with Section 6(b) of the Securities Exchange Act of 1934 ("Act"),[5] in general, and furthers the objectives of Section 6(b)(4)[6] of the Act in particular, in that it is designed to provide for the equitable allocation of reasonable dues, fees, and other charges among CBOE Trading Permit Holders and other persons using Exchange facilities. The Exchange is modifying the securities in the groups and customizing transaction fees by security due to the different liquidity attributes of the different securities and CBSX's experience in trades involving those securities.

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

No written comments were solicited or received with respect to the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The proposed rule change is designated by the Exchange as establishing or changing a due, fee, or other charge, thereby qualifying for effectiveness on filing pursuant to Section 19(b)(3)(A) of the Act[7] and

[11] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* Securities Exchange Act Release No. 64027 (March 3, 2011), 76 FR 13011 (March 9, 2011) (SR–CBOE–2011–020).

[4] *See* footnote 1.

[5] 15 U.S.C. 78f(b).

[6] 15 U.S.C. 78f(b)(4).

[7] 15 U.S.C. 78s(b)(3)(A).

subparagraph (f)(2) of Rule 19b–4 [8] thereunder. At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend 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–2011–035 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–2011–035. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for Web site viewing and printing in the Commission's Public Reference Room, 100 F Street, NE., Washington, DC 20549, on official business days between the hours of 10 a.m. and 3 p.m. Copies of such filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–CBOE–2011–035 and should be submitted on or before May 3, 2011.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[9]

Cathy H. Ahn,

Deputy Secretary.

[FR Doc. 2011–8622 Filed 4–11–11; 8:45 am]

BILLING CODE 8011–01–P

[8] 17 CFR 240.19b–4(f)(2).

[9] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–64203; File No. SR–CHX–2011–05]

Self-Regulatory Organizations; Chicago Stock Exchange, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change to Extend the Pilot Program Relating to Individual Securities Circuit Breakers

April 6, 2011.

Pursuant to Section 19(b)(1) [1] of the Securities Exchange Act of 1934 (the "Act") [2] and Rule 19b-4 thereunder,[3] notice is hereby given that on April 5, 2010, the Chicago Stock Exchange, Inc. ("CHX" or the "Exchange") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I and II below, which Items have been prepared by the Exchange. 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

CHX proposes to amend its rules to extend the pilot program relating to individual securities circuit breakers. The text of this proposed rule change is available on the Exchange's Web site at (*http://www.chx.com*) and in 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 CHX included statements concerning the purpose of and basis for the proposed rule changes and discussed any comments it received regarding the proposal. The text of these statements may be examined at the places specified in Item IV below. The CHX has prepared summaries, set forth in sections A, B and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Changes

1. Purpose

In June, 2010, CHX obtained Commission approval to amend Article 20, Rule 2 to create circuit breakers in individual securities on a pilot basis to end on December 10, 2010.[4] Shortly thereafter, in September, the Commission approved another amendment to Article 20, Rule 2 to add securities included in the Russell 1000® Index ("Russell 1000") and certain specified Exchange Traded Products ("ETP") to the pilot rule.[5] This program was subsequently extended until April 11, 2011.[6] The proposed rule change merely extends the duration of the pilot program to the earlier of August 11, 2011 or the date on which a limit up/limit down mechanism to address extraordinary market volatility, if adopted, applies. Extending the pilot in this manner will allow it to continue until the limit up/limit down mechanism to address extraordinary market volatility, if adopted, applies.

2. Statutory Basis

The proposed rule change is consistent with Section 6(b)(5) of the Securities Exchange Act of 1934 (the "Act"), which requires the rules of an exchange to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and a national market system and, in general, to protect investors and the public interest. The proposed rule change also is designed to support the principles of Section 11A(a)(1) of the Act in that it seeks to assure fair competition among brokers and dealers and among exchange markets. The Exchange believes that the proposed rule meets these requirements in that it promotes uniformity across markets concerning decisions to pause trading in a security when there are significant price movements.

[1] 15 U.S.C. 78s(b)(1).

[2] 15 U.S.C. 78a.

[3] 17 CFR 240.19b–4.

[4] *See* Securities Exchange Act Release No. 62252 (June 10, 2010), 75 FR 34186 (June 16, 2010) approving SR–CHX–2010–10.

[5] *See* Securities Exchange Act Release No. 62884 (September 10, 2010), 75 FR 56618 (September 16, 2010) approving SR–CHX–2010–14.

[6] *See* Securities Exchange Act Release No. 34–63498 (December 9, 2010), 75 FR 78310 December 15, 2010) approving SR–CHX–2010–24.

B. Self-Regulatory Organization's Statement of Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments Regarding the Proposed Rule Changes Received From Members, Participants or Others

No written comments were either solicited or received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Because the foregoing proposed rule change does not: (i) Significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) become operative for 30 days from the date on which it was filed, or such shorter time as the Commission may designate if consistent with the protection of investors and the public interest, it has become effective pursuant to Section 19(b)(3)(A) of the Act[7] and Rule 19b–4(f)(6) thereunder.[8]

A proposed rule change filed under Rule 19b–4(f)(6) normally may not become operative prior to 30 days after the date of filing.[9] However, Rule 19b–4(f)(6)[10] permits the Commission to designate a shorter time if such action is consistent with the protection of investors and the public interest. The Exchange has requested that the Commission waive the 30-day operative delay.

The Commission has considered the Exchange's request to waive the 30-day operative delay. The Commission believes that waiving the 30-day operative delay is consistent with the protection of investors and the public interest, as it will allow the pilot program to continue uninterrupted, thereby avoiding the investor confusion that could result from a temporary interruption in the pilot program.[11] For this reason, the Commission designates the proposed rule change to be operative upon filing.

At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend 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. If the Commission takes such action, the Commission shall institute proceedings to determine whether the proposed rule change should be approved or disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change, as amended, 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–CHX–2011–05 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–CHX–2011–05. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for Web site viewing and printing in the Commission's Public Reference Room, 100 F Street, NE., Washington, DC 20549, on official business days between the hours of 10 a.m. and 3 p.m. Copies of such filing also will be available for inspection and copying at the principal offices of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly.

All submissions should refer to File Number SR–CHX–2011–05, and should be submitted on or before May 3, 2011.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[12]

Cathy H. Ahn,

Deputy Secretary.

[FR Doc. 2011–8623 Filed 4–11–11; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–64204; File No. SR–EDGA–2011–11]

Self-Regulatory Organizations; EDGA Exchange, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Amend EDGA Rule 11.14 To Extend the Operation of the Single Stock Circuit Breaker Pilot Program

April 6, 2011

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (the "Act"),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on April 5, 2011, the EDGA Exchange, Inc. (the "Exchange" or the "EDGA") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I and II below, which items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to amend EDGA Rule 11.14 to extend the operation of the single stock circuit breaker pilot program pursuant to the Rule until the earlier of August 11, 2011 or the date on which a limit up/limit down mechanism to address extraordinary market volatility, if adopted, applies. The text of the

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[7] 15 U.S.C. 78s(b)(3)(A).

[8] 17 CFR 240.19b–4(f)(6). When filing a proposed rule change pursuant to Rule 19b–4(f)(6) under the Act, an exchange is required to give the Commission written notice of its intent to file the proposed rule change, along with a brief description and text of the proposed rule change, at least five business days prior to the date of filing of the proposed rule change, or such shorter time as designated by the Commission. The Commission notes that the Exchange has satisfied this requirement.

[9] 17 CFR 240.19b–4(f)(6)(iii).

[10] *Id.*

[11] For the purposes only of waiving the operative delay of this proposal, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. *See* 15 U.S.C. 78c(f).

[12] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

proposed rule change is attached as Exhibit 5 and is available on the Exchange's Web site at *http://www.directedge.com*, at the Exchange's principal office, and at the Public Reference Room of the Commission.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The self-regulatory organization has prepared summaries, set forth in Sections A, B and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange proposes to amend EDGA Rule 11.14 to extend the operation of a pilot that allows the Exchange to provide for uniform market-wide trading pause standards for individual securities in the S&P 500 Index, securities included in the Russell 1000® Index ("Russell 1000"), and specified Exchange Traded Products ("ETP") that experience rapid price movement (collectively known as "Circuit Breaker Securities") through the earlier of August 11, 2011 or the date on which a limit up/limit down mechanism to address extraordinary market volatility, if adopted, applies.

Background

Pursuant to Rule 11.14, the Exchange is allowed to pause trading in any Circuit Breaker Securities when the primary listing market for such stock issues a trading pause in any Circuit Breaker Securities.

EDGA Rule 11.14 was approved by the Commission on June 10, 2010 on a pilot basis to end on December 10, 2010.[3] The pilot was subsequently extended until April 11, 2011.[4] As the Exchange noted in its filing to adopt EDGA Rule 11.14, during the pilot period, the Exchange would continue to assess whether additional securities need to be added and whether the parameters of the rule would need to be modified to accommodate trading characteristics of different securities. The original pilot list of securities was all securities included in the S&P 500® Index ("S&P 500"). As noted in comment letters to the original filing to adopt EDGA Rule 11.14, concerns were raised that including only securities in the S&P 500 in the pilot rule was too narrow. In particular, commenters noted that securities that experienced volatility on May 6, 2010, including ETFs, should be included in the pilot.

In response to these concerns, various exchanges and national securities associations collectively determined to expand the list of pilot securities to include securities in the Russell 1000 and specified ETPs to the pilot beginning in September 2010.[5] The Exchange believed that adding these securities would address concerns that the scope of the pilot may be too narrow, while at the same time recognizing that during the pilot period, the markets will continue to review whether and when to add additional securities to the pilot and whether the parameters of the rule should be adjusted for different securities.

As noted above, during the pilot, the Exchange continued to re-assess, in consultation with other markets whether: (i) Specific ETPs should be added or removed from the pilot list; (ii) the parameters for invoking a trading pause continue to be the appropriate standard; and (iii) the parameters should be modified.

The Exchange believes that an extension of the pilot would continue to promote uniformity regarding decisions to pause trading and continue to reduce the negative impacts of sudden, unanticipated price movements in Circuit Breaker Securities. The Exchange believes that the pilot is working well, that it has been infrequently invoked during the past four months, and that the Exchange will be in a better position to determine the efficacy of providing any additional functionality or changes to the pilot by continuing to assess its operation in consultation with other exchange and national securities associations. Therefore, the Exchange requests an extension of the pilot through the earlier of August 11, 2011 or the date on which a limit up/limit down mechanism to address extraordinary market volatility, if adopted, applies.

2. Statutory Basis

The statutory basis for the proposed rule change is Section 6(b)(5) of the Act,[6] which requires the rules of an exchange to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and a national market system and, in general, to protect investors and the public interest. The proposed rule change also is designed to support the principles of Section 11A(a)(1)[7] of the Act in that it seeks to assure fair competition among brokers and dealers and among exchange markets. The Exchange believes that the proposed rule meets these requirements in that it promotes uniformity across markets concerning decisions to pause trading in a security when there are significant price movements. Specifically, an extension will allow the Exchange additional time to determine the efficacy of providing any additional changes to the pilot.

B. Self-Regulatory Organization's Statement on Burden on Competition

The proposed rule change does not impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

The Exchange has not solicited, and does not intend to solicit, comments on this proposed rule change. The Exchange has not received any unsolicited written comments from members or other interested parties.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Because the foregoing proposed rule change does not: (i) Significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) become operative for 30 days from the date on which it was filed, or such shorter time as the Commission may designate if consistent with the protection of investors and the public interest, it has become effective pursuant to Section 19(b)(3)(A) of the Act[8] and Rule 19b–4(f)(6) thereunder.[9]

[3] *See* Securities Exchange Act Release No. 62252 (June 10, 2010) (SR–EDGA–2010–01), 75 FR 34186 (June 16, 2010).

[4] *See* Securities Exchange Act Release No. 63514 (December 9, 2010) (SR–EDGA–2010–23), 75 FR 78783 (December 16, 2010).

[5] *See* Securities Exchange Act Release No. 62884 (September 10, 2010) (SR–EDGA–2010–05), 75 FR 56618 (September 16, 2010).

[6] 15 U.S.C. 78f(b)(5).

[7] 15 U.S.C. 78k–1(a)(1).

[8] 15 U.S.C. 78s(b)(3)(A).

[9] 17 CFR 240.19b–4(f)(6). When filing a proposed rule change pursuant to Rule 19b–4(f)(6) under the Act, an exchange is required to give the Commission written notice of its intent to file the

Continued

A proposed rule change filed under Rule 19b–4(f)(6) normally may not become operative prior to 30 days after the date of filing.[10] However, Rule 19b–4(f)(6)[11] permits the Commission to designate a shorter time if such action is consistent with the protection of investors and the public interest. The Exchange has requested that the Commission waive the 30-day operative delay.

The Commission has considered the Exchange's request to waive the 30-day operative delay. The Commission believes that waiving the 30-day operative delay is consistent with the protection of investors and the public interest, as it will allow the pilot program to continue uninterrupted, thereby avoiding the investor confusion that could result from a temporary interruption in the pilot program.[12] For this reason, the Commission designates the proposed rule change to be operative upon filing.

At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend 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. If the Commission takes such action, the Commission shall institute proceedings to determine whether the proposed rule change should be approved or disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change, as amended, 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–EDGA–2011–11 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–EDGA–2011–11. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for Web site viewing and printing in the Commission's Public Reference Room, 100 F Street, NE., Washington, DC 20549, on official business days between the hours of 10 a.m. and 3 p.m. Copies of such filing also will be available for inspection and copying at the principal offices of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly.

All submissions should refer to File Number SR–EDGA–2011–11, and should be submitted on or before May 3, 2011.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[13]

Cathy H. Ahn,

Deputy Secretary.

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proposed rule change, along with a brief description and text of the proposed rule change, at least five business days prior to the date of filing of the proposed rule change, or such shorter time as designated by the Commission. The Commission notes that the Exchange has satisfied this requirement.

[10] 17 CFR 240.19b–4(f)(6)(iii).

[11] *Id.*

[12] For the purposes only of waiving the operative delay of this proposal, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. *See* 15 U.S.C. 78c(f).

[13] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–64216; File No. SR–NYSEArca–2011–16]

Self-Regulatory Organizations; NYSE Arca, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Modifying Credits for Posting Liquidity for Certain Transactions and Imposing Routing Fees To Defray the Costs of Routing Orders to Away Markets

April 6, 2011.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")[1] and Rule 19b–4 thereunder,[2] notice is hereby given that, on April 1, 2011, NYSE Arca, Inc. ("NYSE Arca" or the "Exchange") filed with the Securities and Exchange Commission (the "Commission") the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to modify credits for posting liquidity for certain transactions and impose routing fees to defray the costs of routing orders to away markets. The text of the proposed rule change is available at the Exchange, at the Commission's Public Reference Room, on the Commission's Web site at *http://www.sec.gov*, and *http://www.nyse.com*.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of those statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant parts of such statements.

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

NYSE Arca proposes to modify its credits for posting liquidity in Penny Pilot issues.[3] The Exchange also proposes to replace certain premium credits in high volume issues and volume tier pricing incentives for Customers and Market Makers in Penny Pilot issues with a Customer Monthly Posting Threshold structure in Penny Pilot issues that will provide increased credits in certain circumstances. In addition, the Exchange is proposing a routing fee and is also eliminating certain references to products that are no longer traded on the Exchange.

Changes to Post Liquidity Credits

Electronic transactions in Penny Pilot issues are assessed Take Liquidity fees and credited with Post Liquidity credits. The Exchange proposes to increase the Post Liquidity credit for Lead Market Makers and Market Makers from $0.30 per contract to $0.32 per contract. The Exchange proposes to reduce the Post Liquidity credit for Firm and Broker Dealer Electronic orders from $0.25 per contract to $0.10 per contract to reflect the fact that attempts to attract Firm and Broker Dealer liquidity with higher posting credits have not proved fruitful because based on our observations, such entities are proprietary traders who seek opportunities and venues to trade against Customer order flow to capture the spread rather than trade based on rebates and fees.

Lead Market Makers and Market Makers pay significantly higher OTP fees than OTP Holders that are Firm proprietary traders, while Broker Dealers that are not OTP Holders pay no OTP fee. The proposed difference in Posting Credits between these categories is intended to partially offset the difference in OTP costs. Additionally, Market Makers and Lead Market Makers have an affirmative continuous quoting obligation that does not apply to Firms and Broker Dealers. This obligation imposes greater costs and potentially greater risks on Market Makers and Lead Market Makers than the costs and risks realized by Firms and Broker Dealers, and Market Makers and Lead Market Makers should thus be rewarded with a greater posting credit. The proposed differential is less than that found on NASDAQ OMX PHLX ("Phlx"), a competing market, which provides an "adding liquidity rebate" of $0.23 for market makers and $0.00 for Firms and Broker-Dealers, while charging an "adding liquidity fee" of $0.00 for Market Makers, but $0.05 for Firms and Broker Dealers. The differential on Phlx between the two classifications of market participants is $0.28, while NYSE Arca proposes a differential of $0.22.[4]

The Exchange proposes to eliminate the "Premium Tier" of issues which received an additional $0.05 per contract Post Liquidity credit above the stated Post Liquidity rates. The Premium Tier distinction did not have the intended effect of increasing market share in these products, and the Exchange proposes a more streamlined fee schedule.

In addition, the Exchange proposes to increase the Post Liquidity credit above the base Customer Post Liquidity credit of $0.25 per contract for OTP Holders that aggregate Customer orders that meet certain volume thresholds in Penny Pilot issues. An OTP Holder sending Customer orders that in the aggregate exceed 500,000 contracts executed in a month from posting liquidity will receive a posting credit of $0.32 per contract on all executions resulting from posted liquidity. If such aggregated Customer orders exceed 800,000 contracts executed in a month from posting liquidity, the OTP Holder will receive a posting credit of $0.34 per contract on all executions resulting from posted liquidity. If such aggregated Customer orders exceed 1,200,000 contracts executed in a month from posting liquidity, the OTP Holder will receive a posting credit of $0.38 per contract on all executions resulting from posted liquidity. The volume thresholds are intended to incentivize firms that route some Customer orders to the Exchange to increase the number of orders that are posted to achieve the next threshold. Increasing the number of orders posted on the Exchange will in turn provide tighter and more liquid markets, and therefore attract more business overall.

It is possible for an OTP Holder routing Customer orders to the Exchange to reach a threshold that provides for a greater posting credit than that of a Market Maker or Lead Market Maker. Market Makers and Lead Market Makers incorporate Post Liquidity credits into their models for quote calculations based on their overhead costs and prefer to have a single credit apply across all similar transactions. OTP Holders who aggregate Customer business are subject to the relative level of activity of the industry, and thus may not have enough business in a particular month to meet a volume threshold. To the extent that Market Makers have an obligation to be present on the Exchange, but Customer order flow may be directed anywhere, the Exchange wishes to incentivize the directing of Customer order flow to NYSE Arca. As indicated above, Firms and Broker Dealers are proprietary traders that seek to trade with Customer order flow to capture the spread rather than trade based on rebates and fees. We have found over time that the higher Post Liquidity credit for such entities has not caused them to post more liquidity on the Exchange. To incentivize such entities to send order flow to the Exchange, we have determined to increase the incentive to send Customer order flow to the Exchange, which in turn is designed to attract more trading interest from such entities to trade with that Customer order flow, and enhance trading opportunities for all market participants.

The Exchange proposes to eliminate the "Tiered Pricing For Penny Pilot Issues," which provided escalating Take Discounts for Customer executions in certain volume ranges, and provided additional Post Credits for Market Maker executions in certain volume ranges. The Take Discounts for Customers did not encourage more business, because Customers generally only take liquidity if there is no charge, or if there is liquidity at the NBBO that does not have a fee. Because of this, there is no structural incentive to increase the amount of liquidity-taking order flow since the Take Discounts only eliminate a portion of the fee. The Penny Pilot Tiered Pricing, which provided increased posting credits for Market Makers with volume in certain tiers, was problematic in that Market Makers, as stated above, could not build the potential credit into their overhead models for quote calculations. Market Makers preferred a definite credit for the first contract rather than those over 1,000,000.

The Exchange believes the adjustments to the Post Liquidity credits will encourage Market Makers and Customers to post liquidity in Penny Pilot issues on NYSE Arca, thereby providing reduced market spreads overall and increasing available liquidity on the Exchange.

Routing Fees

In order to defray costs associated with non-Penny Pilot executions, the

[3] 363 issues have been approved to trade in a minimum price variation of $0.01 as part of a Pilot Program ("Penny Pilot") in accordance with NYSE Arca Rule 6.72.

[4] *See* Phlx Price List, "Make/Take Pricing Program" at (*http://www.nasdaqtrader.com/Micro.aspx?id=PHLXPricing*).

Exchange is proposing a routing surcharge of $0.11 per contract for orders that are routed and executed at away market centers pursuant to order protection requirements of the Options Order Protection and Locked/Crossed Market Plan. In addition, the Exchange proposes to pass through any transaction fees charged by the destination exchange on executions of routed orders. This is a new fee for NYSE Arca options intended to offset the costs and fees of routing orders for execution in non-Penny Pilot issues. NYSE Arca pays a fee to its routing brokers, and in turn pays clearing fees to OCC to clear routed orders. At this time the fee is to be charged only to non-Penny Pilot issues, as orders in Penny Pilot issues which are routed are charged a take liquidity fee that offsets the cost of routing.

Firms may avoid routing charges by either routing orders themselves directly to the away market that is at the NBBO, or by use of various order types on NYSE Arca which carry an instruction to not route the order.

Deletion of Obsolete Reference

The Exchange is also proposing to delete references to Foreign Currency Options in the Transaction Fee schedule and in endnote 6, as Foreign Currency Options are no longer listed on the Exchange.

The proposed changes will be effective on April 1, 2011.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with the provisions of Section 6 of the Securities Exchange Act of 1934 (the "Act"),[5] in general, and Section 6(b)(4) of the Act,[6] in particular, in that it is designed to provide for the equitable allocation of reasonable dues, fees, and other charges among its members and other persons using its facilities. In addition, the Exchange believes that the proposed rule change is consistent with Section 6(b)(5) of the Exchange Act in that it is not designed to permit unfair discrimination between customers, issuers, brokers, or dealers.

The proposed changes to the fee schedule are equitable and reasonable in that they apply uniformly to all similarly situated market participants, are within the range of fees assessed by other exchanges employing similar pricing schemes, and are designed to increase liquidity at the Exchange. In particular, the proposed increase in the Post Liquidity credit from $0.30 to $0.32 per contract for Lead Market Makers and Market Makers is equitable and reasonable because it is within the range of a rebate paid on the NASDAQ Options Market ("NOM").[7] Moreover, the Exchange is seeking to provide an additional incentive for Lead Market Makers and Market Makers to post liquidity on the Exchange. In addition, the proposed decrease in the Post Liquidity credit from $0.25 to $0.10 per contract for Firms and Broker Dealers is reasonable because it is consistent with a rebate paid on NOM and a similar decrease NOM imposed in July 2010.[8] Further, as discussed above, the Exchange has observed that such entities are proprietary traders that seek to trade against Customer order flow to capture the spread rather than trade based on rebates and fees.

The proposed differential in the Post Liquidity credits between the (1) Lead Market Maker/Market Maker, and (2) Firm/Broker Dealer Electronic categories, is equitable and not unfairly discriminatory in that it is intended to partially offset the significantly higher OTP fees paid by Lead Market Makers and Market Makers. Further, this differential is also equitable and not unfairly discriminatory in that it provides additional compensation for the affirmative continuous quoting obligation that Lead Market Makers and Market Makers have, but which does not apply to Firms and Broker Dealers. In addition, as noted above, the proposed differential will still be less than the equivalent differential at the Phlx, a competing market.

Similarly, the proposed increase in Post Liquidity credits for OTP Holders that aggregate Customer orders that meet certain volume thresholds in Penny Pilot issues is equitable and reasonable in that it applies uniformly to all similarly situated OTP Holders that direct Customer orders to the Exchange and is very similar to rebates paid on NOM.[9] The fact that an OTP Holder routing Customer orders to the Exchange may reach a threshold that provides for a greater posting credit than that of a Market Maker or Lead Market Maker is not inequitable or unfairly discriminatory because (1) Market Makers and Lead Market Makers prefer a fixed credit not dependent on volume for purposes of their models for quote calculations based on their overhead costs, and (2) the higher posting credits for the top two threshold levels (which would exceed the posting credit applicable to Market Makers and Lead Market Makers) is subject to the overall level of market activity and may not be reached in any given month. Moreover, the difference between (1) the Post Liquidity credits received by OTP Holders that aggregate Customer orders, and (2) the Post Liquidity credit received by Firms and Broker Dealers, is not inequitable or unfairly discriminatory because the Exchange believes that it has structured its fee schedule in a manner to attract order flow from all such entities. In this regard, the Exchange has found that the higher Post Liquidity credit for Firms and Broker Dealers has not caused them to send additional order flow to the Exchange. Based on its observations, the Exchange believes that such entities focus on the ability to trade with Customer order flow to capture the spread rather than on rebates and fees. Accordingly, the Exchange is proposing to increase the Post Liquidity credits for Customer order flow to attract such order flow to the Exchange. With the anticipated increase in such order flow to the Exchange, the Exchange expects to attract additional order flow from Firms and Broker Dealers to trade with such order flow.

The imposition of routing fees in non-Penny Pilot issues is reasonable in that it is intended to defray the significant cost of routing orders, and these charges may be avoided by direct routing of an order to the away market that is at the NBBO or by the use of do-not-route order types on NYSE Arca. The routing fees are equitable and not unfairly discriminatory in that they are applied in an identical manner to all market participants with similarly situated orders.

Overall, the proposed changes to the fee schedule are structured to increase incentives for posting liquidity in Penny Pilot names so that the overall market is more competitive and spreads are tighter.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

[5] 15 U.S.C. 78f.

[6] 15 U.S.C. 78f(b)(4).

[7] *See* (*http://www.nasdaqtrader.com/Micro.aspx?id=OptionsPricing*). NOM provides a rebate of $0.36 per contract for customers adding liquidity.

[8] *Id.* NOM provides a rebate of $0.10 per contract for firms adding liquidity. In addition, we note that in July 2010, NASDAQ decreased its rebate for firms adding liquidity from $0.25 to $0.10 per contract. *See* Exchange Act Release No. 62543 (July 21, 2010), 75 FR 44037 (July 27, 2010).

[9] *See supra* note 7.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments were solicited or received with respect to the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change is effective upon filing pursuant to Section 19(b)(3)(A)[10] of the Act and subparagraph (f)(2) of Rule 19b–4[11] thereunder, because it establishes a due, fee, or other charge imposed by the NYSE Arca.

At any time within 60 days of the filing of such proposed rule change, the Commission summarily may temporarily suspend 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–NYSEArca–2011–16 on the subject line.

Paper Comments

- Send paper comments in triplicate to Elizabeth M. Murphy, Secretary, Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–NYSEArca–2011–16. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for Web site viewing and printing in the Commission's Public Reference Room, 100 F Street, NE., Washington, DC 20549, on official business days between the hours of 10 a.m. and 3 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–NYSEArca–2011–16 and should be submitted on or before May 3, 2011.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[12]

Cathy H. Ahn,

Deputy Secretary.

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[10] 15 U.S.C. 78s(b)(3)(A).

[11] 17 CFR 240.19b–4(f)(2).

[12] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–64234; File No. SR–NYSEArca–2011–15]

Self-Regulatory Organizations; NYSE Arca, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Amending NYSE Arca Rule 7.10, Clearly Erroneous Executions, To Extend the Effective Date of the Pilot Until the Earlier of August 11, 2011 or the Date on Which a Limit Up/Limit Down Mechanism To Address Extraordinary Market Volatility, if Adopted, Applies

April 7, 2011.

Pursuant to Section 19(b)(1)[1] of the Securities Exchange Act of 1934 (the "Act")[2] and Rule 19b–4 thereunder,[3] notice is hereby given that, on March 31, 2011, NYSE Arca, Inc. (the "Exchange" or "NYSE Arca") filed with the Securities and Exchange Commission (the "Commission") the proposed rule change as described in Items I and II below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

[1] 15 U.S.C. 78s(b)(1).

[2] 15 U.S.C. 78a.

[3] 17 CFR 240.19b–4.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to amend NYSE Arca Rule 7.10, which governs clearly erroneous executions, to extend the effective date of the pilot by which portions of such Rule operate until the earlier of August 11, 2011 or the date on which a limit up/limit down mechanism to address extraordinary market volatility, if adopted, applies. The pilot is currently scheduled to expire on April 11, 2011. The text of the proposed rule change is available at the Exchange, the Commission's Public Reference Room, the Commission's Web site at *http://www.sec.gov*, and *http://www.nyse.com*.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of those statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant parts of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and the Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange proposes to amend NYSE Arca Equities Rule 7.10, which governs clearly erroneous executions, to extend the effective date of the pilot by which portions of such Rule operate, until the earlier of August 11, 2011 or the date on which a limit up/limit down mechanism to address extraordinary market volatility, if adopted, applies. The pilot is currently scheduled to expire on April 11, 2011.[4]

On September 10, 2010, the Commission approved, on a pilot basis, market-wide amendments to exchanges' rules for clearly erroneous executions to set forth clearer standards and curtail discretion with respect to breaking

[4] *See* Securities Exchange Act Release No. 62886 (September 10, 2010), 75 FR 56613 (September 16, 2010) (SR–NYSEArca–2010–58). *See also* Securities Exchange Act Release No. 63482 (December 9, 2010), 75 FR 78331 (December 15, 2010) (SR–NYSEArca–2010–113).

erroneous trades. In connection with this pilot initiative, the Exchange amended NYSE Arca Equities Rule 7.10(c), (e)(2), (f), and (g). The amendments provide for uniform treatment of clearly erroneous execution reviews (1) in Multi-Stock Events [5] involving twenty or more securities, and (2) in the event transactions occur that result in the issuance of an individual security trading pause by the primary market and subsequent transactions that occur before the trading pause is in effect on the Exchange.[6] The amendments also eliminated appeals of certain rulings made in conjunction with other exchanges with respect to clearly erroneous transactions and limited the Exchange's discretion to deviate from Numerical Guidelines set forth in the Rule in the event of system disruptions or malfunctions.

If the pilot were not extended, the prior versions of paragraphs (c), (e)(2), (f), and (g) of NYSE Arca Equities Rule 7.10 would be in effect, and NYSE Arca would have different rules than other exchanges and greater discretion in connection with breaking clearly erroneous transactions. The Exchange proposes to extend the pilot amendments to NYSE Arca Equities Rule 7.10 until the earlier of August 11, 2011 or the date on which a limit up/limit down mechanism to address extraordinary market volatility, if adopted, applies in order to maintain uniform rules across markets and allow the pilot to continue to operate without interruption during the same period that the Rule 7.11 trading pause rule pilot is also in effect. Extension of the pilot would permit the Exchange, other national securities exchanges and the Commission to further assess the effect of the pilot on the marketplace, including whether additional measures should be added, whether the parameters of the rule should be modified or whether other initiatives should be adopted in lieu of the current pilot.

2. Statutory Basis

The proposed rule change is consistent with Section 6(b) [7] of the Act, in general, and furthers the objectives of Section 6(b)(5) [8] in particular in that it is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in facilitating transactions in securities, to remove impediments to and perfect the mechanism of a free and open market and a national market system and, in general, to protect investors and the public interest. More specifically, the NYSE Arca believes that the extension of the pilot would help assure that the determination of whether a clearly erroneous trade has occurred will be based on clear and objective criteria, and that the resolution of the incident will occur promptly through a transparent process. The proposed rule changes would also help assure consistent results in handling erroneous trades across the U.S. markets, thus furthering fair and orderly markets, the protection of investors and the public interest.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments were solicited or received with respect to the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Because the foregoing proposed rule change does not: (i) Significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) become operative for 30 days from the date on which it was filed, or such shorter time as the Commission may designate, it has become effective pursuant to Section 19(b)(3)(A) of the Act [9] and Rule 19b–4(f)(6)(iii) thereunder.[10] The Exchange has asked the Commission to waive the 30-day operative delay so that the proposal may become operative immediately upon filing. The Commission believes that waiving the 30-day operative delay is consistent with the protection of investors and the public interest because such waiver will allow the pilot program to continue uninterrupted and help ensure uniformity among the national securities exchanges and FINRA with respect to the treatment of clearly erroneous transactions.[11] Accordingly, the Commission waives the 30-day operative delay requirement and designates the proposed rule change as operative upon filing with the Commission.

At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend 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–NYSEArca–2011–15 on the subject line.

Paper Comments

- Send paper comments in triplicate to Elizabeth M. Murphy, Secretary, Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–NYSEArca-2011–15. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the

[5] Terms not defined herein are defined in NYSE Arca Equities Rule 7.10.

[6] Separately, the Exchange has proposed extend the effective date of the trading pause pilot under NYSE Arca Equities Rule 7.11, which requires to the Exchange to pause trading in an individual security listed on the Exchange if the price moves by 10% as compared to prices of that security in the preceding five-minute period during a trading day. *See* SR–NYSEArca–2011–14.

[7] 15 U.S.C. 78f(b).

[8] 15 U.S.C. 78f(b)(5).

[9] 15 U.S.C. 78s(b)(3)(A).

[10] 17 CFR 240.19b–4(f)(6)(iii). In addition, Rule 19b–4(f)(6)(iii) requires that a self-regulatory organization submit to the Commission written notice of its intent to file the proposed rule change, along with a brief description and text of the proposed rule change, at least five business days prior to the filing of the proposed rule change, or such shorter time as designated by the Commission. The Commission notes that the Exchange has satisfied this requirement.

[11] 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).

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 website viewing and printing in the Commission's Public Reference Room, 100 F Street, NE., Washington, DC 20549, on official business days between the hours of 10 a.m. and 3 p.m. Copies of 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–NYSEArca-2011–15 and should be submitted on or before May 3, 2011.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[12]

Cathy H. Ahn,

Deputy Secretary.

[FR Doc. 2011–8726 Filed 4–11–11; 8:45 am]

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–64224; File No. SR–NYSEArca–2011–11]

Self-Regulatory Organizations; NYSE Arca, Inc.; Notice of Filing of Proposed Rule Change Relating to the Listing and Trading of the Guggenheim Enhanced Core Bond ETF and Guggenheim Enhanced Ultra-Short Bond ETF

April 7, 2011.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on March 24, 2011, NYSE Arca, Inc. ("Exchange" or "NYSE Arca") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I and II below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

[12] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to list and trade the following under NYSE Arca Equities Rule 8.600: Guggenheim Enhanced Core Bond ETF and Guggenheim Enhanced Ultra-Short Bond ETF. The text of the proposed rule change is available at the Exchange, the Commission's Public Reference Room, and *http://www.nyse.com*.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of those statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant parts of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange proposes to list and trade the following Managed Fund Shares[3] ("Shares") under NYSE Arca Equities Rule 8.600: Guggenheim Enhanced Core Bond ETF and Guggenheim Enhanced Ultra-Short Bond ETF (each a "Fund," and, collectively, "Funds").[4] The Shares will be offered by the Claymore Exchange-Traded Fund Trust ("Trust"), a statutory trust organized under the laws of the State of Delaware and registered with the Commission as an open-end management investment company.[5]

The investment adviser for the Funds is Claymore Advisors, LLC ("Investment Adviser"). The Bank of New York Mellon is the custodian and transfer agent for the Funds. Claymore Securities, Inc. is the distributor for the Funds.

Commentary .06 to Rule 8.600 provides that, if the investment adviser to the Investment Company issuing Managed Fund Shares is affiliated with a broker-dealer, such investment adviser shall erect a "fire wall" between the investment adviser and the broker-dealer with respect to access to information concerning the composition and/or changes to such Investment Company portfolio.[6] In addition, Commentary .06 further requires that personnel who make decisions on the open-end fund's portfolio composition must be subject to procedures designed to prevent the use and dissemination of material nonpublic information regarding the open-end fund's portfolio. The Investment Adviser is affiliated with a broker-dealer and has represented that it has implemented a fire wall with respect to its broker-

[3] A Managed Fund Share is a security that represents an interest in an investment company registered under the Investment Company Act of 1940 (15 U.S.C. 80a) ("1940 Act") organized as an open-end investment company or similar entity that invests in a portfolio of securities selected by its investment adviser consistent with its investment objectives and policies. In contrast, an open-end investment company that issues Investment Company Units, listed and traded on the Exchange under NYSE Arca Equities Rule 5.2(j)(3), seeks to provide investment results that correspond generally to the price and yield performance of a specific foreign or domestic stock index, fixed income securities index, or combination thereof.

[4] The Commission previously approved listing and trading on the Exchange of the following actively managed funds under Rule 8.600. *See* Securities Exchange Act Release Nos. 57801 (May 8, 2008), 73 FR 27878 (May 14, 2008) (SR–NYSEArca–2008–31) (order approving Exchange listing and trading of twelve actively-managed funds of the WisdomTree Trust); 61365 (January 15, 2010), 75 FR 4124 (January 26, 2010) (SR–NYSEArca–2009–114) (order approving listing and trading of Grail McDonnell Fixed Income ETFs); and 60981 (November 10, 2009), 74 FR 59594 (November 18, 2009) (SR–NYSEArca–2009–79) (order approving listing of five fixed income funds of the PIMCO ETF Trust).

[5] The Trust is registered under the 1940 Act. On July 26, 2010, the Trust filed with the Commission Form N–1A under the Securities Act of 1933 (15 U.S.C. 77a) ("Securities Act") relating to the Funds (File Nos. 333–134551 and 811–21906) ("Registration Statement"). The description of the operation of the Trust and the Funds herein is based on the Registration Statement.

[6] An investment adviser to an open-end fund is required to be registered under the Investment Advisers Act of 1940 ("Advisers Act"). As a result, the investment adviser is subject to the provisions of Rule 204A–1 under the Advisers Act relating to codes of ethics. This Rule requires investment advisers to adopt a code of ethics that reflects the fiduciary nature of the relationship to clients as well as compliance with other applicable securities laws. Accordingly, procedures designed to prevent the communication and misuse of non-public information by an investment adviser must be consistent with Rule 204A–1 under the Advisers Act. The Exchange represents that the Investment Adviser and related personnel, are subject to Advisers Act Rule 204A–1. In addition, Rule 206(4)–7 under the Advisers Act makes it unlawful for an investment adviser to provide investment advice to clients unless such investment adviser has (i) Adopted and implemented written policies and procedures reasonably designed to prevent violation, by the investment adviser and its supervised persons, of the Advisers Act and the Commission rules adopted thereunder; (ii) implemented, at a minimum, an annual review regarding the adequacy of the policies and procedures established pursuant to subparagraph (i) above and the effectiveness of their implementation; and (iii) designated an individual (who is a supervised person) responsible for administering the policies and procedures adopted under subparagraph (i) above.

dealer affiliate regarding access to information concerning the composition and/or changes to the portfolio. In the event (a) the Investment Adviser becomes newly affiliated with a broker-dealer, or (b) any new adviser or sub-adviser becomes affiliated with a broker-dealer, they will implement a fire wall with respect to such broker-dealer regarding access to information concerning the composition and/or changes to the portfolio.

Guggenheim Enhanced Core Bond ETF

According to the Registration Statement, the investment objective of the Guggenheim Enhanced Core Bond ETF is to seek total return, comprised of income and capital appreciation. The Fund will use a quantitative strategy to seek total returns, comprised of income and capital appreciation, and risk-adjusted returns in excess of the Barclays Capital U.S. Aggregate Bond Index ("Benchmark") while maintaining a low risk profile versus the Benchmark. The Fund's quantitative strategy attempts to identify relative mispricing among the instruments of a given asset class and estimate future returns which may arise from the correction of these mispricing levels. The quantitative portfolio construction process then attempts to maximize expected returns due to issue-specific mispricing while controlling for interest rate and credit spread (*i.e.*, differences in yield between different debt instruments arising from differences in credit risk) risks. The average duration of the Fund's debt holdings is expected to be generally similar to the average duration of the Benchmark components.

The Fund primarily will invest in U.S. dollar-denominated investment grade debt securities, rated Baa or higher by Moody's Investors Service, Inc. ("Moody's"), or equivalently rated by Standard & Poor's Rating Group ("S&P") or Fitch Investor Services ("Fitch") or, if unrated, determined by the Investment Adviser to be of comparable quality.[7] The Fund may invest, without limitation, in U.S. dollar-denominated debt securities of foreign issuers. The Fund may also invest in debt securities denominated in foreign currencies. The Investment Adviser may attempt to reduce foreign currency exchange rate risk by entering into contracts with banks, brokers, or dealers to purchase or sell securities or foreign currencies at a future date ("forward contracts"). The Fund may invest no more than 10% in high yield securities ("junk bonds"), which are debt securities that are rated below investment grade by nationally recognized statistical rating organizations, or are unrated securities that the Investment Adviser believes are of comparable quality.

The Fund may invest in a wide range of fixed income instruments selected from, but not limited to, the following sectors: U.S. Treasury securities, corporate bonds, emerging market debt, and non-dollar denominated sovereign and corporate debt:[8] The Fund may invest up to 10% of its assets in mortgage-backed securities ("MBS") or in other asset-backed securities.[9] This limitation does not apply to securities issued or guaranteed by federal agencies and/or U.S. government sponsored instrumentalities, such as the Government National Mortgage Administration ("GNMA"), the Federal Housing Administration ("FHA"), the Federal National Mortgage Association ("FNMA"), and the Federal Home Loan Mortgage Corporation ("FHLMC").

According to the Registration Statement, the Fund may obtain exposure to the securities in which it normally invests by engaging in various investment techniques, including, but not limited to, forward purchase agreements, mortgage dollar roll, and "TBA" mortgage trading.[10] The Fund also may invest directly in exchange-traded funds ("ETFs") and other investment companies that provide exposure to fixed income securities similar to those securities in which the Fund may invest in directly.

The Fund will normally invest at least 80% of its net assets in fixed income securities.

Guggenheim Enhanced Ultra-Short Bond ETF

According to the Registration Statement, the investment objective of the Guggenheim Enhanced Ultra-Short Bond ETF is to seek maximum current income, consistent with preservation of capital and daily liquidity. The Fund uses a low duration strategy to seek to outperform the 1–3 month Treasury Bill Index in addition to providing returns in excess of those available in U.S. Treasury bills, government repurchase agreements, and money market funds, while providing preservation of capital and daily liquidity. The Fund is not a money market fund and thus does not seek to maintain a stable net asset value of $1.00 per Share.

The Fund expects, under normal circumstances,[11] to hold a diversified portfolio of fixed income instruments of varying maturities, but that have an average duration of less than 1 year. The Fund primarily will invest in U.S. dollar-denominated investment grade debt securities, rated Baa or higher by Moody's, or equivalently rated by S&P or Fitch or, if unrated, determined by the Investment Adviser to be of comparable quality.[12] The Fund may invest, without limitation, in U.S. dollar-denominated debt securities of foreign issuers. The Fund may also invest in debt securities denominated in

[7] The Investment Adviser's analysis is comprised of multiple elements including collateral and counterparty risk, structural analysis, quantitative analysis, and relative value/market value at risk analysis. Evaluation is also applied to collateral, historical market data, and proprietary statistical models to evaluate specific transactions. This analysis is applied against the macroeconomic outlook, geopolitical issues as well as considerations that more directly affect the company's industry to determine an internally assigned credit rating.

[8] The Fund will invest only in securities that the Investment Adviser deems to be sufficiently liquid. While corporate bonds and emerging market debt generally must have $200 million or more par amount outstanding and significant par value traded to be considered as an eligible investment, at least 80% of issues of corporate bonds or corporate debt held by the Fund must have $200 million or more par amount outstanding. The strategy follows an active quantitative investment process that seeks excess returns to the Benchmark. The strategy selects securities using a rigorous portfolio construction approach to tightly control independent risk exposures such as fixed income sector weights, sector specific yield curves, credit spreads, prepayment risks, and others. Within those risk constraints, the strategy utilizes relative value estimates to select individual securities that can provide risk adjusted outperformance relative to the Benchmark.

[9] The Fund may invest in MBS or other asset-backed securities issued or guaranteed by private issuers. The MBS in which the Fund may invest may also include residential mortgage-backed securities ("RMBS"), collateralized mortgage obligations ("CMOs"), and commercial mortgage-backed securities ("CMBS"). The asset-backed securities in which the Fund may invest include collateralized debt obligations ("CDOs"). CDOs include collateralized bond obligations ("CBOs"), collateralized loan obligations ("CLOs") and other similarly structured securities. A CBO is a trust which is backed by a diversified pool of high risk, below investment grade fixed income securities. A CLO is a trust typically collateralized by a pool of loans, which may include, among others, domestic and foreign senior secured loans, senior unsecured loans, and subordinate corporate loans, including loans that may be rated below investment grade or equivalent unrated loans.

[10] A mortgage dollar roll involves the sale of a MBS by one of the Funds and its agreement to repurchase the instrument (or one which is substantially similar) at a specified time and price. A TBA transaction is a method of trading MBS. In a TBA transaction, the buyer and seller agree upon general trade parameters such as agency, settlement date, par amount, and price. The actual pools delivered generally are determined two days prior to the settlement date.

[11] The term "under normal market circumstances" includes, but is not limited to, the absence of extreme volatility or trading halts in the fixed income markets or the financial markets generally; operational issues causing dissemination of inaccurate market information; or force majeure type events such as systems failure, natural or man-made disaster, act of God, armed conflict, act of terrorism, riot or labor disruption, or any similar intervening circumstance.

[12] See note 7, *supra*.

foreign currencies. The Investment Adviser may attempt to reduce foreign currency exchange rate risk by entering into contracts with banks, brokers, or dealers to purchase or sell securities or forward contracts. The Fund may invest no more than 10% in junk bonds. The Fund may also invest in municipal securities.

The Fund may invest a substantial portion of its assets in short-term instruments such as commercial paper[13] and/or repurchase agreements.[14] The Fund may also invest in a wide range of fixed income instruments selected from, but not limited to, the following sectors: U.S. Treasury securities, corporate bonds, emerging market debt, and non-dollar denominated sovereign and corporate debt.[15] The Fund may invest up to 10% of its assets in MBS or in other asset-backed securities.[16] This limitation does not apply to securities issued or guaranteed by federal agencies and/or U.S. government sponsored instrumentalities, such as the GNMA, FHA, FNMA, and FHLMC.

According to the Registration Statement, the Fund may obtain exposure to the securities in which it normally invests by engaging in various investment techniques, including, but not limited to, forward purchase agreements, mortgage dollar roll, and "TBA" mortgage trading. The Fund also may invest directly in ETFs and other investment companies that provide exposure to fixed income securities similar to those securities in which the Fund may invest in directly.

The Fund will normally invest at least 80% of its net assets in fixed income securities.

Other Investments

Each Fund may invest up to an aggregate amount of 15% of its net assets in: (1) Illiquid securities; and (2) Rule 144A securities. Illiquid securities include securities subject to contractual or other restrictions on resale and other instruments that lack readily available markets. With respect to investment in illiquid securities, if changes in the values of a Fund's securities cause the Fund's holdings of illiquid securities to exceed the 15% limitation (as if liquid securities have become illiquid), the Fund will take such actions as it deems appropriate and practicable to attempt to reduce its holdings of illiquid securities.

The Funds may invest in Rule 144A securities. Rule 144A securities are securities which, while privately placed, are eligible for purchase and resale pursuant to Rule 144A under the Securities Act. According to the Registration Statement, this rule permits certain qualified institutional buyers, such as the Funds, to trade in privately placed securities even though such securities are not registered under the Securities Act.

The Funds' portfolio holdings will be disclosed on their Web site (*http://www.guggenheimfunds.com*) daily after the close of trading on the Exchange and prior to the opening of trading on the Exchange the following day.

The Funds are considered non-diversified under the 1940 Act and can invest a greater portion of assets in securities of individual issuers than a diversified fund. The Funds intend to maintain the level of diversification necessary to qualify as a regulated investment company ("RIC") under Subchapter M of the Internal Revenue Code of 1986, as amended.[17]

The Shares will conform to the initial and continued listing criteria under NYSE Arca Equities Rule 8.600. The Exchange represents that, for initial and/or continued listing, the Funds will be in compliance with Rule 10A–3 under the Exchange Act,[18] as provided by NYSE Arca Equities Rule 5.3. A minimum of 100,000 Shares of each Fund will be outstanding at the commencement of trading on the Exchange. The Exchange will obtain a representation from the issuer of the Shares that the net asset value ("NAV") will be calculated daily, and the NAV and the Disclosed Portfolio will be made available to all market participants at the same time.

The Funds will not invest in non-U.S. equity securities. In addition, the Funds will not invest in options contracts, futures contracts, or swap agreements.

Creations and Redemptions of Shares

Investors may create or redeem in Creation Unit size of 100,000 Shares or aggregations thereof ("Creation Unit Aggregation") through an Authorized Participant, as described in the Registration Statement. In order to purchase Creation Units of a Fund, an investor must generally deposit a designated portfolio of securities ("Deposit Securities") and/or an amount in cash in lieu of some or all of the Deposit Securities per each Creation Unit Aggregation constituting a substantial replication, or representation, of the securities included in the Fund's portfolio as selected by the Investment Adviser ("Fund Securities") and generally make a cash payment referred to as the "Cash Component." The list of the names and the amounts of the Deposit Securities will be made available by the Funds' custodian through the facilities of the

[13] Commercial paper consists of short-term, promissory notes issued by banks, corporations and other entities to finance short-term credit needs. These securities generally are discounted but sometimes may be interest bearing. As of year end 2010, $1.058 trillion commercial paper was outstanding, and, as of February 28, 2011, $1.123 trillion commercial paper was outstanding. The daily average commercial paper market issuance in 2010 was $84.343 billion, with 65% having a maturity of 1–4 days, 8% having a maturity of 5–9 days, 4% having a maturity of 10–20 days, 11% having a maturity of 21–40 days, 4% having a maturity of 41–80 days, and 8% having a maturity of 81 days or more. As of March 16, 2011, the daily average commercial paper market issuance was $78.780 billion, with 58% having a maturity of 1–4 days, 9% having a maturity of 5–9 days, 5% having a maturity of 10–20 days, 12% having a maturity of 21–40 days, 5% having a maturity of 41–80 days, and 11% having a maturity of 81days or more. (Source: Federal Reserve).

[14] The Fund may invest a substantial portion of its assets in short-term instruments such as repurchase agreements. Repurchase agreements are fixed-income securities in the form of agreements backed by collateral. These agreements, which may be viewed as a type of secured lending by the Fund, typically involve the acquisition by the Fund of securities from the selling institution (such as a bank or a broker-dealer), coupled with the agreement that the selling institution will repurchase the underlying securities at a specified price and at a fixed time in the future (or on demand). The underlying securities which serve as collateral for the repurchase agreements entered into by the Fund may include U.S. government securities, corporate obligations, and convertible securities, and are marked-to-market daily in order to maintain full collateralization (typically purchase price plus accrued interest).

[15] The Fund will invest only in securities that the Investment Adviser deems to be sufficiently liquid. While corporate bonds and emerging market debt generally must have $200 million or more par amount outstanding and significant par value traded to be considered as an eligible investment, at least 80% of issues of corporate bonds or corporate debt held by the Fund must have $200 million or more par amount outstanding.

[16] The Fund may invest in MBS or other asset-backed securities issued or guaranteed by private issuers. The MBS in which the Fund may invest may also include RMBS, CMOs and CMBS. The asset-backed securities in which the Fund may invest include CDOs.

[17] 26 U.S.C. 851. As a RIC, each Fund will not be subject to U.S. federal income tax on the portion of its taxable investment income and capital gains that it distributes to its shareholders. To qualify for treatment as a RIC, a company must annually distribute at least 90% of its net investment company taxable income (which includes dividends, interest, and net short-term capital gains) and meet several other requirements relating to the nature of its income and the diversification of its assets. If a Fund fails to qualify for any taxable year as a RIC, all of its taxable income will be subject to tax at regular corporate income tax rates without any deduction for distributions to shareholders, and such distributions generally will be taxable to shareholders as ordinary dividends to the extent of a Fund's current and accumulated earnings and profits. In addition, in order to requalify for taxation as a RIC, a Fund may be required to recognize unrealized gains, pay substantial taxes and interest, and make certain distributions.

[18] 17 CFR 240.10A–3.

National Securities Clearing Corporation ("NSCC") immediately prior to the opening of business each day of the NYSE Arca. The Cash Component represents the difference between the NAV of a Creation Unit and the market value of the Deposit Securities.

Shares may be redeemed only in Creation Unit size at their NAV on a day the NYSE Arca is open for business. The Funds' custodian will make available immediately prior to the opening of business each day of the NYSE Arca, through the facilities of NSCC, the list of the names and the amounts of the Funds' portfolio securities that will be applicable that day to redemption requests in proper form ("Fund Securities"). Fund Securities received on redemption may not be identical to Deposit Securities which are applicable to purchases of Creation Units.

Availability of Information

The Funds' Web site, which will be publicly available prior to the public offering of Shares, will include a form of the Prospectus for the Funds that may be downloaded. The Funds' website will include additional quantitative information updated on a daily basis, including, for the Funds, (1) daily trading volume, the prior business day's reported closing price, NAV and mid-point of the bid/ask spread at the time of calculation of such NAV ("Bid/Ask Price"),[19] and a calculation of the premium and discount of the Bid/Ask Price against the NAV, and (2) data in chart format displaying the frequency distribution of discounts and premiums of the daily Bid/Ask Price against the NAV, within appropriate ranges, for each of the four previous calendar quarters. On each business day, before commencement of trading in Shares in the Core Trading Session on the Exchange, the Funds will disclose on their website the Disclosed Portfolio as defined in NYSE Arca Equities Rule 8.600(c)(2) that will form the basis for each Fund's calculation of NAV at the end of the business day.[20]

On a daily basis, the Investment Adviser will disclose for each portfolio security or other financial instrument of the Funds the following information: Ticker symbol (if applicable), name of security or financial instrument, number of shares or dollar value of financial instruments held in the portfolio, and percentage weighting of the security or financial instrument in the portfolio. The website information will be publicly available at no charge. In addition, price information for the debt securities held by the Funds will be available through major market data vendors.

In addition, a basket composition file, which includes the security names and share quantities required to be delivered in exchange for Fund shares, together with estimates and actual cash components, will be publicly disseminated daily prior to the opening of the New York Stock Exchange ("NYSE") via NSCC. The basket represents one Creation Unit of each of the Funds. The NAV of each of the Funds will normally be determined as of the close of the regular trading session on the NYSE (ordinarily 4 p.m. Eastern Time) on each business day.

Investors can also obtain the Trust's Statement of Additional Information ("SAI"), the Funds' Shareholder Reports, and Form N–CSR, and Form N–SAR, filed twice a year. The Trust's SAI and Shareholder Reports are available free upon request from the Trust, and those documents and the Form N–CSR and Form N–SAR may be viewed on-screen or downloaded from the Commission's Web site at *http://www.sec.gov*. Information regarding market price and trading volume of the Shares is and will be continually available on a real-time basis throughout the day on brokers' computer screens and other electronic services. Information regarding the previous day's closing price and trading volume information will be published daily in the financial section of newspapers. Quotation and last-sale information for the Shares will be available via the Consolidated Tape Association ("CTA") high-speed line. In addition, the Portfolio Indicative Value, as defined in NYSE Arca Equities Rule 8.600(c)(3), will be disseminated by one or more major market data vendors at least every 15 seconds during the Core Trading Session. The dissemination of the Portfolio Indicative Value, together with the Disclosed Portfolio, will allow investors to determine the value of the underlying portfolio of each Fund on a daily basis and to provide a close estimate of that value throughout the trading day.

Additional information regarding the Trust and the Shares, including investment strategies, risks, creation and redemption procedures, fees, portfolio holdings disclosure policies, distributions, and taxes is included in the Registration Statement.

Trading Halts

With respect to trading halts, the Exchange may consider all relevant factors in exercising its discretion to halt or suspend trading in the Shares of the Funds.[21] Trading in Shares of the Funds will be halted if the circuit breaker parameters in NYSE Arca Equities Rule 7.12 have been reached. Trading also may be halted because of market conditions or for reasons that, in the view of the Exchange, make trading in the Shares inadvisable. These may include: (1) The extent to which trading is not occurring in the securities and/or the financial instruments comprising the Disclosed Portfolio of the Funds; or (2) whether other unusual conditions or circumstances detrimental to the maintenance of a fair and orderly market are present. Trading in the Shares will be subject to NYSE Arca Equities Rule 8.600(d)(2)(D), which sets forth circumstances under which Shares of the Funds may be halted.

Trading Rules

The Exchange deems the Shares to be equity securities, thus rendering trading in the Shares subject to the Exchange's existing rules governing the trading of equity securities. Shares will trade on the NYSE Arca Marketplace from 4 a.m. to 8 p.m. Eastern Time in accordance with NYSE Arca Equities Rule 7.34 (Opening, Core, and Late Trading Sessions). The Exchange has appropriate rules to facilitate transactions in the Shares during all trading sessions. As provided in NYSE Arca Equities Rule 7.6, Commentary .03, the minimum price variation ("MPV") for quoting and entry of orders in equity securities traded on the NYSE Arca Marketplace is $0.01, with the exception of securities that are priced less than $1.00 for which the MPV for order entry is $0.0001.

Surveillance

The Exchange intends to utilize its existing surveillance procedures applicable to derivative products (which include Managed Fund Shares) to monitor trading in the Shares. The Exchange represents that these procedures are adequate to properly monitor Exchange trading of the Shares in all trading sessions and to deter and detect violations of Exchange rules and applicable federal securities laws.

The Exchange's current trading surveillance focuses on detecting

[19] The Bid/Ask Price of the Funds will be determined using the highest bid and the lowest offer on the Exchange as of the time of calculation of each Fund's NAV. The records relating to Bid/Ask Prices will be retained by the Funds and its service providers.

[20] Under accounting procedures followed by the Funds, trades made on the prior business day ("T") will be booked and reflected in NAV on the current business day ("T+1"). Accordingly, the Funds will be able to disclose at the beginning of the business day the portfolio that will form the basis for the NAV calculation at the end of the business day.

[21] *See* NYSE Arca Equities Rule 7.12, Commentary .04.

securities trading outside their normal patterns. When such situations are detected, surveillance analysis follows and investigations are opened, where appropriate, to review the behavior of all relevant parties for all relevant trading violations.

The Exchange may obtain information via the Intermarket Surveillance Group ("ISG") from other exchanges that are members of ISG or with which the Exchange has entered into a surveillance sharing agreement.[22]

In addition, the Exchange also has a general policy prohibiting the distribution of material, non-public information by its employees.

Information Bulletin

Prior to the commencement of trading, the Exchange will inform its Equity Trading Permit ("ETP") Holders in an Information Bulletin ("Bulletin") of the special characteristics and risks associated with trading the Shares. Specifically, the Bulletin will discuss the following: (1) The procedures for purchases and redemptions of Shares in Creation Unit Aggregations (and that Shares are not individually redeemable); (2) NYSE Arca Equities Rule 9.2(a), which imposes a duty of due diligence on its ETP Holders to learn the essential facts relating to every customer prior to trading the Shares; (3) the risks involved in trading the Shares during the Opening and Late Trading Sessions when an updated Portfolio Indicative Value will not be calculated or publicly disseminated; (4) how information regarding the Portfolio Indicative Value is disseminated; (5) the requirement that ETP Holders deliver a prospectus to investors purchasing newly issued Shares prior to or concurrently with the confirmation of a transaction; and (6) trading information.

In addition, the Bulletin will reference that the Funds are subject to various fees and expenses described in the Registration Statement. The Bulletin will discuss any exemptive, no-action, and interpretive relief granted by the Commission from any rules under the Exchange Act. The Bulletin will also disclose that the NAV for the Shares will be calculated after 4:00 p.m. Eastern Time each trading day.

2. Statutory Basis

The basis under the Exchange Act for this proposed rule change is the requirement under Section 6(b)(5)[23] that an exchange have rules that are designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to remove impediments to, and perfect the mechanism of a free and open market and, in general, to protect investors and the public interest. The Exchange believes that the proposed rule change will facilitate the listing and trading of an additional type of actively-managed exchange-traded product that will enhance competition among market participants, to the benefit of investors and the marketplace. The Funds primarily will invest in U.S. dollar-denominated investment grade debt securities, rated Baa or higher by Moody's, or equivalently rated by S&P or Fitch or, if unrated, determined by the Investment Adviser to be of comparable quality. At least 80% of issues of corporate bonds or corporate debt held by each Fund must have $200 million or more par amount outstanding. The Funds will not invest in non-U.S. equity securities.

In addition, the Funds will not invest in options contracts, futures contracts, or swap agreements. The Funds' portfolio holdings will be disclosed on their website daily after the close of trading on the Exchange and prior to the opening of trading on the Exchange the following day. The Portfolio Indicative Value, as defined in NYSE Arca Equities Rule 8.600(c)(3), will be disseminated by one or more major market data vendors at least every 15 seconds during the Core Trading Session. Information regarding market price and trading volume of the Shares is and will be continually available on a real-time basis throughout the day on brokers' computer screens and other electronic services, and quotation and last-sale information will be available via the CTA high-speed line. Trading in Shares of the Funds will be halted if the circuit breaker parameters in NYSE Arca Equities Rule 7.12 have been reached or because of market conditions or for reasons that, in the view of the Exchange, make trading in the Shares inadvisable. Trading in the Shares will be subject to NYSE Arca Equities Rule 8.600(d)(2)(D), which sets forth circumstances under which Shares of the Funds may be halted. The Exchange will obtain a representation from the issuer of the Shares that the NAV will be calculated daily, and the NAV and the Disclosed Portfolio will be made available to all market participants at the same time.

In addition, the Exchange has in place surveillance procedures that are adequate to properly monitor trading in the Shares. Prior to the commencement of trading, the Exchange will inform its ETP Holders in an Information Bulletin of the special characteristics and risks associated with trading the Shares.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

No written comments were solicited or received with respect to the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 45 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission shall:

(A) By order approve or disapprove such proposed rule change, or

(B) Institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an e-mail to *rule-comments@sec.gov*. Please include File Number SR–NYSEArca–2011–11 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.

[22] For a list of the current members of ISG, *see http://www.isgportal.org*. The Exchange notes that not all components of the Disclosed Portfolio for the Funds may trade on markets that are members of ISG or with which the Exchange has in place a comprehensive surveillance sharing agreement.

[23] 15 U.S.C. 78f(b)(5).

All submissions should refer to File Number SR–NYSEArca–2011–11. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for Web site viewing and printing in the Commission's Public Reference Room, 100 F Street, NE., Washington, DC 20549, on official business days between the hours of 10 a.m. and 3 p.m. Copies of the filing will also be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File No. SR–NYSEArca–2011–11 and should be submitted on or before May 3, 2011.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[24]

Cathy H. Ahn,

Deputy Secretary.

[FR Doc. 2011–8725 Filed 4–11–11; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–64200; File No. SR–CBOE–2011–036]

Self-Regulatory Organizations; Chicago Board Options Exchange, Incorporated; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change to CBSX Rule 52.6

April 6, 2011.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (the "Act"),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on April 1, 2011, the Chicago Board Options Exchange, Incorporated (the "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 Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The purpose of the filing is to eliminate the "flash" component of CBOE Stock Exchange ("CBSX") Rule 52.6 (Processing of Round-lot Orders). 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.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of those statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant parts of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The purpose of the filing is to eliminate the "flash" component of CBOE Stock Exchange ("CBSX") Rule 52.6 (Processing of Round-lot Orders) and to modify other CBSX rules in connection with that change. Pursuant to Rule 52.6, when a market or marketable limit order cannot be executed or displayed on CBSX because of a better displayed price on another exchange (as precluded by the Commission Rules 611 (Order Protection Rule) and 610 (Access to Quotations)),[3] CBSX flashes the order to CBSX Traders at the NBBO price in an effort to execute the order on CBSX before it is routed to another exchange. CBSX now seeks to eliminate this flash functionality. Market and marketable limit orders that cannot trade or be displayed on CBSX because of a better-priced quote on another exchange will route to such other exchange if so instructed. Consistent with this change, other CBSX rules are being modified to eliminate references to the CBSX flash process in Rule 52.6 and the CBSX Trade Flash and Cancel Order type is being eliminated.

2. Statutory Basis

The Exchange believes the proposed rule change is consistent with the Securities Exchange Act of 1934 (the "Act")[4] and the rules and regulations thereunder and, in particular, the requirements of Section 6(b) of the Act.[5] Specifically, the Exchange believes the proposed rule change is consistent with the Section 6(b)(5)[6] 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. Since the flash process was an enhanced functionality offered by the Exchange not required under the Act, the Exchange would like to remove references to it from its rules.

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

No written comments were solicited or received with respect to the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Because the foregoing proposed rule change does not: (i) Significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) become operative for 30 days 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

[24] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] 17 CFR 242.611 and 242.610.

[4] 15 U.S.C. 78s(b)(1).

[5] 15 U.S.C. 78f(b).

[6] 15 U.S.C. 78f(b)(5).

19(b)(3)(A) of the Act[7] and Rule 19b–4(f)(6) thereunder.[8]

The Exchange requested that the Commission waive the 30-day operative delay. The Exchange stated that waiver would allow the Exchange to immediately delete references to the flash functionality and thereby reduce any customer confusion. In addition, the Exchange noted that the proposal is consistent with proposals from other exchanges to eliminate flash functionality.[9] Based on the foregoing, the Commission believes it is consistent with the protection of investors and the public interest to waive the 30-day operative delay and hereby designates the proposal operative upon filing.[10]

At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend 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–2011–036 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–2011–036. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for Web site viewing and printing in the Commission's Public Reference Room on official business days between the hours of 10 a.m. and 3 p.m. Copies of such filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–CBOE–2011–036 and should be submitted on or before May 3, 2011.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[11]

Cathy H. Ahn,

Deputy Secretary.

[FR Doc. 2011–8656 Filed 4–11–11; 8:45 am]

BILLING CODE 8011–01–P

[7] 15 U.S.C. 78s(b)(3)(A).

[8] 17 CFR 240.19b–4(f)(6). In addition, Rule 19b–4(f)(6)(iii) requires the self-regulatory organization to submit to the Commission written notice of its intent to file the proposed rule change, along with a brief description and text of the proposed rule change, at least five business days prior to the date of filing of the proposed rule change, or such shorter time as designated by the Commission. The Exchange has satisfied this requirement.

[9] *See* SR–CBOE–2011–036, Items 7 and 8.

[10] For purposes of waiving the 30-day operative delay, the Commission has considered the proposed rule change's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

[11] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–64215; File No. SR–NASDAQ–2011–045]

Self-Regulatory Organizations; The NASDAQ Stock Market LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Amend NASDAQ Rule 3011 To Reflect Changes to a Corresponding Financial Industry Regulatory Authority, Inc. Rule

April 6, 2011.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),[1] and Rule 19b–4[2] thereunder, notice is hereby given that on March 31, 2011, The NASDAQ Stock Market LLC (the "Exchange" or "NASDAQ") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I, II and III below, which Items have been substantially prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to amend NASDAQ Rule 3011 to reflect recent changes to a corresponding rule of the Financial Industry Regulatory Authority, Inc. ("FINRA"). The text of the proposed rule change is available at *http://nasdaq.cchwallstreet.com.* at NASDAQ's principal office, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

Many of NASDAQ's rules are based on rules of FINRA (formerly the National Association of Securities Dealers ("NASD")). During 2008, FINRA embarked on an extended process of moving rules formerly designated as "NASD Rules" into a consolidated FINRA rulebook. In most cases, FINRA has renumbered these rules, and in some cases has substantively amended them. Accordingly, NASDAQ also has been modifying its rulebook to ensure that NASDAQ rules corresponding to FINRA/NASD rules continue to mirror them as closely as practicable. In some cases, it will not be possible for the rule numbers of NASDAQ rules to mirror corresponding FINRA rules, because existing or planned NASDAQ rules make use of those numbers. However, wherever possible, NASDAQ plans to update its rules to reflect changes to corresponding FINRA rules.

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

This filing addresses NASDAQ Rule 3011, which pertains to anti-money laundering compliance programs.[3] In SR–FINRA–2009–039,[4] FINRA adopted: (1) NASD Rule 3011 (AML Compliance Program) as FINRA Rule 3310 (AML Compliance Program), without substantive change; (2) NASD IM–3011–1 (Independent Testing Requirements) as FINRA Rule 3310.01, subject to certain amendments; and (3) NASD IM–3011–2 (Review of AML Compliance Person Information) as FINRA Rule 3310.02, without substantive change.

FINRA Rule 3310 requires that each AML compliance program must, at a minimum: (1) Establish and implement policies and procedures that can be reasonably expected to detect and cause the reporting of suspicious transactions; (2) establish and implement policies, procedures, and internal controls reasonably designed to achieve compliance with the Bank Secrecy Act ("BSA")[5] and its implementing regulations promulgated by the Department of the Treasury; (3) provide in most instances for annual (on a calendar-year basis) independent testing for compliance to be conducted by member personnel or a qualified outside party; (4) designate and identify to FINRA an individual or individuals (*i.e.*, AML compliance person(s)) who will be responsible for implementing and monitoring the day-to-day operations and internal controls of the AML compliance program and provide prompt notification to FINRA of any changes to the designation; and (5) provide on-going training for appropriate persons. NASDAQ is proposing to adopt FINRA Rule 3310 in the same form as NASDAQ Rule 3011.

FINRA Rule 3310.01 (Independent Testing Requirements) is substantially similar to NASD IM–3011–1 (the predecessor to FINRA Rule 3310.01) in that: (1) Members should undertake more frequent testing than required if circumstances warrant; (2) the person conducting the independent test must have a working knowledge of applicable requirements under the BSA and its implementing regulations; and (3) the testing cannot be conducted by any person who performs the functions being tested, by the AML compliance person(s), or by any person who reports to any of these persons.

However, NASD IM–3011–1 permitted the AML compliance program testing to be conducted by persons who report to either the AML compliance person or persons performing the functions being tested if: (1) The member has no other qualified internal personnel to conduct the test; (2) the member establishes written policies and procedures to address conflicts that may arise from allowing the test to be conducted by a person who reports to the person(s) whose activities he or she is testing (*e.g.*, anti-retaliation procedures); (3) to the extent possible, the person conducting the test reports the results of the test to someone who is senior to the AML compliance person or persons performing the functions being tested; and (4) the member documents its rationale, which must be reasonable, for determining there is no other alternative than to comply in this manner. In addition, if the person does not report the results consistent with (3) above, the member must document a reasonable explanation for not doing so.

This provision is referred to as the "independent testing exception." When it renumbered NASD IM–3011–1 as FINRA Rule 3310.01, FINRA eliminated the independent testing exception, because the Financial Crimes Enforcement Network ("FinCEN"), a bureau within the Department of the Treasury that is responsible for administering the BSA and its implementing regulations, has stated that the independent testing provision of the BSA precludes AML program testing by personnel with an interest in the outcome of the testing and that an independent testing exception, such as the one previously in NASD IM–3011–1, is inconsistent with the BSA's independent testing provision and FinCEN's interpretive guidance on the BSA's independent testing requirement. In light of this, NASDAQ proposes to adopt FINRA Rule 3310.01, which eliminates the independent testing exception, in the same form as NASDAQ Rule 3011.01.

Finally, FINRA Rule 3310.02 (Review of AML Compliance Person Information) requires each member to identify, review, and if necessary, update the information regarding its AML compliance person in the manner prescribed in NASD Rule 1160. NASDAQ is proposing to adopt this in the same form as NASDAQ Rule 3011.02.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with Section 6(b)(5) of the Act,[6] in that it is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest. The proposed changes will conform NASDAQ Rule 3011 to recent changes made to a corresponding FINRA rule in order to promote application of consistent regulatory standards.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments were either solicited or received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Because the foregoing proposed rule change does not: (i) Significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) become operative for 30 days from the date on which it was filed, or such shorter time as the Commission may designate, it has become effective pursuant to Section 19(b)(3)(A) of the Act[7] and Rule 19b–4(f)(6)[8] thereunder.

At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend 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. If the Commission takes such action, the Commission shall institute proceedings to determine whether the proposed rule should be approved or disapproved.

[3] NASDAQ Rule 3011 will remain numbered as Rule 3011, rather than Rule 3310, like FINRA's rule, because NASDAQ already has a different rule operating as NASDAQ Rule 3310.

[4] Securities Exchange Act Release No. 60645 (September 10, 2009), 74 FR 47630 (September 16, 2009) (SR–FINRA–2009–039).

[5] See Currency and Foreign Transactions Reporting Act of 1970 (commonly referred to as the Bank Secrecy Act), 12 U.S.C. 1829b, 12 U.S.C. 1951–1959, and 31 U.S.C. 5311–5330.

[6] 15 U.S.C. 78f(b)(5).

[7] 15 U.S.C. 78s(b)(3)(A).

[8] 17 CFR 240.19b–4(f)(6). In addition, Rule 19b–4(f)(6) requires a self-regulatory organization to give the Commission written notice of its intent to file the proposed rule change at least five business days prior to the date of filing of the proposed rule change, or such shorter time as designated by the Commission. The Exchange has satisfied this requirement.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an e-mail to *rule-comments@sec.gov*. Please include File Number SR–NASDAQ–2011–045 on the subject line.

Paper Comments

- Send paper comments in triplicate to Elizabeth M. Murphy, Secretary, Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–NASDAQ–2011–045. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for Web site viewing and printing in the Commission's Public Reference Room, 100 F Street, NE., Washington, DC 20549, on official business days between the hours of 10 a.m. and 3 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–NASDAQ–2011–045 and should be submitted on or before May 3, 2011.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[9]

Cathy H. Ahn,

Deputy Secretary.

[FR Doc. 2011–8633 Filed 4–11–11; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–64213; File No. SR–NSX–2011–04]

Self-Regulatory Organizations; National Stock Exchange, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Amend Its Rules To Extend a Pilot Program Regarding Trading Pauses in Individual Securities Due to Extraordinary Market Volatility

April 6, 2011.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (the "Act")[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on March 31, 2011, National Stock Exchange, Inc. ("Exchange" or "NSX") filed with the Securities and Exchange Commission ("Commission") the proposed rule change, as described in Items I and II below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comment on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

National Stock Exchange, Inc. ("NSX®" or "Exchange") is proposing to amend its rules to extend a certain pilot program regarding trading pauses in individual securities due to extraordinary market volatility.

The text of the proposed rule change is available on the Exchange's Web site at *http://www.nsx.com*, at the principal office of the Exchange, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant parts of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

With this rule change, the Exchange is proposing to extend a pilot program currently in effect regarding trading pauses in individual securities due to extraordinary market volatility under NSX Rule 11.20B. Currently, unless otherwise extended or approved permanently, this pilot program will expire on April 11, 2011. The instant rule filing proposes to extend the pilot program until the earlier of August 11, 2011 or the date on which a limit up/limit down mechanism to address extraordinary market volatility, if adopted, applies to the Circuit Breaker Securities as defined in Commentary .05 of Rule 11.20.

NSX Rule 11.20B (Trading Pauses in Individual Securities Due to Extraordinary Market Volatility) was approved by the Securities and Exchange Commission (the "Commission") on June 10, 2010 on a pilot basis to end on December 10, 2010.[3] The pilot program end date was subsequently extended until April 11, 2011.[4] Similar rule changes were adopted by other markets in the national market system in a coordinated manner. As the Exchange noted in its filing to adopt NSX Rule 11.20B, during the pilot period, the Exchange, in conjunction with other markets in the national market system, would continue to assess whether additional securities need to be added and whether the parameters of the rule would need to be modified to accommodate trading characteristics of different securities. NSX Rule 11.20B was expanded to include additional exchange traded products on September 10, 2010.[5] The Exchange, in consultation with the Commission and other markets, has determined that the duration of this pilot program should be extended until August 11, 2011 or to coincide, if applicable, with the earlier implementation date of the limit up/limit down mechanism. Accordingly,

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[9] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] See Securities Exchange Act Release No. 62252 (June 10, 2010), 75 FR 34186 (June 16, 2010) (SR–NSX–2010–05).

[4] See Securities Exchange Act Release No. 63512 (December 9, 2010), 75 FR 78786 (December 16, 2010) (SR–NSX–2010–17).

[5] *See* Securities Exchange Act Release No. 62884 (September 10, 2010), 75 FR 56618 (September 16, 2010) (SR–NSX–2010–08).

pursuant to the instant rule filing, the expiration date of the pilot program referenced in Commentary .05 to Rule 11.20B is proposed to be changed from "April 11, 2011" to the earlier of August 11, 2011 or the date on which the limit up/limit down mechanism, if adopted, applies to the Circuit Breaker Securities.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with the provisions of Section 6(b) and Section 11A of the Act,[6] in general, and Section 6(b)(5) of the Act,[7] in particular, in that it is designed, among other things, to promote clarity, transparency and full disclosure, in so doing, to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to maintain fair and orderly markets and protect investors and the public interest. Moreover, the proposed rule change is not discriminatory in that it uniformly applies to all ETP Holders. The Exchange believes that the extension of the pilot program will promote uniformity among markets with respect to trading pauses.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any inappropriate burden on competition.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

The Exchange has neither solicited nor received written comments on the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Because the foregoing proposed rule change does not: (i) Significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) become operative for 30 days from the date on which it was filed, or such shorter time as the Commission may designate if consistent with the protection of investors and the public interest, it has become effective pursuant to Section 19(b)(3)(A) of the Act[8] and Rule 19b–4(f)(6) thereunder.[9]

A proposed rule change filed under Rule 19b-4(f)(6) normally may not become operative prior to 30 days after the date of filing.[10] However, Rule 19b–4(f)(6)[11] permits the Commission to designate a shorter time if such action is consistent with the protection of investors and the public interest. The Exchange has requested that the Commission waive the 30-day operative delay.

The Commission has considered the Exchange's request to waive the 30-day operative delay. The Commission believes that waiving the 30-day operative delay is consistent with the protection of investors and the public interest, as it will allow the pilot program to continue uninterrupted, thereby avoiding the investor confusion that could result from a temporary interruption in the pilot program.[12] For this reason, the Commission designates the proposed rule change to be operative upon filing.

At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend 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. If the Commission takes such action, the Commission shall institute proceedings to determine whether the proposed rule change should be approved or disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change, as amended, is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an e-mail to *rule-comments@sec.gov*. Please include File Number SR–NSX–2011–04 on the subject line.

Paper Comments

- Send paper comments in triplicate to Elizabeth M. Murphy, Secretary, Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–NSX–2011–04. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for Web site viewing and printing in the Commission's Public Reference Room, 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 offices of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly.

All submissions should refer to File Number SR–NSX–2011–04, and should be submitted on or before May 3, 2011.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[13]

Cathy H. Ahn,

Deputy Secretary.

[FR Doc. 2011–8632 Filed 4–11–11; 8:45 am]

BILLING CODE 8011–01–P

[6] 15 U.S.C. 78f(b) and 15 U.S.C. 78k–1, respectively.

[7] 15 U.S.C. 78f(b)(5).

[8] 15 U.S.C. 78s(b)(3)(A).

[9] 17 CFR 240.19b–4(f)(6). When filing a proposed rule change pursuant to Rule 19b–4(f)(6) under the Act, an exchange is required to give the Commission written notice of its intent to file the proposed rule change, along with a brief description and text of the proposed rule change, at least five business days prior to the date of filing of the proposed rule change, or such shorter time as designated by the Commission. The Commission notes that the Exchange has satisfied this requirement.

[10] 17 CFR 240.19b–4(f)(6)(iii).

[11] *Id.*

[12] For the purposes only of waiving the operative delay of this proposal, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. *See* 15 U.S.C. 78c(f).

[13] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–64212; File No. SR–CBOE–2011–033]

Self-Regulatory Organizations; Chicago Board Options Exchange, Incorporated; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Relating to CBOE's Marketing Fee Program

April 6, 2011.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on March 31, 2011, Chicago Board Options Exchange, Incorporated ("CBOE" or the "Exchange") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I and II below, which Items have been prepared by the Exchange. The Exchange has designated this proposal as one establishing or changing a due, fee, or other charge imposed by CBOE under Section 19(b)(3)(A)(ii) of the Act[3] and Rule 19b–4(f)(2) 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

Chicago Board Options Exchange, Incorporated ("CBOE" or "Exchange") proposes to amend its Fees Schedule and specifically make certain changes to its Marketing Fee Program. 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.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, CBOE included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. CBOE has prepared summaries, set forth in sections (A), (B), and (C) below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

CBOE proposes to amend its Marketing Fee Program to extend for an additional three months a pilot program it implemented on December 1, 2010, relating to the assessment of the marketing fee in the SPY option class.[5] Specifically, CBOE previously determined not to assess the marketing fee on electronic transactions in SPY options, except that it would continue to assess the marketing fee on electronic transactions resulting from its Automated Improvement Mechanism ("AIM") pursuant to CBOE Rule 6.74A and transactions in open outcry. This pilot program is scheduled to terminate on March 31, 2011, and CBOE now proposes to extend it until June 30, 2011.

As CBOE stated in its rule filing establishing this three month pilot program, this proposed change is intended to attract more customer volume to the Exchange in this option class and to allow CBOE market-makers to better compete for order flow. CBOE noted that the SPY option class is unique in the manner in which it trades and is one of the most active option classes. CBOE also noted that DPMs and Preferred Market-Makes [sic] can utilize the marketing fee funds to attract orders from payment accepting firms that are executed in AIM and in open outcry. Finally, CBOE noted that it believes that the marketing fee funds received by payment accepting firms may be used to offset transaction and other costs related to the execution of an order in AIM and in open outcry, including in the SPY option class.

For the reasons noted above, CBOE believes that it would make sense to extend the pilot program until June 30, 2011. CBOE believes that it is beneficial to continue to assess the fee on the limited bases as proposed and will continue to enable CBOE to compete for order flow in the SPY option class. However, because the SPY option class is unique in the manner in which it trades and is one of the most active option classes, CBOE would like to continue to evaluate for an additional three months the effect of not assessing the fee on all electronic transactions in the SPY option class, except for transactions resulting from AIM and in open outcry.

2. Statutory Basis

The proposed rule change is consistent with Section 6(b) of the Securities Exchange Act of 1934 (the "Act"),[6] in general, and furthers the objectives of Section 6(b)(4)[7] of the Act, in particular, in that it is designed to provide for the equitable allocation of reasonable dues, fees, and other charges among Trading Permit Holders in that it is intended to attract more customer volume on the Exchange in SPY options. The SPY option class is one of the most active and liquid classes and trades with a significant electronic trading volume. Because of its current trading profile, CBOE believes it might be better able to attract electronic liquidity by not assessing the marketing fee on electronic SPY transactions and therefore proposes to extend the current waiver. However, CBOE believes that continuing to collect the marketing fee on open outcry transactions, as well as electronic orders submitted to AIM for price improvement, from market makers that trade with customer orders from payment accepting firms would continue to attract liquidity in SPY to the floor and AIM mechanism, respectively. Accordingly, CBOE believes continuing the waiver is equitable because it reflects the trading profile of SPY and is designed and intended to attract additional order flow in SPY to the Exchange, which would benefit all trading permit holders.

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 that is not necessary or appropriate in furtherance of [sic] purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments were solicited or received with respect to the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Because the foregoing proposed rule change establishes or changes a due, fee, or other charge imposed by the Exchange, it has become effective pursuant to Section 19(b)(3)(A) of the

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] 15 U.S.C. 78s(b)(3)(A)(ii).

[4] 17 CFR 240.19b–4(f)(2).

[5] *See* Securities Exchange Act Release No. 63470 (December 8, 2010), 75 FR 78284 (December 15, 2010) (SR–CBOE–2010–108).

[6] 15 U.S.C. 78f(b).

[7] 15 U.S.C. 78f(b)(4).

Act [8] and subparagraph (f)(2) of Rule 19b–4 [9] thereunder. At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend 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–2011–033 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–2011–033. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for Web site viewing and printing in the Commission's Public Reference Room on official business days between the hours of 10 a.m. and 3 p.m. Copies of such filing also will be available for inspection and copying at the principal office of CBOE. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–CBOE–2011–033 and should be submitted on or before May 3, 2011.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[10]

Cathy H. Ahn,

Deputy Secretary.

[FR Doc. 2011–8631 Filed 4–11–11; 8:45 am]

BILLING CODE 8011–01–P

[8] 15 U.S.C. 78s(b)(3)(A).

[9] 17 CFR 240.19b–4(f)(2).

[10] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–64208; File No. SR–NSX–2011–02]

Self-Regulatory Organizations; National Stock Exchange, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Amend the NSX Fee and Rebate Schedule and NSX Rule 16.4

April 6, 2011.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act") [1] and Rule 19b–4 thereunder,[2] notice is hereby given that on March 29, 2011, National Stock Exchange, Inc. filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I and II below, which Items have been prepared by the Exchange. 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 National Stock Exchange, Inc. ("NSX®" or the "Exchange") is proposing a rule change, operative at commencement of trading on April 1, 2011, which proposes to amend the NSX Fee and Rebate Schedule (the "Fee Schedule") to adjust certain liquidity taking rebates and fees in the Automatic Execution Mode of order interaction, eliminate the Exchange's market data rebate in the Order Delivery Mode of order interaction and establish an exchange regulatory fee.

The text of the proposed rule change is available on the Exchange's Web site at *http://www.nsx.com*, at the principal office of the Exchange, and at the Commission's Public Reference Room.

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

With this rule change, the Exchange is proposing to modify the Fee Schedule and related text of Rule 16 in four respects. First, the proposed rule change would increase the highest rebate, and adjust the tier thresholds, for liquidity adding displayed orders in the Automatic Execution Mode of order interaction ("AutoEx") [3] priced at least one dollar. Certain conforming changes are also proposed for rebates for liquidity adding Zero Display Orders [4] in AutoEx priced at least one dollar. Second, the proposed rule change would eliminate the $0.0028 taker fee on orders that take liquidity in AutoEx for securities one dollar and above. Third, the proposed rule change would eliminate the market data revenue rebate currently available in the Order Delivery Mode of order interaction ("Order Delivery"). Finally, the proposed rule change would establish a monthly exchange regulatory fee. Each of the proposed changes is further addressed below.

AutoEx Liquidity Adding Rebate for Securities Priced at Least One Dollar

Currently, for displayed orders in securities priced one dollar and above that provide liquidity in AutoEx, the Fee Schedule provides a ("Tier 1") rebate of $0.0026 per share if an ETP Holder's liquidity adding average daily volume (as such term is defined in Endnote 3 of the Fee Schedule, "Liquidity Adding ADV") is less than 20 basis points of Total Consolidated Average Daily Volume (as defined in Endnote 13 of the Fee Schedule,

[3] The Exchange's two modes of order interaction are described in NSX Rule 11.13(b).

[4] "Zero Display Orders" means "Zero Display Reserve Orders" as specified in NSX Rule 11.11(c)(2)(A).

"TCADV"), and a ("Tier 2") rebate of $0.0028 per share if Liquidity Adding ADV is at or above 20 basis points of TCADV.

The instant rule change modifies the AutoEx liquidity adding rebate thresholds described above by increasing the Tier 2 rebate from $0.0028 to $0.0029 per share. In addition, the instant rule change eliminates the measurement of TCADV and replaces it with a tier of 10 million shares of Liquidity Adding ADV, where such measurement includes only liquidity providing Tape A and C securities in AutoEx priced at least one dollar. With respect to the rebate for Zero Display Orders that add liquidity in AutoEx that are priced at least one dollar, the calculation of an ETP Holder's Liquidity Adding ADV would be made consistent with the rebate calculation for liquidity adding displayed orders priced at least one dollar in AutoEx.

The proposed edits discussed above are reflected in Section I of the Fee Schedule under the header "Securities $1 and Above" and across from the header "Displayed Orders that Add Liquidity" and in corresponding Endnotes 3 and 13.

AutoEx Taker Fee for Securities Priced at Least One Dollar

The Exchange is also proposing to modify the Fee Schedule's taker fee structure with respect to orders that take liquidity in AutoEx. Prior to the effective date of the proposed rule change, the Exchange charges a taker fee of $.0028 per share on securities one dollar or above from all tapes that take liquidity if an ETP Holder's Liquidity Adding ADV is at least 50,000 ("Tier 1"), and a fee of $0.0030 per share if Liquidity Adding ADV is less than 50,000 ("Tier 2"). In the proposed rule change, the Exchange is proposing to eliminate Tier 1 and all volume thresholds. Accordingly, after the effective date, a taker fee of $0.0030 per share, on all securities one dollar or above on all orders that take liquidity on all tapes, will be charged in AutoEx, regardless of the ETP Holder's Liquidity Adding ADV.

The proposed edits discussed above are reflected in Section I of the Fee Schedule, under the header "Securities $1 and Above" and across from the header "Orders That Take Liquidity".

Order Delivery Market Data Rebate

The Exchange is also proposing to eliminate the market data rebate in Order Delivery. Prior to the effective date of the proposed rule change, under the Fee Schedule and NSX Rule 16.4, an ETP Holder that has selected the Order Delivery mode of order interaction is eligible (depending on achievement of volume thresholds) to receive a rebate of a specified percentage of Tape "A", "B", and "C" market data revenue attributable to such ETP Holder's trading and quoting of non-Zero Display Reserve Orders priced at or above one dollar in Order Delivery Mode.[5] Under the proposed rule change, the Exchange is proposing to eliminate the current market data rebate. Accordingly, reference to rebates of market data revenue would be deleted from Section II of the Fee Schedule (together with Endnote 8), and NSX Rule 16.4 would be deleted in its entirety.

To the extent that the Consolidated Tape Association or the Nasdaq Securities Information Processor subsequently adjusts any Tape A, Tape B or Tape C revenue earned by the Exchange for any period(s) during which the tape revenue rebate program was in effect, rebates provided to ETP Holders would be adjusted, as necessary, in accordance with Rule 16.4 (c) as in effect during the period such rebates accrued. Similarly, current Exchange Rules 16.4(d) (De Minimis Rebates) and 16.4(e) (Quarterly Payments) will apply to any market data rebates based on an ETP Holder's trading activity pursuant to Rule 16.4(b) prior to the effective date of the instant rule filing eliminating the market data rebate.

Regulatory Fee

Finally, the Exchange is proposing to establish a monthly regulatory fee payable by each ETP Holder on a monthly basis. Prior to the effective date of the proposed rule change, NSX did not impose a regulatory fee. After the effective date, a monthly regulatory fee of $500 per ETP Holder will be charged, payable monthly. New text has been added as Section IV of the Fee Schedule to reflect this charge.

Rationale

The Exchange has determined that these changes are necessary to increase the revenues of the Exchange for the purpose of continuing to adequately fund its regulatory and general business functions. The Exchange believes that these changes will not impair the Exchange's ability to fulfill its regulatory responsibilities.

The proposed modifications are reasonable and equitably allocated to ETP Holders that submit orders in AutoEx and Order Delivery, as either display or non-display orders and as liquidity taking or liquidity providing, and are not discriminatory because ETP Holders are free to elect whether or not to submit such orders. Based upon the information above, the Exchange believes that the proposed rule change is consistent with the protection of investors and the public interest.

Operative Date and Notice

The Exchange intends to make the proposed modifications, which are effective on filing of this proposed rule, operative as of commencement of trading on April 1, 2011. Pursuant to Exchange Rule 16.1(c), the Exchange will "provide ETP Holders with notice of all relevant dues, fees, assessments and charges of the Exchange" through the issuance of a Regulatory Circular of the changes to the Fee Schedule and will post a copy of the rule filing on the Exchange's website (*http://www.nsx.com*).

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with the provisions of Section 6(b) of the Act,[6] in general, and Section 6(b)(4) of the Act,[7] in particular, in that it is designed to provide for the equitable allocation of reasonable dues, fees and other charges among its members and other persons using the facilities of the Exchange. Moreover, the proposed rule change is not discriminatory in that all qualified ETP Holders are eligible to submit (or not submit) trades and quotes at any price in AutoEx and Order Delivery in all tapes, as either displayed or undisplayed and as liquidity adding or liquidity taking, and may do so at their discretion.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any inappropriate burden on competition.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

The Exchange has neither solicited nor received written comments on the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The proposed rule change has taken effect upon filing pursuant to Section

[5] NSX Rule 16.4(b).

[6] 15 U.S.C. 78f(b).

[7] 15 U.S.C. 78f(b)(4).

19(b)(3)(A)(ii) of the Act[8] and subparagraph (f)(2) of Rule 19b–4[9] thereunder, because, as provided in (f)(2), it changes "a due, fee or other charge applicable only to a member" (known on the Exchange as an ETP Holder). At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend 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. If the Commission takes such action, the Commission shall institute proceedings to determine whether the proposed rule should be approved or disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an e-mail to *rule-comments@sec.gov*. Please include File Number SR–NSX–2011–02 on the subject line.

Paper Comments

- Send paper comments in triplicate to Elizabeth M. Murphy, Secretary, Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–NSX–2011–02. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro/shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for Web site viewing and printing in the Commission's Public Reference Room, 100 F Street, NE., Washington, DC 20549, on official business days between the hours of 10 a.m. and 3 p.m. Copies of such filing will also be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File No. SR–NSX–2011–02 and should be submitted on or before May 3, 2011.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[10]

Cathy H. Ahn,

Deputy Secretary.

[FR Doc. 2011–8630 Filed 4–11–11; 8:45 am]

BILLING CODE 8011–01–P

[8] 15 U.S.C. 78s(b)(3)(A)(ii).

[9] 17 CFR 240.19b–4.

[10] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–64211; File No. SR–BATS–2011–012]

Self-Regulatory Organizations; BATS Exchange, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Related to Fees for Use of BATS Exchange, Inc.

April 6, 2011.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (the "Act")[1] and Rule 19b–4 thereunder,[2] notice is hereby given that, on April 1, 2011, BATS Exchange, Inc. (the "Exchange" or "BATS") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the Exchange. The Exchange has designated the proposed rule change as one establishing or changing a due, fee, or other charge imposed by the Exchange under Section 19(b)(3)(A)(ii) of the Act[3] and Rule 19b–4(f)(2) thereunder,[4] which renders the proposed rule change effective upon filing with the Commission. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] 15 U.S.C. 78s(b)(3)(A)(ii).

[4] 17 CFR 240.19b–4(f)(2).

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes [sic] amend the fee schedule applicable to Members[5] and non-members of the Exchange pursuant to BATS Rules 15.1(a) and (c). Changes to the fee schedule pursuant to this proposal will be effective upon filing.

The text of the proposed rule change is available at the Exchange's Web site at *http://www.batstrading.com*, at the principal office of the Exchange, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in Sections A, B, and C below, of the most significant parts of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange proposes to modify the "Options Pricing" section of its fee schedule to: (i) Adopt a definition for Total Consolidated Volume ("TCV"), to be used for purposes of the tiered pricing structure offered by the BATS options market ("BATS Options"); (ii) modify the fees applicable to removing liquidity from BATS Options; (iii) modify the program that provides a rebate specifically for orders that set either the national best bid (the "NBB") or the national best offer (the "NBO") subject to average daily volume requirements; and (iv) adopt other changes to other definitions used for purposes of the fee schedule.

(i) Definition and Use of Total Consolidated Volume for Pricing

Rather than basing its pricing structure on a static number of contracts, the Exchange proposes to modify its tiered pricing structure such that it is based on Total Consolidated Volume, or TCV, and is thus variable

[5] A Member is any registered broker or dealer that has been admitted to membership in the Exchange.

based on overall volumes in the options industry. In order to achieve this change, the Exchange proposes to adopt the definition of TCV as meaning "total consolidated volume calculated as the volume reported by all exchanges to the consolidated transaction reporting plan for the month for which the fees apply." To illustrate the Exchange's application of TCV, if the overall volume of options contracts traded as reported by all options exchanges is 200 million contracts in a given month, this amount will be used as the TCV against which the Exchange's tiered pricing will be measured for all trading activity during the month. The amount of overall TCV in the month will be divided by the number of trading days to determine average TCV; for instance, 200 million contracts divided by 20 trading days is an average TCV of 10 million contracts per day. Using these volumes as an example, to reach the Exchange's highest proposed tier, which, as described in further detail below will be 1% or more of average TCV, a Member would need to have an ADV of at least 100,000 contracts traded on BATS Options per day. If, in the next month, options volumes doubled, and the TCV for the month was 400 million contracts, then a Member would need to have an ADV of at least 200,000 contracts traded on BATS Options to have an ADV equal to 1% of average TCV. The Exchange believes that basing its tiered pricing on TCV rather than a specific number of contracts is a preferable measure of overall activity given the fluctuation of volumes in the options industry.

(ii) Fees To Remove Liquidity

The Exchange currently charges standard fees of $0.28 per contract for customer orders and $0.38 per contract for Firm and Market Maker orders that remove liquidity from BATS Options. The Exchange proposes to increase this fee to $0.30 per contract for customer orders and $0.40 per contract for Firm and Market Maker orders that remove liquidity from BATS Options, subject to potential reduction for any Member with an ADV of 0.30% or more of average TCV on BATS Options, as described below.

The Exchange currently maintains two tiers through which Members can realize lower liquidity removal fees. The first tier is available for any Member with an ADV [6] of 50,000 or more contracts; such Members are currently charged a fee of $0.25 per contract for customer orders and $0.35 per contract for Firm and Market Maker orders, and thus realize savings of $0.03 per contract as compared to the current standard fees. The second tier is available for any member with an ADV of 15,000 or more, but less than 50,000, contracts; such Members are currently charged a fee of $0.27 per contract for customer orders and $0.37 per contract for Firm and Market Maker orders, and thus realize savings of $0.01 per contract as compared to the current standard fees.

The Exchange proposes to modify its tiered pricing structure to apply a single, reduced liquidity removal rate to all Members with an ADV equal to or greater than 0.30% of average TCV. For Members reaching this volume threshold, the Exchange will charge a fee of $0.27 per contract for customer orders and $0.37 per contract for Firm and Market Maker orders. Thus, such Members will save $0.03 per contract as compared to the standard fee to remove liquidity. Using examples set forth above, during a month with a total of 200 million contracts traded, in order to receive the discounted removal fee based on a requirement of 0.30% of average TCV, a Member would be required to trade 600,000 contracts on BATS Options during the month (an ADV requirement of 30,000 contracts).

(iii) Expansion and Modification of NBBO Setter Rebate Program

The Exchange currently offers a rebate upon execution for all orders that add liquidity that sets either the NBB or NBO (the "NBBO Setter Rebate") [7] so long as the Member submitting the order achieves either an ADV of between 15,000 and 49,999 contracts or an ADV of 50,000 or more contracts during the calendar month. The NBBO Setter Rebate currently offered by the Exchange to such Members is $0.40 per contract and $0.50 per contract, respectively. The Exchange proposes to modify the threshold to meet the ADV requirement for the $0.40 NBBO Setter Rebate to 0.30% of average TCV and to modify the threshold to meet the ADV requirement for the $0.50 NBBO Setter Rebate to 1% of average TCV. As explained above, assuming a monthly TCV of 200 million contracts in a month with 20 trading days, a Member would need an ADV of at least 30,000 contracts to receive the $0.40 NBBO Setter Rebate, and an ADV of at least 100,000 contracts to receive the $0.50 NBBO Setter Rebate.

(iv) Other Changes to Definitions

In addition to the changes described above, including adoption of a definition for TCV, the Exchange proposes to modify other definitions contained in the Options Pricing section of the fee schedule. First, the Exchange proposes to modify the definition of ADV to allow affiliated entities to aggregate their order flow for purposes of the Exchange's pricing tiers if such entities provide prior notice to the Exchange. Specifically, to the extent two or more affiliated companies maintain separate BATS Options memberships and can demonstrate their affiliation by showing they control, are controlled by, or are under common control with each other, the Exchange will permit such Members to count overall volume of the affiliates in calculating ADV. In addition, the Exchange proposes to capitalize the term "Member" throughout the definitions.

2. Statutory Basis

The Exchange believes 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 exchange, and, in particular, with the requirements of Section 6 of the Act.[8] Specifically, the Exchange believes that the proposed rule change is consistent with Section 6(b)(4) of the Act,[9] in that it provides for the equitable allocation of reasonable dues, fees and other charges among members and other persons using any facility or system which the Exchange operates or controls. The Exchange notes that it operates in a highly competitive market in which market participants can readily direct order flow to competing venues if they deem fee levels at a particular venue to be excessive.

The changes to Exchange execution fees and rebates proposed by this filing are intended to attract order flow to BATS Options by continuing to offer competitive pricing while also permitting the Exchange to avoid significant monetary losses.

The Exchange believes that basing its tiered pricing structure on overall TCV, rather than a static number irrespective of overall options volumes, is a fair and equitable approach to pricing. Volume-based discounts such as the liquidity removal fee tiers proposed in this filing have been widely adopted in the cash

[6] As currently defined, ADV means average daily volume calculated as the number of contracts added or removed, combined, per day on a monthly basis. ADV does not include contracts routed away from the Exchange and executed at a different options exchange.

[7] An order that is entered at the most aggressive price both on the BATS Options book and according to then current OPRA data will be determined to have set the NBB or NBO for purposes of the NBBO Setter Rebate without regard to whether a more aggressive order is entered prior to the original order being executed.

[8] 15 U.S.C. 78f.

[9] 15 U.S.C. 78f(b)(4).

equities markets, and are equitable and not unreasonably discriminatory because they are open to all members on an equal basis and provide discounts that are reasonably related to the value to an exchange's market quality associated with higher levels of market activity, such as higher levels of liquidity provision and introduction of higher volumes of orders into the price and volume discovery process. Accordingly, the Exchange believes that the proposal is not unreasonably discriminatory because it is consistent with the overall goals of enhancing market quality. Additionally, the Exchange believes that the NBBO Setter Rebate, now in place on BATS Options for three months, has and will continue to incentivize the entry of more aggressive orders that will create tighter spreads, benefitting both Members and public investors.

The proposed increase in fees to remove liquidity will have variable affects on Members of BATS Options, dependent on the volume of transaction activity they conduct on BATS Options. The Exchange notes that only a small subset of Members currently meeting the ADV tier of 15,000 to 49,999 will not be impacted by any increase in fees. Despite this increase in fees for most Members, the Exchange believes that its proposed fee structure is fair and equitable as the Exchange's standard removal fees (either $0.30 or $0.40 per contract) and the reduced removal fees (either $0.27 or $0.37 per contract) still remain lower than other markets with similar fee structures, such as the NASDAQ Options Market and NYSE Arca in Make/Take Issues. The increase in liquidity removal fees so that the Exchange is earning a slightly greater fee will provide the Exchange with additional revenue to both fund the NBBO Setter Rebate and to fund its operations generally.

The proposed language permitting aggregation of volume amongst corporate affiliates for purposes of the ADV calculation is intended to avoid disparate treatment of firms that have divided their various business activities between separate corporate entities as compared to firms that operate those business activities within a single corporate entity. By way of example, subject to appropriate information barriers, many firms that are Members of the Exchange operate both a market making desk and a public customer business within the same corporate entity. In contrast, other firms may be part of a corporate structure that separates those business lines into different corporate affiliates, either for business, compliance or historical reasons. Those corporate affiliates, in turn, are required to maintain separate memberships with the Exchange in order to access BATS Options. Absent the proposed policy, such corporate affiliates would not receive the same treatment as firms operating similar business lines within a single entity that is a Member of the Exchange. Accordingly, the Exchange believes that its proposed policy is fair and equitable, and not unreasonably discriminatory. In addition to ensuring fair and equal treatment of its Members, the Exchange does not want to create incentives for its Members to restructure their business operations or compliance functions simply due to the Exchange's pricing structure.

Finally, the Exchange believes that the adoption of a definition for TCV will help to avoid potential confusion regarding the Exchange's fee schedule.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change imposes any burden on competition.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments were solicited or received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Pursuant to Section 19(b)(3)(A)(ii) of the Act [10] and Rule 19b–4(f)(2) thereunder,[11] the Exchange has designated this proposal as establishing or changing a due, fee, or other charge applicable to the Exchange's Members and non-members, which renders the proposed rule change effective upon filing.

At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend 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–BATS–2011–012 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–BATS–2011–012. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for Web site viewing and printing in the Commission's Public Reference Room, 100 F Street, NE., Washington, DC 20549, on official business days between the hours of 10 a.m. and 3 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–BATS–2011–012 and should be submitted on or before May 3, 2011.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[12]

Cathy H. Ahn,

Deputy Secretary.

[FR Doc. 2011–8628 Filed 4–11–11; 8:45 am]

BILLING CODE 8011–01–P

[10] 15 U.S.C. 78s(b)(3)(A)(ii).

[11] 17 CFR 240.19b–4(f)(2).

[12] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–64205; File No. SR–EDGX–2011–10]

Self-Regulatory Organizations; EDGX Exchange, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Amend EDGX Rule 11.14 To Extend the Operation of the Single Stock Circuit Breaker Pilot Program

April 6, 2011.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (the "Act"),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on April 5, 2011, the EDGX Exchange, Inc. (the "Exchange" or the "EDGX") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I and II below, which items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to amend EDGX Rule 11.14 to extend the operation of the single stock circuit breaker pilot program pursuant to the Rule until the earlier of August 11, 2011 or the date on which a limit up/limit down mechanism to address extraordinary market volatility, if adopted, applies. The text of the proposed rule change is attached as Exhibit 5 and is available on the Exchange's Web site at *http://www.directedge.com*, at the Exchange's principal office, and at the Public Reference Room of the Commission.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The self-regulatory organization has prepared summaries, set forth in Sections A, B and C below, of the most significant aspects of such statements.

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange proposes to amend EDGX Rule 11.14 to extend the operation of a pilot that allows the Exchange to provide for uniform market-wide trading pause standards for individual securities in the S&P 500 Index, securities included in the Russell 1000® Index ("Russell 1000"), and specified Exchange Traded Products ("ETP") that experience rapid price movement (collectively known as "Circuit Breaker Securities") through the earlier of August 11, 2011 or the date on which a limit up/limit down mechanism to address extraordinary market volatility, if adopted, applies.

Background

Pursuant to Rule 11.14, the Exchange is allowed to pause trading in any Circuit Breaker Securities when the primary listing market for such stock issues a trading pause in any Circuit Breaker Securities.

EDGX Rule 11.14 was approved by the Commission on June 10, 2010 on a pilot basis to end on December 10, 2010.[3] The pilot was subsequently extended until April 11, 2011.[4] As the Exchange noted in its filing to adopt EDGX Rule 11.14, during the pilot period, the Exchange would continue to assess whether additional securities need to be added and whether the parameters of the rule would need to be modified to accommodate trading characteristics of different securities. The original pilot list of securities was all securities included in the S&P 500® Index ("S&P 500"). As noted in comment letters to the original filing to adopt EDGX Rule 11.14, concerns were raised that including only securities in the S&P 500 in the pilot rule was too narrow. In particular, commenters noted that securities that experienced volatility on May 6, 2010, including ETFs, should be included in the pilot.

In response to these concerns, various exchanges and national securities associations collectively determined to expand the list of pilot securities to include securities in the Russell 1000 and specified ETPs to the pilot beginning in September 2010.[5] The Exchange believed that adding these securities would address concerns that the scope of the pilot may be too narrow, while at the same time recognizing that during the pilot period, the markets will continue to review whether and when to add additional securities to the pilot and whether the parameters of the rule should be adjusted for different securities.

As noted above, during the pilot, the Exchange continued to re-assess, in consultation with other markets whether: (i) Specific ETPs should be added or removed from the pilot list; (ii) the parameters for invoking a trading pause continue to be the appropriate standard; and (iii) the parameters should be modified.

The Exchange believes that an extension of the pilot would continue to promote uniformity regarding decisions to pause trading and continue to reduce the negative impacts of sudden, unanticipated price movements in Circuit Breaker Securities. The Exchange believes that the pilot is working well, that it has been infrequently invoked during the past four months, and that the Exchange will be in a better position to determine the efficacy of providing any additional functionality or changes to the pilot by continuing to assess its operation in consultation with other exchange and national securities associations. Therefore, the Exchange requests an extension of the pilot through the earlier of August 11, 2011 or the date on which a limit up/limit down mechanism to address extraordinary market volatility, if adopted, applies.

2. Statutory Basis

The statutory basis for the proposed rule change is Section 6(b)(5) of the Act,[6] which requires the rules of an exchange to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and a national market system and, in general, to protect investors and the public interest. The proposed rule change also is designed to support the principles of Section 11A(a)(1)[7] of the Act in that it seeks to assure fair competition among brokers and dealers and among exchange markets. The Exchange believes that the proposed rule meets these requirements in that it promotes uniformity across markets

[3] *See* Securities Exchange Act Release No. 62252 (June 10, 2010) (SR–EDGX–2011–01), 75 FR 34186 (June 16, 2010).

[4] *See* Securities Exchange Act Release No. 63507 (December 9, 2010) (SR–EDGX–2011–22), 75 FR 78787 (December 16, 2010).

[5] *See* Securities Exchange Act Release No. 62884 (September 10, 2010) (SR–EDGX–2011–05), 75 FR 56618 (September 16, 2010).

[6] 15 U.S.C. 78f(b)(5).

[7] 15 U.S.C. 78k–1(a)(1).

concerning decisions to pause trading in a security when there are significant price movements. Specifically, an extension will allow the Exchange additional time to determine the efficacy of providing any additional changes to the pilot.

B. Self-Regulatory Organization's Statement on Burden on Competition

The proposed rule change does not impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

The Exchange has not solicited, and does not intend to solicit, comments on this proposed rule change. The Exchange has not received any unsolicited written comments from members or other interested parties.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Because the foregoing proposed rule change does not: (i) Significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) become operative for 30 days from the date on which it was filed, or such shorter time as the Commission may designate if consistent with the protection of investors and the public interest, it has become effective pursuant to Section 19(b)(3)(A) of the Act[8] and Rule 19b–4(f)(6) thereunder.[9]

A proposed rule change filed under Rule 19b–4(f)(6) normally may not become operative prior to 30 days after the date of filing.[10] However, Rule 19b–4(f)(6)[11] permits the Commission to designate a shorter time if such action is consistent with the protection of investors and the public interest. The Exchange has requested that the Commission waive the 30-day operative delay.

The Commission has considered the Exchange's request to waive the 30-day operative delay. The Commission believes that waiving the 30-day operative delay is consistent with the protection of investors and the public interest, as it will allow the pilot program to continue uninterrupted, thereby avoiding the investor confusion that could result from a temporary interruption in the pilot program.[12] For this reason, the Commission designates the proposed rule change to be operative upon filing.

At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend 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. If the Commission takes such action, the Commission shall institute proceedings to determine whether the proposed rule change should be approved or disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change, as amended, 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–EDGX–2011–10 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–EDGX–2011–10. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for Web site viewing and printing in the Commission's Public Reference Room, 100 F Street, NE., Washington, DC 20549, on official business days between the hours of 10 a.m. and 3 p.m. Copies of such filing also will be available for inspection and copying at the principal offices of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly.

All submissions should refer to File Number SR–EDGX–2011–10, and should be submitted on or before May 3, 2011.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[13]

Cathy H. Ahn,

Deputy Secretary.

[FR Doc. 2011–8625 Filed 4–11–11; 8:45 am]

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[8] 15 U.S.C. 78s(b)(3)(A).

[9] 17 CFR 240.19b–4(f)(6). When filing a proposed rule change pursuant to Rule 19b–4(f)(6) under the Act, an exchange is required to give the Commission written notice of its intent to file the proposed rule change, along with a brief description and text of the proposed rule change, at least five business days prior to the date of filing of the proposed rule change, or such shorter time as designated by the Commission. The Commission notes that the Exchange has satisfied this requirement.

[10] 17 CFR 240.19b–4(f)(6)(iii).

[11] *Id.*

[12] For the purposes only of waiving the operative delay of this proposal, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. *See* 15 U.S.C. 78c(f).

[13] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–64206; File No. SR–NYSEAmex–2011–23]

Self-Regulatory Organizations; NYSE Amex LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Amending NYSE Amex Equities Rule 80C, Trading Pauses in Individual Securities Due to Extraordinary Market Volatility, To Extend the Effective Date of the Pilot Until the Earlier of August 11, 2011 or the Date on Which a Limit Up/Limit Down Mechanism To Address Extraordinary Market Volatility, If Adopted, Applies

April 6, 2011.

Pursuant to Section 19(b)(1)[1] of the Securities Exchange Act of 1934 (the "Act")[2] and Rule 19b–4 thereunder,[3] notice is hereby given that on March 31, 2011, NYSE Amex LLC (the "Exchange" or "NYSE Amex") filed with the Securities and Exchange Commission (the "Commission") the proposed rule change as described in Items I and II

[1] 15 U.S.C.78s(b)(1).

[2] 15 U.S.C. 78a.

[3] 17 CFR 240.19b–4.

below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to amend NYSE Amex Equities Rule 80C, which provides for trading pauses in individual securities due to extraordinary market volatility, to extend the effective date of the pilot by which such rule operates from the current scheduled expiration date of April 11, 2011, until the earlier of August 11, 2011 or the date on which a limit up/limit down mechanism to address extraordinary market volatility, if adopted, applies. The text of the proposed rule change is available at the Exchange, the Commission's Public Reference Room, and *http://www.nyse.com*.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of those statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant parts of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and the Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange proposes to amend NYSE Amex Equities Rule 80C, which provides for trading pauses in individual securities due to extraordinary market volatility, to extend the effective date of the pilot by which such rule operates from the current scheduled expiration date of April 11, 2011,[4] until the earlier of August 11, 2011 or the date on which a limit up/limit down mechanism to address extraordinary market volatility, if adopted, applies.

NYSE Amex Equities Rule 80C requires the Exchange to pause trading in an individual security listed on the Exchange if the price moves by 10% as compared to prices of that security in the preceding five-minute period during a trading day, which period is defined as a "Trading Pause." The pilot was developed and implemented as a market-wide initiative by the Exchange and other national securities exchanges in consultation with the Commission staff and is currently applicable to all S&P 500 Index securities, Russell 1000 Index securities, and specified exchange-traded products.[5]

The extension proposed herein would allow the pilot to continue to operate without interruption while the Exchange, other national securities exchanges and the Commission further assess the effect of the pilot on the marketplace or whether other initiatives should be adopted in lieu of the current pilot.

2. Statutory Basis

The Exchange believes that its proposal is consistent with Section 6(b) of the Securities Exchange Act of 1934 (the "Act"),[6] in general, and furthers the objectives of Section 6(b)(5) of the Act,[7] in particular, in that it is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest. The Exchange believes that the change proposed herein meets these requirements in that it promotes uniformity across markets concerning decisions to pause trading in a security when there are significant price movements. Additionally, extension of the pilot until the earlier of August 11, 2011 or the date on which a limit up/limit down mechanism to address extraordinary market volatility, if adopted, applies would allow the pilot to continue to operate without interruption while the Exchange and the Commission further assess the effect of the pilot on the marketplace or whether other initiatives should be adopted in lieu of the current pilot.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments were solicited or received with respect to the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Because the foregoing proposed rule change does not: (i) Significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) become operative for 30 days from the date on which it was filed, or such shorter time as the Commission may designate if consistent with the protection of investors and the public interest, it has become effective pursuant to Section 19(b)(3)(A) of the Act[8] and Rule 19b–4(f)(6) thereunder.[9]

A proposed rule change filed under Rule 19b–4(f)(6) normally may not become operative prior to 30 days after the date of filing.[10] However, Rule 19b–4(f)(6)[11] permits the Commission to designate a shorter time if such action is consistent with the protection of investors and the public interest. The Exchange has requested that the Commission waive the 30-day operative delay.

The Commission has considered the Exchange's request to waive the 30-day operative delay. The Commission believes that waiving the 30-day

[4] *See* Securities Exchange Act Release No. 63501 (December 9, 2010), 75 FR 78307 (December 15, 2010) (SR–NYSEAmex–2010–117).

[5] The Exchange notes that the other national securities exchanges and the Financial Industry Regulatory Authority have adopted the pilot in substantially similar form. *See* Securities Exchange Act Release No. 62252 (June 10, 2010), 75 FR 34186 (June 16, 2010) (File Nos. SR–BATS–2010–014; SR–EDGA–2010–01; SR–EDGX–2010–01; SR–BX–2010–037; SR–ISE–2010–48; SR–NYSE–2010–39; SR–NYSEAmex–2010–46; SR–NYSEArca–2010–41; SR–NASDAQ–2010–061; SR–CHX–2010–10; SR–NSX–2010–05; and SR–CBOE–2010–047) and Securities Exchange Act Release No. 62251 (June 10, 2010), 75 FR 34183 (June 16, 2010) (SR–FINRA–2010–025). *See also* Securities Exchange Act Release No. 62884 (September 10, 2010), 75 FR 56618 (September 16, 2010) (File Nos. SR–BATS–2010–018; SR–BX–2010–044; SR–CBOE–2010–065; SR–CHX–2010–14; SR–EDGA–2010–05; SR–EDGX–2010–05; SR–ISE–2010–66; SR–NASDAQ–2010–079; SR–NYSE–2010–49; SR–NYSEAmex–2010–63; SR–NYSEArca–2010–61; and SR–NSX–2010–08 and Securities Exchange Act Release No. 62883 (September 10. 2010), 75 FR 56608 (September 16, 2010) (SR–FINRA–2010–033).

[6] 15 U.S.C. 78f(b).

[7] 15 U.S.C. 78f(b)(5).

[8] 15 U.S.C. 78s(b)(3)(A).

[9] 17 CFR 240.19b–4(f)(6). When filing a proposed rule change pursuant to Rule 19b–4(f)(6) under the Act, an exchange is required to give the Commission written notice of its intent to file the proposed rule change, along with a brief description and text of the proposed rule change, at least five business days prior to the date of filing of the proposed rule change, or such shorter time as designated by the Commission. The Commission notes that the Exchange has satisfied this requirement.

[10] 17 CFR 240.19b–4(f)(6)(iii).

[11] *Id.*

operative delay is consistent with the protection of investors and the public interest, as it will allow the pilot program to continue uninterrupted, thereby avoiding the investor confusion that could result from a temporary interruption in the pilot program.[12] For this reason, the Commission designates the proposed rule change to be operative upon filing.

At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend 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. If the Commission takes such action, the Commission shall institute proceedings to determine whether the proposed rule change should be approved or disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change, as amended, is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an e-mail to *rule-comments@sec.gov*. Please include File Number SR–NYSEAmex–2011–23 on the subject line.

Paper Comments

- Send paper comments in triplicate to Elizabeth M. Murphy, Secretary, Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–NYSEAmex–2011–23. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for Web site viewing and printing in the Commission's Public Reference Room, 100 F Street, NE., Washington, DC 20549, on official business days between the hours of 10 a.m. and 3 p.m. Copies of such filing also will be available for inspection and copying at the principal offices of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly.

All submissions should refer to File Number SR–NYSEAmex–2011–23, and should be submitted on or before May 3, 2011.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[13]

Cathy H. Ahn,

Deputy Secretary.

[FR Doc. 2011–8626 Filed 4–11–11; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–64210; File No. SR–NASDAQ–2011–046]

Self-Regulatory Organizations; The NASDAQ Stock Market LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Relating to Rebates and Fees in Penny Pilot and Non-Penny Pilot Options

April 6, 2011.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on March 31, 2011, The NASDAQ Stock Market LLC ("NASDAQ" or "Exchange") filed with the Securities and Exchange Commission ("SEC" or "Commission") the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to modify Rule 7050 governing pricing for NASDAQ members using the NASDAQ Options Market ("NOM"), NASDAQ's facility for executing and routing standardized equity and index options. Specifically, NOM proposes to: (i) Modify pricing for the Penny Pilot[3] Options with respect to the Customer Rebate to Add Liquidity;[4] and (ii) modify pricing for both Penny Pilot Options and All Other Options with respect to the Fees for Removing Liquidity.[5]

While changes pursuant to this proposal are effective upon filing, the Exchange has designated these changes to be operative for transactions on April 1, 2011.

The text of the proposed rule change is set forth below. Proposed new text is in italics and deleted text is in brackets.

* * * * *

7050. NASDAQ Options Market

The following charges shall apply to the use of the order execution and routing services of the NASDAQ Options Market for all securities.

(1) Fees for Execution of Contracts on the NASDAQ Options Market

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[12] For the purposes only of waiving the operative delay of this proposal, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. *See* 15 U.S.C. 78c(f).

[13] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] The Penny Pilot was established in March 2008 and in October 2009 was expanded and extended through December 31, 2010. *See* Securities Exchange Act Release Nos. 57579 (March 28, 2008), 73 FR 18587 (April 4, 2008) (SR–NASDAQ–2008–026)(notice of filing and immediate effectiveness establishing Penny Pilot); 60874 (October 23, 2009), 74 FR 56682 (November 2, 2009) (SR–NASDAQ–2009–091) (notice of filing and immediate effectiveness expanding and extending Penny Pilot); 60965 (November 9, 2009), 74 FR 59292 (November 17, 2009) (SR–NASDAQ–2009–097) (notice of filing and immediate effectiveness adding seventy-five classes to Penny Pilot); 61455 (February 1, 2010), 75 FR 6239 (February 8, 2010) (SR–NASDAQ–2010–013)(notice of filing and immediate effectiveness adding seventy-five classes to Penny Pilot); and 62029 (May 4, 2010), 75 FR 25895 (May 10, 2010) (SR–NASDAQ–2010–053)(notice of filing and immediate effectiveness adding seventy-five classes to Penny Pilot). *See also* Exchange Rule Chapter VI, Section 5.

[4] An order that adds liquidity is one that is entered into NOM and rests on the NOM book.

[5] An order that removes liquidity is one that is entered into NOM and that executes against an order resting on the NOM book.

FEES AND REBATES
[Per executed contract]

	Customer	Firm	Non-NOM market maker	NOM market maker
Penny Pilot Options:				
Rebate to Add Liquidity	$0.3[2]*6*	$0.10	$0.25	$0.30
Fee for Removing Liquidity	0.4[3]*5*	0.45	0.45	0.45
NDX and MNX:				
Rebate to Add Liquidity	0.10	0.10	0.10	0.20
Fee for Removing Liquidity	0.50	0.50	0.50	0.40
All Other Options:				
Fee for Adding Liquidity	0.00	0.45	0.45	0.30
Fee for Removing Liquidity	0.4[3]*5*	0.45	0.45	0.45
Rebate to Add Liquidity	0.20	0.00	0.00	0.00

(2) No Change
(3) No Change
(4) No Change
* * * * *

The text of the proposed rule change is available on the Exchange's Web site at *http://www.nasdaq.cchwallstreet.com*, at the principal office of the Exchange, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

NASDAQ is proposing to modify Rule 7050 governing the rebates and fees assessed for options orders entered into NOM. Specifically, NASDAQ is proposing to modify pricing for the Penny Pilot Options with respect to the Customer Rebate to Add Liquidity and also modify both Penny Pilot Options and All Other Options with respect to the Customer Fees for Removing Liquidity.

Customer Rebate To Add Liquidity

The Exchange currently pays a Rebate to Add Liquidity of $0.32 per executed contract to members providing liquidity through NOM in options included in the Penny Pilot and in the clearing capacity of "Customer." The Exchange proposes to amend this rebate so that a Customer would receive a Rebate to Add Liquidity of $0.36 per contract.[6] The Exchange believes that this increase in the Rebate to Add Liquidity would serve to incentivize Customers to add greater liquidity to the options listed for trading on NOM.

Customer Fees for Removing Liquidity

The Exchange assesses a Fee for Removing Liquidity of $0.43 per executed contract to members removing liquidity through NOM in options included both the Penny Pilot and All Other Options and in the clearing capacity of "Customer." The Exchange proposes to amend these fees so that a Customer would pay a Fee to Remove Liquidity of $0.45 per contract.[7] The Exchange is proposing to uniformly assess all market participants the same fee to remove liquidity.

While changes pursuant to this proposal are effective upon filing, the Exchange has designated these changes to be operative for transactions on April 1, 2011.

2. Statutory Basis

NASDAQ believes that the proposed rule changes are consistent with the provisions of Section 6 of the Act,[8] in general, and with Section 6(b)(4) of the Act,[9] in particular, in that it provides for the equitable allocation of reasonable dues, fees and other charges among members and issuers and other persons using any facility or system which NASDAQ operates or controls.

The Exchange believes that the proposed increase in the Customer Rebate to Add Liquidity in the Penny Pilot Options is both equitable and reasonable because the Exchange is seeking to provide the appropriate incentives to broker-dealers acting as agent for Customer orders to select the Exchange as a venue to post Customer orders. The Exchange believes that the proposed increase in the rebate is also reasonable because the rebate is consistent with other rebates being paid at the BATS Exchange, Inc. ("BATS") for orders that add liquidity to the BATS Options book.[10]

The Exchange believes that the proposed increase in the Fee to Remove Liquidity for Customers in both the Penny Pilot Options and All Other Options is both reasonable and equitable because the Exchange would uniformly assess a $0.45 per contract Fee to Remove Liquidity on all market participants.

The Exchange believes its proposal to increase the Fee for Adding Liquidity for Customers in both the Penny Pilot Options and All Other Options is also reasonable because the fees are within the range of fees assessed by other exchanges employing similar pricing schemes. Specifically, NYSE Arca, Inc. ("NYSE Arca") assesses a customer fee for taking liquidity of $0.45 for electronic executions in penny pilot issues and foreign currency options and assesses a firm and broker dealer standard execution fee of $0.50 for electronic executions in options not included in the penny pilot.[11]

The Exchange operates in a highly competitive market comprised of nine U.S. options exchanges in which sophisticated and knowledgeable market participants can readily send order flow to competing exchanges if

[6] A Firm would continue to receive $0.10 per contract, a Non-NOM Market Maker would continue to receive $0.25 per contract and a NOM Market Makers would continue to receive $0.30 per contract to add liquidity.

[7] A Firm, Non-NOM Market Makers and NOM Market Makers would continue to be assessed $0.45 per contract for removing liquidity.

[8] 15 U.S.C. 78f.

[9] 15 U.S.C. 78f(b)(4).

[10] *See* BATS' BZX Exchange Fee Schedule.

[11] *See* NYSE Arca's Fee Schedule.

they deem fee levels at a particular exchange to be excessive. The Exchange believes that the proposed rebate and fees are competitive and similar with rebates and fees in place on other exchanges. The Exchange believes that this competitive marketplace impacts the rebates and fees present on the Exchange today and substantially influences the proposals set forth above.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

No written comments were either solicited or received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change has become effective pursuant to Section 19(b)(3)(A)(ii) of the Act;[12] and paragraph (f)(2) of Rule 19b–4[13] thereunder. At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an e-mail to *rule-comments@sec.gov*. Please include File Number SR–NASDAQ–2011–046 on the subject line.

Paper Comments

- Send paper comments in triplicate to Elizabeth M. Murphy, Secretary, Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–NASDAQ–2011–046. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro/shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for Web site viewing and printing in the Commission's Public Reference Room, 100 F Street, NE., Washington, DC 20549, on official business days between the hours of 10 a.m. and 3 p.m. Copies of such filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File No. SR–NASDAQ–2011–046 and should be submitted on or before May 3, 2011.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[14]

Cathy H. Ahn,

Deputy Secretary.

[FR Doc. 2011–8627 Filed 4–11–11; 8:45 am]

BILLING CODE 8011–01–P

[12] 15 U.S.C. 78s(b)(3)(A)(ii).

[13] 17 CFR 240.19b–4(f)(2).

[14] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–64209; File No. SR–NYSEArca–2011–14]

Self-Regulatory Organizations; NYSE Arca, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Amending NYSE Arca Equities Rule 7.11, Trading Pauses in Individual Securities Due to Extraordinary Market Volatility, To Extend the Effective Date of the Pilot Until the Earlier of August 11, 2011 or the Date on Which a Limit Up/Limit Down Mechanism To Address Extraordinary Market Volatility, if Adopted, Applies

April 6, 2011.

Pursuant to Section 19(b)(1)[1] of the Securities Exchange Act of 1934 (the "Act")[2] and Rule 19b-4 thereunder,[3] notice is hereby given that on March 31, 2011, NYSE Arca, Inc. (the "Exchange" or "NYSE Arca") 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 Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to amend NYSE Arca Equities Rule 7.11, which provides for trading pauses in individual securities due to extraordinary market volatility, to extend the effective date of the pilot by which such rule operates from the current scheduled expiration date of April 11, 2011, until the earlier of August 11, 2011 or the date on which a limit up/limit down mechanism to address extraordinary market volatility, if adopted, applies. The text of the proposed rule change is available at the Exchange, the Commission's Public Reference Room, and *http://www.nyse.com*.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received

[1] 15 U.S.C.78s(b)(1).

[2] 15 U.S.C. 78a.

[3] 17 CFR 240.19b–4.

on the proposed rule change. The text of those statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant parts of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and the Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange proposes to amend NYSE Arca Equities Rule 7.11, which provides for trading pauses in individual securities due to extraordinary market volatility, to extend the effective date of the pilot by which such rule operates from the current scheduled expiration date of April 11, 2011,[4] until the earlier of August 11, 2011 or the date on which a limit up/limit down mechanism to address extraordinary market volatility, if adopted, applies.

NYSE Arca Equities Rule 7.11 requires the Exchange to pause trading in an individual security listed on the Exchange if the price moves by 10% as compared to prices of that security in the preceding five-minute period during a trading day, which period is defined as a "Trading Pause." The pilot was developed and implemented as a market-wide initiative by the Exchange and other national securities exchanges in consultation with the Commission staff and is currently applicable to all S&P 500 Index securities, Russell 1000 Index securities, and specified exchange-traded products.[5]

The extension proposed herein would allow the pilot to continue to operate without interruption while the Exchange, other national securities exchanges and the Commission further assess the effect of the pilot on the marketplace or whether other initiatives should be adopted in lieu of the current pilot.

2. Statutory Basis

The Exchange believes that its proposal is consistent with Section 6(b) of the Securities Exchange Act of 1934 (the "Act"),[6] in general, and furthers the objectives of Section 6(b)(5) of the Act,[7] in particular, in that it is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest. The Exchange believes that the change proposed herein meets these requirements in that it promotes uniformity across markets concerning decisions to pause trading in a security when there are significant price movements. Additionally, extension of the pilot until the earlier of August 11, 2011 or the date on which a limit up/limit down mechanism to address extraordinary market volatility, if adopted, applies would allow the pilot to continue to operate without interruption while the Exchange and the Commission further assess the effect of the pilot on the marketplace or whether other initiatives should be adopted in lieu of the current pilot.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments were solicited or received with respect to the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Because the foregoing proposed rule change does not: (i) Significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) become operative for 30 days from the date on which it was filed, or such shorter time as the Commission may designate if consistent with the protection of investors and the public interest, it has become effective pursuant to Section 19(b)(3)(A) of the Act[8] and Rule 19b–4(f)(6) thereunder.[9]

A proposed rule change filed under Rule 19b–4(f)(6) normally may not become operative prior to 30 days after the date of filing.[10] However, Rule 19b–4(f)(6)[11] permits the Commission to designate a shorter time if such action is consistent with the protection of investors and the public interest. The Exchange has requested that the Commission waive the 30-day operative delay.

The Commission has considered the Exchange's request to waive the 30-day operative delay. The Commission believes that waiving the 30-day operative delay is consistent with the protection of investors and the public interest, as it will allow the pilot program to continue uninterrupted, thereby avoiding the investor confusion that could result from a temporary interruption in the pilot program.[12] For this reason, the Commission designates the proposed rule change to be operative upon filing.

At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend 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. If the Commission takes such action, the Commission shall institute proceedings to determine whether the proposed rule change should be approved or disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change, as amended, is consistent with

[4] *See* Securities Exchange Act Release No. 63496 (December 9, 2010), 75 FR 78285 (December 15, 2010) (SR–NYSEArca–2010–114).

[5] The Exchange notes that the other national securities exchanges and the Financial Industry Regulatory Authority have adopted the pilot in substantially similar form. *See* Securities Exchange Act Release No. 62252 (June 10, 2010), 75 FR 34186 (June 16, 2010) (File Nos. SR–BATS–2010–014; SR–EDGA–2010–01; SR–EDGX–2010–01; SR–BX–2010–037; SR–ISE–2010–48; SR–NYSE–2010–39; SR–NYSEAmex–2010–46; SR–NYSEArca–2010–41; SR–NASDAQ–2010–061; SR–CHX–2010–10; SR–NSX–2010–05; and SR–CBOE–2010–047) and Securities Exchange Act Release No. 62251 (June 10, 2010), 75 FR 34183 (June 16, 2010) (SR–FINRA–2010–025). *See also* Securities Exchange Act Release No. 62884 (September 10, 2010), 75 FR 56618 (September 16, 2010) (File Nos. SR–BATS–2010–018; SR–BX–2010–044; SR–CBOE–2010–065; SR–CHX–2010–14; SR–EDGA–2010–05; SR–EDGX–2010–05; SR–ISE–2010–66; SR–NASDAQ–2010–079; SR–NYSE–2010–49; SR–NYSEAmex–2010–63; SR–NYSEArca–2010–61; and SR–NSX–2010–08 and Securities Exchange Act Release No. 62883 (September 10, 2010), 75 FR 56608 (September 16, 2010) (SR–FINRA–2010–033).

[6] 15 U.S.C. 78f(b).

[7] 15 U.S.C. 78f(b)(5).

[8] 15 U.S.C. 78s(b)(3)(A).

[9] 17 CFR 240.19b–4(f)(6). When filing a proposed rule change pursuant to Rule 19b–4(f)(6) under the Act, an exchange is required to give the Commission written notice of its intent to file the proposed rule change, along with a brief description and text of the proposed rule change, at least five business days prior to the date of filing of the proposed rule change, or such shorter time as designated by the Commission. The Commission notes that the Exchange has satisfied this requirement.

[10] 17 CFR 240.19b–4(f)(6)(iii).

[11] *Id.*

[12] For the purposes only of waiving the operative delay of this proposal, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. *See* 15 U.S.C. 78c(f).

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–NYSEArca–2011–14 on the subject line.

Paper Comments

- Send paper comments in triplicate to Elizabeth M. Murphy, Secretary, Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–NYSEArca–2011–14. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for Web site viewing and printing in the Commission's Public Reference Room, 100 F Street, NE., Washington, DC 20549, on official business days between the hours of 10 a.m. and 3 p.m. Copies of such filing also will be available for inspection and copying at the principal offices of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly.

All submissions should refer to File Number SR–NYSEArca–2011–14, and should be submitted on or before May 3, 2011.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[13]

Cathy H. Ahn,

Deputy Secretary.

[FR Doc. 2011–8600 Filed 4–11–11; 8:45 am]

BILLING CODE 8011–01–P

[13] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–64207; File No. SR–BATS–2011–011]

Self-Regulatory Organizations; BATS Exchange, Inc.; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change To Extend the Pilot Program Related to Trading Pauses Due to Extraordinary Market Volatility

April 6, 2011.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (the "Act"),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on April 1, 2011, BATS Exchange, Inc. (the "Exchange" or "BATS") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I and II below, which Items have been prepared by the Exchange. 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 filing with the Commission a proposal to extend a pilot program previously approved by the Commission related to Rule 11.18, entitled "Trading Halts Due to Extraordinary Market Volatility."

The text of the proposed rule change is available at the Exchange's Web site at *http://www.batstrading.com*, at the principal office of the Exchange, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in Sections A, B, and C below, of the most significant parts of such statements.

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

(A) Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The purpose of this filing is to extend the effectiveness of the Exchange's rule related to individual stock circuit breakers, which is contained in Rule 11.18(d) and Interpretation and Policy .05 to Rule 11.18. The rule, explained in further detail below, was approved to operate under a pilot program set to expire on April 11, 2011. The Exchange proposes to extend the pilot program to the earlier of August 11, 2011 or the date on which a limit up/limit down mechanism to address extraordinary market volatility, if adopted, applies.

On June 10, 2010, the Commission approved on a pilot basis changes to BATS Rule 11.18 to provide for uniform market-wide trading pause standards for individual securities in the S&P 500® Index that experience rapid price movement.[3] Later, the Exchange and other markets proposed extension of the trading pause standards on a pilot basis to individual securities in the Russell 1000® Index and specified Exchange Traded Products, which changes the Commission approved on September 10, 2010.[4] The pilot program relating to trading pause standards was then extended to April 11, 2011.[5] The Exchange believes the benefits to market participants from the individual stock trading pause rule should be continued on a pilot basis.

2. Statutory Basis

The Exchange believes that its proposal is consistent with the requirements of the Act and the rules and regulations thereunder that are applicable to a national securities exchange, and, in particular, with the requirements of Section 6(b) of the Act.[6] In particular, the proposal is consistent with Section 6(b)(5) of the Act,[7] because it would promote just and equitable principles of trade, remove impediments to, and perfect the mechanism of, a free and open market and a national market system. The proposed rule change is also consistent with Section 11A(a)(1) of the Act[8] in

[3] Securities Exchange Act Release No. 62252 (June 10, 2010), 75 FR 34186 (June 16, 2010) (SR–BATS–2010–014).

[4] Securities Exchange Act Release No. 62884 (September 10, 2010), 75 FR 56618 (September 16, 2010) (SR–BATS–2010–018).

[5] Securities Exchange Act Release No. 63497 (December 9, 2010), 75 FR 78315 (December 15, 2010) (SR–BATS–2010–037).

[6] 15 U.S.C. 78f(b).

[7] 15 U.S.C. 78f(b)(5).

[8] 15 U.S.C. 78k–1(a)(1).

that it seeks to assure fair competition among brokers and dealers and among exchange markets. The Exchange believes that the pilot program promotes just and equitable principles of trade in that it promotes transparency and uniformity across markets concerning decisions to pause trading in a security when there are significant price movements.

(B) Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change imposes any burden on competition.

(C) Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

The Exchange has neither solicited nor received written comments on the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Because the foregoing proposed rule change does not: (i) Significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) become operative for 30 days from the date on which it was filed, or such shorter time as the Commission may designate if consistent with the protection of investors and the public interest, it has become effective pursuant to Section 19(b)(3)(A) of the Act [9] and Rule 19b–4(f)(6) thereunder.[10]

A proposed rule change filed under Rule 19b–4(f)(6) normally may not become operative prior to 30 days after the date of filing.[11] However, Rule 19b–4(f)(6) [12] permits the Commission to designate a shorter time if such action is consistent with the protection of investors and the public interest. The Exchange has requested that the Commission waive the 30-day operative delay.

The Commission has considered the Exchange's request to waive the 30-day operative delay. The Commission believes that waiving the 30-day operative delay is consistent with the protection of investors and the public interest, as it will allow the pilot program to continue uninterrupted, thereby avoiding the investor confusion that could result from a temporary interruption in the pilot program.[13] For this reason, the Commission designates the proposed rule change to be operative upon filing.

At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend 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. If the Commission takes such action, the Commission shall institute proceedings to determine whether the proposed rule change should be approved or disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change, as amended, 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–BATS–2011–011 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–BATS–2011–011. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for Web site viewing and printing in the Commission's Public Reference Room, 100 F Street, NE., Washington, DC 20549, on official business days between the hours of 10 a.m. and 3 p.m. Copies of such filing also will be available for inspection and copying at the principal offices of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–BATS–2011–011, and should be submitted on or before May 3, 2011.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[14]

Cathy H. Ahn,

Deputy Secretary.

[FR Doc. 2011–8599 Filed 4–11–11; 8:45 am]

BILLING CODE 8011–01–P

[9] 15 U.S.C. 78s(b)(3)(A).

[10] 17 CFR 240.19b–4(f)(6). When filing a proposed rule change pursuant to Rule 19b–4(f)(6) under the Act, an exchange is required to give the Commission written notice of its intent to file the proposed rule change, along with a brief description and text of the proposed rule change, at least five business days prior to the date of filing of the proposed rule change, or such shorter time as designated by the Commission. The Commission notes that the Exchange has satisfied this requirement.

[11] 17 CFR 240.19b–4(f)(6)(iii).

[12] *Id.*

[13] For the purposes only of waiving the operative delay of this proposal, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. *See* 15 U.S.C. 78c(f).

[14] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–64196; File No. SR–NSCC–2010–15]

Self-Regulatory Organizations; National Securities Clearing Corporation; Order Approving Proposed Rule Change Relating to Establishing an Automated Service for the Processing of Transfers, Replacements, and Exchanges of Insurance and Retirement Products

April 6, 2011.

I. Introduction

On November 18, 2010, the National Securities Clearing Corporation ("NSCC") filed with the Securities and Exchange Commission ("Commission") the proposed rule change pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (the "Act").[1] The proposed rule change allows NSCC to add a new automated service to process transfers, replacements, and exchanges of insurance and retirement products through NSCC's Insurance and Retirement Processing Service ("IPS"). The proposed rule change was published for comment in the **Federal**

Register on November 30, 2010.[2] No comment letters were received. This order approves the proposed rule change.

II. Description of the Proposal

The proposed rule change will enable NSCC to offer a new automated service for the transfer, replacement, or exchange (collectively referred to as a "Replacement") of an existing insurance contract that is eligible for NSCC's IPS. Specifically, NSCC will add new Section 11 to Rule 57 (Insurance and Retirement Processing Services) that will centralize and automate Replacement processing and will decrease the administrative burden on and risk to NSCC Members, Insurance Carrier/Retirement Service Members, Mutual Fund/Insurance Services Members, and Data Services Only Members. Prior to this rule change, the Replacement process was not conducted through a centralized or automated process and requires extensive manual processing of paper forms and other documents. The insurance industry utilized Transfer of Assets forms, 1035 Exchange Forms, or other similar paperwork (collectively referred to as "TOA") to document the request and the authorization for a Replacement.

Under the new service, an Insurance Carrier/Retirement Services Member will be able to initiate a Replacement ("Receiving Carrier") by submitting an instruction to NSCC to process a Replacement ("Request for Replacement"). NSCC will then transmit the Request for Replacement to the designated Insurance Carrier/Retirement Services Member ("Delivering Carrier"). The Delivery Member will have to confirm, reject, or request modification to the Request for Replacement in the format and by such time as established by NSCC. NSCC will delete from the IPS Requests for Replacement that are not confirmed or rejected. The IPS will also incorporate and will automate the settlement of confirmed Replacements into NSCC's existing IPS settlement process.

Also under the new Section 11, the Delivering Carrier will waive the obligation of the Receiving Carrier to submit a signed physical copy of the TOA unless specifically required by state or local law. The transfer of any physical documents related to Replacements that are required under state law would continue to be transferred outside of NSCC. It will be the sole obligation of the Insurance Carrier/Retirement Services Members involved in the Replacement to confirm that all legal requirements, including any requirement to obtain a signed physical copy of the TOA imposed by applicable State or local law, are satisfied prior to confirming a Request for Replacement. The Replacement service will permit the transfer of documentation as an attachment to the Request for Replacement but this will not be a requirement to utilize the Replacement service. The waiver of the obligation to submit signed physical documents is intended to improve the orderly processing of Replacements.

Finally, NSCC will update the Fee Schedule to incorporate the fees associated with processing a Request for Replacement. The fee associated with a Request for Replacement, including submitting incremental replacement status messages and money settlement, will be $5.00 per Request for Replacement. The cost will be divided between the carriers associated with the transaction with the Receiving Carrier responsible for $3.75 per transaction, which is three-fourths of the cost of the Replacement service, and the Delivering Carrier responsible for the remaining $1.25, which is one-fourth of the cost. The fee associated with obtaining the status of a pending Request for Replacement, including incremental statuses, will be $1.00 per pending status request. The cost will be divided evenly between the Receiving Carrier and the Distributor, each of which will be responsible for paying a fee of $0.50.

Members will be advised of the specific implementation date through the issuance of an NSCC Important Notice.

III. Discussion

The Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules thereunder applicable to NSCC. In particular, the Commission finds that the proposal is consistent with Section 17A(b)(3)(F) of the Act,[3] which requires, among other things, that the rules of a registered clearing agency are designed to promote the prompt and accurate clearance and settlement of securities transactions. NSCC's new Replacement service is designed to process Replacements in a more timely and efficient manner by reducing manual errors, lowering costs, and providing a uniform platform for Replacements processing. In addition, the new service should increase the speed of processing Replacements through the use of automation, which should also decrease NSCC's operational risk posed by processing paper documentation. Accordingly, NSCC's proposal should promote the prompt and accurate clearance and settlement of securities transactions.

IV. Conclusion

On the basis of the foregoing, the Commission finds that the proposed rule change is consistent with the requirements of the Act and in particular Section 17A of the Act[4] and the rules and regulations thereunder.

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,[5] that the proposed rule change (File No. SR–NSCC–2010–15) be and hereby is approved.[6]

For the Commission by the Division of Trading and Markets, pursuant to delegated authority.[7]

Cathy H. Ahn,

Deputy Secretary.

[FR Doc. 2011–8585 Filed 4–11–11; 8:45 am]

BILLING CODE 8011–01–P

[2] Securities Exchange Act Release No. 63368 (Nov. 23, 2010), 75 FR 74117.

[3] 15 U.S.C. 78q–1(b)(3)(F).

[4] 15 U.S.C. 78q–1.

[5] 15 U.S.C. 78s(b)(2).

[6] In approving the proposed rule change, the Commission considered the proposal's impact on efficiency, competition and capital formation. 15 U.S.C. 78c(f).

[7] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–64198; File No. SR–BX–2011–020]

Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by NASDAQ OMX BX, Inc. To Amend the Fee Schedule of the Boston Options Exchange Facility

April 6, 2011.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on March 31, 2011, NASDAQ OMX BX, Inc. (the "Exchange") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I and II, below, which Items have been prepared by the self-regulatory organization. The Exchange filed the proposed rule change pursuant to Section 19(b)(3)(A)(ii) of the Act,[3] and Rule 19b–4(f)(2) thereunder,[4] which renders the proposal effective upon filing with the Commission. The Commission is publishing this notice to

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] 15 U.S.C. 78s(b)(3)(A)(ii).

[4] 17 CFR 240.19b–4(f)(2).

solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to amend the Fee Schedule of the Boston Options Exchange Group, LLC ("BOX"). While changes to the BOX Fee Schedule pursuant to this proposal will be effective upon filing, the changes will become operative on April 1, 2011. The text of the proposed rule change is available from the principal office of the Exchange, at the Commission's Public Reference Room, on the Exchange's Internet Web site at *http://nasdaqomxbx.cchwallstreet.com/NASDAQOMXBX/Filings/*, and on the Commission's Web site at *http://www.sec.gov*.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The self-regulatory organization has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

Fees and Credits in Section 7

Currently, Section 7 of the BOX Fee Schedule specifies a $0.25 credit and fee for transactions in the BOX Price Improvement Period ("PIP"). These credits and fees apply equally to all account types, whether Public Customer, Broker Dealer or Market Maker, and across options classes, both those within the Penny Pilot program and non-Penny classes, and are in addition to any applicable trading fees, as described in Sections 1 through 3 of the BOX Fee Schedule. The Exchange proposes to increase the existing credits and fees within Section 7 for transactions in the PIP, from $0.25 to $0.30. This increase in credits and fees for PIP transactions is designed to provide all BOX market participants an additional incentive to submit their orders to the PIP and the opportunity to benefit from its potential price improvement.

BOX believes that the change to PIP transaction fees and credits are competitive, fair and reasonable, and non-discriminatory in that they apply to all account types and options classes.

2. Statutory Basis

The Exchange believes that the proposal is consistent with the requirements of Section 6(b) of the Act,[5] in general, and Section 6(b)(4) of the Act,[6] in particular, in that it provides for the equitable allocation of reasonable dues, fees, and other charges among its members and other persons using its facilities. The Exchange believes the proposal is an equitable allocation of reasonable fees and other charges among BOX Options Participants. The Exchange also believes that there is an equitable allocation of reasonable credits among BOX Options Participants.

The Exchange believes that it is equitable to provide a credit to any Participant that removes liquidity through the PIP on behalf of its customer. The Exchange believes this credit will attract additional order flow to BOX, and to the PIP in particular, to the benefit of all market participants. The Exchange believes that it is an equitable allocation of the fees and credits for PIP transactions because such fees and credits apply uniformly to all categories of participants in PIP transactions, across all account types and options classes. All market participants that trade within the PIP, and all PIP transactions would be subject to the fees and credits in Section 7 of the BOX Fee Schedule.

Further, the Exchange believes the proposed fees and credits related to PIP transactions to be reasonable. BOX operates within a highly competitive market in which market participants can readily direct order flow to any of eight other competing venues if they deem fee levels at a particular venue to be excessive. The changes to BOX credits and fees proposed by this filing are intended to attract order flow to BOX by offering incentives to all market participants to submit their orders to the PIP for potential price improvement. BOX notes that this proposed rule change will increase both the fees and credit for PIP transactions. The result is that BOX will collect a $.30 fee from Participants that add liquidity in the PIP and credit another Participant $.30 for removing liquidity. Stated otherwise, the fees collected will not necessarily result in additional revenue to BOX, but will simply allow BOX to provide the credit incentive to Participants to attract additional order flow to the PIP. BOX believes it is appropriate to provide incentives to market participants to use PIP, resulting in potential benefit to customers through potential price improvement, and to all market participants from greater liquidity.

In particular, the proposed change will allow the fees charged on BOX to remain competitive with other exchanges as well as apply such fees in a manner which is equitable among all BOX Participants. The Exchange believes that the PIP transaction fees and credits it assesses are fair and reasonable and must be competitive with fees and credits in place on other exchanges. Further, the Exchange believes that this competitive marketplace impacts the fees and credits present on BOX today and influences the proposal set forth above.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

The Exchange has neither solicited nor received comments on the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change has become effective pursuant to Section 19(b)(3)(A)(ii) of the Act[7] and Rule 19b–4(f)(2) thereunder,[8] because it establishes or changes a due, fee, or other charge applicable only to a member.

At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend 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. If the Commission takes such action, the Commission shall institute proceedings to determine whether the proposed rule should be approved or disapproved.

[5] 15 U.S.C. 78f(b).

[6] 15 U.S.C. 78f(b)(4).

[7] 15 U.S.C. 78s(b)(3)(A)(ii).

[8] 17 CFR 240.19b–4(f)(2).

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an e-mail to *rule-comments@sec.gov*. Please include File Number SR–BX–2011–020 on the subject line.

Paper Comments

- Send paper comments in triplicate to Elizabeth M. Murphy, Secretary, Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–BX–2011–020. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for Web site viewing and printing in the Commission's Public Reference Room, 100 F Street, NW., Washington, DC 20549, on official business days between the hours of 10 a.m. and 3 p.m. Copies of such filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–BX–2011–020 and should be submitted on or before May 3, 2011.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[9]

Cathy H. Ahn,

Deputy Secretary.

[FR Doc. 2011–8582 Filed 4–11–11; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–64195; File No. SR–NYSEAmex–2011–21]

Self-Regulatory Organizations; NYSE Amex LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Amending the Exchange Price List

April 5, 2011.

Pursuant to Section 19(b)(1)[1] of the Securities Exchange Act of 1934 (the "Act")[2] and Rule 19b–4 thereunder,[3] notice is hereby given that, on March 29, 2011, NYSE Amex LLC ("NYSE Amex" or the "Exchange") filed with the Securities and Exchange Commission (the "Commission") the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to amend its 2011 Price List ("Price List") for equities to amend the fees charged for taking liquidity in Nasdaq securities priced at $1.00 or more and traded pursuant to unlisted trading privileges ("UTP"). The Exchange proposes to create a new tier with a reduced "take" fee of $0.0019 per share (compared with $0.0027 currently) for market participants and Designated Market Makers ("DMMs") that meet certain average daily executed volume requirements in either shares or a combination of shares and contracts traded on the NYSE Amex options market. Market participants and DMMs who meet these executed volume requirements will also qualify for a reduced routing fee of $0.0019 per share (compared with $0.0029 currently) for executions on other markets as a result of routing. The Exchange also proposes to eliminate all fees shown in the Price List for Supplemental Liquidity Providers ("SLPs"), regardless of price, for taking liquidity and for routing because those categories are not applicable to SLPs. The amended pricing will become operative on April 1, 2011. The text of the proposed rule change is available at the Exchange, on the Exchange's Web site at *http://www.nyse.com*, on the Commission's Web site at *http://www.sec.gov*, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of those statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant parts of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and the Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange proposes to amend its Price List for equities to modify the fees charged to market participants and DMMs for taking liquidity in Nasdaq securities traded pursuant to UTP whose share price is $1.00 or more. The corresponding fees for such securities whose share price is below $1.00 will remain unchanged from the current formulation regardless of whether the volume requirements described below are met.

Currently, market participants and DMMs are charged a fee of $0.0027 per share for orders in Nasdaq securities traded pursuant to unlisted trading privileges and priced at $1.00 or more that take liquidity. Under the proposal, the fee will be reduced to $0.0019 per share for orders that take liquidity if either of the following volume requirements is met:

- Execution of an average daily volume ("ADV") in the current month of greater than three million shares when taking liquidity and routing to other markets for execution (combined); or
- Execution of an ADV in the current month of greater than 1 million shares when taking liquidity and routing to other markets for execution (combined) *and* execution of an ADV of 130,000 total contracts or more on the NYSE Amex options market.

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[9] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 15 U.S.C. 78a.

[3] 17 CFR 240.19b–4.

The second alternative above for meeting the volume requirements is being provided for the purpose of encouraging and rewarding active participation in both of the NYSE Amex markets (equities and options) and to recognize those participants that are active on both markets. A party that does no options business could still obtain the lower charge based solely on its UTP equities business.

Currently, market participants and DMMs are charged a fee of $0.0029 per share for orders in Nasdaq securities traded pursuant to unlisted trading privileges and priced at $1.00 or more that are routed to other markets and execute there. Under the proposal, the fee will be reduced to $0.0019 per share for executions of such routed orders if either of the above volume requirements is met. The corresponding fee for such securities whose share price is below $1.00 will remain unchanged from the current formulation regardless of whether the volume requirements are met.

The Exchange believes that these reduced fees for taking liquidity and executions from routing will attract more volume to the Exchange and thereby result in a more competitive market in the trading of Nasdaq UTP securities.

Finally, the Exchange proposes to eliminate all fees shown in the Price List for SLPs, regardless of price, for taking liquidity and for routing, because those categories are not applicable to SLPs and should not have been added when the fee and credit structure for trading Nasdaq listed securities pursuant to UTP was adopted.[4] As indicated in the Price List for its listed securities, the only prices applicable to SLPs are credits for adding liquidity. The applicable charges for taking liquidity and routing are already covered in that portion of the Price List that relates more generally to fees and credits applicable to market participants for transactions in Nasdaq securities pursuant to UTP, which would include fees for taking liquidity and routing that are charged to the firm with which the SLP is associated.

These changes are intended to become operative for all transactions beginning April 1, 2011.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with the provisions of Section 6 of the Securities Exchange Act of 1934 (the "Act"),[5] in general, and Section 6(b)(4) of the Act,[6] in particular, in that it is designed to provide for the equitable allocation of reasonable dues, fees, and other charges among its members and other persons using its facilities. The Exchange believes that the proposal does not constitute an inequitable allocation of fees, as all similarly situated member organizations will be charged the same amount and access to the Exchange's market is offered on fair and non-discriminatory terms. The Exchange believes that these reduced fees for taking liquidity and executions from routing will attract more volume to the Exchange and thereby result in a more competitive market in the trading of Nasdaq UTP securities.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments were solicited or received with respect to the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change is effective upon filing pursuant to Section 19(b)(3)(A)[7] of the Act and subparagraph (f)(2) of Rule 19b–4[8] thereunder, because it establishes a due, fee, or other charge imposed by the NYSE Amex.

At any time within 60 days of the filing of such proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an e-mail to *rule-comments@sec.gov*. Please include File Number SR–NYSEAmex–2011–21 on the subject line.

Paper Comments

- Send paper comments in triplicate to Elizabeth M. Murphy, Secretary, Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–NYSEAmex–2011–21. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for Web site viewing and printing in the Commission's Public Reference Room, 100 F Street, NE., Washington, DC 20549, on official business days between the hours of 10 a.m. and 3 p.m. Copies of such filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make publicly available. All submissions should refer to File Number SR–NYSEAmex–2011–21 and should be submitted on or before May 3, 2011.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[9]

Cathy H. Ahn,

Deputy Secretary.

[FR Doc. 2011–8581 Filed 4–11–11; 8:45 am]

BILLING CODE 8011–01–P

[4] *See* Securities Exchange Act Release No. 62488 (July 13, 2010), 75 FR 41912 (July 19, 2010) (File No. SR–NYSEAmex–2010–69).

[5] 15 U.S.C. 78f(b).

[6] 15 U.S.C. 78f(b)(4).

[7] 15 U.S.C. 78s(b)(3)(A).

[8] 17 CFR 240.19b–4(f)(2).

[9] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–64214; File No. SR–BYX–2011–007]

Self-Regulatory Organizations; BATS Y–Exchange, Inc.; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change To Extend the Pilot Program Related to Trading Pauses Due to Extraordinary Market Volatility

April 6, 2011.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (the "Act"),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on April 1, 2011, BATS Y–Exchange, Inc. (the "Exchange" or "BYX") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I and II below, which Items have been prepared by the Exchange. 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 filing with the Commission a proposal to extend a pilot program related to Rule 11.18, entitled "Trading Halts Due to Extraordinary Market Volatility."

The text of the proposed rule change is available at the Exchange's Web site at *http://www.batstrading.com*, at the principal office of the Exchange, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in Sections A, B, and C below, of the most significant parts of such statements.

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

(A) Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The purpose of this filing is to extend the effectiveness of the Exchange's rule related to individual stock circuit breakers, which is contained in Rule 11.18(d) and Interpretation and Policy .05 to Rule 11.18. The rule, explained in further detail below, was approved to operate under a pilot program set to expire on April 11, 2011. The Exchange proposes to extend the pilot program to the earlier of August 11, 2011 or the date on which a limit up/limit down mechanism to address extraordinary market volatility, if adopted, applies.

On October 4, 2010, the Exchange filed an immediately effective filing to adopt various rule changes to bring BYX Rules up to date with the changes that had been made to the rules of BATS Exchange, Inc., the Exchange's affiliate, while BYX's Form 1 Application to register as a national securities exchange was pending approval. Such changes included changes to the Exchange's Rule 11.18, on a pilot basis, to provide for uniform market-wide trading pause standards for individual securities in the S&P 500® Index, the Russell 1000® Index and specified Exchange Traded Products that experience rapid price movement.[3] The pilot program relating trading pause standards was then extended to April 11, 2011.[4] The Exchange believes the benefits to market participants from the individual stock trading pause rule should be continued on a pilot basis.

2. *Statutory Basis*

The Exchange believes that its proposal is consistent with the requirements of the Act and the rules and regulations thereunder that are applicable to a national securities exchange, and, in particular, with the requirements of Section 6(b) of the Act.[5] In particular, the proposal is consistent with Section 6(b)(5) of the Act,[6] because it would promote just and equitable principles of trade, remove impediments to, and perfect the mechanism of, a free and open market and a national market system. The proposed rule change is also consistent with Section 11A(a)(1) of the Act[7] in that it seeks to assure fair competition among brokers and dealers and among exchange markets. The Exchange believes that the pilot program promotes just and equitable principles of trade in that it promotes transparency and uniformity across markets concerning decisions to pause trading in a security when there are significant price movements.

[3] Securities Exchange Act Release No. 63097 (October 13, 2010), 75 FR 64767 (October 20, 2010) (SR–BYX–2010–002).

[4] Securities Exchange Act Release No. 63513 (December 9, 2010), 75 FR 78784 (December 16, 2010) (SR–BYX–2010–007).

[5] 15 U.S.C. 78f(b).

[6] 15 U.S.C. 78f(b)(5).

(B) Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change imposes any burden on competition.

(C) Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

The Exchange has neither solicited nor received written comments on the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Because the foregoing proposed rule change does not: (i) Significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) become operative for 30 days from the date on which it was filed, or such shorter time as the Commission may designate if consistent with the protection of investors and the public interest, it has become effective pursuant to Section 19(b)(3)(A) of the Act[8] and Rule 19b-4(f)(6) thereunder.[9]

A proposed rule change filed under Rule 19b–4(f)(6) normally may not become operative prior to 30 days after the date of filing.[10] However, Rule 19b–4(f)(6)[11] permits the Commission to designate a shorter time if such action is consistent with the protection of investors and the public interest. The Exchange has requested that the Commission waive the 30-day operative delay.

The Commission has considered the Exchange's request to waive the 30-day

[7] 15 U.S.C. 78k–1(a)(1).

[8] 15 U.S.C. 78s(b)(3)(A).

[9] 17 CFR 240.19b–4(f)(6). When filing a proposed rule change pursuant to Rule 19b–4(f)(6) under the Act, an exchange is required to give the Commission written notice of its intent to file the proposed rule change, along with a brief description and text of the proposed rule change, at least five business days prior to the date of filing of the proposed rule change, or such shorter time as designated by the Commission. The Commission notes that the Exchange has satisfied this requirement.

[10] 17 CFR 240.19b–4(f)(6)(iii).

[11] *Id.*

operative delay. The Commission believes that waiving the 30-day operative delay is consistent with the protection of investors and the public interest, as it will allow the pilot program to continue uninterrupted, thereby avoiding the investor confusion that could result from a temporary interruption in the pilot program.[12] For this reason, the Commission designates the proposed rule change to be operative upon filing.

At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend 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. If the Commission takes such action, the Commission shall institute proceedings to determine whether the proposed rule change should be approved or disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change, as amended, 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–BYX–2011–007 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–BYX–2011–007. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for website viewing and printing in the Commission's Public Reference Room, 100 F Street, NE., Washington, DC 20549, on official business days between the hours of 10 a.m. and 3 p.m. Copies of such filing also will be available for inspection and copying at the principal offices of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–BYX–2011–007, and should be submitted on or before May 3, 2011.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[13]

Cathy H. Ahn,

Deputy Secretary.

[FR Doc. 2011–8684 Filed 4–11–11; 8:45 am]

BILLING CODE 8011–01–P

[12] For the purposes only of waiving the operative delay of this proposal, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. *See* 15 U.S.C. 78c(f).

[13] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–64202; File No. SR–ISE–2011–16]

Self-Regulatory Organizations; International Securities Exchange, LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Relating to a Market Maker Incentive Plan for Foreign Currency Options

April 6, 2011.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (the "Act"),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on March 31, 2011, the International Securities Exchange, LLC (the "Exchange" or the "ISE") filed with the Securities and Exchange Commission ("Commission") the proposed rule change, as described in Items I and II below, which items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b-4.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The ISE is proposing to extend an incentive plan for market makers in a number of foreign currency options ("FX Options") traded on the Exchange. The text of the proposed rule change is available on the Exchange's Web site (*http://www.ise.com*), at the principal office of the Exchange, on the Commission's Web site at *http://www.sec.gov*, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The self-regulatory organization has prepared summaries, set forth in sections A, B and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The purpose of this proposed rule change is to extend an incentive plan for market makers in options on the New Zealand dollar ("NZD"), the Mexican peso ("PZO"), the Swedish krona ("SKA"), the Brazilian real ("BRB"), the Australian dollar ("AUX"), the British pound ("BPX"), the Canadian dollar ("CDD"), the euro ("EUI"), the Japanese yen ("YUK") and the Swiss franc ("SFC").[3] On August 3, 2009, the Exchange adopted an incentive plan applicable to market makers in NZD, PZO and SKA,[4] and on January 19, 2010, added BRB to the incentive plan,[5] and on March 1, 2011, added AUX, BPX, CDD, EUI, YUK and SFC.[6] The Exchange has since extended the date

[3] The Commission previously approved the trading of options on NZD, PZO, SKA, BRB, AUX, BPX, CDD, EUI, YUK and SFC. *See* Securities Exchange Act Release No. 55575 (April 3, 2007), 72 FR 17963 (April 10, 2007) (SR–ISE–2006–59).

[4] *See* Securities Exchange Act Release No. 60536 (August 19, 2009), 74 FR 43204 (August 26, 2009) (SR–ISE–2009–59).

[5] *See* Securities Exchange Act Release No. 61459 (February 1, 2010), 75 FR 6248 (February 8, 2010) (SR–ISE–2010–07).

[6] *See* Securities Exchange Act Release No. 64012 (March 2, 2011), 76 FR 12778 (March 8, 2011) (SR–ISE–2011–11).

by which market makers may join the incentive plan[7] and now proposes to do so again.

In order to promote trading in these FX Options, the Exchange has an incentive plan pursuant to which the Exchange waives the transaction fees for the Early Adopter[8] FXPMM[9] and all Early Adopter FXCMMs[10] that make a market in NZD, PZO SKA, BRB, AUX, BPX, CDD, EUI, YUK and SFC for as long as the incentive plan is in effect. Further, pursuant to a revenue sharing agreement entered into between an Early Adopter Market Maker and ISE, the Exchange pays the Early Adopter FXPMM forty percent (40%) of the transaction fees collected on any customer trade in NZD, PZO SKA, BRB, AUX, BPX, CDD, EUI, YUK and SFC and pays up to ten (10) Early Adopter FXCMMs that participate in the incentive plan twenty percent (20%) of the transaction fees collected for trades between a customer and that FXCMM. Market makers that do not participate in the incentive plan are charged regular transaction fees for trades in these products. In order to participate in the incentive plan, market makers are currently required to enter into the incentive plan no later than March 31, 2011. The Exchange now proposes to extend the date by which market makers may enter into the incentive plan to June 30, 2011.

Additionally, the Exchange proposes to correct an inadvertent deletion in a recent filing. Specifically, in the filing where the Exchange added AUX, BPX, CDD, EUI, YUK and SFC to the incentive plan,[11] the Exchange inadvertently failed to add these additional FX options symbols to the Notes for fees applicable ISE Market Maker on pages 3–4 of the Exchange's Schedule of Fees.

Finally, the Exchange proposes to make a clarifying change to the Customer fee noted on page 2 on the Exchange's Schedule of Fees to note that the $0.18 per contract Customer fee as it relates to FX Options is applicable to those FX Options that are not part of the incentive plan. For FX Options that are part of the incentive plan, the Customer fee is $0.40 per contract, as noted on page 1 of the Exchange's current Schedule of Fees.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with the objectives of Section 6 of the Act,[12] in general, and furthers the objectives of Section 6(b)(4),[13] in particular, in that it is designed to provide for the equitable allocation of reasonable dues, fees and other charges among its members and other persons using its facilities.

The Exchange believes the proposed rule change is equitable as it will permit all market makers to explore the opportunity to join the incentive plan for an additional three months. The Exchange believes the proposed rule change is reasonable because the extension of the incentive plan for three months will permit additional market makers to join the incentive plan which in turn will generate additional order flow to the Exchange by creating incentives to trade these FX Options as well as defray operational costs for Early Adopter Market Makers.

B. Self-Regulatory Organization's Statement on Burden on Competition

The proposed rule change does not impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

The Exchange has not solicited, and does not intend to solicit, comments on this proposed rule change. The Exchange has not received any unsolicited written comments from members or other interested parties.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change has become effective pursuant to Section 19(b)(3)(A)(ii) of the Act.[14] At any time within 60 days of the filing of such proposed rule change, the Commission summarily may temporarily suspend 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. If the Commission takes such action, the Commission shall institute proceedings to determine whether the proposed rule should be approved or disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing, including whether the proposal is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an e-mail to *rule-comments@sec.gov*. Please include File No. SR–ISE–2011–16 on the subject line.

Paper Comments

- Send paper comments in triplicate to Elizabeth M. Murphy, Secretary, Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549–1090.

All submissions should refer to File No. SR–ISE–2011–16. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for Web site viewing and printing in the Commission's Public Reference Room, 100 F Street, NE., Washington, DC 20549, on official business days between the hours of 10 a.m. and 3 p.m. Copies of such filing also will be available for inspection and copying at the principal office of ISE. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File No.

[7] See Securities Exchange Act Release Nos. 60810 (October 9, 2009), 74 FR 53527 (October 19, 2009) (SR–ISE–2009–80), 61334 (January 12, 2010), 75 FR 2913 (January 19, 2010) (SR–ISE–2009–115), 61851 (April 6, 2010), 75 FR 18565 (April 12, 2010) (SR–ISE–2010–27), 62503 (July 15, 2010), 75 FR 42812 (July 22, 2010) (SR–ISE–2010–71), 36045 (October 5, 2010), 75 FR 62900 (October 13, 2010) (SR–ISE–2010–100) and 63639 (January 4, 2011), 76 FR 1488 (January 10, 2011) (SR–ISE–2010–121).

[8] Participants in the incentive plan are known on the Exchange's Schedule of Fees as Early Adopter Market Makers.

[9] A FXPMM is a primary market maker selected by the Exchange that trades and quotes in FX Options only. *See* ISE Rule 2213.

[10] A FXCMM is a competitive market maker selected by the Exchange that trades and quotes in FX Options only. *See* ISE Rule 2213.

[11] See *supra* note 6.

[12] 15 U.S.C. 78f(b).

[13] 15 U.S.C. 78f(b)(4).

[14] 15 U.S.C. 78s(b)(3)(A)(ii).

SR–ISE–2011–16 and should be submitted on or before May 3, 2011.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[15]

Cathy H. Ahn,

Deputy Secretary.

[FR Doc. 2011–8683 Filed 4–11–11; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[File No. 500–1]

MaxLife Fund Corp.; Order of Suspension of Trading

April 8, 2011.

It appears to the Securities and Exchange Commission that there is a lack of current and accurate information concerning the securities of MaxLife Fund Corp. ("MaxLife") because of questions that have arisen concerning representations made by MaxLife, the control of its stock, its market price, and trading in the stock. MaxLife trades on the OTCQB Market operated by the OTC Markets Group Inc. under the symbol MXFD.

The Commission is of the opinion that the public interest and the protection of investors require a suspension of trading in the securities of the company listed above.

Therefore, it is ordered, pursuant to Section 12(k) of the Securities Exchange Act of 1934, that trading in the securities of the company listed above is suspended for the period from 9:30 a.m. EDT, April 8, 2011, through 11:59 p.m. EDT, on April 21, 2011.

By the Commission.

Jill M. Peterson,

Assistant Secretary.

[FR Doc. 2011–8811 Filed 4–8–11; 11:15 am]

BILLING CODE 8011–01–P

SMALL BUSINESS ADMINISTRATION

[Disaster Declaration #12497 and #12498]

Tennessee Disaster #TN–00048

AGENCY: U.S. Small Business Administration.

ACTION: Amendment 1.

SUMMARY: This is a an amendment of the Administrative declaration of a disaster for the State of Tennessee dated 03/23/2011.

Incident: Severe Storms and Flooding.

Incident Period: 02/28/2011 through 03/09/2011.

Effective Date: 04/05/2011.

Physical Loan Application Deadline Date: 05/23/2011.

Economic Injury (EIDL) Loan Application Deadline Date: 12/23/2011.

ADDRESSES: Submit completed loan applications to: U.S. Small Business Administration, Processing and Disbursement Center, 14925 Kingsport Road, Fort Worth, TX 76155.

FOR FURTHER INFORMATION CONTACT: A. Escobar, Office of Disaster Assistance, U.S. Small Business Administration, 409 3rd Street, SW., Suite 6050, Washington, DC 20416.

SUPPLEMENTARY INFORMATION: The notice of the Administrator's disaster declaration in the State of Tennessee, dated 03/23/2011, is hereby amended to establish the incident period for this disaster as beginning 02/28/2011 and continuing through 03/09/2011.

All other information in the original declaration remains unchanged.

(Catalog of Federal Domestic Assistance Numbers 59002 and 59008)

Dated: April 5, 2011.

Karen G. Mills,

Administrator.

[FR Doc. 2011–8607 Filed 4–11–11; 8:45 am]

BILLING CODE 8025–01–P

SMALL BUSINESS ADMINISTRATION

[Disaster Declaration #12514 and #12515]

California Disaster #CA–00169

AGENCY: U.S. Small Business Administration.

ACTION: Notice.

SUMMARY: This is a notice of an Administrative declaration of a disaster for the State of California dated 04/05/2011.

Incident: Center Fire.

Incident Period: 03/18/2011 through 03/20/2011.

Effective Date: 04/05/2011.

Physical Loan Application Deadline Date: 06/06/2011.

Economic Injury (EIDL) Loan Application Deadline Date: 01/05/2012.

ADDRESSES: Submit completed loan applications to: U.S. Small Business Administration, Processing and Disbursement Center, 14925 Kingsport Road, Fort Worth, TX 76155.

FOR FURTHER INFORMATION CONTACT: A. Escobar, Office of Disaster Assistance, U.S. Small Business Administration, 409 3rd Street, SW., Suite 6050, Washington, DC 20416.

SUPPLEMENTARY INFORMATION: Notice is hereby given that as a result of the Administrator's disaster declaration, applications for disaster loans may be filed at the address listed above or other locally announced locations.

The following areas have been determined to be adversely affected by the disaster:

Primary Counties: Inyo.

Contiguous Counties:

California: Fresno, Kern, Mono, San Bernardino, Tulare.

Nevada: Clark, Esmeralda, Nye.

The Interest Rates are:

	Percent
For Physical Damage:	
Homeowners With Credit Available Elsewhere	5.125
Homeowners Without Credit Available Elsewhere	2.563
Businesses With Credit Available Elsewhere	6.000
Businesses Without Credit Available Elsewhere	4.000
Non-Profit Organizations With Credit Available Elsewhere	3.250
Non-Profit Organizations Without Credit Available Elsewhere	3.000
For Economic Injury:	
Businesses & Small Agricultural Cooperatives Without Credit Available Elsewhere	4.000
Non-Profit Organizations Without Credit Available Elsewhere	3.000

The number assigned to this disaster for physical damage is 12514 5 and for economic injury is 12515 0.

The States which received an EIDL Declaration # are California, Nevada.

(Catalog of Federal Domestic Assistance Numbers 59002 and 59008)

Dated: April 5, 2011.

Karen G. Mills,

Administrator.

[FR Doc. 2011–8608 Filed 4–11–11; 8:45 am]

BILLING CODE 8025–01–P

DEPARTMENT OF STATE

[Delegation of Authority No. 335]

Delegation of the Authorities of the Assistant Secretary of State for Administration to William H. Moser

By virtue of the authority vested in me by the laws of the United States, including the State Department Basic Authorities Act, as amended (22 U.S.C. 2651a), and Delegations of Authority 323 and 198, I hereby delegate to William H. Moser, to the extent authorized by law, all authorities vested in the Assistant Secretary of State for Administration, including authorities vested in the Secretary of State that have been or may be delegated to the

[15] 17 CFR 200.30–3(a)(12).

Assistant Secretary of State for Administration.

Notwithstanding this delegation of authority, the Secretary of State, the Deputy Secretary of State, the Deputy Secretary of State for Management and Resources, the Under Secretary of State for Political Affairs, and the Under Secretary of State for Management may exercise any function or authority delegated herein.

Nothing in this delegation of authority shall be deemed to supersede any other delegation of authority. This delegation shall expire upon the appointment by the President of an Assistant Secretary for Administration, unless sooner revoked.

This delegation shall be published in the **Federal Register**.

Dated: March 31, 2011.

Patrick F. Kennedy,

Under Secretary for Management.

[FR Doc. 2011–8540 Filed 4–11–11; 8:45 am]

BILLING CODE 4710–35–P

DEPARTMENT OF STATE

[Public Notice 7412]

Determination Under Section 602(q) of the Foreign Assistance Act of 1961, as Amended, Relating to Assistance to Antigua and Barbuda

Pursuant to the authority vested in me by Section 620(q) of the Foreign Assistance Act of 1961, as amended (FAA), Executive Order 12163, as amended by Executive Order 13346, and Delegation of Authority 245–1, I hereby determine the continued assistance to Antigua and Barbuda from the date upon which the restriction took effect is in the national interest of the United States and thereby waive the application of section 620(q) of the FAA for such assistance.

This Determination shall be reported to Congress and published in the **Federal Register**.

Dated: March 18, 2011.

Thomas R. Nides,

Deputy Secretary of State for Management and Resources.

[FR Doc. 2011–8722 Filed 4–11–11; 8:45 am]

BILLING CODE 4710–29–P

TENNESSEE VALLEY AUTHORITY

Notice of Sunshine Act Meeting

April 14, 2011; Meeting No. 11–02

The TVA Board of Directors will hold a public meeting on April 14, 2011, at the Chattanooga Office Complex, 1101 Market Street, Chattanooga, Tennessee, to consider the matters listed below. The public may comment on any agenda item or subject at a *public listening session* which begins at 8:30 a.m. (ET). Immediately following the end of the public listening session, the meeting will be called to order to consider the agenda items listed below. **Please Note:** Speakers must pre-register online at TVA.gov or sign in before the meeting begins at 8:30 a.m. (ET) on the day of the meeting. The Board will answer questions from the news media following the Board meeting.

STATUS: Open.

Agenda

Chairman's Report

A. Welcome.

B. Nuclear Safety Review.

Old Business

Approval of minutes of February 18, 2011, Board Meeting.

New Business

1. President's Report.
2. Selection of Chairman.
3. Integrated Resource Plan.
4. TVA Environmental Future and Implementing Agreements.
5. Report of the Nuclear Oversight Committee.
6. Report of the Audit, Risk, and Regulation Committee.

A. Board's Role as Regulator.

7. Report of the Customer and External Relations Committee.
8. Report of the People and Performance Committee.
9. Report of the Finance, Rates, and Portfolio Committee.

A. Valley Investment Initiative—Eligibility Pilot Program.

B. Power Contracts.

C. Transformer Contracts.

D. Bellefonte Nuclear Plant—Extension of Decision and Budget.

E. Coal Combustion Product Process Conversions.

For more information: Please call TVA Media Relations at (865) 632–6000, Knoxville, Tennessee. People who plan to attend the meeting and have special needs should call (865) 632–6000. Anyone who wishes to comment on any of the agenda in writing may send their comments to: TVA Board of Directors, Board Agenda Comments, 400 West Summit Hill Drive, Knoxville, Tennessee 37902.

Dated: April 7, 2011.

Clifford L. Beach, Jr.,

Assistant General Counsel.

[FR Doc. 2011–8810 Filed 4–8–11; 4:15 pm]

BILLING CODE 8120–08–P

DEPARTMENT OF TRANSPORTATION

Office of the Secretary

Notice of Applications for Certificates of Public Convenience and Necessity and Foreign Air Carrier Permits Filed Under Subpart B (Formerly Subpart Q) During the Week Ending March 19, 2011

The following Applications for Certificates of Public Convenience and Necessity and Foreign Air Carrier Permits were filed under subpart B (formerly subpart Q) of the Department of Transportation's Procedural Regulations (*See* 14 CFR 301.201 *et. seq.*). The due date for Answers, Conforming Applications, or Motions to Modify Scope are set forth below for each application. Following the Answer period DOT may process the application by expedited procedures. Such procedures may consist of the adoption of a show-cause order, a tentative order, or in appropriate cases a final order without further proceedings.

Docket Number: DOT–OST–2011–0051.

Date Filed: March 17, 2011.

Due Date for Answers, Conforming Applications, or Motion to Modify Scope: April 7, 2011.

Description: Joint application of Southwest Airlines Co. and AirTran Airways, Inc. requesting approval of the de facto route transfer that will result from Southwest's acquisition of AirTran.

Docket Number: DOT–OST–2008–0062.

Date Filed: March 18, 2011.

Due Date for Answers, Conforming Applications, or Motion to Modify Scope: April 8, 2011.

Description: Application of XL Airways France requesting renewal of its exemption authority to engage in: (i) Foreign scheduled and charter air transportation of persons, property and mail from any point or points behind any Member State of the European Union via any point or points in any Member State and via intermediate points to any point or points in the United States and beyond; (ii) foreign scheduled and charter air transportation of persons, property, and mail between any point or points in the United States and any point or points in any member of the European Common Aviation Area; (iii) foreign scheduled and charter cargo air transportation between any point or points in the United States and any other point or points; (iv) other charters pursuant to the prior approval requirements; and (v) transportation authorized by any additional route

rights made available to European Community carriers in the future. XL Airways France further requests issuance of a foreign air carrier permit to enable XL Airways France to engage in the same foreign air transportation described above.

Renee V. Wright,

Program Manager, Docket Operations, Federal Register Liaison.

[FR Doc. 2011–8696 Filed 4–11–11; 8:45 am]

BILLING CODE 4910–9X–P

DEPARTMENT OF TRANSPORTATION

Office of the Secretary

Notice of Applications for Certificates of Public Convenience and Necessity and Foreign Air Carrier Permits

Notice of Applications for Certificates of Public Convenience and Necessity and Foreign Air Carrier Permits Filed Under Subpart B (formerly Subpart Q) during the Week Ending March 5, 2011. The following Applications for Certificates of Public Convenience and Necessity and Foreign Air Carrier Permits were filed under Subpart B (formerly Subpart Q) of the Department of Transportation's Procedural Regulations (*See* 14 CFR 301.201 *et seq.*).

The due date for Answers, Conforming Applications, or Motions To Modify Scope are set forth below for each application. Following the Answer period DOT may process the application by expedited procedures. Such procedures may consist of the adoption of a show-cause order, a tentative order, or in appropriate cases a final order without further proceedings.

Docket Number: DOT–OST–2010–0093.

Date Filed: February 28, 2011.

Due Date for Answers, Conforming Applications, or Motion To Modify Scope: March 21, 2011.

Description: Amendment No. 2 of Open Joint Stock Company Transaero Airlines ("Transaero") to its application for a foreign air carrier permit to include a request for authority for Transaero to provide scheduled foreign air transportation of persons, property, and mail (i) from any point or points behind the Russian Federation, via any point or points in the Russian Federation and intermediate points, to Los Angeles, California, and (ii) from Los Angeles, California, to any point or points in the Russian Federation and beyond.

Renee V. Wright,

Program Manager, Docket Operations, Federal Register Liaison.

[FR Doc. 2011–8698 Filed 4–11–11; 8:45 am]

BILLING CODE 4910–9X–P

DEPARTMENT OF TRANSPORTATION

Office of the Secretary

Notice of Applications for Certificates of Public Convenience and Necessity and Foreign Air Carrier Permits

Notice of Applications for Certificates of Public Convenience and Necessity and Foreign Air Carrier Permits Filed Under Subpart B (formerly Subpart Q) during the Week Ending March 12, 2011. The following Applications for Certificates of Public Convenience and Necessity and Foreign Air Carrier Permits were filed under Subpart B (formerly Subpart Q) of the Department of Transportation's Procedural Regulations (*See* 14 CFR 301.201 *et. seq.*). The due date for Answers, Conforming Applications, or Motions to Modify Scope are set forth below for each application. Following the Answer period DOT may process the application by expedited procedures. Such procedures may consist of the adoption of a show-cause order, a tentative order, or in appropriate cases a final order without further proceedings.

Docket Number: DOT–OST–2011–0043.

Date Filed: March 7, 2011.

Due Date for Answers, Conforming Applications, or Motion to Modify Scope: March 28, 2011.

Description: Application of Calima Aviacion, S.L. ("Calima") requesting exemption authority and a foreign air carrier permit to conduct charter foreign air transportation of persons, property and mail between a point or points in the European Community and the Member States of the European Union, and a point or points in the United States, to the full extent allowed under the Air Transport Agreement between the United States and the European Community and the Member States of the European Union. Specifically Calima requests authority to engage in: (a) Foreign charter air transportation of persons, property, and mail from any point or points behind any Member State of the European Community via any point or points in any Member State and via intermediate points to any point or points in the United States and beyond; (b) foreign charter air transportation of persons, property, and mail between any point or points in the United States and any point or points in any Member State of the EuropeanCommon Aviation Area; (c) foreign charter cargo air transportation between any point or points in the United States and any other point or points; and (d) charter transportation consistent with any future, additional rights that may be granted to foreign air carriers of the Member States of the European Community.

Docket Number: DOT–OST–2011–0045.

Date Filed: March 8, 2011.

Due Date for Answers, Conforming Applications, or Motion to Modify Scope: March 29, 2011.

Description: Application of Sky Regional Airlines Inc/Lignes Aeriennes Sky Regional Inc. ("Sky Regional") requesting a foreign air carrier permit to the full extent authorized by the Air Transport Agreement between the Government of the United States of America and the Government of Canada in order to engage in: (i) Charter foreign air transportation of persons, property and mail from points behind Canada via Canada and intermediate points to a point or points in the United States and beyond, and (ii) other charter transportation. Sky Regional further requests exemption authority to the extent necessary to enable it to provide the services described above pending issuance of a foreign air carrier permit and such additional or other relief as the Department may deem necessary or appropriate.

Renee V. Wright,

Program Manager, Docket Operations, Federal Register Liaison.

[FR Doc. 2011–8697 Filed 4–11–11; 8:45 am]

BILLING CODE 4910–9X–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Notice of Approval of the Supplemental Finding of No Significant Impact and Record of Decision for the Supplemental Environmental Assessment (EA) for Proposed Changes to the Construction of a New Land-Based Airport in Akutan, AK

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

ACTION: Notice of approval of the Supplemental Finding of No Significant Impact/Record of Decision.

SUMMARY: The Federal Aviation Administration is announcing the approval of the Supplemental Finding

of No Significant Impact/Record of Decision (FONSI/ROD) for the Supplemental Environmental Assessment (EA) for changes proposed to the construction of a new land-based airport in Akutan, AK. The Supplemental FONSI/ROD provides final agency determinations and approvals for the proposed development.

FOR FURTHER INFORMATION CONTACT: Patti Sullivan, Environmental Program Manager, Federal Aviation Administration, Alaskan Region, Airports Division, 222 W. 7th Avenue #14, Anchorage, AK 99513–7504. Ms. Sullivan may be contacted during business hours at (907) 271–5454 (phone) and (907) 271–2851 (facsimile).

SUPPLEMENTARY INFORMATION: The Supplemental FONSI/ROD is for the approval of actions for proposed changes to the construction of an airport not previously addressed in the December 2007 environmental assessment FONSI/ROD. The proposed changes include realignment of the runway; expansion of the seaplane ramp in Akutan Harbor; realignment of Stream number 1; and temporary construction facilities including a barge landing and construction access road along Surf Bay, fuel storage facility, and a personnel camp. On December 26, 2007, the FAA approved a FONSI/ROD for the construction of a new land based airport including a runway, a runway safety area, connecting taxiway, an apron, and a snow removal equipment and maintenance facility; an airport access road; two hovercraft landing pads; a hovercraft storage and maintenance facility; and acquisition of a hovercraft The Supplemental FONSI/ROD provides the final agency determinations and approvals for Federal actions by the FAA related to the selection of alternatives to meet the purpose and need for the action. The Supplemental FONSI/ROD also includes required mitigation measures and conditions of approval. The Supplemental FONSI/ROD indicates that the selected actions are consistent with existing environmental policies and objectives set forth in the National Environmental Policy Act (NEPA) of 1969, as amended, as well as other federal and state statutes, and that the actions will not significantly affect the quality of the environment.

The FAA's decision is based upon information contained in the Supplemental EA, issued in March 3, 2011, and on all other applicable documents available to the agency and considered by it, which constitutes the administrative record.

The FAA's determinations are discussed in the Supplemental FONSI/ROD, which was approved on March 7, 2011.

FONSI/ROD Availability

The FONSI/ROD may be viewed at the following Web site *http://www.faa.gov/airports/alaskan/environmental/.*

Issued in Anchorage, Alaska on March 30, 2011.

Byron K. Huffman,

Manager, Airports Division, Alaskan Region.

[FR Doc. 2011–8529 Filed 4–11–11; 8:45 am]

BILLING CODE 4913–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Ninth Meeting: RTCA Special Committee 223: Airport Surface Wireless Communications

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

ACTION: Notice of RTCA Special Committee 223: Airport Surface Wireless Communications meeting.

SUMMARY: The FAA is issuing this notice to advise the public of a meeting of RTCA Special Committee 223: Airport Surface Wireless Communications.

DATES: The meeting will be held May 3–5, 2011 from 9 a.m. to 5 p.m.

ADDRESSES: The meeting will be held at ITT Corp., 12930 Worldgate Drive, Herndon, VA 20170.

FOR FURTHER INFORMATION CONTACT: RTCA Secretariat, 1828 L Street, NW., Suite 805, Washington, DC 20036; telephone (202) 833–9339; fax (202) 833–9434; Web site *http://www.rtca.org.*

SUPPLEMENTARY INFORMATION: Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463, 5 U.S.C., and Appendix 2), notice is hereby given for a RTCA Special Committee 223: Airport Surface Wireless Communications meeting. Agenda:

Tuesday May 3, 2011

- Tuesday Morning Plenary
- Welcome, Introductions, Administrative Remarks by Special Committee Leadership
  - Designated Federal Officer (DFO): Mr. Brent Phillips
  - Co-Chair: Mr. Aloke Roy, Honeywell International
  - Co-Chair: Mr. Ward Hall, ITT Corporation
  - EUROCAE WG–82 Chair: Armin Schlereth, DFS
- Agenda Overview
- Review and Approve Plenary Eighth Meeting Summary, RTCA Paper No. 051–11/SC224–020, and Action Item Status
- RTCA PMC Feedback and Guidance on WiMAX Forum Test Suites
- General Presentations of Interest
  - AeroMACS Mobility Test Results Update—ITT
  - AeroMACS load estimations and performance evaluations—Max Ehammer (University of Salzburg)
- EUROCAE WG–82 Status
- Tuesday Afternoon—MOPS WG Breakout Session
- MOPS Outline
  - Harmonize with EUROCAE Ground MOPS
  - Core/common parts
  - Avionics specific parts
- General Requirements

Wednesday, May 4, 2011

- Wednesday Morning—MOPS WG Breakout Session
- Avionics System Requirements
- Signal-in-space requirements
- Interface Requirements
- Interoperability requirements
- Tour of WiMAX testing facility (return by 15:00)
- Wednesday Afternoon—MOPS WG Breakout Session
- RF Performance Tests
  - WiMAX Forum versus MOPS

Thursday, May 5, 2011

- Thursday Morning—MOPS WG Breakout Session
- Environmental Tests
- Thursday Afternoon
- Establish Agenda, Date and Place for the next plenary meetings of numbers 10 and 11. Number 10 is tentatively scheduled for June 28–29 at RTCA in Washington, DC.
- Review of Meeting Summary Report
- Adjourn

Attendance is open to the interested public but limited to space availability. With the approval of the chairmen, members of the public may present oral statements at the meeting. Persons wishing to present statements or obtain information should contact the person listed in the **FOR FURTHER INFORMATION CONTACT** section. Members of the public may present a written statement to the committee at any time.

Issued in Washington, DC, on April 5, 2011.

Robert L. Bostiga,

RTCA Advisory Committee.

[FR Doc. 2011–8611 Filed 4–11–11; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Fourteenth Meeting: Joint RTCA Special Committee 213: EUROCAE WG–79: Enhanced Flight Vision Systems/Synthetic Vision Systems (EFVS/SVS)

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

ACTION: Notice of Joint RTCA Special Committee 213: EUROCAE WG–79: Enhanced Flight Vision Systems/ Synthetic Vision Systems (EFVS/SVS).

SUMMARY: The FAA is issuing this notice to advise the public of a meeting of Joint RTCA Special Committee 213: EUROCAE WG–79: Enhanced Flight Vision Systems/Synthetic Vision Systems (EFVS/SVS).

DATES: The meeting will be held May 5, from 8:30 a.m.–3 p.m.

ADDRESS: The meeting will be held at RTCA, Inc., 1828 L Street, NW., Suite 805, Washington, DC 20036. Point of Contact is *Jiverson@rtca.org,* telephone (202) 833–9339, Fax (202) 833–9434.

FOR FURTHER INFORMATION CONTACT: (1) RTCA Secretariat, 1828 L Street, NW., Suite 805, Washington, DC, 20036; telephone (202) 833–9339; fax (202) 833–9434; Web site *http://www.rtca.org.*

SUPPLEMENTARY INFORMATION: Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463, 5 U.S.C., Appendix 2), notice is hereby given for a Joint RTCA Special Committee 213: EUROCAE WG–79: Enhanced Flight Vision Systems/ Synthetic Vision Systems (EFVS/SVS) meeting.

The agenda will include:

Tuesday, March 29

- 8 a.m.–3 p.m. Plenary
- Introductions and administrative items
- Review of the meeting agenda
- Review and resolve Final Review and Comment (FRAC) comments to revised DO–315A FRAC Draft
- Any other business
- Administrative items (meeting schedule)
- Adjourn

Attendance is open to the interested public but limited to space availability. With the approval of the chairmen, members of the public may present oral statements at the meeting. Persons wishing to present statements or obtain information should contact the person listed in the **FOR FURTHER INFORMATION CONTACT** section. Members of the public may present a written statement to the committee at any time.

Issued in Washington, DC, April 6, 2011.

Robert L. Bostiga,

RTCA Advisory Committee.

[FR Doc. 2011–8740 Filed 4–11–11; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

[U.S. DOT Docket Number NHTSA–2010–0182]

Reports, Forms and Record Keeping Requirements

AGENCY: National Highway Traffic Safety Administration, U.S. Department of Transportation.

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*), this notice announces that the Information Collection Request (ICR) abstracted below has been forwarded to the Office of Management and Budget (OMB) for review and comment. The ICR describes the nature of the information collections and their expected burden. The **Federal Register** Notice with a 60-day comment period was published on February 4, 2011 (76 FR 6513).

DATES: Comments must be submitted to OMB on or before May 12, 2011.

ADDRESSES: Send comments to the Office of Information and Regulatory Affairs, OMB, 725 17th Street, NW., Washington, DC 20503, *Attention:* Desk Officer.

FOR FURTHER INFORMATION CONTACT: Alex Ansley, Recall Management Division (NVS–215), Room W46–412, NHTSA, 1200 New Jersey Ave., Washington, DC 20590. *Telephone:* (202) 493–0481.

SUPPLEMENTARY INFORMATION: Under the Paperwork Reduction Act of 1995, before an agency submits a proposed collection of information to OMB for approval, it must first publish a document in the **Federal Register** providing a 60-day comment period and otherwise consult with members of the public and affected agencies concerning each proposed collection of information. The OMB has promulgated regulations describing what must be included in such a document. Under OMB's regulation, *see* 5 CFR 1320.8(d), an agency must ask for public comment on the following:

(i) 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) 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) How to enhance the quality, utility, and clarity of the information to be collected; and

(iv) How 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.

In compliance with these requirements, NHTSA asks for public comments on the following collection of information:

Title: Names and Address of First Purchasers of Motor Vehicles.

OMB Number: 2127–0044.

Type of Request: Extension of a currently approved information collection.

Affected Public: Businesses or others for profit.

Abstract: Pursuant to 49 U.S.C. 30117(b), a manufacturer of a motor vehicle or tire (except a retread tire) must maintain a record of the name and address of the first purchasers of each vehicle or tire it produces and, to the extent prescribed by regulation of the Secretary, must maintain a record of the name and address of the first purchaser of replacement equipment (except a tire) that the manufacturer produces.

Vehicle manufacturers presently collect and maintain purchaser information for business reasons, such as for warranty claims processing and marketing, and experience with this statutory requirement has shown that manufacturers have retained this information in a manner sufficient to enable them to expeditiously notify vehicle purchasers in the case of a safety recall. Based on industry custom and this experience, NHTSA therefore determined that the regulation mentioned in 49 U.S.C. 30117(b) was unnecessary as to vehicle manufacturers. As an aside. the requirement for maintaining tire purchaser information are contained in 49 CFR part 574, Tire Identification and Recordkeeping, and the burden of that information collection is not part of this information collection.

Estimated annual burden: Zero. As a practical matter, vehicle manufacturers are presently collecting from their dealers and then maintaining first purchaser information for their own commercial reasons. Therefore, the

statutory requirement does not impose any additional burden.

Number of respondents: We estimate that there are roughly 1,000 manufacturers of motor vehicles that collect and keep first purchaser information.

Comments are invited on: whether the proposed collection of information is necessary for the proper performance of the functions of the Department, including whether the information will have practical utility; the accuracy of the Departments estimate of the burden of the proposed information collection; ways to enhance the quality, utility and clarity of the information to be collected; and ways to minimize the burden of the collection of information on respondents, including the use of automated collection techniques or other forms of information technology.

A comment to OMB is most effective if OMB receives it within 30 days of publication.

Issued on: April 6, 2011.

Frank Borris,

Director, Office of Defects Investigation.

[FR Doc. 2011–8746 Filed 4–11–11; 8:45 am]

BILLING CODE 4910–59–P

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

[U.S. DOT Docket Number NHTSA–2010–0181]

Reports, Forms, and Recordkeeping Requirements

AGENCY: National Highway Traffic Safety Administration (NHTSA), U.S. Department of Transportation.

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 et seq.), this notice announces that the Information Collection Request (ICR) abstracted below has been forwarded to the Office of Management and Budget (OMB) for review and comment. The ICR describes the nature of the information collections and their expected burden. The Federal Register Notice with a 60-day comment period was published on February 4, 2011 (76 FR 6515).

DATES: Comments must be submitted to OMB on or before May 12, 2011.

ADDRESSES: Send comments to the Office of Information and Regulatory Affairs, OMB, 725 17th Street, NW., Washington, DC 20503, *Attention:* Desk Officer.

FOR FURTHER INFORMATION CONTACT: Alex Ansley, Recall Management Division (NVS–215), Room W46–412, NHTSA, 1200 New Jersey Ave., Washington, DC 20590. *Telephone:* (202) 493–0481.

SUPPLEMENTARY INFORMATION: Under the Paperwork Reduction Act of 1995, before an agency submits a proposed collection of information to OMB for approval, it must first publish a document in the **Federal Register** providing a 60-day comment period and otherwise consult with members of the public and affected agencies concerning each proposed collection of information. The OMB has promulgated regulations describing what must be included in such a document. Under OMB's regulation, *see* 5 CFR 1320.8(d), an agency must ask for public comment on the following:

(i) 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) 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) How to enhance the quality, utility, and clarity of the information to be collected; and

(iv) How 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.

In compliance with these requirements, NHTSA asks for public comments on the following collection of information:

Title: Petitions for Hearings on Notification and Remedy of Defects.

Type of Request: Extension of a currently approved information collection.

OMB Control Number: 2127–0039.

Affected Public: Businesses or others for profit.

Abstract: Sections 30118(e) and 30120(e) of Title 49 of the United States Code specify that any interested person may petition NHTSA to hold a hearing to determine whether a manufacturer of motor vehicles or motor vehicle equipment has met its obligation to notify owners, purchasers, and dealers of vehicles or equipment of a safety-related defect or noncompliance with a Federal motor vehicle safety standard in the manufacturer's products and to remedy that defect or noncompliance.

To implement these statutory provisions, NHTSA promulgated 49 CFR part 557, Petitions for Hearings on Notification and Remedy of Defects. Part 577 establishes procedures providing the submission and disposition of petitions for hearings on the issues of whether the manufacturer has met its obligation to notify owners, purchasers, and dealers of safety-related defects or noncompliance, or to remedy such defect or noncompliance free of charge.

Estimated annual burden: During NHTSA's last renewal of this information collection, the agency estimated it would receive one petition a year, with an estimated one hour of preparation for each petition, for a total of one burden hour per year. That estimate remains unchanged with this notice.

Number of respondents: 1.

Comments are invited on: Whether the proposed collection of information is necessary for the proper performance of the functions of the Department, including whether the information will have practical utility; the accuracy of the Departments estimate of the burden of the proposed information collection; ways to enhance the quality, utility and clarity of the information to be collected; and ways to minimize the burden of the collection of information on respondents, including the use of automated collection techniques or other forms of information technology.

A comment to OMB is most effective if OMB receives it within 30 days of publication.

Issued on: April 6, 2011.

Frank Borris,

Director, Office of Defects Investigation.

[FR Doc. 2011–8739 Filed 4–11–11; 8:45 am]

BILLING CODE 4910–59–P

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

[Docket No. NHTSA–2011–0044]

Proposed Model Performance Measures for State Traffic Records Systems

AGENCY: National Highway Traffic Safety Administration (NHTSA), Department of Transportation (DOT).

ACTION: Notice

SUMMARY: This notice announces the publication of *Model Performance Measures for State Traffic Records Systems* DOT HS 811 44, which proposes model performance measures for State traffic record systems to monitor the development and implementation of traffic record data

systems, strategic plans, and data-improvement grants. These model performance measures are voluntary and are to help States monitor and improve the quality of the data in their traffic record systems

DATES: Written comments may be submitted to this agency and must be received no later than June 13, 2011.

ADDRESSES: You may submit comments identified by DOT Docket ID number NHTSA–2011–0044 by any of the following methods:

- *Electronic Submissions:* Go to *http://www.regulations.gov*. Follow the online instructions for submitting comments.
- *Fax:* 202–366–2746.
- *Mail:* Docket Management Facility, M–30 U.S. Department of Transportation, West Building, Ground Floor, Room W12–140, 1200 New Jersey Ave., SE., Washington, DC 20590.
- *Hand Delivery or Courier:* Docket Management Facility, M–30 U.S. Department of Transportation, West Building, Ground Floor, Room W12–140, 1200 New Jersey Ave., SE., Washington, DC 20590, between 9 a.m. and 5 p.m. Eastern time, Monday through Friday, except Federal holidays.

Regardless of how you submit your comments, you should identify the Docket number of this document.

Instructions: For detailed instructions on submitting comments and additional information, see *http://www.regulations.gov*. Note that all comments received will be posted without change to *http://www.regulations.gov,* including any personal information provided. Please read the "Privacy Act" heading below.

Privacy Act: Anyone is able to search the electronic form of all contents received into any of our dockets by the name of the individual submitting the comment (or signing the comment, if submitted on behalf of an association, business, labor union, *etc.*). You may review the complete User Notice and Privacy Notice for Regulations.gov at *http://www.regulations.gov/search/footer/privacyanduse.jsp*.

Docket: For access to the docket to read background documents or comments received, go to *http://www.regulations.gov* at any time or to West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue, SE., Washington, DC between 9 a.m. and 5 p.m., Eastern Time, Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: For programmatic issues: Luke Johnson, Office of Traffic Records and Analysis, NPO–423, National Highway Traffic Safety Administration, 400 Seventh Street, SW., Washington, DC 20590. Telephone (202) 366–1722. For legal issues: Roland Baumann, Office of Chief Counsel, NCC–113, National Highway Traffic Safety Administration, 400 Seventh Street, SW., Washington, DC 20590. Telephone (202) 366–5260.

SUPPLEMENTARY INFORMATION: The National Highway Traffic Safety Administration (NHTSA) has identified 61 model performance measures for the six core State traffic records data systems: Crash, vehicle, driver, roadway, citation/adjudication, and EMS/injury surveillance. These model performance measures address the six performance attributes: Timeliness, accuracy, completeness, uniformity, integration, and accessibility. States can use these measures to develop and track performance goals in their Traffic Records Strategic Plans, Traffic Records Assessments, and Highway Safety Plans; establish data-quality improvement measures for specific traffic records projects; and support data improvement goals in the Strategic Highway Safety Plan. The full text of the report *Model Performance Measures for State Traffic Records Systems* DOT HS 811 44, is available at *http://www.nhtsa.gov/*.

Key Features of the Model Performance Measures

Use is voluntary: States should use the measures for those data system performance attributes they wish to monitor or improve. If the suggested measures are not deemed appropriate, States are free to modify them or develop their own.

The measures are flexible: The measures are models. States can modify a measure to meet a specific need as long as its overall intent remains the same.

The measures do not set numerical performance goals: They describe what to measure and suggest how it should be measured but are not intended to establish a numerical performance goal. Each State should set its own performance goals.

The measures provide a template or structure States can populate with specific details: For example, the States must decide what data files to use and what data elements are critical. States should take advantage of these decision-making opportunities to focus on their most important performance features.

The measures are not exhaustive: The measures attempt to capture one or two key performance features of each data system performance attribute. States may wish to use additional or alternative measures to address specific performance issues.

The measures are not intended to be used to compare States: Their purpose is to help each State improve its own performance. Each State selects the measures it uses, establishes its own definitions of key terms, and may modify the measures to fit its circumstances. Since the measures will vary considerably from State to State, it is unlikely that they could be used for any meaningful comparisons between States. NHTSA has no intention of using the measure to make interstate comparisons.

Core Traffic Records Data Systems

The model performance measures cover the six core traffic data systems.

1. *Crash:* The State repository that stores law enforcement officer crash reports.

2. *Vehicle:* The State repository that stores information on registered vehicles within the State (also known as the vehicle registration system). This database can also include records for vehicles not registered in the State—*e.g.*, a vehicle that crashed in the State but registered in another State.

3. *Driver:* The State repository that stores information on licensed drivers within the State and their driver histories. This is also known as the driver license and driver history system. The driver file also could contain a substantial number of records for drivers not licensed within the State—*e.g.*, an unlicensed driver involved in a crash.

4. *Roadway:* The State repository that stores information about the roadways within the State. It should include information on all roadways within the State and is typically composed of discrete sub-files that include: Roadway centerline and geometric data, location reference data, geographical information system data, travel and exposure data, *etc.*

5. *Citation/Adjudication:* The component repositories, managed by multiple State or local agencies, which store traffic citation, arrest, and final disposition of charge data.

6. *EMS/Injury Surveillance:* The component repositories, managed by multiple State or local agencies, which store data on motor vehicle-related injuries and deaths. Typical components of an EMS/injury surveillance system are pre-hospital EMS data, hospital emergency department data systems, hospital discharge data systems, trauma registries, and long term care/rehabilitation patient data systems.

Performance Attributes

The model performance measures are based on six core characteristics:

1. *Timeliness:* Timeliness reflects the span of time between the occurrence of an event and entry of information into the appropriate database. Timeliness can also measure the time from when the custodial agency receives the data to the point when the data are entered into the database.

2. *Accuracy:* Accuracy reflects the degree to which the data are error-free, satisfy internal consistency checks, and do not exist in duplicate within a single database. Error means the recorded value for some data element of interest is incorrect. Error does not mean the information is missing from the record. Erroneous information in a database cannot always be detected. In some cases, it is possible to determine that the values entered for a variable or data element are not legitimate codes. In other cases, errors can be detected by matching with external sources of information. It may also be possible to determine that duplicate records have been entered for the same event (*e.g.,* title transfer).

3. *Completeness:* Completeness reflects both the number of records that are missing from the database (*e.g.,* events of interest that occurred but were not entered into the database) and the number of missing (blank) data elements in the records that are in a database. In the crash database, internal completeness reflects the amount of specified information captured in each individual crash record. External crash completeness reflects number or percentage of crashes on which crash reports are entered into the database. However, it is not possible to determine precisely external crash completeness as it is impossible to determine the number of unreported crashes. The measures in this report only address internal completeness by measuring what is *not* missing.

4. *Uniformity:* Uniformity reflects the consistency among the files or records in a database and may be measured against some independent standard, preferably a national standard. Within a State all jurisdictions should collect and report the same data using the same definitions and procedures. If the same data elements are used in different State files, they should be identical or at least compatible (*e.g.,* names, addresses, geographic locations). Data collection procedures and data elements should also agree with nationally accepted guidelines and standards (such as the Model Minimum Uniform Crash Criteria, [MMUCC]).

5. *Integration:* Integration reflects the ability of records in a database to be linked to a set of records in another of the six core databases—or components thereof—using common or unique identifiers. Integration differs in one important respect from the first four attributes of data quality. By definition, integration is a performance attribute that always involves two or more traffic records subsystems (*i.e.,* databases or files). For integration, the model performance measures offer a single performance measure with database-specific applications that typically are of interest to many States. The samples included are of course non-exhaustive. Many States will be interested in establishing links between databases and sub-databases other than those listed here, and therefore will be interested in measuring the quality of those other integrations. Note that some of the specific examples herein involve integration of files within databases rather than the integration of entire databases.

6. *Accessibility:* Accessibility reflects the ability of legitimate users to successfully obtain desired data is different. For the other performance attributes, the owners and operators of the various databases and sub-files, examine the data in the files and the internal workings of the files. In contrast, accessibility is measured in terms of customer satisfaction. Every database and file in a traffic records system has a set of legitimate users who are entitled to request and receive data. The accessibility of the database or sub-file is determined by obtaining the users' perceptions of how well the system responds to their requests. Some users' perceptions may be more relevant to measurement of accessibility than others'. Each database manager should decide which of the legitimate users of the database would be classified as principal users, whose satisfaction with the system's response to requests for data and other transactions will provide the basis for the measurement of accessibility. Thus, the generic approach to measurement of database accessibility in the model performance measured by (1) identifying the principal users of the database; (2) Querying the principal users to assess (a) their ability to obtain the data or other services requested and (b) their satisfaction with the timeliness of the response to their request; and (3) documenting the method of data collection and the principal users' responses. How the principal users are contacted and queried is up to the database managers. Similarly, the extent to which the principal users' responses are quantified is left to the managers to determine. However, this measure does require supporting documentation that provides evidentiary support to the claims of accessibility. This measure would be best used to gauge the impact of an improvement to a data system. Surveying the principal users before and after the rollout of a specific upgrade would provide the most meaningful measure of improved database accessibility.

Performance Measure Criteria

Each model performance measure was developed in accordance with the following criteria:

Specific and well-defined: The measures are appropriate and understandable.

Performance based: The measures are defined by data system performance, not supporting activities or milestones: "awarded a contract" or "formed a Traffic Records Coordinating Committee" are not acceptable performance measures.

Practical: The measures use data that are readily available at reasonable cost and can be duplicated.

Timely: The measures should provide an accurate and current—near real-time—snapshot of the database's timeliness, accuracy, completeness, uniformity, integration, and accessibility.

Accurate: The measures use data that are valid and consistent with values that are properly calculated.

Important: The measures capture the essence of this performance attribute for the data system; for example, an accuracy measure should not be restricted to a single unimportant data element.

Universal: The measures are usable by all States, though not necessarily immediately.

These criteria take a broad view of performance measures. For example, performance on some of the model measures may not change from year to year. Once a State has incorporated uniform data elements, established data linkages, or provided appropriate data file access, further improvement may not be expected. Some States cannot use all measures. For example, States that do not currently maintain a statewide data file cannot use measures based on this file (see in particular the injury data files). Some measures require States to define a set of critical data elements. Many measures require States to define their own performance goals or standards. The model measures should be a guide for States as they assess their data systems and work to improve their

performance. Each State should select performance measures most appropriate to the circumstance and should define and modify them to fit their specific needs.

Performance Measures

Listed below are the 61 measures classified by data system and performance attribute.

Crash—Timeliness

Timeliness always reflects the span of time between the occurrence of some event and the entry of information from the event into the appropriate database. For the crash database, the events of interest are crashes. States must measure the time between the occurrence of a crash and the entry of the report into the crash database. The model performance measures offer two approaches to measuring the timeliness of a crash database:

C–T–1: The *median* or *mean* number of days from (A) the crash date to (B) the date the crash report is entered into the database. The median value is the point at which 50 percent of the crash reports were entered into the database within a period defined by the State. Alternatively, the arithmetic mean could be calculated for this measure.

C–T–2: The *percentage* of crash reports entered into the database within XX days after the crash. The XX usually reflects a target or goal set by the State for entry of reports into the database. The higher percentage of reports entered within XX days, the timelier the database. Many States set the XX for crash data entry at 30, 60, or 90 days but any other target or goal is equally acceptable.

Crash—Accuracy

Accuracy reflects the number of errors in information in the records entered into a database. *Error* means the recorded value for some data element of interest is incorrect. Error does not mean the information is missing from the record. Erroneous information in a database cannot always be detected. Methods for detecting errors include: (1) Determining that the values entered for a variable or element are not legitimate codes, (2) matching with external sources of information, and (3) identifying duplicate records entered for the same event. The model performance measures offer two approaches to measuring crash database accuracy:

C–A–1: The *percentage* of crash records with no errors in *critical* data elements. The State selects one or more crash data elements it considers *critical* and assesses the accuracy of that element or elements in all of the crash records entered into the database within a period defined by the State. Many States consider the following crash elements critical:

Environmental elements: Record #, Location (on/at/distance from; lat/long, location code), Date, time (can calculate day of week from this too), Environment contributing factors (up to 3) Location description (roadway type, location type, roadway-contributing factors—up to 3) Crash type, severity, # involved units, Harmful events (first harmful, most harmful).

Vehicle/Unit elements: Crash record #, vehicle/unit #, VIN decoded sub-file of values for make, model, year, other decode values, Sequence of events (multiple codes), Harmful events (1st and most harmful for each vehicle), SafetyNet variables for reportable vehicles/crashes (carrier name/ID, additional vehicle codes, tow away due to damage).

Person elements: Crash record #, vehicle/unit #, person #, Person type (driver, occupant, non-occupant), Demographics (age, sex, other), Seating position, Protective device type (occupant protection, helmet, *etc.*), Protective device use, Airbag (presence, deployment: Front, side, both, none), Injury severity (if this can be sourced through EMS/Trauma/hospital records.

C–A–2: The *percentage* of in-State registered vehicles on the State crash file with Vehicle Identification Number (VIN) matched to the State vehicle registration file.

Crash—Completeness

Completeness reflects both the number of records that are missing from the database (*e.g.*, events of interest that occurred but were not entered into the database) and the number of missing (blank) data elements in the records that are in a database. Completeness has internal and external aspects. In the crash database, external crash completeness reflects the number or percentage of crashes for which crash reports are entered into the database. It is impossible, however, to establish precisely external crash completeness as the number of unreported crashes cannot be determined. Internal completeness can be determined since it reflects the amount of specified information captured in each individual crash record. The model performance measures offer three approaches to measuring the internal completeness of a crash database:

C–C–1: The *percentage* of crash records with no missing *critical* data elements. The State selects one or more crash data elements it considers *critical* and assesses internal completeness by dividing the number of records not missing a critical element by the total number of records entered into the database within a period defined by the State.

C–C–2: The *percentage* of crash records with no missing data elements. The State can assess overall completeness by dividing the number of records missing no elements by the total number of records entered into the database within a period defined by the State.

C–C–3: The *percentage* of unknowns or blanks in *critical* data elements for which unknown is not an acceptable value. This measure should be used when States wish to track improvements on specific critical data values and reduce the occurrence of illegitimate null values.

Crash—Uniformity

Uniformity reflects the consistency among the files or records in a database and may be measured against some independent standard, preferably a national standard. The model performance measures offer one approach to measure crash database uniformity:

C–U–1: The *number* of MMUCC-compliant data elements entered into the crash database or obtained via linkage to other database(s). The Model Minimum Uniform Crash Criteria (MMUCC) Guideline is the national standard for crash records.

Crash-Integration

Integration reflects the ability of records in the crash database to be linked to a set of records in another of the six core databases—or components thereof—using common or unique identifiers.

C–I–1: The *percentage* of appropriate records in the crash database that are linked to another system or file. Linking the crash database with the five other core traffic records databases can provide important information. For example, a State may wish to determine the percentage of in-State drivers on crash records that link to the driver file.

Crash-Accessibility

Accessibility reflects the ability of legitimate users to successfully obtain desired data. The below process outlines one way of measuring crash database accessibility:

C–X–1: To measure crash accessibility: (1) Identify the principal users of the crash database; (2) Query the principal users to assess (A) their ability to obtain the data or other services requested and (B) their satisfaction with the timeliness of the

response to their request; (3) Document the method of data collection and the principal users' responses.

Vehicle-Timeliness

Timeliness always reflects the span of time between the occurrence of some event and the entry of information from the event into the appropriate database. For the vehicle database, the State determines the events of principal interest that will be used to measure timeliness. For example, a State may determine that the transfer of the title of the vehicle constitutes a critical status change of that vehicle record. There are many ways to measure the timeliness of the entry of a report on the transfer of a vehicle title or any other critical status change. The model performance measures offer two general approaches to measuring vehicle database timeliness:

V–T–1: The *median* or *mean* number of days from (A) the date of a critical status change in the vehicle record to (B) the date the status change is entered into the database. The median value is the point at which 50 percent of the vehicle record updates were entered into the database within a period defined by the State. Alternatively, the arithmetic mean could be calculated for this measure.

V–T–2: The *percentage* of vehicle record updates entered into the database within XX days after the critical status change. The XX usually reflects a target or goal set by the State for entry of reports into the database. The higher percentage of reports entered within XX days, the timelier is the database. Many States set the XX for vehicle data entry at one, five, or 10 days, but any target or goal is equally acceptable.

Vehicle-Accuracy

Accuracy reflects the number of errors in information in the records entered into a database. *Error* means the recorded value for some data element of interest is incorrect. Error does not mean the information is missing from the record. Erroneous information in a database cannot always be detected. Methods for detecting errors include: (1) Determining that the values entered for a variable or element are not legitimate codes, (2) matching with external sources of information, and (3) identifying duplicate records have been entered for the same event. The model performance measures offer one approach to measuring vehicle database accuracy:

- V–A–1: The *percentage* of vehicle records with no errors in *critical* data elements. The State selects one or more vehicle data elements it considers *critical* and assesses the accuracy of that element or elements in all of the vehicles records entered into the database within a period defined by the State. Many Stats have identified the following critical data elements: Vehicle Identification Number (VIN), Current registration status, Commercial or non-CMV, State of registration, State of title, Stolen flag (as appropriate), Motor carrier name, Motor carrier ID, and Title brands.

Vehicle-Completeness

Completeness has internal and external aspects. For the vehicle database, external vehicle completeness reflects the portion of the critical changes to the vehicle status reported and entered into the database. It is not possible to determine precisely external vehicle database completeness because one can never know how many critical status changes occurred but went unreported. Internal completeness reflects the amount of specified information captured by individual vehicle records. It is possible to determine precisely internal vehicle completeness; for example, one can calculate the percentage of vehicle records in the database that is missing one or more critical data elements. The model performance measures offer four approaches to measuring the completeness of a vehicle database:

V–C–1: The *percentage* of vehicle records with no missing *critical* data elements. The State selects one or more vehicle data elements it considers *critical* and assesses internal completeness by dividing the number of records not missing a critical element by the total number of records entered into the database within a period defined by the State.

V–C–2: The *percentage* of records on the State vehicle file that contain no missing data elements. The State can assess overall completeness by dividing the number of records missing no elements by the total number of records entered into the database within a period defined by the State.

V–C–3: The *percentage* of unknowns or blanks in critical data elements for which unknown is not an acceptable value. This measure should be used when States wish to track improvements on specific critical data values to reduce the occurrence of illegitimate null values.

V–C–4: The *percentage* of vehicle records from large trucks and buses that have all of the following data elements: Motor Carrier ID, Gross Vehicle Weight Rating/Gross Combination Weight Rating, Vehicle Configuration, Cargo Body Type, and Hazardous Materials (Cargo Only). This is a measure of database completeness in specific critical fields.

Vehicle-Uniformity

Uniformity reflects the consistency among the files or records in a database and may be measured against some independent standard, preferably a national standard. The model performance measures offer one general approach to measuring vehicle database uniformity.

V–U–1: The *number* of standards-compliant data elements entered into a database or obtained via linkage to other database(s). These standards include the Model Minimum Uniform Crash Criteria (MMUCC).

Vehicle-Integration

Integration reflects the ability of records in the vehicle database to be linked to a set of records in another of the six core databases—or components thereof—using common or unique identifiers.

V–I–1: The *percentage* of appropriate records in the vehicle file that are linked to another system or file. Linking the vehicle database with the five other core traffic record databases can provide important information. For example, a State may wish to determine the percentage of vehicle registration records that link to a driver record.

Vehicle-Accessibility

Accessibility reflects the ability of legitimate users to successfully obtain desired data. The below process outlines one way of measuring the vehicle database's accessibility.

V–X–1: To measure accessibility: (1) Identify the principal users of the vehicle database; (2) Query the principal users to assess (A) their ability to obtain the data or other services requested and (B) their satisfaction with the timeliness of the response to their request; (3) Document the method of data collection and the principal users' responses.

Driver-Timeliness

Timeliness always reflects the span of time between the occurrence of some event and the entry of information from the event into the appropriate database. For the driver database, the State determines the events of principal interest that shall be used to measure timeliness. For example, the State may determine that an adverse action against a driver's license constitutes a critical status change of that driver record. There are many ways to measure the timeliness of the entry of a report on an adverse action against a driver's license or any other critical status change. The

model performance measures offer two approaches to measuring the timeliness of the driver database. The first is a true measure of timeliness from time of conviction to entry into the driver database, while the second is a measure internal to the agency with custody of the driver database.

D–T–1: The *median* or *mean* number of days from (A) the date of a driver's adverse action to (B) the date the adverse action is entered into the database. This measure represents the time from final adjudication of a citation to entry into the driver database within a period defined by the State. This process can occur in a number of ways, from the entry of paper reports and data conversion to a seamless electronic process. An entry of a citation disposition into the driver database cannot occur until the adjudicating agency (usually a court) notifies the repository that the disposition has occurred. Since the custodial agency of the driver database in most States has no control over the transmission of the disposition notification many States may wish to track the portion of driver database timelines involving citation dispositions that it can control. Measure D–T–2 is offered for that purpose.

D–T–2: The *median* or *mean* number of days from (A) the date of receipt of citation disposition notification by the driver repository to (B) the date the disposition report is entered into the driver's record in the database within a period determined by the State. This measure represents the *internal* (to the driver database) time lapse from the receipt of disposition information to entry into the driver database within a period defined by the State.

Driver-Accuracy

Accuracy reflects the number of errors in information in the records entered into a database. *Error* means the recorded value for some data element of interest is incorrect. Error does not mean the information is missing from the record. Erroneous information in a database cannot always be detected. Methods for detecting errors include: (1) Determining that the values entered for a variable or element are not legitimate codes, (2) matching with external sources of information, and (3) identifying duplicate records have been entered for the same event. The model performance measures offer two approaches to measuring driver database accuracy:

D–A–1: The *percentage* of driver records with no errors in *critical* data elements. The State selects one or more driver data elements it considers critical and assesses the accuracy of that element or elements in all of the driver records entered into the database within a period defined by the State. Several States have identified the following critical data elements: Name, Date of birth, Sex, Driver license number, State of driver license issuance, Date license issued or renewed, Social Security Number, License type, Restrictions, Crash involvement, Conviction offenses, Violation date per event, Conviction date per event, Driver control actions (Suspensions, Revocations, Withdrawals), and Date of each action.

D–A–2: The *percentage* of records on the State driver file with Social Security Numbers (SSN) successfully verified using Social Security Online Verification (SSOLV) or other means.

Driver-Completeness

Completeness has internal and external aspects. For the driver database, external completeness reflects the portion of critical driver status changes that are reported and entered into the database. It is not possible to determine precisely the external completeness of driver records because one can never know how many critical driver status change occurred but went unreported. Internal completeness reflects the amount of specified information captured in individual driver records. It is possible to determine precisely internal driver record completeness. One can, for example, calculate the percentage of driver records in the database that is missing one or more critical data elements. The model performance measures offer three approaches to measuring the internal completeness of the driver database:

D–C–1: The *percentage* of driver records with no missing *critical* data elements. The State selects one or more driver elements it considers *critical* and assesses internal completeness by dividing the number of records not missing a critical element by the total number of records entered into the database within a period defined by the State.

D–C–2: The *percentage* of driver records with no missing data elements. The State can assess overall completeness by dividing the number of records missing no elements by the total number of records entered into the database within a period defined by the State.

D–C–3: The *percentage* of unknowns or blanks in *critical* data elements for which unknown is not an acceptable value. This measure should be used when States wish to track improvements on specific critical data values and reduce the occurrence of illegitimate null values.

Driver-Uniformity

Uniformity reflects the consistency among the files or records in a database and may be measured against an independent standard, preferably a national standard. The model performance measures offer one general approach to measuring driver database uniformity:

D–U–1: The *number* of standards-compliant data elements entered into the driver database or obtained via linkage to other database(s). The relevant standards include MMUCC.

Driver-Integration

Integration reflects the ability of records in the driver database to be linked to a set of records in another of the six core databases—or components thereof—using common or unique identifiers.

D–I–1: The *percentage* of appropriate records in the driver file that are linked to another system or file. Linking the driver database with the five other core traffic record databases can provide important information. For example, a State may wish to determine the percentage of drivers in crashes linked to the adjudication file.

Driver-Accessibility

Accessibility reflects the ability of legitimate users to successfully obtain desired data. The below process outlines one way of measuring the driver database's accessibility.

D–X–1: To measure accessibility: (1) Identify the principal users of the driver database; (2) Query the principal users to assess (A) their ability to obtain the data or other services requested and (B) their satisfaction with the timeliness of the response to their request; (3) Document the method of data collection and the principal users' responses

Roadway-Timeliness

Timeliness always reflects the span of time between the occurrence of some event and the entry of information from the event into the appropriate database. For the roadway database, the State determines the events of principal interest that will be used to measure timeliness. A State may determine that the completion of periodic collection of a critical roadway data element or elements constitutes a critical status change of that roadway record. For example, one critical roadway data element that many States periodically collect is annual average daily traffic (AADT). Roadway database timeliness can be validly gauged by measuring the

time between the completion of data collection and the entry into the database of AADT for roadway segments of interest. There are many ways to do this. The model performance measures offer two general approaches to measuring vehicle database timeliness:

R–T–1: The *median* or *mean* number of days from (A) the date a periodic collection of a critical roadway data element is complete (*e.g.,* Annual Average Daily Traffic) to (B) the date the updated critical roadway data element is entered into the database. The median value is the duration within which 50 percent of the changes to critical roadway elements were updated in the database. Alternatively, the arithmetic mean is the average number of days between the completion of the collection of critical roadway elements and when the data are entered into the database.

R–T–2: The *median* or *mean* number of days from (A) roadway project completion to (B) the date the updated critical data elements are entered into the roadway inventory file. The median value is the point at which 50 percent of the updated critical data elements from a completed roadway project were entered into the roadway inventory file. Alternatively, the arithmetic mean could be calculated for this measure. Each State will determine its short list of critical data elements, which should be a subset of MIRE. For example, it could be some or all of the elements required for Highway Performance Monitoring System (HPMS) sites. The database should be updated at regular intervals or when a change is made to the inventory. For example, when a roadway characteristic or attribute (*e.g.,* traffic counts, speed limits, signs, markings, lighting, *etc.*) that is contained in the inventory is modified, the inventory should be updated within a reasonable period.

Roadway-Accuracy

Accuracy reflects the number of errors in information in the records entered into a database. *Error* means the recorded value for some data element of interest is incorrect. Error does not mean the information is missing from the record. Erroneous information in a database cannot always be detected. Methods for detecting errors include: (1) Determining that the values entered for a variable or element are not legitimate codes, (2) matching with external sources of information, and (3) identifying duplicate records have been entered for the same event. The model performance measures offer one approach to measuring roadway database accuracy:

R–A–1: The *percentage* of all road segment records with no errors in *critical* data elements. The State selects one or more roadway data elements it considers *critical* and assesses the accuracy of that element or elements in all of the roadway records within a period defined by the State. Many States consider the HPMS standards to be critical.

Roadway-Completeness

Completeness has internal and external aspects. For the roadway database, external roadway completeness reflects the portion of road segments in the State for which data are collected and entered into the database. It is very difficult to determine precisely external roadway completeness because many States do not know the characteristics or even the existence of roadway segments that are non-State owned, maintained, or reported in the HPMS. Internal completeness reflects the amount of specified information that is captured in individual road segment records. It is possible to determine precisely internal roadway completeness. One can, for example, calculate the percentage of roadway segment records in the database that is missing one or more critical elements (*e.g.,* number of traffic lanes. The model performance measures offer four general approaches to measuring the roadway database's internal completeness:

R–C–1: The *percentage* of road segment records with no missing *critical* data elements. The State selects one or more roadway elements it considers *critical* and assesses internal completeness by dividing the number of records not missing a critical element by the total number of roadway records in the database.

R–C–2: The *percentage* of public road miles or jurisdictions identified on the State's basemap or roadway inventory file. A jurisdiction may be defined by the limits of a State, county, parish, township, Metropolitan Planning Organization (MPO), or municipality.

R–C–3: The *percentage* of unknowns or blanks in *critical* data elements for which unknown is not an acceptable value. This measure should be used when States wish to track improvements on specific critical data elements and reduce the occurrence of illegitimate null values.

R–C–4: The *percentage* of total roadway segments that include location coordinates, using measurement frames such as a GIS basemap. This is a measure of the database's overall completeness.

Roadway-Uniformity

Uniformity reflects the consistency among the files or records in a database and may be measured against some independent standard, preferably a national standard. The model performance measures offer one general approach to measuring roadway database uniformity:

R–U–1: The *number* of Model Inventory of Roadway Elements (MIRE)-compliant data elements entered into a database or obtained via linkage to other database(s).

Roadway-Integration

Integration reflects the ability of records in the roadway database to be linked to a set of records in another of the six core databases—or components thereof—using common or unique identifiers.

R–I–1: The *percentage* of appropriate records in a specific file in the roadway database that are linked to another system or file. For example, a State may wish to determine the percentage of records in the State's bridge inventory that link to the basemap file.

Roadway-Accessibility

Accessibility reflects the ability of legitimate users to successfully obtain desired data. The below process outlines one way of measuring roadway database accessibility:

R–X–1: To measure accessibility of a specific file in the roadway database: (1) Identify the principal users of the file; (2) Query the principal users to assess (A) their ability to obtain the data or other services requested and (B) their satisfaction with the timeliness of the response to their request; (3) Document the method of data collection and the principal users' responses.

Citation/Adjudication-Timeliness

Timeliness always reflects the span of time between the occurrence of some event and the entry of information from the event into the appropriate database. For the citation and adjudication databases, the State determines the events of principal interest that will be used to measure timeliness. Many States will include the critical events of citation issuance and citation disposition among those events of principal interest used to track timeliness. There are many ways to measure the timeliness of either citation issuance or citation disposition. The model performance measures offer one general approach to measuring citation and adjudication database timeliness:

C/A–T–1: The *median* or *mean* number of days from (A) the date a citation is issued to (B) the date the

citation is entered into the statewide citation database, or a first available repository. The median value is the point at which 50 percent of the citation records were entered into the citation database within a period defined by the State. Alternatively, the arithmetic mean could be calculated for this measure.

C/A–T–2: The *median* or *mean* number of days from (A) the date of charge disposition to (B) the date the charge disposition is entered into the statewide adjudication database, or a first available repository. The median value is the point at which 50 percent of the charge dispositions were entered into the statewide database. Alternatively, the arithmetic mean could be calculated for this measure.

Note: Many States do not have statewide databases for citation or adjudication records. Therefore, in some citation and adjudication data systems, timeliness and other attributes of data quality should be measured at individual first available repositories.

Citation/Adjudication-Accuracy

Accuracy reflects the number of errors in information in the records entered into a database. *Error* means the recorded value for some data element of interest is incorrect. Error does not mean the information is missing from the record. Erroneous information in a database cannot always be detected. Methods for detecting errors include: (1) Determining that the values entered for a variable or element are not legitimate codes, (2) matching with external sources of information, and (3) identifying duplicate records that have been entered for the same event. The State selects one or more citation data elements and one or more charge disposition data elements it considers critical and assesses the accuracy of those elements in all of the citation and adjudication records entered into the database within a period of interest. The model performance measures offer two approaches to measuring citation and adjudication database accuracy:

C/A–A–1: The *percentage* of citation records with no errors in *critical* data elements. The State selects one or more citation data elements it considers *critical* and assesses the accuracy of that element or elements in all of the citation records entered into the database within a period defined by the State. Below is a list of suggested critical data elements.

C/A–A–2: The *percentage* of charge disposition records with no errors in *critical* data elements. The State selects one or more charge disposition data elements it considers critical and assesses the accuracy of that element or elements for the charge-disposition records entered into the database within a period defined by the State. Many States have identified the following as critical data elements: Critical elements from the Issuing Agency include the offense/charge code, date, time, officer, Agency, citation number, crash report number (as applicable), and BAC (as applicable). Critical elements from the Citation Data include the Offender's name, driver license number, age, and sex. Critical data elements from the Charge Disposition/Adjudication include the offender's name, driver license number, age, sex, and citation number. From the charge Disposition/Adjudication: court, date of receipt, date of disposition, disposition, and date of transmittal to DMV (as applicable).

*Citation/Adjudication-Completeness**

Completeness has internal and external aspects. For the citation/adjudication databases, external completeness can only be assessed by identifying citation numbers for which there are no records. Missing citations should be monitored at the place of first repository. Internal completeness reflects the amount of specified information that is captured in individual citation and charge disposition records. It is possible to determine precisely internal citation and adjudication completeness. One can, for example, calculate the percentage of citation records in the database that are missing one or more critical data elements. The model performance measures offer three approaches to measuring internal completeness:

C/A–C–1: The *percentage* of citation records with no missing *critical* data elements. The State selects one or more citation data elements it considers *critical* and assesses internal completeness by dividing the number of records not missing a critical element by the total number of records entered into the database within a period defined by the State.

C/A–C–2: The *percentage* of citation records with no missing data elements. The State can assess overall completeness by dividing the number of records missing no elements by the total number of records entered into the database.

C/A–C–3: The *percentage* of unknowns or blanks in *critical* citation data elements for which unknown is not an acceptable value. This measure should be used when States wish to track improvements on specific critical data elements and reduce the occurrence of illegitimate null values.

Note: These measures of completeness are also applicable to the adjudication file.

*Citation/Adjudication-Uniformity **

Uniformity reflects the consistency among the files or records in a database and may be measured against some independent standard, preferably a national standard. The model performance measures offer two general approaches to measuring database uniformity:

C/A–U–1: The *number* of Model Impaired Driving Record Information System (MIDRIS)-compliant data elements entered into the citation database or obtained via linkage to other database(s).

C/A–U–2: The *percentage* of citation records entered into the database with common uniform statewide violation codes. The State identifies the number of citation records with common uniform violation codes entered into the database within a period defined by the State and assesses uniformity by dividing this number by the total number of citation records entered into the database during the same period.

*** Note:** These measures of uniformity are also applicable to the adjudication file.

*Citation/Adjudication-Integration **

Integration reflects the ability of records in the citation database to be linked to a set of records in another of the six core databases—or components thereof—using common or unique identifiers.

C/A–I–1: The *percentage* of appropriate records in the citation files that are linked to another system or file. Linking the citation database with the five other core traffic record databases can provide important information. For example, a State may wish to determine the percentage of DWI citations that have been adjudicated.

*** Note:** This measure of integration is also applicable to the adjudication file.

*Citation/Adjudication-Accessibility **

Accessibility reflects the ability of legitimate users to successfully obtain desired data. The below process outlines one way of measuring the citation database's accessibility.

C/A–X–1: To measure accessibility of the citation database: (1) Identify the principal users of the citation database; (2) Query the principal users to assess (A) their ability to obtain the data or other services requested and (B) their satisfaction with the timeliness of the response to their request; (3) Document the method of data collection and the principal users' responses. The EMS/Injury Surveillance database is actually a set of related databases. The principal files of interest are: Pre-hospital

Emergency Medical Services (EMS) data, Hospital Emergency Department Data Systems, Hospital Discharge Data Systems, and State Trauma Registry File, State Vital Records. States typically wish to measure data quality separately for each of these files. These measures may be applied to each of the EMS/Injury Surveillance databases individually.

Injury Surveillance-Timeliness *

Timeliness always reflects the span of time between the occurrence of some event and the entry of information from the event into the appropriate database. For the EMS/Injury Surveillance databases, the State determines the events of principal interest that will be used to measure timeliness. A State may, for example, determine that the occurrence of an EMS run constitutes a critical event to measure the timeliness of the EMS database. As another example, a State can select the occurrence of a hospital discharge as the critical event to measure the timeliness of the hospital discharge data system. There are many ways to measure the timeliness of the EMS/Injury Surveillance databases. The model performance measures offer two general approaches to measuring timeliness:

I–T–1: The *median* or *mean* number of days from (A) the date of an EMS run to (B) the date when the EMS patient care report is entered into the database. The median value is the point at which 50 percent of the EMS run reports were entered into the database within a period defined by the State. Alternatively, the arithmetic mean could be calculated for this measure.

I–T–2: The *percentage* of EMS patient care reports entered into the State EMS discharge file within XX* days after the EMS run. The XX usually reflects a target or goal set by the State for entry of reports into the database. The higher percentage of reports entered within XX days, the timelier the database. Many States set the XX for EMS data entry at 5, 30, or 90 days, but any target or goal is equally acceptable.

*** Note:** This measure of timeliness is also applicable to the following files: State Emergency Dept. File, State Hospital Discharge File, State Trauma Registry File, & State Vital Records.

Injury Surveillance-Accuracy *

Accuracy reflects the number of errors in information in the records entered into a database. *Error* means the recorded value for some data element of interest is incorrect. Error does not mean the information is missing from the record. Erroneous information in a database cannot always be detected. Methods for detecting errors include: 1) determining that the values entered for a variable or element are not legitimate codes, 2) matching with external sources of information, and 3) identifying duplicate records have been entered for the same event. The model performance measures offer one general approach to measuring the accuracy of the injury surveillance databases that is applicable to each of the five principal files:

I–A–1: The *percentage* of EMS patient care reports with no errors in *critical* data elements. The State selects one or more EMS data elements it considers *critical*—response times, for example—and assesses the accuracy of that element or elements for all the records entered into the database within a period defined by the State. Critical EMS/Injury Surveillance Data elements used by many States include: Hospital Emergency Department/Inpatient Data elements such as E-code, date of birth, name, sex, admission date/time, zip code of hospital, emergency dept. disposition, inpatient disposition, diagnosis codes, and discharge date/time. Elements from the Trauma Registry Data (National Trauma Data Bank [NTDB] standard) such as E-code, date of birth, name, sex, zip code of injury, admission date, admission time, inpatient disposition, diagnosis codes, zip code of hospital, discharge date/time, and EMS patient report number. Data from the EMS Data (National Emergency Medical Services Information System [NEMSIS] standard) includes date of birth, name, sex, incident date/time, scene arrival date/time, provider's primary impression, injury type, scene departure date/time, destination arrival date/time, county/zip code of hospital, and county/zip code of injury Critical data elements from the Death Certificate (Mortality) Data (National Center for Health Statistics [NCHS] standard) include date of birth, date of death, name, sex, manner of death, underlying cause of death, contributory cause of death, county/zip code of death, and location of death.

*** Note:** This measure of accuracy is also applicable to the following files: State Emergency Dept. File, State Hospital Discharge File, State Trauma Registry File, & State Vital Records.

Injury Surveillance-Completeness *

Completeness has internal and external aspects. For EMS/Injury Surveillance databases, external completeness reflects the portion of critical events (*e.g.*, EMS runs, hospital admissions, *etc.*) that are reported and entered into the databases. It is not possible to determine precisely external EMS/injury surveillance completeness because once can never know the how many critical events occurred but went unreported. Internal completeness reflects the amount of specified information that is captured in individual EMS run records, State Emergency Department records, State Hospital Discharge File records, and State Trauma Registry File records. It is possible to determine precisely internal EMS/Injury Surveillance completeness. One can, for example, calculate the percentage of EMS run records in the database that are missing one or more critical data elements. The model performance measures offer three approaches to measuring completeness for each of the files:

I–C–1: The *percentage* of EMS patient care reports with no missing *critical* data elements. The State selects one or more EMS data elements it considers *critical* and assesses internal completeness by dividing the number of EMS run records not missing a critical element by the total number of EMS run records entered into the database within a period defined by the State.

I–C–2: The *percentage* of EMS patient care reports with no missing data elements. The State can assess overall completeness by dividing the number of records missing no elements by the total number of records entered into the database.

I–C–3: The *percentage* of unknowns or blanks in *critical* data elements for which unknown is not an acceptable value. This measure should be used when States wish to track improvement on specific *critical* data values and reduce the occurrence of illegitimate null values. E-code, for example, is an appropriate EMS/Injury Surveillance data element that may be tracked with this measure.

*** Note:** These measures of completeness are also applicable to the following files: State Emergency Dept. File, State Hospital Discharge File, State Trauma Registry File, & State Vital Records.

Injury Surveillance-Uniformity

Uniformity reflects the consistency among the files or records in a database and may be measured against an independent standard, preferably a national standard. The model performance measures offer one approach to measuring uniformity that can be applied to each discrete file using the appropriate standard as enumerated below.

I–U–1: The *percentage* of National Emergency Medical Services Information System (NEMSIS)-

compliant data elements on EMS patient care reports entered into the database or obtained via linkage to other database(s).

I–U–2: The *number* of National Emergency Medical Services Information System (NEMSIS)-compliant data elements on EMS patient care reports entered into the database or obtained via linkage to other database(s).

The national standards for many of the other major EMS/Injury Surveillance database files are: The Universal Billing 04 (UB04) for State Emergency Department Discharge File and State Hospital Discharge File; the National Trauma Data Standards (NTDS) for State Trauma Registry File; and the National Association for Public Health Statistics and Information Systems (NAPHSIS) for State Vital Records.

*Injury Surveillance-Integration**

Integration reflects the ability of records in the EMS database to be linked to a set of records in another of the six core databases—or components thereof—using common or unique identifiers.

I–I–1: The *percentage* of appropriate records in the EMS file that are linked to another system or file. Linking the EMS file to other files in the EMS/Injury Surveillance database or any of the five other core databases can provide important information. For example, a State may wish to determine the percentage of EMS records that link to the trauma file that are linked to the EMS file.

*** Note:** This measure of integration is also applicable to the following files: State Emergency Dept. File, State Hospital Discharge File, State Trauma Registry File, & State Vital Records.

*Injury Surveillance-Accessibility**

Accessibility reflects the ability of legitimate users to successfully obtain desired data.

I–X–1: To measure accessibility of the EMS file: (1) Identify the principal users of the EMS file, (2) Query the principal users to assess (A) their ability to obtain the data or other services requested and (B) their satisfaction with the timeliness of the response to their request, and (3) Document the method of data collection and the principal users' responses

Note: This measure of accessibility is also applicable to the State Emergency Dept. File, the State Hospital Discharge File, the State Trauma Registry File, & State Vital Records.

Recommendations

While use of the performance measures is voluntary, States will be better able to track the success of upgrades and identify areas for improvement in their traffic records systems if they elect to utilize the measures appropriate to their circumstances. Adopting the measures will also put States ahead of the curve should performance metrics be mandated in any future legislation. The measures are not exhaustive. They describe what to measure and suggest how to measure it, but do not recommend numerical performance goals. The measures attempt to capture one or two key performance features of each data system performance attribute. States may wish to use additional or alternative measures to address specific performance issues.

States that elect to use these measures to demonstrate progress in a particular system should start using them immediately. States should begin by judiciously selecting the appropriate measures and modifying them as needed. States should use only the measures for the data system performance attributes they wish to monitor or improve. No State is expected to use a majority of the measures, and States may wish to develop their own additional measures to track State-specific issues or programs.

Once States have developed their specific performance indices, they should be measured consistently to track changes over time. Since the measures will vary considerably from State to State, it is unlikely that they could be used for any meaningful comparisons between States. In any event, NHTSA does not anticipate using the measures for interstate comparison purposes.

Notes on Terminology Used

The following terms are used throughout the document:

Data system: One of the six component State traffic records databases, such as crash, injury surveillance, *etc.*

Data file (such as "crash file" or "State Hospital Discharge file"): A data system may contain a single data file—such as a State's driver file—or more than one, *e.g.*, the injury system has several data files.

Record: All the data entered in a file for a specific event (a crash, a patient hospital discharge, *etc.*).

Data element: Individual fields coded within each record.

Data element code value: The allowable code values or attributes for a data element.

Data linkages: The links established by matching at least one data element in a record in one file with the corresponding element or elements in one or more records in another file or files.

State: The 50 States, the District of Columbia, Puerto Rico, the territories, and the Bureau of Indian Affairs. These are the jurisdictions eligible to receive State data improvement grants.

Defining and Calculating Performance Measures

Specified number of days: Some measures are defined in terms of a specified number of days (such as 30, 60, or 90). Each State can establish its own period for these measures.

Defining periods of interest: States will need to define periods of interest for several of the measures. These periods should be of an appropriate length for the data being gathered. A State may wish to calculate the timeliness of its crash database on an annual basis. The same State may also wish to calculate the timeliness of their other databases (*e.g.*, driver, vehicle) on a monthly or weekly basis because of their ability to generate revenue. These decisions are left to the State to make per the situation and their data needs.

Critical data elements: Some measures are defined using a set of "critical data elements." Unless a measure is specifically defined in a national standard, each State can define its own set of critical data elements. Data elements that many States use are presented as examples for each data system.

When measures should be calculated: Many measures can be calculated and monitored using data from some period of time such as a month, a quarter, or a year. All measures should be calculated and monitored at least annually. A few measures are defined explicitly for annual files. States should calculate measures at the same time or times each year for consistency in tracking progress.

Missing data: Some completeness measures are defined in terms of "missing" data, such as C–C–1—*the percentage of crash records with no missing critical data elements.* "Missing" means that the data element is not coded—nothing was entered. Many data elements have null codes that indicate that information is not available for some reason. Typical null codes are "not available," "not documented," "not known," or "not recorded." A data element with a null value is not counted as missing data because it does contain a valid code, even though the data element may contain no useful information. The States should determine under what

circumstances a null value is valid for a particular data element. For accuracy measures, a data element with missing data or a null value is not considered an error. It is up to the State—specifically, the custodians of a database—to decided if null codes should be accepted as legitimate entries or treated as missing values.

How to define "entered into a database": Some records do not have all their data entered into a database at the same time. In general, an event is considered to be "entered into a database" when a specified set of critical data elements has been entered. In fact, many databases will not accept a record until all data from a critical set are available. States may define "entered into a database" using their own data entry and data access processes.

How to calculate a timeliness measure: For all systems, there will be a period of time between the event generating the record and when the information is entered into the file (or is available for use). The model performance measures include several methods to define a single number that captures the entire distribution of times. Each method is appropriate in different situations.

The median time for events to be entered into the file can be calculated as the point at which 50 percent of events within a period of interest are entered into the file.

The mean time for events to be entered into the file (counting all events). The mean can be calculated as the average (the sum of the times for all events divided by the number of events).

The percentage of events on file within some fixed time (such as 24 hours or 30 days).

Tradeoffs between timeliness and completeness: Generally speaking, the relationship between timeliness and completeness is inversely proportional: The more timely the data, the less complete it is and vice versa. This is because many data files have records or data elements added well past the date of the event producing the record, so the files may be incomplete when the performance measure is calculated. There are three methods of choosing data to calculate the performance measures that offer different combinations of timeliness and completeness. Depending on the need for greater timeliness or completeness, users should choose accordingly.

For example, if timeliness is important when calculating the first Crash Completeness measure C–C–1—*the percentage of crash records with no missing critical data elements*—could be calculated in the following manner: (1) Select the period: Calendar year 2007 crash file; (2) Select the date for calculation: April 1 of the following year. So calculate using the 2007 crash file as it exists on April 1, 2008; (3) Calculate: Take all crashes from 2007 on file as of April 1, 2008; calculate the percentage with missing data for one or more critical data elements.

This method offers several advantages. It is easy to understand and use, and can produce performance measures in a timely manner. Its disadvantage is that performance measures calculated fairly soon after the end of the data file's period may not be based on complete data. For example, NHTSA's Fatality Analysis Reporting System (FARS) is not closed and complete for a full year; the 2007 file was not closed until Dec. 31, 2008. Timeliness measures will exclude any records that have not yet been entered by the calculation date, so timeliness measures may make the file appear to be timelier than it will be when the file is closed and completed. Completeness measures will exclude any information entered after the calculation date for records on file. Completeness measures calculated on open files will make those files appear less complete than measures calculated on files that are closed and completed.

When completeness is most important the performance measure could be calculated after a file (say an annual file) is closed and no further information can be added to it. This method reverses the simple method's advantages and disadvantages, providing performance measures that are accurate but not timely. The final FARS file, for example, is a very complete database. Its completeness, however, comes at the expense of timeliness. In comparison, the annual FARS file is less complete, but is more timely.

Another-preferable-method calculates a performance measure using all records *entered* into a file during a specified period. The timeliness measures produced by this method will be accurate but the completeness and accuracy measures may not, because the records entered during a given time period may not be complete when the measure is calculated. For example, the Crash Timeliness measure C–T–1—*the median or mean number of days from (A) the crash date to (B) the crash report is entered into the database*—could be calculated as follows: (1) Select the period: calendar year 2007; (2) Take all records entered into the State crash file during the period: if the period is calendar year 2007 the crashes could have occurred in 2007 or 2006 (or perhaps even earlier depending on the State's reporting criteria); (3) Calculate the measure: The median or mean time between the crash date and the date when entered into the crash file.

States should choose methods that are accurate, valid, reliable, and useful. They may choose different methods for different measures. Or they may use two different methods for the same measure, for example calculating a timeliness measure first with an incomplete file (for example the 2007 crash file on April 1, 2008) and again with the complete and closed file (the 2007 crash file on January 1, 2009, after it is closed). Once methods have been selected for a measure, States should be consistent and use the same methods to calculate that measure using the same files in the same way each year. To accurately gauge progress, States must compare measures calculated by the same method using the same files for successive years.

Privacy issues in file access and linkage: Data file access and linkage both raise broad issues of individual privacy and the use of personal identifiers. The Driver Privacy Protection Act (DPPA), the Health Insurance Portability and Accountability Act (HIPAA), and other regulations restrict the release of personal information on traffic safety data files. Information in many files may be sought for use in legal actions. All data file linkage and all data file access actions must consider these privacy issues.

Authority: 44 U.S.C. Section 3506(c)(2)(A).

Jeffrey Michael,

Acting Associate Administrator, National Center for Statistics and Analysis.

[FR Doc. 2011–8738 Filed 4–11–11; 8:45 am]

BILLING CODE 4910–59–P

DEPARTMENT OF THE TREASURY

Submission for OMB Review; Comment Request

April 7, 2011.

The Department of the Treasury will submit the following public information collection requirements to OMB for review and clearance under the Paperwork Reduction Act of 1995, Public Law 104–13 on or after the date of publication of this notice. A copy of the submissions may be obtained by calling the Treasury Bureau Clearance Officer listed. Comments regarding these information collections should be addressed to the OMB reviewer listed and to the Treasury PRA Clearance Officer, Department of the Treasury,

1750 Pennsylvania Avenue, NW., Suite 11010, Washington, DC 20220.

DATES: Written comments should be received on or before May 12, 2011 to be assured of consideration.

Internal Revenue Service (IRS)

OMB Number: 1545–0002.

Type of Review: Extension without change of a currently approved collection.

Title: Employee Representative's Quarterly Railroad Tax Return.

Form: CT–2.

Abstract: Employee representatives file Form CT–2 quarterly to report compensation on which railroad retirement taxes are due. IRS uses this information to ensure that employee representatives have paid the correct tax. Form CT–2 also transmits the tax payment.

Respondents: Individual or Household.

Estimated Total Burden Hours: 127.

OMB Number: 1545–1634.

Type of Review: Extension without change of a currently approved collection.

Title: REG–106902–98 (Final) Consolidated Returns—Consolidated Overall Foreign Losses and Separate Limitation Losses.

Abstract: The regulations provide guidance relating to the amount of overall foreign losses and separate limitation losses in the computation of the foreign tax credit. The regulation affect consolidated groups of corporations that compute the foreign tax credit limitation or that dispose of property used in a foreign trade or business.

Respondents: Private sector: Businesses or other for-profits.

Estimated Total Burden Hours: 3,000.

OMB Number: 1545–1770.

Type of Review: Extension without change of a currently approved collection.

Title: REG–115054–01 (Final) Treatment of Community Income for Certain Individuals Not Filing Joint Returns.

Abstract: The regulations provide rules to determine how community income is treated under section 66 for certain married individuals in community property states who do not file joint individual Federal income tax returns. The regulations also reflect changes in the law made by the IRS Restructuring and Reform Act of 1998.

Respondents: Individuals or Households.

Estimated Total Burden Hours: 1.

OMB Number: 1545–1800.

Type of Review: Extension without change of a currently approved collection.

Title: Reportable Transaction Disclosure Statement and Pre-CAP/CAP Application Form.

Form: 8886.

Abstract: Form 8886 is used to disclose participation in reportable transactions by taxpayers as described in regulations 1.6011–4. The Compliance Assurance Process (CAP) is a strictly voluntary program available to LMSB taxpayers that meet the selection criteria. CAP is a real-time review of completed business transactions during the CAP year with the goal of providing certainty of the tax return within 90 days of the filing. The Pre-CAP/CAP Application Form is used by taxpayers wanting to join the program each year. Participation in the CAP program is completely voluntary and is only available for LMSB Taxpayers.

Respondents: Private sector: Businesses or other for-profits.

Estimated Total Burden Hours: 9,112.

OMB Number: 1545–2083.

Type of Review: Extension without change of a currently approved collection.

Title: Applicable Insurance Contracts Information Return.

Form: 8921.

Abstract: To comply with IRC section 6050V, as added by the Pension Protection Act of 2006, an applicable exempt organization must file a Form 8921 for each structured transaction under which it makes reportable acquisitions of applicable insurance contracts.

Respondents: Private sector: Not-for-profit institutions.

Estimated Total Burden Hours: 1,794,500.

OMB Number: 1545–2098.

Type of Review: Extension without change of a currently approved collection.

Title: Rev. Proc. 2007–99 (RP–127367–07), 9100 Relief Under Sections 897 and 1445.

Abstract: The IRS needs certain information to determine whether a taxpayer should be granted permission to make late filings of certain statements or notices under sections 897 and 1445. The information submitted will include a statement by the taxpayer demonstrating reasonable cause for the failure to timely make relevant filings under sections 897 and 1445.

Respondents: Private sector: Businesses or other for-profits.

Estimated Total Burden Hours: 4.

OMB Number: 1545–2195.

Type of Review: Extension without change of a currently approved collection.

Title: Statement of Foreign Financial Assets.

Form: 8938.

Abstract: The collection of information in Form 8938 will be the means by which taxpayers will comply with self-reporting obligations imposed under section 6038D with respect to foreign financial assets.

Respondents: Individuals or Households.

Estimated Total Burden Hours: 378,000.

OMB Number: 1545–2197.

Type of Review: Extension without change of a currently approved collection.

Title: Bond Tax Credit.

Form: 1097–BTC.

Abstract: This is an information return for reporting tax credit bond credits distributed to holders of tax credit bonds. The taxpayer holding a tax credit bond on an allowance date during a tax year is allowed a credit against Federal income tax equivalent to the interest that the bond would otherwise pay. The bondholder must include the amount of the credit in gross income and treat it as interest income. The issuers and holders of the tax credit bond will send Form 1097–BTC to the bond holders quarterly and file the return with the IRS annually.

Respondents: Private sector: Businesses or other for-profits.

Estimated Total Burden Hours: 828,287,508.

Bureau Clearance Officer: Yvette Lawrence, Internal Revenue Service, 1111 Constitution Avenue, NW., Washington, DC 20224; (202) 927–4374.

OMB Reviewer: Shagufta Ahmed, Office of Management and Budget, New Executive Office Building, Room 10235, Washington, DC 20503; (202) 395–7873.

Dawn D. Wolfgang,

Treasury PRA Clearance Officer.

[FR Doc. 2011–8675 Filed 4–11–11; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Submission for OMB Review; Comment Request

April 6, 2011.

The Department of the Treasury will submit the following public information collection requirements to OMB for review and clearance under the Paperwork Reduction Act of 1995, Public Law 104–13 on or after the date of publication of this notice. A copy of

the submissions may be obtained by calling the Treasury Bureau Clearance Officer listed. Comments regarding these information collections should be addressed to the OMB reviewer listed and to the Treasury PRA Clearance Officer, Department of the Treasury, 1750 Pennsylvania Avenue, NW., Suite 11010, Washington, DC 20220.

Dates: Written comments should be received on or before May 12, 2011 to be assured of consideration.

Alcohol and Tobacco Tax and Trade Bureau (TTB)

OMB Number: 1513–0069.

Type of Review: Extension without change of a currently approved collection.

Title: Tobacco Products Manufacturers—Supporting Records for Removals for the Use of the United States.

Abstract: Tobacco products and cigarette papers and tubes are taxed under the Internal Revenue Code of 1986, as amended. These items can be removed without the payment of tax if they are for the use of the United States. In order to safeguard taxes, tobacco products manufacturers are required to maintain a system of records designed to establish accountability over the tobacco products and cigarette papers and tubes produced. Records must be retained by the manufacturer for 3 years following the close of the year covered therein and must be made available for inspection by any TTB officer upon his/her request.

Respondents: Private Sector: Businesses or other for-profits.

Estimated Total Burden Hours: 505 hours.

OMB Number: 1513–0128.

Type of Review: Extension without change of a currently approved collection.

Title: Records to Support Tax Free and Tax Overpayment Sales of Firearms and Ammunition.

Forms: TTB F 5600.33, 5600.34, 5600.35, 5600.36, and 5600.37.

Abstract: Industry members are required to maintain certain records in accordance with regulations. TTB offers forms that ensure that all of the information required by regulations is accounted for, when completed. The information collected on the forms serve as a record to justify the sales to exempt users, exportation, or use for further manufacture of articles.

Respondents: Private Sector: Businesses or other for-profits; State, Local, and Tribal Governments.

Estimated Total Burden Hours: 52,500 hours.

Clearance Officer: Gerald Isenberg, Alcohol and Tobacco Tax and Trade Bureau, Room 200 East, 1310 G Street, NW., Washington, DC 20005; (202) 453–2165.

OMB Reviewer: Shagufta Ahmed, Office of Management and Budget, New Executive Office Building, Room 10235, Washington, DC 20503; (202) 395–7873.

Dawn D. Wolfgang,

Treasury PRA Clearance Officer.

[FR Doc. 2011–8569 Filed 4–11–11; 8:45 am]

BILLING CODE 4810–31–P

DEPARTMENT OF THE TREASURY

Submission for OMB Review; Comment Request

April 6, 2011.

The Department of the Treasury will submit the following public information collection requirement to OMB for review and clearance under the Paperwork Reduction Act of 1995, Public Law 104–13 on or after the date of publication of this notice. A copy of the submission may be obtained by calling the Treasury Bureau Clearance Officer listed. Comments regarding this information collection should be addressed to the OMB reviewer listed and to the Treasury PRA Clearance Officer, Department of the Treasury, 1750 Pennsylvania Avenue, NW., Suite 11010, Washington, DC 20220.

Dates: Written comments should be received on or before May 12, 2011 to be assured of consideration.

Bureau of the Public Debt (BPD)

OMB Number: 1535–0137.

Title: U.S. Treasury Auctions Submitter Agreement.

Type of Review: Extension without change of a currently approved collection.

Form: PD F 5441.

Abstract: Used to request information from entities wishing to participate in U.S. Treasury Securities Auctions via TAPPS Link.

Affected Public: Private Sector: Businesses or other for-profits.

Estimated Total Burden Hours: 80.

Bureau Clearance Officer: Bruce Sharp, Bureau of the Public Debt, 200 Third Street, Parkersburg, West Virginia 26106; (304) 480–8112.

OMB Reviewer: Shagufta Ahmed, Office of Management and Budget, New Executive Office Building, Room 10235, Washington, DC 20503; (202) 395–7873.

Dawn D. Wolfgang,

Treasury PRA Clearance Officer.

[FR Doc. 2011–8586 Filed 4–11–11; 8:45 am]

BILLING CODE 4810–39–P

DEPARTMENT OF THE TREASURY

Designation of Nine Individuals Pursuant to Executive Order 13566

AGENCY: Office of Foreign Assets Control, Treasury.

ACTION: Notice.

SUMMARY: The Treasury Department's Office of Foreign Assets Control ("OFAC") is publishing the names of nine individuals newly-designated as persons whose property and interests in property are blocked pursuant to Executive Order 13566 of February 25, 2011, "Blocking Property and Prohibiting Certain Transactions Related to Libya."

DATES: The designation by the Director of OFAC of the nine individuals identified in this notice, pursuant to Executive Order 13566 of February 25, 2011, is effective March 11, 2011.

FOR FURTHER INFORMATION CONTACT: Assistant Director, Compliance Outreach & Implementation, Office of Foreign Assets Control, Department of the Treasury, Washington, DC 20220, *Tel.:* 202/622–2490.

SUPPLEMENTARY INFORMATION:

Electronic and Facsimile Availability

This document and additional information concerning OFAC are available from OFAC's Web site (*http://www.treas.gov/ofac*) or via facsimile through a 24-hour fax-on-demand service, *Tel.:* 202/622–0077.

Background

On February 25, 2011, the President issued Executive Order 13566, "Blocking Property and Prohibiting Certain Transactions Related to Libya" (the "Order") pursuant to, *inter alia*, the International Emergency Economic Powers Act (50 U.S.C. 1701–06).

Section 1 of the Order blocks, with certain exceptions, all property and interests in property that are in the United States, that come within the United States, or that are or come within the possession or control of any United States person, of persons listed in the Annex to the Order and of persons determined by the Secretary of the Treasury, in consultation with Secretary of State, to meet any of the criteria set forth in the Order.

The Annex to the Order listed five individuals whose property and interests in property are blocked pursuant to the Order.

On March 11, 2011, the Director of OFAC, in consultation with the Secretary of State, designated, pursuant to one or more of the criteria set forth in subparagraphs (b)(i) through (b)(vi) of

Section 1 of the Order, nine individuals whose property and interests in property are blocked, pursuant to the Order. The listing for these individuals is as follows:

1. AL–SENUSSI, Abdullah (a.k.a. SENUSSI, Abdullah); DOB 1949; POB Sudan; Director of Military Intelligence; Colonel (individual) [LIBYA2]
2. DORDA, Abu Zaid (a.k.a. DORDA, Abouzid Omar; a.k.a. DORDA, Abu Zayd Umar; a.k.a. DORDA, Bu Zaid; a.k.a. DOURDA, Abu Zaid Omar; a.k.a. DURDA, Abu Zeid Omar); DOB 4 Apr 1944; Director of the External Security Organization (individual) [LIBYA2]
3. FARKASH, Safia (a.k.a. FARKASH AL–BARASSI, Safia); DOB 1952; POB Al Bayda, Libya (individual) [LIBYA2]
4. GADDAFI, Hannibal (a.k.a. AL–GADDAFI, Hannibal; a.k.a. AL–QADHAFI, Hannibal; a.k.a. ELKADDAFI, Hannibal; a.k.a. EL–QADDAFI, Hannibal; a.k.a. GADDAFI, Hannibal Muammar; a.k.a. GHADAFFI, Hannibal; a.k.a. GHATHAFI, Hannibal; a.k.a. QADDAFI, Hannibal; a.k.a. QADHAFI, Hannibal Muammar); DOB 20 Sep 1975; alt. DOB 1977; POB Tripoli, Libya; Passport B/002210 (Libya) (individual) [LIBYA2]
5. GADDAFI, Muhammad (a.k.a. AL–GADDAFI, Muhammad; a.k.a. AL–QADHAFI, Mohammed; a.k.a. ELKADDAFI, Muhammad; a.k.a. EL–QADDAFI, Muhammad; a.k.a. GADHAFFI, Mohammad Moammar; a.k.a. GADHAFI, Mohammed; a.k.a. GHATHAFI, Muhammad; a.k.a. QADDAFI, Muhammad; a.k.a. QADHAFI, Mohammed Muammar); DOB 1970; POB Tripoli, Libya (individual) [LIBYA2]
6. GADDAFI, Saadi (a.k.a. AL–GADDAFI, Saadi; a.k.a. AL–QADHAFI, Sa'adi Mu'ammar; a.k.a. ELKADDAFI, Saadi; a.k.a. EL–QADDAFI, Saadi; a.k.a. GADHAFI, Saadi; a.k.a. GHATHAFI, Saadi; a.k.a. QADDAFI, Saadi; a.k.a. QADHAFI, Saadi); DOB 27 May 1973; alt. DOB 25 May 1973; POB Tripoli, Libya; Passport 010433 (Libya); alt. Passport 014797 (Libya) (individual) [LIBYA2]
7. GADDAFI, Saif Al-Arab (a.k.a. AL–GADDAFI, Saif Al-Arab; a.k.a. AL–QADHAFI, Saif Al-Arab; a.k.a. ELKADDAFI, Saif Al-Arab; a.k.a. EL–QADDAFI, Saif Al-Arab; a.k.a. GADDAFI, Seif Al-Arab; a.k.a. GADHAFI, Saif Al-Arab; a.k.a. GHATHAFI, Saif Al-Arab; a.k.a. QADDAFI, Saif Al-Arab; a.k.a. QADHAFI, Saif Al-Arab); DOB 1979; alt. DOB 1982; alt. DOB 1983; POB Tripoli, Libya (individual) [LIBYA2]
8. JABIR, Abu Bakr Yunis (a.k.a. JABER, Abu Bakr Yunis); DOB 1952; POB Jalo, Libya; Defense Minister; Major General (individual) [LIBYA2]
9. MATUQ, Matuq Mohammed (a.k.a. MATOUK, Matouk Mohamed; a.k.a. MATUQ, Matuq Muhammad); DOB 1956; POB Khoms, Libya; Secretary of the General People's Committee for Public Works (individual) [LIBYA2]

Dated: March 11, 2011.

Barbara C. Hammerle,

Acting Director, Office of Foreign Assets Control.

[FR Doc. 2011–8755 Filed 4–11–11; 8:45 am]

BILLING CODE 4811–45–P

DEPARTMENT OF THE TREASURY

Unblocking of Specially Designated National and Blocked Person Pursuant to Executive Order 13566

AGENCY: Office of Foreign Assets Control, Treasury.

ACTION: Notice.

SUMMARY: The Treasury Department's Office of Foreign Assets Control ("OFAC") is publishing the name of one individual whose property and interests in property have been unblocked pursuant to Executive Order 13566 of February 25, 2011, "Blocking Property and Prohibiting Certain Transactions Related to Libya."

DATES: The unblocking and removal from the list of Specially Designated Nationals and Blocked Persons ("SDN List") of the individual identified in this notice whose property and interests in property were blocked pursuant to Executive Order 13566 of February 25, 2011, is effective on April 4, 2011.

FOR FURTHER INFORMATION CONTACT: Assistant Director, Compliance Outreach & Implementation, Office of Foreign Assets Control, Department of the Treasury, Washington, DC 20220, tel.: 202/622–2490.

SUPPLEMENTARY INFORMATION:

Electronic and Facsimile Availability

This document and additional information concerning OFAC are available from OFAC's Web site (*www.treas.gov/ofac*) or via facsimile through a 24-hour fax-on-demand service tel.: (202) 622–0077.

Background

On February 25, 2011, President Barack Obama declared a national emergency in order to address the threat created by the deteriorating situation in Libya and Colonel Muammar Qadhafi's and his government's extreme measures against the people of Libya by issuing Executive Order 13566, "Blocking Property and Prohibiting Certain Transactions Related to Libya" ("E.O. 13566" or the "Order") pursuant to the International Emergency Economic Powers Act (50 U.S.C. 1701 *et seq.*) ("IEEPA"). E.O. 13566 imposes economic sanctions on persons named in the Annex to the Order. The Order also authorizes the Secretary of the Treasury, in consultation with the Secretary of State, to designate additional persons determined to meet the criteria set forth in E.O. 13566.

On March 15, 2011, the Director of OFAC, in consultation with the Secretary of State, designated, pursuant to one or more of the criteria set forth in subparagraphs (b)(i) through (b)(vi) of Section 1 of the Order, the individual listed below, whose property and interests in property were blocked, pursuant to the Order.

On April 4, 2011, the Director of OFAC removed from the SDN List the individual listed below, whose property and interests in property were blocked pursuant to the Order:

KOUSSA, Moussa (a.k.a. KOUSA, Mousa: a.k.a. KUSA, Musa; a.k.a. KUSSA, Mussa); DOB circa 1949; Foreign Minister; Secretary of the General People's Committee for Foreign Liaison and International Cooperation (individual) [LIBYA2]

Dated: April 4, 2011.

Adam J. Szubin,

Director, Office of Foreign Assets Control.

[FR Doc. 2011–8754 Filed 4–11–11; 8:45 am]

BILLING CODE 4811–45–P

DEPARTMENT OF THE TREASURY

Financial Crimes Enforcement Network

Proposed Collection; Comment Request; Renewal Without Change of the Registration of Money Services Business, FinCEN Form 107

AGENCY: Financial Crimes Enforcement Network ("FinCEN"), Treasury.

ACTION: Notice and request for comments.

SUMMARY: As part of its continuing effort to reduce paperwork and respondent burden, FinCEN invites comment on a proposed information collection contained in a revised form, Registration

of Money Services Business, FinCEN Form 107. The form will be used by currency dealers or exchangers; check cashers; issuers of traveler's checks, money orders or stored value; sellers of traveler's checks, money orders or stored value; redeemers of traveler's checks, money orders or stored value; and money transmitters to register with the Department of the Treasury as required by statute. This request for comments is being made pursuant to the Paperwork Reduction Act of 1995, Public Law 104–13, 44 U.S.C. 3506(c)(2)(A).

DATES: Written comments are welcome and must be received on or before June 13, 2011.

ADDRESSES: Written comments should be submitted to: Office of Regulatory Policy and Programs Division, Financial Crimes Enforcement Network, Department of the Treasury, P.O. Box 39, Vienna, Virginia 22183, *Attention:* PRA Comments—MSB Registration-Form 107. Comments also may be submitted by electronic mail to the following Internet address: *regcomments@fincen.gov,* again with a caption, in the body of the text, "*Attention:* PRA Comments—MSB Registration-Form 107."

Inspection of comments: Comments may be inspected, between 10 a.m. and 4 p.m., in the FinCEN reading room in Vienna, VA. Persons wishing to inspect the comments submitted must request an appointment with the Disclosure Officer by telephoning (703) 905–5034 (Not a toll free call).

FOR FURTHER INFORMATION CONTACT: The FinCEN Regulatory helpline at (800) 949–2732 and select Option 1.

SUPPLEMENTARY INFORMATION:

Title: Registration of Money Services Business.

OMB Number: 1506–0013.

Form Number: FinCEN Form 107.

Abstract: The statute generally referred to as the "Bank Secrecy Act," Titles I and II of Public Law 91–508, as amended, codified at 12 U.S.C. 1829b, 12 U.S.C. 1951–1959, and 31 U.S.C. 5311–5330, authorizes the Secretary of the Treasury, *inter alia,* to issue regulations requiring records and reports that are determined to have a high degree of usefulness in criminal, tax, and regulatory matters. Regulations implementing Title II of the Bank Secrecy Act (codified at 31 U.S.C. 5311–5330) appear at 31 CFR Chapter X. The authority of the Secretary to administer the Bank Secrecy Act has been delegated to the Director of FinCEN.

Under 31 U.S.C. 5330 and its implementing regulations, money services businesses must register with the Department of the Treasury, maintain a list of their agents, and renew their registration every two years. Currently, money services businesses register by filing FinCEN Form 107, which is being renewed without change. The information collected on the form is required to comply with 31 U.S.C. 5330 and its implementing regulations. The information will be used to assist supervisory and law enforcement agencies in the enforcement of criminal, tax, and regulatory laws and to prevent money services businesses from being used by those engaging in money laundering. The collection of information is mandatory.

Current Actions: The current Form 107 and instructions are being renewed without change.

Type of Review: Renewal of currently approved collection report.

Affected Public: Individuals, business or other for-profit institutions, and not-for-profit institutions.

Frequency: As required.

Estimated Burden: Reporting average of 30 minutes per response; recordkeeping average of 30 minutes per response.

Estimated Number of Respondents: 42,000.

Estimated Total Annual Burden Hours: 42,000 hours.

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number. Records required to be retained under the Bank Secrecy Act must be retained for five years. Generally, information collected pursuant to the Bank Secrecy Act is confidential, but may be shared as provided by law with regulatory and law enforcement authorities.

Request for Comments:

Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected: (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance and purchase of services to provide information.

Dated: April 5, 2011.

James H. Freis, Jr.,

Director, Financial Crimes Enforcement Network.

[FR Doc. 2011–8589 Filed 4–11–11; 8:45 am]

BILLING CODE 4810–02–P

DEPARTMENT OF THE TREASURY

Office of Foreign Assets Control

Unblocking of Specially Designated Nationals and Blocked Persons Pursuant to the Foreign Narcotics Kingpin Designation Act

AGENCY: Office of Foreign Assets Control, Treasury.

ACTION: Notice.

SUMMARY: The Department of the Treasury's Office of Foreign Assets Control ("OFAC") is publishing the name of one entity whose property and interests in property has been unblocked pursuant to the Foreign Narcotics Kingpin Designation Act ("Kingpin Act") (21 U.S.C. 1901–1908, 8 U.S.C. 1182).

DATES: The unblocking and removal from the list of Specially Designated Nationals and Blocked Persons ("SDN List") of the entity identified in this notice whose property and interests in property was blocked pursuant to the Kingpin Act, is effective on March 30, 2011.

FOR FURTHER INFORMATION CONTACT: Assistant Director, Compliance Outreach & Implementation, U.S. Department of the Treasury, Office of Foreign Assets Control, Washington, DC 20220, *tel.:* (202) 622–2420.

SUPPLEMENTARY INFORMATION:

Electronic and Facsimile Availability

This document and additional information concerning OFAC are available from OFAC's Web site (*http://www.treas.gov/ofac*) or via facsimile through a 24-hour fax-on-demand service at (202) 622–0077.

Background

The Kingpin Act became law on December 3, 1999. The Act provides a statutory framework for the President to impose sanctions against significant foreign narcotics traffickers and their organizations on a worldwide basis, with the objective of denying their businesses and agents access to the U.S. financial system and to the benefits of trade and transactions involving U.S. persons and entities.

The Kingpin Act blocks all property and interests in property, subject to U.S. jurisdiction, owned or controlled by significant foreign narcotics traffickers as identified by the President. In addition, the Secretary of the Treasury consults with the Attorney General, the Director of the Central Intelligence Agency, the Director of the Federal Bureau of Investigation, the Administrator of the Drug Enforcement Administration, the Secretary of Defense, the Secretary of State, and the Secretary of Homeland Security when designating and blocking the property or interests in property, subject to U.S. jurisdiction, of foreign persons found to be: (1) Materially assisting in, or providing financial or technological support for or to, or providing goods or services in support of, the international narcotics trafficking activities of a person designated pursuant to the Kingpin Act; (2) owned, controlled, or directed by, or acting for or on behalf of, a person designated pursuant to the Kingpin Act; or (3) playing a significant role in international narcotics trafficking.

On March 30, 2011, the Director of OFAC removed from the SDN list the entity listed below, whose property and interests in property were blocked pursuant to the Kingpin Act:

MERCURIO INTERNACIONAL S.A., Transversal 71D No. 26–94 Sur, Local 3504, Bogota, Colombia; Avenida Carrera 15 No. 100–69, Oficina 303, Bogota, Colombia; Carrera 15 No. 93–60 Local 205, Bogota, Colombia; Calle 5 No. 50–103, Local C108, Cali, Colombia; Carrera 1 No. 61A–30, Locales 80 y 81, Cali, Colombia; Calle 19 No. 6–48, Oficinas 403 y 404, Pereira, Colombia; Carrera 14 No. 18–56, Locales 34 y 35, Piso 3, Armenia, Colombia; Carrera 43A No. 34–95, Local 253, Medellin, Colombia; Carrera 54 No. 72–147, Local 144, Barranquilla, Colombia; NIT # 830063708–7 (Colombia) [SDNTK]

Dated: March 30, 2011.

Adam J. Szubin,

Director, Office of Foreign Assets Control.

[FR Doc. 2011–8678 Filed 4–11–11; 8:45 am]

BILLING CODE 4810–AL–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Proposed Collection; Comment Request for Form 1040 and Schedules A, B, C, C–EZ, D, D–1, E, EIC, F, H, J, R, and SE, Form 1040A, Form 1040EZ, Form 1040NR, Form 1040NR–EZ, Form 1040X, and All Attachments to These Forms

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice and request for comments.

SUMMARY: The Internal Revenue Service, 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 continuing information collections, as required by the Paperwork Reduction Act of 1995 (PRA), Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)). This notice requests comments on all forms used by individual taxpayers: Form 1040, U.S. Individual Income Tax Return, and Schedules A, B, C, C–EZ, D, D–1, E, EIC, F, H, J, R, and SE; Form 1040A; Form 1040EZ; Form 1040NR; Form 1040NR–EZ; Form 1040X; and all attachments to these forms (see the Appendix to this notice).

DATES: Written comments should be received on or before May 12, 2011 to be assured of consideration.

ADDRESSES: This collection is available for comment on *http://www.PRAComment.gov*. Comments may be made through the Web site electronically and anonymously. Respondents may also direct written comments to Shagufta Ahmed, Office of Management and Budget, New Executive Office Building, Room 10235, Washington, DC 20503; (202) 395–7873 and to Yvette Lawrence, Internal Revenue Service, 1111 Constitution Avenue, NW., Washington, DC 20224; (202) 927–4374.

FOR FURTHER INFORMATION CONTACT: Requests for additional information should be directed to Chief, RAS:R:TAM, NCA 7th Floor, Internal Revenue Service, 1111 Constitution Avenue, NW., Washington, DC 20224.

SUPPLEMENTARY INFORMATION:

PRA Approval of Forms Used by Individual Taxpayers

Under the PRA, OMB assigns a control number to each "collection of information" that it reviews and approves for use by an agency. The PRA also requires agencies to estimate the burden for each collection of information. Burden estimates for each control number are displayed in (1) PRA notices that accompany collections of information, (2) **Federal Register** notices such as this one, and (3) OMB's database of approved information collections.

Taxpayer Burden Model

The Individual Taxpayer Burden Model (ITBM) estimates burden experienced by individual taxpayers when complying with Federal tax laws and incorporates results from a survey of tax year 2007 individual taxpayers, conducted in 2008 and 2009. The approach to measuring burden focuses on the characteristics and activities undertaken by individual taxpayers in meeting their tax return filing obligations.

Burden is defined as the time and out-of-pocket costs incurred by taxpayers in complying with the Federal tax system and are estimated separately. Out-of-pocket costs include any expenses incurred by taxpayers to prepare and submit their tax returns. Examples include tax return preparation fees, the purchase price of tax preparation software, submission fees, photocopying costs, postage, and phone calls (if not toll-free).

The methodology distinguishes among preparation method, taxpayer activities, taxpayer type, filing method, and income level. Indicators of tax law and administrative complexity, as reflected in the tax forms and instructions, are incorporated into the model.

Preparation methods reflected in the model are as follows:

- Self-prepared without software,
- Self-prepared with software, and
- Use of a paid preparer or tax professional.

Types of taxpayer activities reflected in the model are as follows:

- Recordkeeping,
- Tax planning,
- Gathering tax materials,
- Use of services (IRS and other),
- Form completion, and
- Form submission (electronic and paper).

Taxpayer Burden Estimates

Summary level results using this methodology are presented in Table 1 below. The data shown are the best forward-looking estimates available for income tax returns filed for tax year 2010. Note that the estimates presented in this table differ from those published in the tax form instructions and publications. Revised estimates presented herein reflect legislation approved after the IRS Forms and Publications print deadline.

Table 1 shows burden estimates by form, type and type of taxpayer. Time burden is further broken out by taxpayer activity. The largest component of time burden for all taxpayers is recordkeeping, as opposed to form completion and submission. In addition, the time burden associated with form completion and submission activities is closely tied to preparation method.

Both time and cost burdens are national averages and do not necessarily

reflect a "typical" case. For instance, the average time burden for all taxpayers filing a 1040, 1040A, or 1040EZ is estimated at 19 hours, with an average cost of $250 per return. This average includes all associated forms and schedules, across all preparation methods and all taxpayer activities. Taxpayers filing Form 1040 have an expected average burden of about 24 hours and $310; the average burden for taxpayers filing Form 1040A is about 9 hours and $130; and the average for Form 1040EZ filers is about 7 hours and $60. However, within each of these estimates, there is significant variation in taxpayer activity. Similarly, tax preparation fees vary extensively depending on the taxpayer's tax situation and issues, the type of professional preparer, and the geographic area.

The estimates include burden for activities up through and including filing a return but do not include burden associated with post-filing activities. However, operational IRS data indicate that electronically prepared and e-filed returns have fewer arithmetic errors, implying a lower associated post-filing burden.

Proposed PRA Submission to OMB

Title: U.S. Individual Income Tax Return.

OMB Number: 1545–0074.

Form Numbers: Form 1040 and Schedules A, B, C, C–EZ, D, D–1, E, EIC, F, H, J, R, and SE; Form 1040A; Form 1040EZ; Form 1040NR; Form 1040NR–EZ, Form 1040X; and all attachments to these forms (see the Appendix to this notice).

Abstract: These forms are used by individuals to report their income tax liability. The data is used to verify that the items reported on the forms are correct, and also for general statistical use.

Current Actions: Changes in aggregate compliance burden estimates are explained in terms of three major components: Technical Adjustments, Statutory Changes, and Agency (IRS) Discretionary Changes and are presented in Table 2 below.

Technical Adjustments

Technical changes include refinements to the modeling methodology using the new survey data as well as the effects of the economic recovery and an increase in the number of taxpayers projected.

Statutory Changes

The primary drivers for the statutory changes are newly enacted legislation along with the expiration of many provisions of the American Recovery and Reinvestment Act of 2009. New legislation includes the Small Business Jobs Act of 2010; the Patient Protection and Affordable Care Act; the Tax Relief, Unemployment Insurance Reauthorization, and Job Creation Act of 2010; and related legislations.

IRS Discretionary Changes

IRS discretionary changes include redesign of Form1040X, fees associated with new paid professional licensing requirements, changes in the delivery of form instructions and publications to taxpayers, and delayed filing resulting from late legislation.

These changes have resulted in an overall increase of 270,000,000 total hours and $650,000,000 in taxpayer burden previously approved by OMB.

Type of Review: Revision of currently approved collections.

Affected Public: Individuals or households.

Estimated Number of Respondents: 146,700,000.

Total Estimated Time: 2.701 billion hours (2,701,000,000 hours).

Estimated Time per Respondent: 19 hours.

Total Estimated Out-of-Pocket Costs: $35.193 billion ($35,193,000,000).

Estimated Out-of-Pocket Cost per Respondent: $250.

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB Control Number.

Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

Request for Comments

Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Robert Dahl,

Treasury Departmental Clearance Officer.

The average time and costs required to complete and file Form 1040, Form 1040A, Form 1040EZ, their schedules, and accompanying forms will vary depending on individual circumstances. The estimated averages are:

TABLE 1—ESTIMATED AVERAGE TAXPAYER BURDEN FOR INDIVIDUALS BY ACTIVITY

Primary form filed or type of taxpayer	Percentage of returns	Average time burden (hours)						
		Total time*	Record keeping	Tax planning	Form completion	Form submission	All other	Average cost (dollars)**
All taxpayers—primary forms filed	100	19.0	9.0	2.0	4.0	1.0	3.0	$250
1040	70	24.0	11.0	3.0	5.0	1.0	3.0	310
1040A	19	9.0	3.0	1.0	2.0	1.0	1.0	130
1040EZ	11	7.0	2.0	1.0	2.0	1.0	1.0	60
Nonbusiness***	69	12.0	5.0	2.0	3.0	1.0	2.0	160
Business***	31	34.0	18.0	4.0	6.0	1.0	4.0	430

* Detail may not add to total time due to rounding.

** Dollars rounded to the nearest $10.

*** You are considered a "business" filer if you file one or more of the following with Form 1040: Schedule C, C–EZ, E, or F or Form 2106 or 2106–EZ. You are considered a "nonbusiness" filer if you did not file any of these schedules or forms with Form 1040 or if you file Form 1040A or 1040EZ.

Note: Estimates presented in this table differ from those published in the tax forms and publications. Revised estimates presented herein reflect legislation approved after the IRS Forms and Publications print deadline.

TABLE 2—ICB ESTIMATES FOR THE 1040/A/EZ/NR/NR–EZ/X SERIES OF RETURNS AND SUPPORTING FORMS AND SCHEDULES

	FY 2011				
	Previously approved FY10	Program change due to adjustment	Program change due to new legislation	Program change due to agency	FY11
Number of Taxpayers	143,400,000	3,300,000			146,700,000
Burden in Hours	2,431,000,000	292,000,000	(25,000,000)	3,000,000	2,701,000,000
Burden in Dollars	31,543,000,000	3,986,000,000	(370,000,000)	34,000,000	35,193,000,000

Note: Estimates presented in this table differ from those published in the tax forms and publications. Revised estimates presented herein reflect legislation approved after the IRS Forms and Publications print deadline.

APPENDIX

Forms	Filed by individuals and others	Title
673		Statement for Claiming Exemption from Withholding on Foreign Earned Income Eligible for the Exclusions Provided by Section 911.
926	X	Return by a U.S. Transferor of Property to a Foreign Corporation.
970	X	Application To Use LIFO Inventory Method.
972	X	Consent of Shareholder To Include Specific Amount in Gross Income.
982	X	Reduction of Tax Attributes Due To Discharge of Indebtedness (and Section 1082 Basis Adjustment).
1040		U.S. Individual Income Tax Return.
1040 SCH A		Itemized Deductions.
1040 SCH B		Interest and Ordinary Dividends.
1040 SCH C	X	Profit or Loss From Business.
1040 SCH C–EZ	X	Net Profit From Business.
1040 SCH D		Capital Gains and Losses.
1040 SCH D–1		Continuation Sheet for Schedule D.
1040 SCH E	X	Supplemental Income and Loss.
1040 SCH EIC		Earned Income Credit.
1040 SCH F	X	Profit or Loss From Farming.
1040 SCH H	X	Household Employment Taxes.
1040 SCH J		Income Averaging for Farmers and Fishermen.
1040 SCH R		Credit for the Elderly or the Disabled.
1040 SCH SE		Self-Employment Tax.
1040 A		U.S. Individual Income Tax Return.
1040ES (NR)		U.S. Estimated Tax for Nonresident Alien Individuals.
1040ES (PR)		Estimated Federal Tax on Self Employment Income and on Household Employees (Residents of Puerto Rico).
1040 ES–OCR–V		Payment Voucher.
1040 ES–OTC		Estimated Tax for Individuals.
1040 EZ		Income Tax Return for Single and Joint Filers With No Dependents.
1040 NR		U.S. Nonresident Alien Income Tax Return.
1040 NR–EZ		U.S. Income Tax Return for Certain Nonresident Aliens With No Dependents.
1040 V		Payment Voucher.
1040 V–OCR–ES		Payment Voucher.
1040 X		Amended U.S. Individual Income Tax Return.
1045	X	Application for Tentative Refund.
1116	X	Foreign Tax Credit.
1127	X	Application For Extension of Time For Payment of Tax.
1128	X	Application To Adopt, Change, or Retain a Tax Year.
1310		Statement of Person Claiming Refund Due a Deceased Taxpayer.
2106		Employee Business Expenses.
2106 EZ		Unreimbursed Employee Business Expenses.
2120		Multiple Support Declaration.
2210	X	Underpayment of Estimated Tax by Individuals, Estates, and Trusts.
2210 F	X	Underpayment of Estimated Tax by Farmers and Fishermen.
2350		Application for Extension of Time To File U.S. Income Tax Return.
2350 SP		Solicitud de Prórroga para Presentar la Declaración del Impuesto Personal sobre el Ingreso de los Estados Unidos.
2439	X	Notice to Shareholder of Undistributed Long-Term Capital Gains.
2441		Child and Dependent Care Expenses.
2555		Foreign Earned Income.
2555 EZ		Foreign Earned Income Exclusion.
2848	X	Power of Attorney and Declaration of Representative.
3115	X	Application for Change in Accounting Method.

APPENDIX—Continued

Forms	Filed by individuals and others	Title
3468	X	Investment Credit.
3520	X	Annual Return To Report Transactions With Foreign Trusts and Receipt of Certain Foreign Gifts
3800	X	General Business Credit.
3903		Moving Expenses.
4029		Application for Exemption From Social Security and Medicare Taxes and Waiver of Benefits.
4070 A		Employee's Daily Record of Tips.
4136	X	Credit for Federal Tax Paid On Fuels.
4137		Social Security and Medicare Tax on Unreported Tip Income.
4255	X	Recapture of Investment Credit.
4361		Application for Exemption From Self-Employment Tax for Use by Ministers, Members of Religious Orders, and Christian Science Practitioners.
4562	X	Depreciation and Amortization.
4563		Exclusion of Income for Bona Fide Residents of American Samoa.
4684	X	Casualties and Thefts.
4797	X	Sales of Business Property.
4835		Farm Rental Income and Expenses.
4852	X	Substitute for Form W–2, Wage and Tax Statement or Form 1099–R, Distributions From Pension Annuities, Retirement or Profit-Sharing Plans, IRAs, Insurance Contracts, etc.
4868		Application for Automatic Extension of Time To File Individual U.S. Income Tax Return.
4868 SP		Solicitud de Prórroga Automática para Presentar la Declaración del Impuesto sobre el Ingreso Personal de los Estados Unidos.
4952	X	Investment Interest Expense Deduction.
4970	X	Tax on Accumulation Distribution of Trusts.
4972	X	Tax on Lump-Sum Distributions.
5074		Allocation of Individual Income Tax To Guam or the Commonwealth of the Northern Mariana Islands (CNMI).
5213	X	Election To Postpone Determination as To Whether the Presumption Applies That an Activity Is Engaged in for Profit.
5329		Additional Taxes on Qualified Plans (Including IRAs) and Other Tax-Favored Accounts.
5405		First-Time Homebuyer Credit.
5471	X	Information Return of U.S. Persons With Respect To Certain Foreign Corporations.
5471 SCH J	X	Accumulated Earnings and Profits (E&P) of Controlled Foreign Corporation.
5471 SCH M	X	Transactions Between Controlled Foreign Corporation and Shareholders or Other Related Persons.
5471 SCH O	X	Organization or Reorganization of Foreign Corporation, and Acquisitions and Dispositions of Its Stock.
5695		Residential Energy Credits.
5713	X	International Boycott Report.
5713 SCH A	X	International Boycott Factor (Section 999(c)(1)).
5713 SCH B	X	Specifically Attributable Taxes and Income (Section 999(c)(2)).
5713 SCH C	X	Tax Effect of the International Boycott Provisions.
5754	X	Statement by Person(s) Receiving Gambling Winnings.
5884	X	Work Opportunity Credit.
6198	X	At-Risk Limitations.
6251		Alternative Minimum Tax—Individuals.
6252	X	Installment Sale Income.
6478	X	Credit for Alcohol Used as Fuel.
6765	X	Credit for Increasing Research Activities.
6781	X	Gains and Losses From Section 1256 Contracts and Straddles.
8082	X	Notice of Inconsistent Treatment or Administrative Adjustment Request (AAR).
8275	X	Disclosure Statement.
8275 R	X	Regulation Disclosure Statement.
8283	X	Noncash Charitable Contributions.
8332		Release of Claim to Exemption for Child of Divorced or Separated Parents.
8379		Injured Spouse Claim and Allocation.
8396		Mortgage Interest Credit.
8453		U.S. Individual Income Tax Declaration for an IRS e-file Return.
8582	X	Passive Activity Loss Limitations.
8582 CR	X	Passive Activity Credit Limitations.
8586	X	Low-Income Housing Credit.
8594	X	Asset Acquisition Statement.
8606		Nondeductible IRAs.
8609–A	X	Annual Statement for Low-Income Housing Credit.
8611	X	Recapture of Low-Income Housing Credit.
8615		Tax for Certain Children Who Have Investment Income of More Than $1,800.
8621	X	Return by a Shareholder of a Passive Foreign Investment Company or Qualified Electing Fund.
8621–A	X	Late Deemed Dividend or Deemed Sale Election by a Passive Foreign Investment Company.
8689		Allocation of Individual Income Tax To the Virgin Islands.
8693	X	Low-Income Housing Credit Disposition Bond.
8697	X	Interest Computation Under the Look-Back Method for Completed Long-Term Contracts.
8801	X	Credit for Prior Year Minimum Tax—Individuals, Estates, and Trusts.

APPENDIX—Continued

Forms	Filed by individuals and others	Title
8812		Additional Child Tax Credit.
8814		Parents' Election To Report Child's Interest and Dividends.
8815		Exclusion of Interest From Series EE and I U.S. Savings Bonds Issued After 1989.
8818		Optional Form To Record Redemption of Series EE and I U.S. Savings Bonds Issued After 1989.
8820	X	Orphan Drug Credit.
8821	X	Tax Information Authorization.
8822	X	Change of Address.
8824	X	Like-Kind Exchanges.
8826	X	Disabled Access Credit.
8828		Recapture of Federal Mortgage Subsidy.
8829		Expenses for Business Use of Your Home.
8832	X	Entity Classification Election.
8833	X	Treaty-Based Return Position Disclosure Under Section 6114 or 7701(b).
8834	X	Qualified Electric Vehicle Credit.
8835	X	Renewable Electricity and Refined Coal Production Credit.
8838	X	Consent To Extend the Time To Assess Tax Under Section 367—Gain Recognition Statement.
8839		Qualified Adoption Expenses.
8840		Closer Connection Exception Statement for Aliens.
8843		Statement for Exempt Individuals and Individuals With a Medical Condition.
8844	X	Empowerment Zone and Renewal Community Employment Credit.
8845	X	Indian Employment Credit.
8846	X	Credit for Employer Social Security and Medicare Taxes Paid on Certain Employee Tips.
8847	X	Credit for Contributions to Selected Community Development Corporations.
8853		Archer MSAs and Long-Term Care Insurance Contracts.
8854		Initial and Annual Expatriation Information Statement.
8858	X	Information Return of U.S. Persons With Respect to Foreign Disregarded Entities.
8858 SCH M	X	Transactions Between Controlled Foreign Disregarded Entity and Filer or Other Related Entities.
8859		District of Columbia First-Time Homebuyer Credit.
8860	X	Qualified Zone Academy Bond Credit.
8861	X	Welfare-to-Work Credit.
8862		Information to Claim Earned Income Credit After Disallowance.
8863		Education Credits.
8864	X	Biodiesel Fuels Credit.
8865	X	Return of U.S. Persons With Respect To Certain Foreign Partnerships.
8865 SCH K–1	X	Partner's Share of Income, Credits, Deductions, etc.
8865 SCH O	X	Transfer of Property to a Foreign Partnership.
8865 SCH P	X	Acquisitions, Dispositions, and Changes of Interests in a Foreign Partnership.
8866	X	Interest Computation Under the Look-Back Method for Property Depreciated Under the Income Forecast Method.
8873	X	Extraterritorial Income Exclusion.
8874	X	New Markets Credit.
8878		IRS e-file Signature Authorization for Form 4868 or Form 2350.
8878 SP		Autorización de firma para presentar por medio del IRS e-file para el Formulario 4868(SP) o el Formulario 2350(SP).
8879		IRS e-file Signature Authorization.
8879 SP		Autorización de firma para presentar la Declaración por medio del IRS e-file.
8880		Credit for Qualified Retirement Savings Contributions.
8881	X	Credit for Small Employer Pension Plan Startup Costs.
8882	X	Credit for Employer-Provided Childcare Facilities and Services.
8885		Health Coverage Tax Credit.
8886	X	Reportable Transaction Disclosure Statement.
8888		Allocation of Refund (Including Savings Bond Purchases.
8889		Health Savings Accounts (HSAs).
8891		U.S. Information Return for Beneficiaries of Certain Canadian Registered Retirement Plans.
8896	X	Low Sulfur Diesel Fuel Production Credit.
8898		Statement for Individuals Who Begin or End Bona Fide Residence in a U.S. Possession.
8900	X	Qualified Railroad Track Maintenance Credit.
8903	X	Domestic Production Activities Deduction.
8906		Distilled Spirits Credit.
8907		Nonconventional Source Fuel Credit.
8908		Energy Efficient Home Credit.
8910		Alternative Motor Vehicle Credit.
8911		Alternative Fuel Vehicle Refueling Property Credit.
8914		Exemption Amount for Taxpayers Housing Midwestern Displaced Individuals.
8915		Qualified Hurricane Retirement Plan Distribution and Repayments.
8917		Tuition and Fees Deduction.
8919		Uncollected Social Security and Medicare Tax on Wages.
8925	X	Report of Employer-Owned Life Insurance Contracts.
8931	X	Agricultural Chemicals Security Credit.
8932	X	Credit for Employer Differential Wage Payments.

APPENDIX—Continued

Forms	Filed by individuals and others	Title
9465		Installment Agreement Request.
9465 SP		Solicitud para un Plan de Pagos a Plazos.
Notice 2006–52		
Notice 160920–05		Deduction for Energy Efficient Commercial Buildings.
Pub 972 Tables		Child Tax Credit.
REG–149856–03		Notice of Proposed Rulemaking Dependent Child of Divorced or Separated Parents or Parents Who Live Apart.
SS–4	X	Application for Employer Identification Number.
SS–8	X	Determination of Worker Status for Purposes of Federal Employment Taxes and Income Tax Withholding.
T (Timber)	X	Forest Activities Schedules.
W–4		Employee's Withholding Allowance Certificate.
W–4 P		Withholding Certificate for Pension or Annuity Payments.
W–4 S		Request for Federal Income Tax Withholding From Sick Pay.
W–4 SP		Certificado de Exención de la Retención del Empleado.
W–4 V		Voluntary Withholding Request.
W–7		Application for IRS Individual Taxpayer Identification Number.
W–7 A		Application for Taxpayer Identification Number for Pending U.S. Adoptions.
W–7 SP		Solicitud de Numero de Identificacíon Personal del Contribuyente del Servicio de Impuestos Internos.

Forms Removed from this ICR:	**Reason for removal:**
W–5/W–5SP	AEIC is not valid for tax years beginning after 12/31/2010. P.L. 111–226, sec. 219
1040 ES/V OCR	Obsolete
4070	Obsolete
Forms Added to this ICR:	**Justification for Addition:**
W–7(COA)	T.D. 8671, 1996–1 C.B.314
5884–B	P.L. 111—147, section 102

[FR Doc. 2011–8669 Filed 4–11–11; 8:45 am]
BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Office of Thrift Supervision

Mutual Holding Company

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

ACTION: Notice and request for comment.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to comment on proposed and continuing information collections, as required by the Paperwork Reduction Act of 1995, 44 U.S.C. 3507. The Office of Thrift Supervision within the Department of the Treasury will submit the proposed information collection requirement described below to the Office of Management and Budget (OMB) for review, as required by the Paperwork Reduction Act. Today, OTS is soliciting public comments on its proposal to extend this information collection.

DATES: Submit written comments on or before June 13, 2011.

ADDRESSES: Send comments, referring to the collection by title of the proposal or by OMB approval number, to Information Collection Comments, Chief Counsel's Office, Office of Thrift Supervision, 1700 G Street, NW., Washington, DC 20552; send a facsimile transmission to (202) 906–6518; or send an e-mail to *infocollection.comments@ots.treas.gov.* OTS will post comments and the related index on the OTS Internet site at *http://www.ots.treas.gov.* In addition, interested persons may inspect comments at the Public Reading Room, 1700 G Street, NW by appointment. To make an appointment, call (202) 906–5922, send an e-mail to *public.info@ots.treas.gov,* or send a facsimile transmission to (202) 906–7755.

FOR FURTHER INFORMATION CONTACT: You can request additional information about this proposed information collection from Donald W. Dwyer on (202) 906–6414, Office of Thrift Supervision, 1700 G Street, NW., Washington, DC 20552.

SUPPLEMENTARY INFORMATION: OTS may not conduct or sponsor an information collection, and respondents are not required to respond to an information collection, unless the information collection displays a currently valid OMB control number. As part of the approval process, we invite comments on the following information collection.

Comments should address one or more of the following points:

a. Whether the proposed collection of information is necessary for the proper performance of the functions of OTS;

b. The accuracy of OTS's estimate of the burden of the proposed information collection;

c. Ways to enhance the quality, utility, and clarity of the information to be collected;

d. Ways to minimize the burden of the information collection on respondents, including through the use of information technology.

We will summarize the comments that we receive and include them in the OTS request for OMB approval. All

comments will become a matter of public record. In this notice, OTS is soliciting comments concerning the following information collection.

Title of Proposal: Mutual Holding Company.

OMB Number: 1550–0072.

Form Numbers: MHC–1 (OTS Form 1522) and MHC–2 (OTS Form 1523).

Description: The OTS analyzes the submitted information to determine whether the applicant meets the statutory and regulatory criteria to form a mutual holding company and/or perform minority stock issuances. Information provided in the notice or application is essential if the OTS is to fulfill its mandate to prevent insider abuse and unsafe and unsound practices by mutual holding companies and their subsidiaries. Minority issuances are not feasible without an application process that includes the review of such information.

Type of Review: Extension of a currently approved collection.

Affected Public: Businesses or other for-profit.

Estimated Number of Respondents: 50.

Estimated Frequency of Response: On occasion.

Estimated Total Burden: 4,132 hours.

Dated: April 6, 2011.

Ira L. Mills,

Paperwork Clearance Officer, Office of Chief Counsel, Office of Thrift Supervision.

[FR Doc. 2011–8591 Filed 4–11–11; 8:45 am]

BILLING CODE 6720–01–P

DEPARTMENT OF THE TREASURY

Office of Thrift Supervision

Mutual to Stock Conversion Application

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

ACTION: Notice and request for comment.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to comment on proposed and continuing information collections, as required by the Paperwork Reduction Act of 1995, 44 U.S.C. 3507. The Office of Thrift Supervision within the Department of the Treasury will submit the proposed information collection requirement described below to the Office of Management and Budget (OMB) for review, as required by the Paperwork Reduction Act. Today, OTS is soliciting public comments on its proposal to extend this information collection.

DATES: Submit written comments on or before June 13, 2011.

ADDRESSES: Send comments, referring to the collection by title of the proposal or by OMB approval number, to Information Collection Comments, Chief Counsel's Office, Office of Thrift Supervision, 1700 G Street, NW., Washington, DC 20552; send a facsimile transmission to (202) 906–6518; or send an e-mail to *infocollection.comments@ots.treas.gov.* OTS will post comments and the related index on the OTS Internet Site at *http://www.ots.treas.gov.* In addition, interested persons may inspect comments at the Public Reading Room, 1700 G Street, NW by appointment. To make an appointment, call (202) 906–5922, send an e-mail to *public.info@ots.treas.gov,* or send a facsimile transmission to (202) 906–7755.

FOR FURTHER INFORMATION CONTACT: You can request additional information about this proposed information collection from Donald W. Dwyer on (202) 906–6414, Office of Thrift Supervision, 1700 G Street, NW., Washington, DC 20552.

SUPPLEMENTARY INFORMATION: OTS may not conduct or sponsor an information collection, and respondents are not required to respond to an information collection, unless the information collection displays a currently valid OMB control number. As part of the approval process, we invite comments on the following information collection.

Comments should address one or more of the following points:

a. Whether the proposed collection of information is necessary for the proper performance of the functions of OTS;

b. The accuracy of OTS's estimate of the burden of the proposed information collection;

c. Ways to enhance the quality, utility, and clarity of the information to be collected;

d. Ways to minimize the burden of the information collection on respondents, including through the use of information technology.

We will summarize the comments that we receive and include them in the OTS request for OMB approval. All comments will become a matter of public record. In this notice, OTS is soliciting comments concerning the following information collection.

Title of Proposal: Mutual to Stock Conversion Application.

OMB Number: 1550–0014.

Form Numbers: 1680, 1681, 1682, and 1683.

Description: The OTS staff makes an in-depth study of all information furnished in the application in order to determine the safety and soundness of the proposed stock conversion. The purpose of the information collection is to provide OTS with the information necessary to determine if the proposed transaction may be approved. If the information required were not collected, OTS would not be able to properly evaluate whether the proposed transaction was acceptable. The information collection allows OTS to evaluate the merits of the proposed conversion plan and application in light of applicable statutory and regulatory criteria.

Type of Review: Extension of a currently approved collection.

Affected Public: Businesses or other for-profit.

Estimated Number of Respondents: 30.

Estimated Frequency of Response: On occasion.

Estimated Total Burden: 15,300 hours.

Dated: April 6, 2011.

Ira L. Mills,

Paperwork Clearance Officer, Office of Chief Counsel, Office of Thrift Supervision.

[FR Doc. 2011–8602 Filed 4–11–11; 8:45 am]

BILLING CODE 6720–01–P

DEPARTMENT OF THE TREASURY

Office of Thrift Supervision

Savings and Loan Holding Company Application

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

ACTION: Notice and request for comment.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to comment on proposed and continuing information collections, as required by the Paperwork Reduction Act of 1995, 44 U.S.C. 3507. The Office of Thrift Supervision within the Department of the Treasury will submit the proposed information collection requirement described below to the Office of Management and Budget (OMB) for review, as required by the Paperwork Reduction Act. Today, OTS is soliciting public comments on its proposal to extend this information collection.

DATES: Submit written comments on or before June 13, 2011.

ADDRESSES: Send comments, referring to the collection by title of the proposal or by OMB approval number, to Information Collection Comments, Chief

Counsel's Office, Office of Thrift Supervision, 1700 G Street, NW., Washington, DC 20552; send a facsimile transmission to (202) 906–6518; or send an e-mail to *infocollection.comments@ots.treas.gov*. OTS will post comments and the related index on the OTS Internet Site at *http://www.ots.treas.gov*. In addition, interested persons may inspect comments at the Public Reading Room, 1700 G Street, NW. by appointment. To make an appointment, call (202) 906–5922, send an e-mail to *public.info@ots.treas.gov*, or send a facsimile transmission to (202) 906–7755.

FOR FURTHER INFORMATION CONTACT: You can request additional information about this proposed information collection from Donald W. Dwyer on (202) 906–6414, Office of Thrift Supervision, 1700 G Street, NW., Washington, DC 20552.

SUPPLEMENTARY INFORMATION: OTS may not conduct or sponsor an information collection, and respondents are not required to respond to an information collection, unless the information collection displays a currently valid OMB control number. As part of the approval process, we invite comments on the following information collection.

Comments should address one or more of the following points:

a. Whether the proposed collection of information is necessary for the proper performance of the functions of OTS;

b. The accuracy of OTS's estimate of the burden of the proposed information collection;

c. Ways to enhance the quality, utility, and clarity of the information to be collected;

d. Ways to minimize the burden of the information collection on respondents, including through the use of information technology.

We will summarize the comments that we receive and include them in the OTS request for OMB approval. All comments will become a matter of public record. In this notice, OTS is soliciting comments concerning the following information collection.

Title of Proposal: Savings and Loan Holding Company Application.

OMB Number: 1550–0015.

Form Numbers: H–(e).

Description: Section 10(e) of the Home Owners' Loan Act, 12 U.S.C. 1467a(e), and its implementing regulations provide that no company, or any director or officer of a savings and loan holding company, or any individual who owns, controls, or holds with power to vote (or holds proxies representing) more than 25 percent of the voting stock of a savings and loan holding company, shall acquire control of a savings association except upon receipt of written approval of OTS. While this prohibition and approval requirement applies to certain persons affiliated with a savings and loan holding company, a similar prohibition and approval requirement applies to other persons who seek to control a savings association. However, a transaction may be exempt.

OTS analyzes each holding company application to determine whether the applicant meets the statutory criteria set forth in Section 10(e) of the Act to become a savings and loan holding company. The forms are reviewed for adequacy of answers to items and completeness in all material respects.

Type of Review: Extension of a currently approved collection.

Affected Public: Businesses or other for-profit.

Estimated Number of Respondents: 65.

Estimated Frequency of Response: On occasion.

Estimated Total Burden: 32,500 hours.

Dated: April 6, 2011.

Ira L. Mills,

Paperwork Clearance Officer, Office of Chief Counsel, Office of Thrift Supervision.

[FR Doc. 2011–8603 Filed 4–11–11; 8:45 am]

BILLING CODE 6720–01–P

DEPARTMENT OF THE TREASURY

Office of Thrift Supervision

Amendment of a Federal Savings Association Charter

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

ACTION: Notice and request for comment.

SUMMARY: The proposed information collection request (ICR) described below has been submitted to the Office of Management and Budget (OMB) for review and approval, as required by the Paperwork Reduction Act of 1995, 44 U.S.C. 3507. OTS is soliciting public comments on the proposal.

DATES: Submit written comments on or before May 12, 2011. A copy of this ICR, with applicable supporting documentation, can be obtained from RegInfo.gov at *http://www.reginfo.gov/public/do/PRAMain*.

ADDRESSES: Send comments, referring to the collection by title of the proposal or by OMB approval number, to OMB and OTS at these addresses: Office of Information and Regulatory Affairs, Attention: Desk Officer for OTS, U.S. Office of Management and Budget, 725 17th Street, NW., Room 10235, Washington, DC 20503, or by fax to (202) 393–6974; and Information Collection Comments, Chief Counsel's Office, Office of Thrift Supervision, 1700 G Street, NW., Washington, DC 20552, by fax to (202) 906–6518, or by e-mail to *infocollection.comments@ots.treas.gov*. OTS will post comments and the related index on the OTS Internet Site at *http://www.ots.treas.gov*. In addition, interested persons may inspect comments at the Public Reading Room, 1700 G Street, NW., Washington, DC 20552 by appointment. To make an appointment, call (202) 906–5922, send an e-mail to *public.info@ots.treas.gov*, or send a facsimile transmission to (202) 906–7755.

FOR FURTHER INFORMATION CONTACT: For further information or to obtain a copy of the submission to OMB, please contact Ira L. Mills at, *ira.mills@ots.treas.gov*, or on (202) 906–6531, or facsimile number (202) 906–6518, Regulations and Legislation Division, Chief Counsel's Office, Office of Thrift Supervision, 1700 G Street, NW., Washington, DC 20552.

SUPPLEMENTARY INFORMATION: OTS may not conduct or sponsor an information collection, and respondents are not required to respond to an information collection, unless the information collection displays a currently valid OMB control number. As part of the approval process, we invite comments on the following information collection.

Title of Proposal: Amendment of a Federal Savings Association Charter.

OMB Number: 1550–0018.

Form Number: N/A.

Description: The charter of an insured federal savings association is a formal document created when a savings association establishes its corporate existence. The charter states the scope, purpose and duration for the corporate entity. Also, for a federally chartered savings association, the charter confirms that the board of directors has formally committed the institution to Section 5 of the Home Owners' Loan Act ("HOLA") and other applicable statutes and regulations governing federally chartered savings associations. *See* 12 U.S.C. 1464.

All federally chartered savings associations are required to file charter amendment applications or notices with OTS. OTS Regional Office staff review the applications and notices to determine whether the charter amendments comply with the regulations and OTS policy.

Type of Review: Extension of a currently approved collection.

Affected Public: Business or other for-profit.

Estimated Number of Respondents: 1.

Estimated Frequency of Response: On occasion.

Estimated Total Burden: 6 hours.

Clearance Officer: Ira L. Mills, (202) 906–6531, Office of Thrift Supervision, 1700 G Street, NW., Washington, DC 20552.

Dated: April 6, 2011.

Ira L. Mills,

Paperwork Clearance Officer,

Office of Chief Counsel, Office of Thrift Supervision.

[FR Doc. 2011–8594 Filed 4–11–11; 8:45 am]

BILLING CODE 6720–01–P

FEDERAL REGISTER

Vol. 76 Tuesday,
No. 70 April 12, 2011

Part II

Department of the Interior

Fish and Wildlife Service

50 CFR Part 17
Endangered and Threatened Wildlife and Plants; Proposed Endangered Status for the Three Forks Springsnail and San Bernardino Springsnail, and Proposed Designation of Critical Habitat; Proposed Rule

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

[Docket No. FWS–R2–ES–2009–0083; 92210–1117–0000–B4]

RIN 1018–AV84

Endangered and Threatened Wildlife and Plants; Proposed Endangered Status for the Three Forks Springsnail and San Bernardino Springsnail, and Proposed Designation of Critical Habitat

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Proposed rule.

SUMMARY: We, the U.S. Fish and Wildlife Service (Service), propose to list the Three Forks springsnail (*Pyrgulopsis trivialis*) and the San Bernardino springsnail (*Pyrgulopsis bernardina*) as endangered under the Endangered Species Act of 1973, as amended (Act). If we finalize this rule as proposed, it would extend the Act's protections to these species. We also propose to designate critical habitat for both species under the Act. In total, approximately 4.5 hectares (11.1 acres) are being proposed for designation as critical habitat for Three Forks springnail in Apache County, and approximately 0.815 hectares (2.013 acres) for San Bernardino springsnail in Cochise County, Arizona. We seek information and comments from the public regarding the Three Forks and San Bernardino springsnails and this proposed rule.

DATES: We will accept comments received or postmarked on or before June 13, 2011. We must receive requests for public hearings, in writing, at the address shown in the **FOR FURTHER INFORMATION CONTACT** section by May 27, 2011.

ADDRESSES: You may submit comments by one of the following methods:

- *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the instructions for submitting comments for Docket No. FWS–R2–ES–2009–0083.
- *U.S. mail or hand-delivery:* Public Comments Processing, Attn: Docket No. FWS–R2–ES–2009–0083; Division of Policy and Directives Management; U.S. Fish and Wildlife Service; 4401 N. Fairfax Drive, Suite 222; Arlington, VA 22203.

We will not accept e-mail or faxes. We will post all comments on *http://www.regulations.gov.* This generally means that we will post any personal information you provide us (see the Public Comments Solicited section below for more information).

FOR FURTHER INFORMATION CONTACT: Steve Spangle, Field Supervisor, Arizona Ecological Services Field Office, 2321 West Royal Palm Road, Suite 103, Phoenix, Arizona, 85021; telephone 602–242–0210; facsimile 602–242–2513. If you use a telecommunications device for the deaf (TDD), call the Federal Information Relay Service (FIRS) at 800–877–8339.

SUPPLEMENTARY INFORMATION: This document consists of: (1) A proposed rule to list the Three Forks Springsnail and San Bernardino Springsnail as endangered; and (2) proposed critical habitat designations for the two species.

Previous Federal Actions

We first identified the Three Forks springsnail as a candidate for listing on October 30, 2001 (66 FR 54808). We first identified the San Bernardino springsnail as a candidate for listing on December 6, 2007 (72 FR 69034). Candidates are those fish, wildlife, and plants for which we have on file sufficient information on biological vulnerability and threats to support preparation of a listing proposal, but for which development of a listing regulation is precluded by other higher priority listing activities.

On May 4, 2004, the Center for Biological Diversity petitioned the Service to list 225 species of plants and animals as endangered under the provisions of the Endangered Species Act, as amended (16 U.S.C. 1531 *et seq.*), including the Three Forks springsnail. On June 25, 2007, we received a petition from Forest Guardians to list 475 species in the southwestern United States as threatened or endangered under the provisions of the Act, including the San Bernardino springsnail. In our most recent annual Candidate Notice of Review dated November 10, 2010 (75 FR 69222), we retained a listing priority number (LPN) of 2 for the Three Forks springsnail and the San Bernardino springsnail in accordance with our priority guidance published on September 21, 1983 (48 FR 43098). An LPN of 2 reflects threats that are both imminent and high in magnitude, as well as the taxonomic classification as a full species.

Public Comments

We intend that any final action resulting from this proposed rule will be based on the best scientific and commercial data available and be as accurate and as effective as possible. Therefore, we request comments or information from the public, other concerned governmental and tribal agencies, the scientific community, industry, or any other interested party concerning this proposed rule. We particularly seek comments concerning:

(1) Biological, commercial trade, or other relevant data concerning any threats (or lack thereof) to these species and regulations that may be addressing those threats.

(2) Additional information concerning the range, distribution, and population size of these species, including the locations of any additional populations.

(3) Any information on the biological or ecological requirements of these species.

(4) The reasons why we should or should not designate habitat as "critical habitat" under section 4 of the Act including whether there are threats to the species from human activity which are expected to increase due to the designation, and whether that increase in threat outweighs the benefit of designation such that the designation of critical habitat may not be prudent.

(5) Specific information on:

- The amount and distribution of habitat for each species,
- What areas occupied at the time of listing and that contain features essential to the conservation of these species should be included in the designation and why,
- Special management considerations or protections that the features essential to the conservation of both species that have been identified in this proposal may require, including managing for the potential effects of climate change, and
- What areas not occupied at the time of listing are essential for the conservation of the species and why.

(6) Land use designations and current or planned activities in the subject areas and their possible impacts on proposed critical habitat.

(7) Any probable economic, national security, or other relevant impacts of designating any area that may be included in the final designation. We are particularly interested in any impacts on small entities or families, and the benefits of including or excluding areas that exhibit these impacts.

(8) Whether we could improve or modify our approach to designating critical habitat in any way to provide for greater public participation and understanding, or to better accommodate public concerns and comments.

(9) Information on the projected and reasonably likely impacts of climate change on both species and the critical habitat areas we are proposing.

You may submit your comments and materials concerning this proposed rule by one of the methods listed in the **ADDRESSES** section.

We will post your entire comment—including your personal identifying information—on *http://www.regulations.gov*. If you provide personal identifying information, such as your street address, phone number, or e-mail address, you may request at the top of your document that we withhold this information from public review. However, we cannot guarantee that we will be able to do so.

Comments and materials we receive, as well as supporting documentation we used in preparing this proposed rule, will be available for public inspection on *http://www.regulations.gov* at Docket No. FWS–R2–ES–2009–0083, or by appointment, during normal business hours, at the Arizona Ecological Services Field Office (*see* **FOR FURTHER INFORMATION CONTACT** section).

Background

Both the Three Forks springsnail and San Bernardino springsnail are members of the genus *Pyrgulopsis* in the family Hydrobiidae. In the arid Southwest, springsnails in this family are largely relicts of the wetter Pleistocene Epoch (2.5 million to 10,000 years ago) and are typically distributed across the landscape as geographically isolated populations exhibiting a high degree of endemism (found only in a particular area or region) (Bequart and Miller 1973, p. 214; Taylor 1987, pp. 5–6; Shepard 1993, p. 354; Hershler and Sada 2002, p. 255). Springsnails are strictly aquatic and respiration occurs through an internal gill. Springsnails in the genus *Pyrgulopsis* are egg-layers (Hershler 1998, p. 14). The larval stage is completed in the egg capsule and, upon hatching, tiny snails emerge into their adult habitat (Brusca and Brusca 1990, p. 759; Hershler and Sada 2002, p. 256). The sexes are separate and physical differences are noticeable between them, with females being larger than males. Mobility is limited, and significant migration likely does not occur, although aquatic snails have been known to disperse by becoming attached to the feathers of migratory birds (Roscoe 1955, p. 66; Dundee *et al.* 1967, pp. 89–90).

Springsnails in the family Hydrobiidae feed primarily on periphyton, which is a complex mixture of algae, detritus, bacteria, and other microbes that live upon submerged surfaces in aquatic environments (Mladenka 1992, pp. 46, 81; Hershler and Sada 2002, p. 256; Lysne *et al.* 2007, p. 649). The life span of most aquatic snails is 9 to 15 months (Pennak 1989, p. 552); survival of one species in the genus *Pyrgulopsis* in the laboratory was 12.7 months (Lysne *et al.* 2007, p. 3).

Both the Three Forks springsnail and San Bernardino springsnail occur in springs, seeps, spring runs, and a variety of waters, but particularly rheocrene systems (water emerging from the ground as a free-flowing stream). In the desert Southwest, these spring ecosystems are commonly referred to as cienegas (Hendrickson and Minckley 1984, pp. 133, 169; Minckley and Brown 1994, pp. 223–287). Snails in the genus *Pyrgulopsis* are rarely found in mud or soft sediments (Hershler 1998, p. 14) and are typically more abundant in gravel to cobble size substrates (Frest and Johannes 1995, p. 203; Malcom *et al.* 2005, p. 75; Martinez and Thome 2006, pp. 12–13; Lysne *et al.* 2007, p. 650). These substrate types provide a suitable surface for springsnails to graze and lay eggs (Taylor 1987, p. 5; Hersler 1998, p. 14).

Proximity to springheads, where water emerges from the ground, plays a key role in the life history of springsnails. Many springsnail species exhibit decreased abundance further away from spring vents, presumably due to their need for stable water chemistry and flow regime provided by spring waters (Hershler 1984, p. 68; Hershler 1998, p. 11; Hershler and Sada 2002, p. 256; Martinez and Thome 2006, p. 14; Tsai *et al.* 2007, p. 216). Several habitat parameters of springs, such as substrate, dissolved carbon dioxide, dissolved oxygen, temperature, conductivity, and water depth, have been shown to influence the distribution and abundance of *Pyrgulopsis* snails (O'Brien and Blinn 1999, p. 231–232; Mladenka and Minshall 2001, pp. 209–211; Malcom *et al.* 2005, p. 75; Martinez and Thome 2006, pp. 12–15; Lysne *et al.* 2007, p. 650; Tsai *et al.* 2007, p. 2006). Dissolved salt may also be an important factor, because it is essential for shell formation (Pennak 1989, p. 552).

Three Forks Springsnail

The Three Forks springsnail was described as *Pyrgulopsis trivialis* by Hershler (1994, pp. 68–69). We have carefully reviewed the available taxonomic information (Landye 1973, p. 49; Taylor 1987, pp. 30–32; Hershler and Landye 1988, pp. 32–35; Hershler 1994, pp. 68–69; Hurt 2004, p. 1176) and conclude that Three Forks springsnail is a valid taxon. The Three Forks springsnail is a variably sized species, with a shell height (length) of 1.5 to 4.8 millimeters (mm) (0.06 to 0.19 in). A detailed description of the identifying characteristics of the Three Forks springsnail is found in Taylor (1987, pp. 30–32) and Hershler and Landye (1988, pp. 32–35).

The Three Forks springsnail is known to occur in two separate spring complexes, Three Forks Springs and Boneyard Bog Springs in the North Fork East Fork Black River Watershed of the White Mountains on the Apache-Sitgreaves National Forests in Apache County, east-central Arizona (Myers 2000, p. 1; Nelson *et al.* 2002, p. 5). These spring complexes are found in open mountain meadows at 2,500 meters (m) (8,200 feet (ft)) elevation and are separated by 6 kilometers (km) (3.7 miles (mi)) of perennial flowing stream (Martinez and Myers 2008, p. 189). The species has been found in free-flowing springheads, concrete boxed springheads, spring runs, spring seeps, and shallow ponded water at Three Forks Springs and Boneyard Bog Springs (Martinez and Myers 2008, p. 189). A springsnail of the same genus was recently found in a spring along Boneyard Creek between Three Forks Springs and Boneyard Bog Springs (Myers 2010, p. 1). Although the locality of this new site suggests it is likely the same species, additional analysis will be needed for a definitive determination of its taxonomy.

Martinez and Myers (2008, p. 189–194) found the presence of Three Forks springsnail was associated with gravel/pebble substrates, shallow water up to 6 centimeters (cm) (2.4 in) deep, high conductivity, alkaline waters of pH 8, and the presence of pond snails, *Physa gyrina*. It has also been shown that density of Three Forks springsnail is significantly greater on gravel/cobble substrates (Martinez and Myers 2002, p. 1; Nelson 2002, p. 1), though the species has been reported as "abundant" in the fine-grained mud of a 0.01 hectare (ha) (0.025 acre (ac)) pond at Three Forks (Taylor 1987, p. 32). Abundance has been found to decrease downstream from springheads (Nelson *et al.* 2002, p. 11), consistent with studies of other springsnails (Hershler 1984, p. 68; Hershler 1998, p. 11; Hershler and Sada 2002, p. 256; Martinez and Thome 2006, p. 14; Tsai *et al.* 2007, p. 216).

The Three Forks springsnail was historically abundant at both Three Forks and Boneyard Bog springs (Myers 2000, p. 1; Nelson *et al.* 2002, p. 5). Nelson *et al.* (2002, p. 5) reported Three Forks springsnail densities of approximately 60 snails per square meter (72 per square yard) at Three Forks and approximately 790 snails per square meter (945 per square yard) at Boneyard Bog Springs. The number at a single springbrook, with an area of 213 square meters (254 square yards), at

Three Forks Springs in 2002 was estimated at tens of thousands of individual snails (Martinez 2009, pp. 31–32). The Three Forks springsnail no longer occurs in abundance at Three Forks Springs. Since 2004, annual surveys at Three Forks have detected very low numbers of the species, including two individuals found in August 2005 (Cox 2007, p. 1) and three individuals found in July 2008 (Bailey 2008, p. 1). Reasons for the decline are discussed in the Threats section of this proposed rule. The species continues to be abundant at Boneyard Bog Springs (Cox 2007, p. 1).

San Bernardino Springsnail

The San Bernardino springsnail was described by Hershler (1994, pp. 21–22) as *Pyrgulopsis bernardina* from specimens collected at the type locality (site of original collection) from two springs on San Bernardino Ranch (including Snail Spring), Cochise County, Arizona. We have reviewed the available taxonomic information (Landye 1973, p. 34; Landye 1981, p. 21; Hershler and Landye 1988, p. 41; Taylor 1987, p. 34; Hershler 1994, p. 21; Hurt 2004, p. 1176) and conclude that San Bernardino springsnail is a valid taxon. The San Bernardino springsnail has a narrow-conic shell and a height of 1.3 to 1.7 mm. A detailed description of the identifying characteristics of the San Bernardino springsnail is found in Hershler (1994, pp. 21–22).

The historical range of the San Bernardino springsnail in the United States may have included at least six populations within a complex of spring ecosystems along the Rio San Bernardino (also known as San Bernardino Creek or Black Draw) within the headwaters of the Rio Yaqui in Cochise County, southern Arizona, on what is now the San Bernardino National Wildlife Refuge (NWR) and the adjacent, private John Slaughter Ranch, including Snail Spring, House Spring, Horse Spring, Goat Tank Spring, House Pond, Tule Spring, and Mesa Seep (Cox *et al.* 2007, pp. 1–2; Service 2007, pp. 82–83; Malcom *et al.* 2005, p. 75; Malcom *et al.* 2003, p. 2; Velasco 2000, p. 1). The current range of the species is limited to two or possibly three springs, all located on the John Slaughter Ranch. The San Bernardino springsnail has recently been confirmed in Goat Tank Spring and Horse Spring (Martinez 2010, p. 2), though the species appears to exhibit low population numbers at these two sites. The species was formerly very abundant at Snail Spring on the John Slaughter Ranch (Malcom *et al.* 2003, p. 17; Malcom *et al.* 2005, p. 74) and was last confirmed from that site in 2005 (Cox *et al.* 2007, p. 1).

In Sonora, Mexico, a springsnail in the same family as the San Bernardino springsnail occurs in the San Bernardino and Los Ojitos cienegas on the private Rancho San Bernardino within 0.25 mi (0.4 km) of San Bernardino NWR (Service 2007, p. 82; Malcom *et al.* 2005, p. 75). The snails found in Mexico are likely to be San Bernardino springsnails, since they occur in the same drainage; however, additional research is needed to verify if this is the case (Hershler 2009, p. 1; Hershler 2008, p. 1).

Malcom *et al.* 2005 (pp. 71, 75–76) showed that the density of San Bernardino springsnail was positively associated with cobble substrates, higher vegetation density, faster water velocity, higher dissolved oxygen, water temperatures of 14 to 22 degrees Celsius, and pH values between 7.6 and 8.0. San Bernardino springsnail density exhibited positive relationships to sand and cobble substrates, vegetation density, and water velocity, and negative relationships to silt and organic substrates, and water depth (Malcom *et al.* 2005, pp. 75–76). Substrates with higher silt content typically support fewer springsnails. No studies have been conducted to determine the species' limits or tolerances to specific habitat thresholds.

Limited information is available on population sizes for the San Bernardino springsnail. Malcom *et al.* (2003, p. 7; 2005, p. 74) estimated average springsnail density as 55,929 individuals per square meter (66,893 per square yard) at Snail Spring from September 2001 to March 2002. The species appears to occur in low population numbers at Goat Tank Spring and Horse Spring, often making detection difficult.

Summary of Factors Affecting the Species

Section 4 of the Act and implementing regulations at 50 CFR part 424 set forth procedures for adding species to the Federal Lists of Endangered and Threatened Wildlife and Plants. A species may be determined to be an endangered or threatened species due to one or more of the five factors described in section 4(a)(1) of the Act: (A) The present or threatened destruction, modification, or curtailment of its habitat or range; (B) overutilization for commercial, recreational, scientific, or educational purposes; (C) disease or predation; (D) the inadequacy of existing regulatory mechanisms; and (E) other natural or manmade factors affecting its continued existence. Listing actions may be warranted based on any of the above threat factors, singly or in combination. Each of these factors is discussed below.

A. The Present or Threatened Destruction, Modification, or Curtailment of Its Habitat or Range

Wildfire Suppression

Fire frequency and intensity in southwestern forests are altered from historical conditions (Dahms and Geils 1997, p. 34; Danzer *et al.* 1997, p. 1). Before the late 1800s, surface fires generally occurred at least once per decade in montane forests with a pine component (Swetnam and Baisan 1996, p. 15), landscapes similar to those within which the Three Forks springsnail occurs. During the early 1900s, frequent widespread ground fires ceased to occur due to intensive livestock grazing that removed fine fuels, such as grasses. Coupled with fire suppression, changes in fuel load began to alter forest structure and natural fire regime (Dahms and Geils 1997, p. 34). Absence of low-intensity ground fires allowed a buildup of woody fuels that resulted in infrequent, but very hot, stand replacing fires (very hot fires which kill all or most of aboveground parts of the dominant vegetation, changing the aboveground structure substantially) (Danzer *et al.* 1997, p. 9; Dahm and Geils 1997, p. 34).

On May 17, 2004, and June 8, 2004, two wildfires, the KP and Three Forks fires, ignited near one another on U.S. Forest Service (USFS) lands and developed into hot crown fires (fires burning in tree canopies). Initial fire suppression efforts by the USFS were unsuccessful, and the USFS authorized additional actions to protect resources from what they considered to be extreme fire behavior (USFS 2005, p. 2–3). The additional actions included application of aerial fire retardants. Although this fire complex did not directly burn the Three Forks Springs area, surface waters within the Three Forks fire area were exposed to fire retardant (chemicals used to suppress fire) that likely drifted from high elevation retardant releases from aircraft (USFS 2005, pp. 4, 12).

Fire retardants are toxic to springsnails when they enter the aquatic systems the snails occupy. Some fire retardant chemicals are ammonia-based, which are toxic to aquatic wildlife; however, many formulations also contain yellow prussiate of soda (sodium ferrocyanide), which is added as an anticorrosive agent. Such formulations are toxic for fish, aquatic invertebrates, and algae (Angeler *et al.*

2006, pp. 171–172; Calfee and Little 2003, pp. 1527–1530; Little and Calfee 2002, p. 5; Buhl and Hamilton 1998, p. 1598; Hamilton *et al.* 1998, p. 3; Gaikwokski *et al.* 1996, pp. 1372–1373). Toxicity of these formulations is enhanced by sunlight (Calfee and Little 2003, pp. 1529–1533). Contamination of aquatic sites can occur via direct application or runoff from treated uplands.

During the fire suppression activities in the vicinity of Three Forks Springs, approximately 108,610 gallons (411,130 liters) of aerial fire retardant were applied (USFS 2005, p. 3). The nearest documented release into a waterway was 0.65 mi (1.05 km) from Three Forks Springs, though other undocumented aerial releases in the area could have been closer. The USFS (2005, p. 12) concluded that lethal concentrations of retardant contaminated Three Forks Springs waters. This contamination resulted in the near disappearance of springsnails following the fire. Available data indicate that the species was still abundant in all historically occupied sites at Three Forks Springs in 2002 and 2003, just prior to the fire (Arizona Game and Fish Department (AGFD) 2008, p. 57–70; Martinez 2009, pp. 31–32). Surveys in 2004, immediately following the fire, failed to locate any springsnails. 2005 surveys detected only two snails (Cox 2007, p. 1), 2008 surveys detected only three snails (Bailey 2008, p. 1), 2009 surveys located only one snail (Grosch 2010, p. 1), and 2010 surveys did not detect any snails (Sorensen 2010, p.1). Since these are short-lived species, finding even a few individuals 4 and 5 years after the fire seems to indicate that the species continues to persist, though precariously, at Three Forks Springs.

Lack of vegetation and forest litter following intense crown fires can expose soils to surface erosion during storms, often causing sedimentation, and erosion in downstream drainages (DeBano and Neary 1996, pp. 70–75). Surface erosion could not have directly affected the Three Forks springsnail or its habitat because the spring area did not burn. We do not have information that surface erosion following any wildfires has affected the Three Forks springsnail or its habitat in the past. However, since both Three Forks and Boneyard Bog spring complexes are surrounded by dense coniferous forests, it is reasonable to expect that surface erosion from high intensity wildfires may threaten them in the future.

Considering the toxic effect of fire retardant and the high potential for future wildfires in the area with exposure at both Three Forks and Boneyard Bog springs, we conclude there is a high risk that the Three Forks springsnail could become extinct due to exposure to fire retardant chemicals in its habitat.

While fires occur within the range of the San Bernardino springsnail, we have no information on fire frequency or intensity in this area. However, if a wildfire were to occur, suppression efforts could include the application of fire retardant chemicals. In this scenario, we would expect San Bernardino springsnails to react negatively to exposure to fire retardants. Because wildfire is unpredictable, and exposure to fire retardants could occur in the future, we believe this represents a potential threat to the species.

Ungulate Grazing

Ungulate (hoofed mammal) grazing on spring ecosystems can alter or remove springsnail habitat and limit the distribution of springsnails, or result in extirpation. For instance, cattle trampling at a spring in Owens Valley, California, reduced banks to mud and sparse grass, limiting the occurrence of the endangered Fish Slough springsnail (*Pyrgulopsis pertubata*) (Bruce and White 1998, pp. 3–4). Additionally, a population of another closely related springsnail, Chupadera springsnail, (*P. chupaderae*), endemic to Socorro County, New Mexico, was extirpated due to the impacts of livestock grazing on its habitat (Arritt 1998, p. 10).

Since the mid- and late 1990s, livestock have been fenced out of both Three Forks and Boneyard Bog springs. However, free-ranging elk (*Cervus elaphus*) have access to both spring complexes. During field surveys in 2000 and 2008, Service staff noted evidence of elk wallowing at Boneyard Bog Springs (Martinez 2000, p. 1; Martinez 2008, p. 1). Areas affected by wallowing were characterized by banks reduced to mud and sparse grass, with stagnant, rather than flowing, water. These are not optimal habitat conditions for the Three Forks springsnail. Although the AGFD have stated that elk wallowing at Boneyard Bog Springs may be a problem for maintaining springhead integrity, they did not find the amount of habitat disturbed alarming (Shroufe 2003, p. 5). We have discussed with AGFD and the Forest Service the possibility of constructing an elk fence, but no action has been taken. Nevertheless, the maintenance of springhead integrity is critical to maintaining water quality and conserving springsnails (Hershler and Williams 1996, p. 1). The observed changes to springsnail habitat resulting from elk use at Boneyard Bog Springs threatens the integrity of the spring system.

Ungulate grazing is not believed to be a current threat for the San Bernardino springsnail. Cattle grazing does not currently occur on the San Bernardino NWR. A small number of cattle graze on the John Slaughter Ranch, but they do not have access to the spring sites. Horse Spring is located in a horse pen (Martinez 2010, p. 2), but it is unclear what effect, if any, the horses have on the spring. However, past cattle grazing may have played a role in the extirpation of the species from what may have been its historical range. The San Bernardino Valley, including the John Slaughter Ranch, historically supported extensive cattle ranching (Hendrickson and Minckley 1984, pp. 142–144; Service 2007, p. iii–iv). At one time, livestock likely had access to all spring habitats along the Rio San Bernardino.

Springhead Inundation

Springhead inundation refers to pooling of water over a spring vent resulting in ponded water, sometimes relatively deep, that would otherwise exist as shallow free-flowing water. Inundation can alter springsnail habitats by causing shifts in water depth, velocity, substrate composition, vegetation, and water chemistry. Inundation has negatively affected other springsnails (70 FR 46304, August 9, 2005).

Three Forks springsnail habitats have been subjected to minor inundation. During the 1930s, concrete boxes were constructed around four springheads at Three Forks Springs. However, these boxes are small and the majority of the springs affected still exist as shallow, flowing-water ecosystems below the springboxes. Also, the species had been known to be locally abundant within springboxes until 1999, when the extirpation of the species from at least two boxed springheads at Three Forks Springs was noted (Myers 2000, p. 1). Extirpation is believed to be linked to invasion by the northern crayfish (*Orconectis virilis*) (see Factor C below). Habitats at Boneyard Bog Springs have not been affected by inundation. Springhead inundation does not appear to be a substantial threat to the Three Forks springsnail because inundated springheads are in a relatively small portion of the species' occupied habitat, and the springboxes are relatively small.

Springhead inundation may be a threat to the San Bernardino springsnail. Three unnamed springs on the Slaughter Ranch no longer exist as free-flowing waters. Instead the springheads have been converted into one large

artificial pond referred to as House Pond, which serves as an important refuge for several native Yaqui fishes. Since inundation of this habitat, the San Bernardino springsnail has not been found in these springs, although it was previously believed to occur there (Cox *et al.* 2007, p.1).

Groundwater Depletion

Habitat loss due to groundwater depletion, or loss of water flow, is the primary threat to the San Bernardino springsnail. Since spring ecosystems rely on water discharged to the surface from underground aquifers, depletion of these groundwater sources can result in drying of springs. This threat is severe for the San Bernardino springsnail because, like all springsnails, it is strictly aquatic, breathing through an internal gill and filtering aquatic organisms for food. Groundwater depletion has been recognized as a threat to the biota of the Rio San Bernardino and associated springs for many years in the Yaqui Fishes listing document (49 FR 34490, August 31, 1984) and the Recovery Plan for Yaqui Fishes (Service 1994, p. 17). The extirpation of several suspected populations of San Bernardino springsnail are believed to have been caused by the loss of water flow attributable to water depletion and diversion for domestic water use (Landye 1973, p. 34; Malcom *et al.* 2003, p. 17), though the taxonomy of those populations is unconfirmed.

Two distinct aquifers exist in the San Bernardino Valley basin, one deep and the other shallow (Earman *et al.* 2003, p. 35). These aquifers exhibit different chemical and thermal properties. Many of the springs in the area are influenced by both the deep and the shallow aquifers (Earman *et al.* 2003, p. 166; Malcom *et al.* 2005, pp. 75–76). House Spring, Snail Spring, and Goat Tank Spring have a different chemical composition (isotopic signatures) than other springs in the area, as well as one another (Earman *et al.* 2003, p. 166), indicating that the interaction between the deep aquifer, shallow groundwater, and spring sources, is a complex phenomenon.

Managers of Slaughter Ranch operate an irrigation system that relies on the shallow aquifer and surface water from House Pond to provide water to turf grass and to a cattle pasture (Malcom *et al.* 2003, p. 18; Malcom 2007, p. 1; Cox *et al.* 2007, p. 2). Malcom (2007, p.1) and Cox (2007, p. 1) both reported a visible decline in flow from Snail and Tule Springs when this irrigation system is running. This may indicate that the drawdown of House Pond on the Slaughter Ranch is hydrologically connected to Snail Spring, or otherwise influences spring flow. However, we have no direct evidence to prove this is the case. Regardless, Snail Spring no longer discharges from the springhead, and the presence of the San Bernardino springsnail was not documented during 2010 spot surveys in areas where it was previously abundant (Martinez 2010, p. 1). The factors contributing to the decline in spring water flows in the San Bernardino Valley, including those located on the Slaughter Ranch and the San Bernardino NWR, may include irrigation, groundwater pumping, extended drought conditions, climate change, and the natural dynamics of groundwater systems.

Regardless of the mechanisms, the cessation of water flow at Snail Spring dates back to at least the summer of 2002, when San Bernardino NWR staff and Slaughter Ranch managers tapped into the Slaughter Ranch domestic water supply from House Spring to maintain springsnail habitat (Smith 2003, p. 1; Malcom 2003, p. 18; Malcom 2007, p. 1). Use of the Slaughter Ranch domestic water supply to support springsnails was intended as an emergency measure that ultimately could not be maintained by House Spring. As a result, surface flow at Snail Spring has been periodically augmented by Slaughter Ranch managers using water diverted from House Pond. While the perception is that such augmentation maintains spring flow, the water chemistry of House Pond is believed to differ significantly from the water chemistry that would naturally flow from Snail Spring. Consistent natural water flow has not been observed in Snail Spring since 2005, and spot surveys have not found the San Bernardino springsnail since then (Cox *et al.* 2007, p. 1; Malcom 2007, p.1; Service 2007, p. 83; Martinez 2010, p. 1). However, these spot surveys have not been intensive, and it is possible the species has managed to survive in wet areas where an overflow pipe discharges water from House Pond, several meters downstream of the springhead.

We have no information indicating that Goat Tank Spring or Horse Spring has experienced any loss of water flow. Because the groundwater system feeding these springs comprises complex interactions between two separate aquifers, we cannot predict if these two springs will eventually cease flowing, as did the springhead at Snail Spring. Even though the species continues to persist at Goat Tank and Horse Springs, it occurs in low numbers most likely due to sub-optimal habitat conditions.

If groundwater depletion results in the continued drying of Snail Spring, a large part of the known range of the San Bernardino springsnail would be eliminated, and the San Bernardino springsnail would be more vulnerable to extinction. If groundwater depletion were to affect Goat Tank Spring and Horse Spring, the entire range of the species could be eliminated.

Groundwater depletion is not currently known to be a threat to the Three Forks springsnail.

Pesticides

Spring endemic species are typically adapted to the unique environmental conditions provided by spring water and may be quite sensitive to shifts in water quality (Hershler 1998, p. 11), including those caused by contamination. Malcom *et al.* (2003, p. 17) consider contamination from pesticides to be a significant threat to the San Bernardino springsnail because a number of herbicides and other pesticides have traditionally been used adjacent to springs on the Slaughter Ranch to maintain landscape conditions (Service 2005, p. 4). These include Roundup® and Rodeo®, which contain glyphosate, a broad-spectrum herbicide, with high water solubility. Pesticides with glyphosate can be slightly to moderately toxic to aquatic organisms, particularly zooplankton and microalgae (Montenegro-Rayo 2004, p. 34), which are food for springsnails.

In addition to possibly contaminating the food base for the springsnail, there may be direct effects to the springsnail. Tate *et al.* (1997, p. 286) reported that glyphosate killed half of the aquatic snails in the snail mimic lymnaea (*Pseudosuccinea columella*) when the dosage was 0.004 ounces per quart (99 milligrams per liter). In the same study, Tate *et al.* (1997, p. 286) continually exposed three successive generations of snails to varying concentrations of glyphosate in water. The results of the study indicate that long-term exposure to sub-lethal concentrations of glyphosate had a delayed effect on growth and development, egg-laying capacity, and hatching of mimic lymnaea snails (Tate *et al.* 1997, p. 288). Less than 50 percent of the eggs hatched at a dosage of 0.0004 ounces per quart (10 milligrams per liter). Thus, sub-lethal, as well as lethal, effects from the use of glyphosate or other pesticides on the Slaughter Ranch may be of concern for the San Bernardino springsnail.

We are unaware of any threat from pesticides to the Three Forks springsnail, because we have no information that pesticides are used in

the vicinity of Three Forks or Boneyard Bog springs.

In summary, the present destruction, modification, and curtailment of habitat and range of the Three Forks springsnail and the San Bernardino springsnail pose significant threats to these species. Threats to the habitat of the Three Forks springsnail are occurring principally from exposure to wildfire and fire retardants, and uncontrolled wild ungulate grazing. Threats to the habitat of the San Bernardino springsnail are caused by springhead inundation, groundwater depletion, and pesticide contamination.

B. Overutilization for Commercial, Recreational, Scientific, or Educational Purposes

Both the Three Forks and San Bernardino springsnails have been subjected to a limited number of scientific studies aimed at determining taxonomy, distribution, and habitat use. Although sampling can reduce population size of springsnails (Martinez and Sorensen 2007, p. 29), studies conducted on the Three Forks and San Bernardino springsnails have not resulted in the removal of large numbers of snails, and we do not believe they have had discernible effects on any population.

Unauthorized collecting has been identified as a threat to other snails, including springsnails (65 FR 10033, February 25, 2000; 58 FR 5938, January 25, 1993; 56 FR 49646, September 30, 1991), due to their rarity, restricted distribution, and generally well-known locations. However, there is currently no documentation of collection being a significant threat to either the Three Forks or San Bernardino springsnail.

In summary, we find that the Three Forks and San Bernardino springsnails are not threatened by overutilization for commercial, recreational, scientific, or educational purposes now, or in the foreseeable future.

C. Disease or Predation

Exceptionally heavy parasitism on the female reproductive system of the Three Forks springsnail has been observed on specimens from Three Forks Springs (Taylor 1987, p. 31). These parasites were not described, but aquatic snails are known to serve as intermediate hosts for a variety of parasitic flatworms (Dillon 2000, p. 227; Schmidt and Roberts 2000, p. 1). Parasitic infection can result in castration of individual snails, and may contribute to population decline (Dillon 2000, pp. 270–272). However, we have no information on whether this has occurred to the Three Forks springsnail populations. No information is available on parasites for the San Bernardino springsnail.

Springsnails are vulnerable to predation by a variety of fish, amphibians, reptiles, mammals, and macroinvertebrates (Dillon 2000, p. 273). Nonnative crayfish are known predators of aquatic snails (Fernandez and Rosen 1996, pp. 24–25; Parkyn *et al.* 1997, p. 690). Gut content analysis has shown that nonnative mosquitofish (*Gambusia affinis)* consumes springsnails (Raisanen 1991, p. 71).

Nonnative crayfish likely prey on the Three Forks springsnail. These crayfish are relatively recent invaders at both Three Forks and Boneyard Bog springs. In a laboratory aquaria experiment that mimicked stream conditions found at Three Forks Springs, crayfish consumed snails in the family Physidae (which occupy similar habitats as springsnails) and their eggs within 1 week (Fernandez and Rosen 1996, pp. 24–25).

As discussed under Factor A, the Three Forks springsnail has been extirpated from concrete-boxed springheads at Three Forks Springs where it previously survived in abundance (Myers 2000, p. 1). The extirpation of the species from these springboxes coincided with the invasion of nonnative crayfish. Recognizing the threat, AGFD personnel conducted an intensive crayfish trapping program aimed at reducing potential predatory pressure at Three Forks Springs (Nelson *et al.* 2002, pp. 4, 6). Complete elimination of crayfish from an aquatic system is usually not possible (Helfrich *et al.* 2001, p. 4), and that was the case with the trapping effort at Three Forks Springs. Arizona has no native crayfish species (Inman 1999, p. 6). Since the Three Forks springsnail did not evolve in the presence of crayfish and is likely not evolutionarily adapted to cope with introduced crayfish, it is more susceptible to crayfish predation.

We are unaware of the presence of significant populations of nonnative predators within springs occupied by the San Bernardino springsnail.

In summary, we find that predation by nonnative crayfish is a threat to the Three Forks springsnail, but predation is not known to be a threat to the San Bernardino springsnail. We have no information indicating that disease is a threat for either species.

D. The Inadequacy of Existing Regulatory Mechanisms

A primary cause of decline of these springsnails is the loss, degradation, and fragmentation of habitat due to human activities, particularly application of aerial fire retardant, introduction of nonnative crayfish, groundwater depletion, and application of pesticides. Existing Federal, State, and local laws have been unable to prevent ongoing loss of the limited habitat of these springsnails, and they are not expected to prevent further declines of the species.

The policy for delivery of wildland fire chemicals near waterways on USFS lands is described in the Interagency Standards for Fire and Fire Aviation Operations developed by the National Interagency Fire Center (NIFC). The policy directs the USFS to avoid aerial application of wildland fire chemicals within 300 ft (91 m) of waterways and avoid any ground application of wildland fire chemicals into waterways (NIFC 2011, p. 3). The closest accidental delivery of fire retardant into a waterway was approximately 0.65 mi (1 km) upstream of Three Forks Springs (USFS 2005, p. 12), well over the 300 ft (91 m) buffer established by NIFC policy. Nevertheless, all aquatic areas at Three Forks Springs were affected by fire retardant drift (USFS 2005, pp. 4, 12), likely from other unrecorded high-elevation drops. Additionally, although long term fire retardants containing sodium ferrocyanide are no longer on the USFS qualified products list as they were at the time of the KP/Three Forks Fires, fire retardant products currently on the qualified products list still contain substances toxic to the snail, as described under Factor A. Therefore, we find the existing regulatory mechanisms inadequate to protect the Three Forks springsnail from the detrimental effects of fire retardant drift.

The application of glyphosate herbicide within or near Snail Spring, Goat Tank Spring, and Horse Spring is not regulated. The Environmental Protection Agency is responsible for controlling the application of pesticides, which they do by putting a specimen label on each pesticide container that explains restrictions on their use. The specimen label for Rodeo®, which is believed to be applied to the grass lawn on the Slaughter Ranch, does not restrict its use within and near aquatic sites (DowAgroSciences 2006, p. 11). Therefore, the label is inadequate to protect the San Bernardino springsnail from the detrimental effects of exposure to glyphosate.

The AGFD has conducted intensive crayfish trapping at Three Forks Springs in an effort to curb predation on the Three Forks springsnail. However, these efforts have not eliminated crayfish at Three Forks Springs nor prevented their spread into Boneyard Bog Springs. Existing regulatory mechanisms to prevent introduction of nonnative crayfish and to control them, once

introduced, are inadequate to protect the Three Forks springsnail.

We are not aware of State laws or local ordinances that would limit the use of groundwater on the Slaughter Ranch or in the San Bernardino watershed; an adequate groundwater supply is needed to protect and restore spring flow at Snail Spring and Tule Spring. Spring flow at Snail Spring seems to be reduced at times when the shallow groundwater aquifer is drawn down by the Slaughter Ranch and other users of the aquifer. There is a Warranty Deed that reserves water rights on the Slaughter Ranch to The Nature Conservancy (TNC), which previously owned the ranch (TNC 1982, pp. 1–20; Malcom 2007, p. 1; Eiden 2007, p. 1). When TNC sold what is now the San Bernardino NWR to the Service, and the Slaughter Ranch to private landowners, it conveyed all water rights it held and the control of the use of water on the ranch to the Service. Thus, through the Warranty Deed, the Service has the right to control the use of water on the Slaughter Ranch. The Service can withhold its consent for planned water uses and other activities by the owner and managers of the Slaughter Ranch if it determines that such activities may have an adverse effect on the fish and snail species occurring on the ranch. The San Bernardino NWR has proactively worked with the ranch over the past several years to moderate irrigation water use, and to install a water line from House Spring to assist in the maintenance of water flow at Snail Spring. The San Bernardino NWR is in the process of evaluating other sources of water for irrigation by the Slaughter Ranch that are not hydrologically connected to the shallow aquifer spring system. Although the Service is the sole owner of the water rights being used by the Slaughter Ranch, the San Bernardino NWR is initiating discussions with the Arizona Department of Water Resources to properly claim the water rights conveyed to the United States and to establish an agreement with the Slaughter Ranch for water use. Through these efforts we are hopeful that we can eventually ensure reliable flow and adequate water quality to provide for the continued survival of the species. At this time, however, threats to the San Bernardino springsnail from groundwater depletion persist.

Since 1919, Arizona's courts have handled surface water and groundwater separately. Surface water allocations are based on the "first in time, first in right" priority system, while groundwater is generally governed by the "reasonable use" doctrine, which indicates that the landowner, without waste, can use water beneath the land for any beneficial purpose. Because the water rights system does not acknowledge the hydrologic connection between surface water and groundwater, it generally is not possible to limit groundwater pumping in order to protect surface water rights (Arizona Department of Water Resources 2009, p. 1).

Take of the Three Forks springsnail and the San Bernardino springsnail is regulated by Arizona Game and Fish Commission Order 42, which establishes no open season (no collecting) for any snail species in the genus *Pyrgulopsis* (AGFD 2009, p. 1). Although Order 42 prohibits direct taking of individuals, it does not prohibit habitat modification. Both species are also identified as priority species in the State Wildlife Action Plan prepared by AGFD. This plan helps guide AGFD and other agencies in determining what biotic resources should receive priority management consideration. However, it is not a regulatory document.

In summary, current regulatory mechanisms do not provide adequate protection for Three Forks and San Bernardino springsnail habitat from modification or destruction or the spread of nonnative predators. USFS and State regulatory mechanisms are adequate to control recreation and scientific collecting, but these do not appear to be threats to either species at this time.

E. Other Natural or Manmade Factors Affecting Its Continued Existence

Invasive Competitors

The nonnative New Zealand mudsnail (*Potamopyrgus antipodarum*) is an invasive freshwater snail of the family Hydrobiidae that has become a concern for spring-dependent aquatic snails, including springsnails. The mudsnail is known to compete with and slow the growth of native freshwater snails, including springsnails (Lysne and Koetsier 2008, pp. 103, 105; Lysne *et al.* 2007, p. 6). There is potential for invasion into the spring ecosystems occupied by the Three Forks and San Bernardino springsnails because the mudsnail can be easily transported and unintentionally introduced into aquatic environments via birds, recreationists, researchers, and resource managers.

The mudsnail was first discovered in the United States in the Snake River, Idaho, in 1987 and has since spread to the Colorado River basin in the western United States (U.S. Geological Survey 2002, p. 1). New Zealand mudsnails were detected along the Colorado River at Lee's Ferry in northern Arizona in 2002 (AGFD 2002, p. 1). Since that time, detections of this exotic species have occurred along the Colorado River at the confluence of Diamond Creek, 226 miles downstream of Lee's Ferry (Montana State University 2008, p. 1), and more recently at Willow Beach Fish Hatchery, downstream of Lake Mead (Olson 2008, pp. 1–2). New Zealand mudsnails were also detected in Utah in 2001 and their dispersal through that State has been rapid (Vinson 2004, p. 9).

The mudsnail has characteristics that enable it to out-compete and replace native springsnails. Mudsnails tolerate a wide range of habitats, and can reach densities exceeding tens of thousands per square meter, particularly in systems with high primary productivity, constant temperatures, and constant flow (typical of spring systems), though faster moving water seems to limit colonization (Richards *et al.* 2001, pp. 378–379). Mudsnails can dominate the invertebrate composition of an aquatic system, accounting for up to 97 percent of invertebrate biomass (Hall *et al.* 2003, p. 409). In doing so, they can consume nearly all microorganisms attached to submerged substrates, making food no longer available for native species, in particular springsnails (Hall *et al.* 2003, p. 409). Although invasion by mudsnails is not considered an imminent threat, if the New Zealand mudsnail were to be introduced into the spring systems harboring the Three Forks or San Bernardino springsnail, the effect on springsnail populations could be devastating. Additionally, control would be difficult because mudsnails are small and therefore cryptic, and because chemical treatment to eradicate them would also eradicate springsnails.

Climate Change

Seagar *et al.* (2007, pp. 1181–1184) analyzed 19 computer models of different variables to estimate the future climatology of the southwestern United States and northern Mexico in response to predictions of changing climatic patterns. All but 1 of the 19 models predicted a drying trend within the Southwest; one predicted a trend toward a wetter climate (Seager *et al.* 2007, p. 1181). A total of 49 projections were created using the 19 models and all but 3 predicted a shift to increasing aridity (dryness) in the Southwest as early as 2021–2040 (Seager, *et al.* 2007, p. 1181). The Three Forks and San Bernardino springsnails depend on permanent flowing water for survival. Wetlands in the Southwest and northern Mexico are predicted to be at risk of drying (Seager *et al.* 2007, pp. 1183–1184), which has severe implications for

aquatic ecosystems. Potential drought associated with changing climatic patterns may adversely affect the spring habitats of the Three Forks and San Bernardino springsnails, not only reducing water availability, but also altering food availability and predation rates.

There are three predictions for anticipated effects from climate change in the Southwest. First, climate change is expected to shorten periods of snowpack accumulation, as well as lessen snowpack levels. With gradually increasing temperatures and reduced snowpack (due to higher spring temperatures and reduced winter-spring precipitation), annual runoff will be reduced (Garfin 2005, p. 42; Smith *et al.* 2003, p. 226), consequently reducing groundwater recharge. Second, snowmelt is expected to occur earlier in the calendar year because increased minimum winter and spring temperatures could melt snowpacks sooner, causing peak water flows to occur much sooner than the historical spring and summer peak flows (Garfin 2005, p. 41; Smith *et al.* 2003, p. 226; Stewart *et al.* 2004, pp. 217–218, 224, 230) and reducing flows later in the season. Third, the hydrologic cycle is expected to become more dynamic on average with climate models predicting increases in the variability and intensity of rainfall events. This will modify disturbance regimes by changing the magnitude and frequency of floods. All of these anticipated effects may alter the habitat for the springsnails by altering surface water flow and ground water recharge.

In addition, there will be increases in riverine system temperatures in drier climates that will result in periods of prolonged low flows and stream drying (Rahel and Olden 2008, p. 526) and will increase demand for water storage and conveyance systems (Rahel and Olden 2008, pp. 521–522). Warmer water temperatures across temperate regions are predicted to expand the distribution of existing aquatic nonnative species. In a study that compared the thermal tolerances of 57 fish species with predictions made from climate change temperature models, Mohseni *et al.* (2003, p. 389) concluded that there would be 31 percent more suitable habitat for aquatic nonnative species, which are often tropical in origin and adaptable to warmer water temperatures. This could result in an expansion in the range of nonnative species that is detrimental to the viability of springsnail populations.

Warmer water temperatures, altered stream flow events and groundwater recharge, and increased demand for water storage and conveyance systems (Rahel and Olden 2008, pp. 521–522) are all likely to exacerbate existing threats to the Three Forks and San Bernardino springsnails and their habitats.

Endemism

Endemic species (organisms with narrowly distributed isolated populations) are susceptible to extinction from natural or human caused events. Biological and ecological factors that put a species at risk of extinction include specialized habitat preference, restricted distribution, poor dispersal ability, population size, fragmentation of range, and life history specialization (McKinney 1997, p. 497; O'Grady *et al.* 2004, p. 514), all of which characterize the Three Forks and San Bernardino springsnails. In addition, both species have suffered substantial reductions in overall numbers and populations. Although rarity itself is not a threat, rarity coupled with existing threats puts them at risk of decreased population viability, loss of genetic diversity, and outright extinction.

Extinction rates for freshwater species are five times higher than those for terrestrial species (Ricciardi and Rasmussen 1999, p. 1220). Spring-dependent species, such as springsnails, are especially at risk because spring ecosystems harbor a disproportionate percentage of endemic species (Minckley and Unmack 2000, pp. 52–53; Shepard 1993, pp. 354–357). Because both species have a very limited range, their populations are disjunct and isolated from each other, and potential habitat areas are isolated, they are particularly vulnerable to localized extinction should their habitat be degraded or destroyed. Because their mobility is limited, populations will have little opportunity to leave degraded habitat areas in search of suitable habitat. As a result, one contamination or wildfire event in the case of the Three Forks springsnail, or a short period of drawdown or exposure to pesticides in the aquatic habitat of the San Bernardino springsnail, could result in the loss of an entire population.

Proposed Determination

We have carefully assessed the best scientific and commercial information available regarding the past, present, and future threats to the Three Forks springsnail and the San Bernardino springsnail. The habitat and range of both species are threatened with destruction, modification, and curtailment. Existing regulatory mechanisms do not provide adequate protection for these species, and other natural and manmade factors affect their continued existence. The Three Forks springsnail is also threatened by predation. These endemic species are threatened by limited distribution, lack of mobility, and the isolation of populations. As a result, any impact from increasing threats (loss of spring flow, contaminants) is likely to result in their extinction because the magnitude of threats is high.

The Endangered Species Act (Section 3(5)(C)(6) defines an endangered species as "any species which is in danger of extinction throughout all or a significant portion of its range." Based on the immediate and ongoing significant threats to the Three Forks springsnail and San Bernardino springsnail throughout their entire limited range, such as habitat destruction from loss of spring flow, contamination, predation, and endemism), we consider both species to be in danger of extinction throughout all of their range. Therefore, the species is proposed as endangered, rather than threatened, because the threats are occurring now, making the species at risk of extinction at the present time. Since threats extend throughout their entire range, it is unnecessary to determine if they are in danger of extinction throughout a significant portion of their range. Therefore, on the basis of the best available scientific and commercial information, we are proposing to list the Three Forks springsnail and the San Bernardino springsnail as endangered species throughout their entire range.

Available Conservation Measures

Conservation measures provided to species listed as endangered or threatened under the Act include recognition, recovery actions, requirements for Federal protection, and prohibitions against certain practices. Recognition through listing results in public awareness and conservation by Federal, state, Tribal, local agencies, private organizations, and individuals. The Act encourages cooperation with the States and requires that recovery actions be carried out for all listed species. The protection measures required of Federal agencies and the prohibitions against certain activities are discussed, in part, below.

The primary purpose of the Act is the conservation of endangered and threatened species and the ecosystems upon which they depend. The ultimate goal of such conservation efforts is the recovery of these listed species, so that they no longer need the protective measures of the Act. Subsection 4(f) of the Act requires the Service to develop and implement recovery plans for the

conservation of endangered and threatened species. The recovery planning process involves the identification of actions that are necessary to halt or reverse the species' decline by addressing the threats to its survival and recovery. The goal of this process is to restore listed species to a point where they are secure, self-sustaining, and functioning components of their ecosystems.

Recovery planning includes the development of a recovery outline shortly after a species is listed, preparation of a draft and final recovery plan, and revisions to the plan as significant new information becomes available. The recovery outline guides the immediate implementation of urgent recovery actions and describes the process to be used to develop a recovery plan. The recovery plan identifies site-specific management actions that will achieve recovery of the species, measurable criteria that determine when a species may be downlisted or delisted, and methods for monitoring recovery progress. Recovery plans also establish a framework for agencies to coordinate their recovery efforts and provide estimates of the cost of implementing recovery tasks. Recovery teams (comprised of species experts, Federal and State agencies, nongovernmental organizations, and stakeholders) are often established to develop recovery plans. When completed, the recovery outline, draft recovery plan, and the final recovery plan will be available from our Web site (*http://www.fws.gov/endangered*), or from our Arizona Ecological Services Field Office (*see* **FOR FURTHER INFORMATION CONTACT**).

Implementation of recovery actions generally requires the participation of a broad range of partners, including other Federal agencies, States, non-governmental organizations, businesses, and private landowners. Examples of recovery actions include habitat restoration (*e.g.*, restoration of native vegetation), research, captive propagation and reintroduction, and outreach and education. The recovery of many listed species cannot be accomplished solely on Federal lands because their range may occur primarily or solely on non-Federal lands. To achieve recovery of these species requires cooperative conservation efforts on private and State lands.

If these species are listed, funding for recovery actions will be available from a variety of sources, including Federal budgets, State programs, and cost share grants for nonfederal landowners, the academic community, and nongovernmental organizations. In addition, pursuant to section 6 of the Act, the State of Arizona would be eligible for Federal funds to implement management actions that promote the protection and recovery of the Three Forks springsnail and San Bernardino springsnail. Information on our grant programs that are available to aid species recovery can be found at: *http://www.fws.gov/grants*.

Although the Three Forks springsnail and San Bernardino springsnail are only proposed for listing under the Act at this time, please let us know if you are interested in participating in recovery efforts for this species. Additionally, we invite you to submit any new information on this species whenever it becomes available and any information you may have for recovery planning purposes (*see* **FOR FURTHER INFORMATION CONTACT**).

Section 7(a) of the Act, as amended, requires Federal agencies to evaluate their actions with respect to any species that is proposed or listed as endangered or threatened and with respect to its critical habitat, if any is designated. Regulations implementing this interagency cooperation provision of the Act are codified at 50 CFR part 402. Section 7(a)(1) requires Federal agencies, in consultation with the Service, to carry out programs for the conservation of listed species. Section 7(a)(4) requires Federal agencies to confer with the Service on any action that is likely to jeopardize the continued existence of a species proposed for listing or result in destruction or adverse modification of proposed critical habitat. If a species is subsequently listed, section 7(a)(2) requires Federal agencies to ensure that activities they authorize, fund, or carry out are not likely to jeopardize the continued existence of the species or destroy or adversely modify its critical habitat. If a Federal action may adversely affect a listed species or its critical habitat, the responsible Federal agency must enter into formal consultation with the Service.

For the Three Forks springsnail and San Bernardino springsnail, Federal agency actions that may require consultation as described in the preceding paragraph include activities approved under a forest management plan, a refuge comprehensive management plan, and activities that require a permit from the Army Corps of Engineers pursuant to section 404 of the Clean Water Act.

The USFS has established a closure around Three Forks Springs to prevent unauthorized access. The AGFD has implemented a crayfish trapping program and a Three Forks springsnail monitoring program. The effectiveness of these measures is yet undemonstrated. We had recently established a captive refugium for Three Forks springsnail in coordination with USFS, AGFD, and the Phoenix Zoo. This refugium is no longer viable, but we hope to apply lessons learned to future efforts to establish refugia. We intend to work with the USFS, AGFD, the Zoo, and The Nature Conservancy (which owns property near Boneyard Bog Springs) to develop conservation actions for the Three Forks springsnail. Additionally, Service staff is currently working to publish additional results of field studies describing habitat relationships for the Three Forks springsnail.

Efforts to rehabilitate habitat on the San Bernardino NWR at Tule Spring have been initiated (Service 2003, p. 2), with the intention of potentially reintroducing San Bernardino springsnails. However, the inconsistency of water flow reduces the likelihood of successful reestablishment of the species on the San Bernardino NWR. The Service is also seeking to acquire, through donation, the John Slaughter Ranch for incorporation into the San Bernardino NWR. This would provide tremendous opportunities to protect, manage, and enhance springs on the property. However, it is uncertain if this transaction will occur. The Service intends to continue to work with AGFD and the John Slaughter Ranch to develop conservation actions for the San Bernardino springsnail, perhaps including the development of a domestic water well that would not affect surface waters.

The Act and its implementing regulations set forth a series of general prohibitions and exceptions that apply to all endangered wildlife. The prohibitions, codified at 50 CFR 17.21 for endangered wildlife, in part, make it illegal for any person subject to the jurisdiction of the United States to take (includes harass, harm, pursue, hunt, shoot, wound, kill, trap, capture, or collect; or to attempt any of these), import, export, ship in interstate commerce in the course of commercial activity, or sell or offer for sale in interstate or foreign commerce any listed species. It is also illegal to possess, sell, deliver, carry, transport, or ship any such wildlife that has been taken illegally. Certain exceptions apply to agents of the Service and State conservation agencies.

We may issue permits to carry out otherwise prohibited activities involving threatened or endangered wildlife species under certain circumstances. Regulations governing permits are codified at 50 CFR 17.22 for

endangered species. With regard to endangered wildlife, a permit must be issued for the following purposes: for scientific purposes, to enhance the propagation or survival of the species, and for incidental take in connection with otherwise lawful activities.

It is our policy, as published in the **Federal Register** on July 1, 1994 (59 FR 34272), to identify to the maximum extent practicable at the time a species is listed, those activities that would or would not constitute a violation of section 9 of the Act. The intent of this policy is to increase public awareness of the effect of a proposed listing on proposed and ongoing activities within the range of species proposed for listing. The following activities could potentially result in a violation of section 9 of the Act; this list is not comprehensive:

(1) Unauthorized collecting, handling, possessing, selling, delivering, carrying, or transporting of the species, including import or export across State lines and international boundaries, except for properly documented antique specimens of these taxa at least 100 years old, as defined by section 10(h)(1) of the Act;

(2) Introduction of nonnative species that compete with or prey upon the Three Forks springsnail and San Bernardino springsnail, such as the introduction of competing, nonnative species to the State of Arizona;

(3) The unauthorized release of biological control agents that attack any life stage of this species;

(4) Unauthorized modification of the springs or water flow of any stream or removal or destruction of emergent aquatic vegetation in any body of water in which the Three Forks springsnail and San Bernardino springsnail are known to occur; and

(5) Unauthorized discharge of chemicals or fill material into any waters in which the Three Forks springsnail and San Bernardino springsnail are known to occur.

Questions regarding whether specific activities would constitute a violation of section 9 of the Act should be directed to the Arizona Ecological Services Field Office (*see* **FOR FURTHER INFORMATION CONTACT**).

Critical Habitat

Background

Critical habitat is defined in section 3 of the Act as:

(i) The specific areas within the geographical area occupied by a species, at the time it is listed in accordance with the Act, on which are found those physical or biological features

(I) essential to the conservation of the species and

(II) which may require special management considerations or protection; and

(ii) specific areas outside the geographical area occupied by a species at the time it is listed, upon a determination that such areas are essential for the conservation of the species.

Conservation, as defined under section 3 of the Act, means the use of all methods and procedures that are necessary to bring any endangered species or threatened species to the point at which the measures provided under the Act are no longer necessary. Such methods and procedures include, but are not limited to, all activities associated with scientific resources management such as research, census, law enforcement, habitat acquisition and maintenance, propagation, live trapping, and transplantation, and, in the extraordinary case where population pressures within a given ecosystem cannot be otherwise relieved, may include regulated taking.

Critical habitat receives protection under section 7 of the Act through the prohibition against Federal agencies carrying out, funding, or authorizing the destruction or adverse modification of critical habitat. Section 7(a)(2) requires consultation on Federal actions that may affect critical habitat. The designation of critical habitat does not affect land ownership or establish a refuge, wilderness, reserve, preserve, or other conservation area. Such designation does not allow government or public access to private lands. Such designation does not require implementation of restoration, recovery, or enhancement measures by non-Federal landowners. Where a landowner seeks or requests Federal agency funding or authorization that may affect a listed species or critical habitat, the consultation requirements of Section 7(a)(2) of the Act would apply. However, even in the event of a destruction or adverse modification finding, the Federal action agency's and the applicant's obligation is not to restore or recover the species, but to implement reasonable and prudent alternatives to avoid destruction or adverse modification of critical habitat.

For inclusion in a critical habitat designation, the habitat within the geographical area occupied by the species at the time it was listed must contain the physical and biological features that are essential to the conservation of the species, and be included only if those features may require special management considerations or protection. Critical habitat designations identify, to the extent known using the best scientific and commercial data available, those physical and biological features that are essential to the conservation of the species (such as space, food, cover, and protected habitat), focusing on the principal biological or physical constituent elements (primary constituent elements) within an area that are essential to the conservation of the species (such as roost sites, nesting grounds, seasonal wetlands, water quality, tide, soil type). Primary constituent elements are the elements of physical and biological features that, when laid out in the appropriate quantity and spatial arrangement to provide for a species' life-history processes, are essential to the conservation of the species.

Under the Act and regulations at 50 CFR 424.12, we can designate critical habitat in areas outside the geographical area occupied by the species at the time it is listed as critical habitat only when we determine that those areas are essential for the conservation of the species and that designation limited to those areas occupied at the time of listing would be inadequate to ensure the conservation of the species. When the best available scientific data do not demonstrate that the conservation needs of the species require such additional areas, we will not designate critical habitat in areas outside the geographical area occupied by the species. An area currently occupied by the species but that was not occupied at the time of listing may, however, be essential to the conservation of the species and may be included in the critical habitat designation.

Section 4 of the Act requires that we designate critical habitat on the basis of the best scientific and commercial data available. Further, our Policy on Information Standards Under the Endangered Species Act (published in the **Federal Register** on July 1, 1994 (59 FR 34271)), the Information Quality Act (section 515 of the Treasury and General Government Appropriations Act for Fiscal Year 2001 (Pub. L. 106–554; H.R. 5658)), and our associated Information Quality Guidelines, provide criteria, establish procedures, and provide guidance to ensure that our decisions are based on the best scientific data available. They require our biologists, to the extent consistent with the Act and with the use of the best scientific data available, to use primary and original sources of information as the basis for recommendations to designate critical habitat.

When we are determining which areas should be proposed as critical habitat, our primary source of information is generally the information developed during the listing process for the species. Additional information sources may include the recovery plan for the species, articles in peer-reviewed journals, conservation plans developed by States and counties, scientific status surveys and studies, biological assessments, or other unpublished materials and expert opinion or personal knowledge.

Habitat is often dynamic, and species may move from one area to another over time. Furthermore, we recognize that designation of critical habitat may not include all of the habitat areas that we may eventually determine, based on scientific data not now available to the Service, are necessary for the recovery of the species. For these reasons, a critical habitat designation does not signal that habitat outside the designated area is unimportant or may not be required for recovery of the species.

Areas that support populations, but are outside the critical habitat designation, will continue to be subject to conservation actions we implement under section 7(a)(1) of the Act. Areas that support populations are also subject to the regulatory protections afforded by the section 7(a)(2) jeopardy standard, as determined on the basis of the best available scientific information at the time of the agency action. Federally funded or permitted projects affecting listed species outside their designated critical habitat areas may still result in jeopardy findings in some cases. Similarly, critical habitat designations made on the basis of the best available information at the time of designation will not control the direction and substance of future recovery plans, habitat conservation plans (HCPs), or other species' conservation planning efforts if new information available to these planning efforts calls for a different outcome.

Prudency Determination

Section 4(a)(3) of the Act, as amended, and implementing regulations (50 CFR 424.12), require that, to the maximum extent prudent and deter: inable, we designate critical habitat at the time the species is determined to be endangered or threatened. Our regulations (50 CFR 424.12(a)(1)) state that the designation of critical habitat is not prudent when one or both of the following situations exist: (1) The species is threatened by taking or other human activity, and identification of critical habitat can be expected to increase the degree of threat to the species, or (2) such designation of critical habitat would not be beneficial to the species.

There is no documentation that the Three Forks and San Bernardino springsnails are threatened by collection and, therefore, are unlikely to experience increased threats by identifying critical habitat. In the absence of a finding that the designation of critical habitat would increase threats to a species, if there are any benefits to a critical habitat designation, then a prudent finding is warranted. The potential benefits include: (1) Triggering consultation under section 7 of the Act, in new areas for actions in which there may be a Federal nexus where it would not otherwise occur because, for example, it has become unoccupied or the occupancy is in question; (2) focusing conservation activities on the most essential features and areas; (3) providing educational benefits to State or county governments or private entities; and (4) preventing people from causing inadvertent harm to the species.

The primary regulatory effect of critical habitat is the section 7(a)(2) requirement that Federal agencies refrain from taking any action that destroys or adversely modifies critical habitat. At present, the Three Forks springsnail occurs only on Federal lands in the White Mountains of east-central Arizona. Lands proposed for designation as critical habitat would be subject to Federal actions that trigger the section 7 consultation requirements. These include land-management actions and permitting by the Apache-Sitgreaves National Forests.

There may also be some educational or informational benefits to the designation of critical habitat. Educational benefits include the notification of lessees and the general public of the importance of protecting habitat.

At present, the only known extant population of the San Bernardino springsnail occurs on private lands in the United States. Although the species is believed to have historically occurred on the San Bernardino NWR, the species currently is not known to occur on Federal lands. However, the San Bernardino NWR has proposed to reintroduce the species onto the refuge; therefore, the species may occur in the future on Federal lands. In addition, lands proposed for designation as critical habitat, whether or not under Federal jurisdiction, may be subject to Federal actions that trigger the section 7 consultation requirement, such as the granting of Federal monies or Federal permits. These may include implementation of the Comprehensive Conservation Plan by the San Bernardino NWR.

Although we make a detailed determination of the habitat needs of a listed species during the recovery planning process, the Act has no provision to delay designation of critical habitat until such time as a recovery plan is prepared. We reviewed the available information pertaining to habitat characteristics where these two species are located. This and other information represent the best scientific data available and lead us to conclude that the designation of critical habitat is both prudent and determinable for the Three Forks Springsnail and San Bernardino springsnail.

Critical Habitat Determinability

As stated above, section 4(a)(3) of the Act requires the designation of critical habitat concurrently with the species' listing "to the maximum extent prudent and determinable." Our regulations at 50 CFR 424.12(a)(2) state that critical habitat is not determinable when one or both of the following situations exist:

(i) Information sufficient to perform required analyses of the impacts of the designation is lacking, or

(ii) The biological needs of the species are not sufficiently well known to permit identification of an area as critical habitat.

When critical habitat is not determinable, the Act provides for an additional year to publish a critical habitat designation (16 U.S.C. 1533(b)(6)(C)(ii)).

We reviewed the available information pertaining to the biological needs of the species and habitat characteristics where this species is located. This and other information represent the best scientific data available and led us to conclude that the designation of critical habitat is both prudent and determinable for the Three Forks Springsnail and San Bernardino springsnail.

Methods

As required by section 4(b) of the Act, we used the best scientific data available in determining areas that contain the features that are essential to the conservation of the Three Forks springsnail and the San Bernardino springsnail. This includes information from the Service's Species Assessment and Listing Priority Assignment Forms (available at *http://ecos.fws.gov/tess_public/pub/SpeciesReport.do?listingType=C*); published literature; site visits; data compiled by the Arizona Heritage Data Management System at AGFD; topographic maps; data supplied

by the USFS, San Bernardino NWR, and AGFD; and other information in our files.

We also reviewed the available information pertaining to historical and current distribution, ecology, life history, and habitat requirements of the Three Forks springsnail and San Bernardino springsnail. This material included research published in peer-reviewed scientific journals, museum records, technical reports, and unpublished field observations by Service, State, Federal, and other experienced biologists, as well as additional notes and communications with qualified professionals and experts.

We plotted all known occurrences in springheads, spring runs, and ditches of the Three Forks and San Bernardino springsnails on 2007 U.S. Geological Survey (USGS) Digital Ortho Quarter Quad maps using ArcMap (Environmental Systems Research Institute, Inc.), a computer GIS program. For the San Bernardino springsnail, we also mapped the historical occurrence at Tule Spring on San Bernardino NWR. For the Three Forks springsnail at the Three Forks Spring complex, we believe that all springs occupied prior to the exposure to fire retardant in 2004 (see discussion above under Threat Factor A) are still occupied, although the Three Forks Springs population seems rather tenuous. Polygons were computer-generated by applying a 1 m (3.3 ft) buffer around these occurrence locations to capture the moist soils and vegetation that produce food for the snails and protect the substrate they use. Because of the small size of the springs and spring runs we are proposing to designate for the San Bernardino springsnail, we were precluded from mapping them precisely due to inaccuracies inherent in the use of satellites for locating and mapping. Therefore, for mapping purposes we created a circle that encompasses them. GPS coordinates have been field verified.

Physical and Biological Features

In accordance with section 3(5)(A)(i) and 4(b)(1)(A) of the Act and regulations at 50 CFR 424.12, in determining which areas within the geographical area occupied at the time of listing to propose as critical habitat, we consider the physical and biological features that are essential to the conservation of the species, and which may require special management considerations or protection. These include, but are not limited to:

(1) Space for individual and population growth and for normal behavior;

(2) Food, water, air, light, minerals, or other nutritional or physiological requirements;

(3) Cover or shelter;

(4) Sites for breeding, reproduction, or rearing (or development) of offspring; and

(5) Habitats that are protected from disturbance or are representative of the historical, geographical, and ecological distributions of a species.

We derive the specific physical and biological features required for the two Arizona springsnails from studies of these species' habitats, ecology, and life histories as described below. We have determined that the Three Forks springsnail and the San Bernardino springsnail require the following physical and biological features:

Space for Individual ond Populotion Growth ond Normal Behavior

The Three Forks and San Bernardino springsnails occur where water emerges from the ground as a free-flowing spring and spring run. Within spring ecosystems, proximity to springheads is important due to their need for appropriate water chemistry, substrate, and flow regime characteristics of springheads. The Three Forks springsnail inhabits free-flowing springs, concrete boxed springheads, spring runs, spring seeps, and shallow ponded water. The San Bernardino springsnail inhabitats free-flowing springs, a concrete boxed springhead, and spring runs.

Food, Woter, Air, Light, or Other Nutritionol or Physiologicol Requirements

Martinez and Myers (2008, pp. 189–194) found the presence of Three Forks springsnail was associated with gravel and pebble substrates, shallow water up to 6 cm (2.35 in) deep, high conductivity, alkaline waters of pH 8, and the presence of pond snail, *Physo gyrino*. Three Forks springsnail density is significantly greater on gravel and cobble substrates (Martinez and Myers 2002, p. 1; Nelson 2002, p. 1), though the species has been reported as "abundant" in the fine-grained mud of a 0.01 ha (0.02 ac) pond at Three Forks Springs (Taylor 1987, p. 32). The density of San Bernardino springsnails is positively associated with cobble substrates, higher vegetation density, faster water velocity, higher dissolved oxygen, water temperature of 14 to 22 degrees Celsius, and pH values between 7.6 and 8.0 (Malcom *et al.* 2005, pp. 71, 75–76). San Bernardino springsnail densities are higher in sand and cobble substrates, higher vegetation density, and higher water velocity, but lower in silt and organic substrates, and deeper water (Malcom *et ol.* 2005, pp. 75–76). The species' tolerance to these habitat characteristics has not been quantified. Maintenance of high water velocity flows at springheads and spring runs is essential for both the Three Forks and San Bernardino springsnails.

Three Forks and San Bernardino springsnails consume periphyton on submerged surfaces. Periphyton is a complex mixture of algae, detritus, bacteria, and other microbes that grow attached to submerged surfaces such as cobble or larger plants, such as watercress. Periphyton are primary producers of energy (organisms at the beginning of a food chain that produce biomass from inorganic compounds) and can be sensitive indicators of environmental change in flowing waters. Spring ecosystems occupied by these springsnail species must support the periphyton upon which springsnails graze.

Sites for Breeding, Reproduction, and Reoring ond Development of Offspring

Substrate characteristics influence the productivity of Three Forks and San Bernardino springsnails. Suitable substrates are typically firm, characterized by cobble, gravel, sand, woody debris, and aquatic vegetation such as watercress, though this is influenced by water flow and depth. Suitable substrates increase productivity by providing suitable egg laying sites, protection of young from predators, and provision of food resources.

Habitots That Are Protected From Disturbonce ond Representotive of the Historicol, Geogrophicol, ond Ecologicol Distribution of the Species

The Three Forks springsnail and the San Bernardino springsnail have restricted geographic distributions. Endemic species whose populations exhibit a high degree of isolation are extremely susceptible to extinction from both random and non-random catastrophic natural or human-caused events. Therefore, it is essential to maintain the spring systems upon which the Three Forks springsnail and San Bernardino springsnail depend. Adequate spring sites, free of inappropriate disturbance, must exist to promote population expansion and viability. This means protection from disturbance caused by exposure to fire retardant, recreation, elk grazing, water depletion, and water contamination. The Three Forks springsnail and San Bernardino springsnail must sustain and

expand their current distribution if ecological representation of these species is to be ensured. For the Three Forks springsnail, this means it must repopulate the Three Forks Spring complex to levels it occupied prior to the 2004 wildfire described under Factor A. For the San Bernardino springsnail, it must repopulate the entirety of the historical Snail Spring, and be re-introduced into a spring, which it historically occupied. At this time, we believe Tule Spring is the most likely candidate since it still retains some water flow.

Primary Constituent Elements (PCEs) for the Three Forks and San Bernardino Springsnails

Based on the above needs and our current knowledge of the life history, biology, and ecology of these species and the habitat requirements for sustaining the essential life history functions of these species, we have determined that the Three Forks springsnail and the San Bernardino springsnail PCEs are:

(1) Adequately clean spring water (free from contamination) emerging from the ground and flowing on the surface;

(2) Periphyton (attached algae), bacteria, and decaying organic material for food;

(3) Substrates that include cobble, gravel, pebble, sand, silt, and aquatic vegetation, for egg laying, maturing, feeding, and escape from predators; and

(4) Either an absence of nonnative predators (crayfish) and competitors (snails) or their presence at low population levels.

Special Management Considerations or Protections

When designating critical habitat, we assess whether the proposed areas contain features that are essential to the conservation of the species and may require special management considerations and protections. Threats to the physical and biological features essential to the conservation of the Three Forks springsnail and San Bernardino springsnail include loss of spring flows due to groundwater depletion and drought; inundation of springheads due to pond creation; degradation of water quality due to pollution, exposure to fire retardant, or other alteration of water chemistry; alteration of appropriate aquatic substrates due to wild ungulate grazing, inundation, and erosion; and, the introduction of nonnative predators and competitors. Due to one or more of the above threats, we find that all areas that we are proposing for critical habitat contain essential physical or biological features that may require special management considerations or protections to ensure the conservation of the Three Forks springsnail and San Bernardino springsnail.

Criteria Used To Identify Critical Habitat

As required by section 4(b) of the Act, we used the best scientific and commercial data available in determining areas within the geographical area occupied at the time of listing that contain the features essential to the conservation of Three Forks springsnail and San Bernardino springsnail, and areas outside of the geographical area occupied at the time of listing that are essential for the conservation of Three Forks springsnail and San Bernardino springsnail. We have also reviewed available information that pertains to the habitat requirements of these species.

We are proposing to designate critical habitat in two areas occupied by the Three Forks springsnail at the time of listing, the Three Forks and Boneyard Bog spring complexes; three areas occupied by the San Bernardino springsnail at the time of listing, Snail Spring, Goat Tank Spring, and Horse Spring; and one area not occupied by the San Bernardino springsnail at the time of listing (but considered to have been historically occupied), Tule Spring. These springs all contain features essential to the conservation of the respective springsnail species. We have determined that Tule Spring, although not currently occupied, is essential to the conservation of the San Bernardino springsnail, as the geographic area occupied at the time of listing is not sufficient for conservation and the SBNWR has identified Tule Spring as a potential reintroduction site with the availability of restorable habitat on protected lands.

The Three Forks springsnail occurs in two separate spring complexes, Three Forks Springs and Boneyard Bog Springs. Historically, the species was abundant at these spring complexes. Recently, annual surveys have documented only two or three individual Three Forks springsnails at Three Forks Springs since 2004. The species continues to occur in abundance at Boneyard Bog Springs.

The San Bernardino springsnail may have historically occurred in a complex of at least six springs along the Rio San Bernardino within the headwaters of the Rio Yaqui in Arizona. Currently, it is known from Goat Tank Spring, Horse Spring, and likely from wet portions of Snail Spring on the private John Slaughter Ranch. Although not currently occupied, Tule Spring on the nearby San Bernardino NWR contains a majority of the PCEs.

We evaluated both species of springsnail in the context of their distribution within their historical range, to determine what portion of their range must be included to ensure conservation of both species. For the Three Forks springsnail, we are designating all habitat containing PCEs that we consider to be currently occupied, which is also the entire known historically occupied habitat. For the San Bernardino springsnail, we are designating the three occupied springs and the only remaining historically occupied spring (but currently unoccupied) in the United States that still contains the PCEs for the species because we believe they are essential to conservation of the species as discussed above. If the two cienegas nearby in Mexico are determined to harbor the San Bernardino springsnail, we would not designate critical habitat for the species in either of those cienegas because we do not designate critical habitat outside the United States.

We assessed the critical life-history components of these springsnail species, as they relate to habitat. Three Forks and San Bernardino springsnails require unpolluted spring water in springheads and spring runs; periphyton, bacteria, and decaying organic material for food; rock-derived substrates for egglaying, maturing, feeding, and escape from predators; and absence or low levels of nonnative predators and competitors. The areas proposed as critical habitat for the Three Forks springsnail and the San Bernardino springsnail contain these PCEs that are essential to these life-history components of the species.

Both species occur or occurred in isolated populations in very small areas. For the Three Forks springsnail, catastrophic wildfires and firefighting actions (retardant drops), as well as overgrazing by elk, and random, intense natural disasters threaten the two populations with extinction. For the San Bernardino springsnail, known populations are at risk of extinction from groundwater pumping and exposure to pesticides. We are proposing for designation of critical habitat lands that we have determined are occupied at the time of listing and contain sufficient PCEs to support life history functions essential for the conservation of the species, and lands outside of the geographical area occupied at the time of listing that we

have determined are essential for the conservation of these species.

Units are proposed for designation based on sufficient PCEs being present to support life processes. Some units contained all PCEs and support multiple life processes. Some segments contain only a portion of the PCEs necessary to support use of that habitat, but remain an essential component necessary for the conservation of the species because they will provide for population redundancy to protect against extinction.

Proposed Critical Habitat Designation

We are proposing two units of critical habitat for the Three Forks springsnail and four units of critical habitat for the San Bernardino springsnail. The critical habitat units we describe below constitute our current and best assessment of the areas that meet the definition of critical habitat for the Three Forks springsnail and the San Bernardino springsnail. Table 1 summarizes the threats and current occupancy of the proposed critical habitat units. Table 2 provides approximate areas (ac/ha) and land ownership of the units.

TABLE 1—THREATS AND OCCUPANCY IN AREAS CONTAINING FEATURES ESSENTIAL TO THE CONSERVATION OF THE THREE FORKS AND SAN BERNARDINO SPRINGSNAILS.

Critical habitat unit	Threats requiring special management or protections	Currently occupied
Three Forks springsnail		
1. Three Forks Springs Unit	wildfire, fire retardant use, elk grazing, nonnative predators, and potential introduction of nonnative snails.	yes.
2. Boneyard Bog Springs Unit	wildfire, fire retardant use, elk grazing, nonnative predators, and potential introduction of nonnative snails.	yes.
San Bernardino springsnail		
1. Snail Spring Unit	groundwater depletion, drought, water contamination from pesticide use, and potential introduction of nonnative snails.	unknown.
2. Goat Tank Spring Unit	groundwater depletion, drought, water contamination from pesticide use, and potential introduction of nonnative snails.	yes.
3. Horse Spring Unit	groundwater depletion, drought, water contamination from pesticide use, and potential introduction of nonnative snails.	yes.
4. Tule Spring Unit	groundwater depletion, drought, and potential introduction of nonnative snails	no.

TABLE 2—OWNERSHIP AND APPROXIMATE AREA OF PROPOSED CRITICAL HABITAT UNITS

Critical habitat unit	Ownership	Total area
Three Forks springsnail		
1. Three Forks Springs Unit	Federal	2.5 ha (6.1 ac)
2. Boneyard Bog Springs Unit	Federal	2.0 ha (5.0 ac)
Total		4.5 ha (11.1 ac)
San Bernardino springsnail		
1. Snail Spring Unit	Private	0.457 ha (1.129 ac)
2. Goat Tank Spring Unit	Private	0.002 ha (0.005 ac)
3. Horse Spring Unit	Private	0.032 ha (0.078 ac)
4. Tule Spring Unit	Federal	0.324 ha (0.801 ac)
Total		0.815 ha (2.013 ac)

We present below brief descriptions of all units and reasons why they meet the definition of critical habitat for the Three Forks springsnail or San Bernardino springsnail. Unit descriptions are presented separately by species.

Three Forks Springsnail

Three Forks Springs Unit

The proposed Three Forks Springs Unit is a complex of springs, spring runs, spring seeps, a segment of an unnamed stream connecting them, and a small amount of upland area encircling them to make them a single unit of approximately 2.5 ha (6.1 ac) in the vicinity of UTM Zone 12 coordinate 655710, 3747260 in Apache County. The entire unit is in Federal ownership and managed by the Apache-Sitgreaves National Forests of the USFS. The unit encompasses eight major springheads and spring runs, which each flow a short distance of several meters to an

unnamed tributary of the Black River. Two of the spring runs flow into a pond, which is occupied by the species and has an outflow run to the unnamed tributary. The spring complex contains spring seeps along the spring runs and the tributary. We are proposing to designate a single critical habitat unit that includes the springheads, spring runs, seeps, pond, and that portion of the unnamed tributary that connects the spring runs. The tributary itself is occupied where there are spring seeps along it and provides for springsnail movement among the occupied seeps, spring runs and springs, thus providing habitat connectivity. The area within the proposed unit contains a small amount of upland area adjacent to the springheads, spring runs, spring seeps and the tributary segment. The moist soils and vegetation in the adjacent uplands (approximately 1 m (3.3 ft) in width) are essential to the species because they produce food for the snails and protect the substrate they use. The remaining small amount of upland area is included to connect the entire essential, occupied habitat to form a single unit. Human-caused changes to the uplands adjacent to the aquatic habitats can be managed through this proposed unit designation to control threats to the aquatic habitats through conservation efforts by AGFD and through consultations between USFS and the Service under section 7 of the Act. For specific coordinates of the boundaries for the proposed critical habitat designation, please reference the unit descriptions in the Regulation Promulgation section below.

Threats to the Three Forks springsnail in this unit that may require special management of the physical and biological features include wildfire, fire retardant use to fight wildfires, erosion and sedimentation, elk grazing, predation by nonnative crayfish, and potential competition from nonnative snails. The Three Forks Springs complex has had documented occupancy since 1973 (Landye 1973, p. 49), and the species was considered abundant there until 2004 (AGFD 2008; Service 2008, p. 1) when the waters appear to have been contaminated by wildfire retardant drift. Surveys in 2004, immediately following a wildfire and fire retardant use, failed to locate springsnails, though surveys in subsequent years revealed the species in low numbers (Cox 2007, p. 1; Bailey 2008, p. 1). Fire retardant becomes non-toxic within a few days of contact with water, so currently, the Three Forks Springs Unit contains all of the PCEs essential to the species, and the unit supports all of the Three Forks springsnail life processes.

Boneyard Bog Springs Unit

The proposed Boneyard Bog Springs Unit is a complex of springs, spring runs, spring seeps, and a segment of an unnamed stream connecting them, and a small amount of upland area encircling them to make them a single unit of approximately 2.0 ha (5.0 ac) in the vicinity of UTM Zone 12 coordinate 659970, 3750730 in Apache County. The entire unit is in Federal ownership and managed by the Apache-Sitgreaves National Forests of the USFS. The unit encompasses seven major springheads and spring runs, which each flow a short distance of several meters to an unnamed tributary of the Black River. The spring complex contains spring seeps along the spring runs and the tributary. We are proposing to designate a single critical habitat unit that includes the springheads, spring runs, seeps, and that portion of the unnamed tributary that connects the spring runs. The tributary itself is occupied where there are spring seeps along it and provides for springsnail movement among the occupied seeps, spring runs and springs and is essential for habitat connectivity. The area within the proposed unit contains a small amount of upland area adjacent to the springheads, spring runs, spring seeps and the tributary segment. The moist soils and vegetation in the adjacent uplands (approximately 1 meter (3.3 ft) in width) are essential to the species because they produce food for the snails and protect the substrate they use. The remaining small amount of upland area is included to connect all of the essential, occupied habitat to form a single unit. Human-caused changes to the uplands adjacent to the aquatic habitats can be managed through this proposed unit designation to control threats to the aquatic habitats through conservation efforts by AGFD and through consultations between USFS and the Service under section 7 of the Act. For specific coordinates of the boundaries for the proposed critical habitat designation, please reference the unit descriptions in the Proposed Regulation Promulgation section below.

Threats to the Three Forks springsnail in this unit that may require special management of the physical and biological features include wildfire, fire retardant use to fight wildfires, elk grazing, predation by nonnative crayfish, and potential competition from nonnative snails. This proposed unit contains all the PCEs and supports all of the Three Forks springsnail life processes.

San Bernardino Springsnail

Snail Spring Unit

The proposed Snail Spring Unit encompasses 0.457 ha (1.129 ac) in Cochise County. The entire unit is in private ownership and managed by the John Slaughter Ranch. The spring is approximately 5 m (16 ft) in diameter and has a spring run that goes south from the spring approximately 23.5 m (77 ft) to a manmade ditch, which runs 10.2 m (33.5 ft) to a dirt road. It passes under the road in a 3.5 m (11.5 ft) culvert, then flows approximately 17 m (56 ft) below the road. We are not proposing the road as critical habitat, but we are proposing to designate the culvert beneath the road because it contains flowing water that is a PCE. The spring and spring run down to the ditch is dry and is likely unoccupied, though they contain other PCEs such as substrate. It is unknown if the ditch is occupied when water and other PCEs are present. We are proposing to include a 1 m (3.3 ft) buffer of upland area around the spring, spring run and ditch because it has moist soils and vegetation that produce food for the snails and protect the substrate they use. Because of the small size of the spring, spring run, and ditch, we are precluded from mapping them precisely due to inaccuracies inherent in the use of satellites for locating and mapping. Therefore, for mapping purposes we created a circle that encompasses them. The proposed critical habitat is the spring, spring run, ditch and buffer within the 76 m (249 ft) diameter circle centered on UTM coordinate 663858, 3468182 in Zone 12.

Threats to the San Bernardino springsnail in this unit that may require special management of the physical and biological features include groundwater depletion, drought, water contamination from pesticide use, and potential introduction of nonnative snails. Groundwater depletion, perhaps from watering the lawn adjacent to Snail Spring, has threatened the species with a loss of flowing water in the past (Cox *et al.* 2007, p. 2; Smith *et al.* 2003, p. 1; Malcom *et al.* 2003, p. 18) and continues to threaten it. Groundwater depletion threatens the region more broadly as the human population grows and demands for water increase (Earman *et al.* 2003, p. 259), especially during periods of drought. Human-caused changes to the uplands adjacent to the aquatic habitats likely cannot be managed through this proposed unit designation to control threats to the aquatic habitat, particularly runoff from pesticide use on the adjacent lawn unless Federal actions or funding are

involved. If that occurs, we would enter into consultation under section 7 of the Act. The proposed Snail Spring Unit contains all the physical and biological features in a complex spatial arrangement and supports all of the San Bernardino springsnail life processes where water is present.

Goat Tank Spring Unit

The proposed Goat Tank Spring Unit encompasses 0.002 ha (0.005 ac) in Cochise County. The entire unit is in private ownership and managed by the John Slaughter Ranch. The spring is contained entirely within a square concrete box approximately 0.6 × 0.9 m (2 × 3 ft). There is also some spring seepage emanating from the base of cottonwood tree about 2 m (6.6 ft) from the springbox. We are proposing to include a 1 m (3.3 ft) of upland area around the springbox and spring seepage because it has moist soils and vegetation that produce food for the snails and protects the substrate snails use. Because of the small size of the springbox and spring seepage, we are precluded from mapping them precisely due to inaccuracies inherent in the use of satellites for locating and mapping. Therefore, for mapping purposes we created a circle that encompasses them. The proposed critical habitat is the springbox, spring seepage, and buffer within the 5 m (16 ft) diameter circle centered on UTM coordinate 663725, 3468162 in Zone 12.

Threats to the San Bernardino springsnail in this unit that may require special management of the physical and biological features include groundwater depletion, drought, water contamination from pesticide use, and potential introduction of nonnative snails. Groundwater depletion has affected the species with a loss of flowing water at nearby Snail Spring in the recent past (Cox *et al.* 2007, p. 2; Smith *et al.* 2003, p. 1; Malcom *et al.* 2003, p. 18) and continues to threaten it. Groundwater depletion threatens the region more broadly as the human population grows and demands for water increase (Earman *et al.* 2003, p. 259), especially during periods of drought. Human-caused changes to the uplands adjacent to the aquatic habitats likely cannot be managed through this proposed unit designation to control threats to the aquatic habitat, particularly runoff from pesticide use on the adjacent lawn unless Federal actions or funding are involved. If that occurs, we would enter into consultation under section 7 of the Act. The proposed Goat Tank Unit contains all the PCEs that support all of the San Bernardino springsnail life processes.

Horse Spring Unit

The proposed Horse Spring Unit encompasses 0.032 ha (0.078 ac) in Cochise County. The entire unit is in private ownership and managed by the John Slaughter Ranch. The spring emerges from a PVC pipe and flows in a springrun that is approximately 0.5 m (1.6 ft) wide and 15.5 m (50.9 ft) in length. We are proposing to include a 1 m (3.3 ft) buffer of upland area around the springhead and springrun because it has moist soils and vegetation that produce food for the snails and protect the substrate they use. Because of the small size of the springhead and springrun, we are precluded from mapping them precisely due to inaccuracies inherent in the use of satellites for locating and mapping. Therefore, for mapping purposes we created a circle that encompasses them. The proposed critical habitat is the springbox, spring seepage, and buffer within the 20 m (66 ft) diameter circle centered on UTM coordinate 663772, 3468091 in Zone 12.

Threats to the San Bernardino springsnail in this unit that may require special management of the physical and biological features include groundwater depletion, drought, water contamination from pesticide use, and potential introduction of nonnative snails. Groundwater depletion has affected the species with a loss of flowing water at nearby Snail Spring in the recent past (Cox *et al.* 2007, p. 2; Smith *et al.* 2003; p. 1, Malcom *et al.* 2003, p. 18) and continues to threaten it. Groundwater depletion threatens the region more broadly as the human population grows and demands for water increase (Earman *et al.* 2003, p. 259), especially during periods of drought. Human-caused changes to the uplands adjacent to the aquatic habitats likely cannot be managed through this proposed unit designation to control threats to the aquatic habitat, particularly runoff from pesticide use on the adjacent lawn unless Federal actions or funding are involved. If that occurs, we would enter into consultation under section 7 of the Act. The proposed Horse Spring Unit contains all the PCEs that support all of the San Bernardino springsnail life processes.

Tule Spring Unit

The proposed Tule Spring Unit encompasses 0.324 ha (0.801 ac) in Cochise County. The entire unit is in Federal ownership and managed by the San Bernardino NWR of the Service. The spring forms a pond approximately 23 m (75 ft) north-south and 13 m (43 ft) east-west, and it has a spring run that is approximately 21.7 m (71 ft) in length. The spring run emerges from the southeastern side of the spring pond, runs northeast for approximately 12.5 m (41 ft) to a manmade ditch, which runs southeast 9.2 m (30 ft). We are proposing to include a 1 m (3.3 ft) buffer of upland area around the spring, spring run, and ditch because it has moist soils and vegetation that produce food for the snails and protect the substrate they use. Because of the small size of the spring, spring run, and ditch, we are precluded from mapping them precisely due to inaccuracies inherent in the use of satellites for locating and mapping. Therefore, for mapping purposes we created a circle that encompasses them. The proposed critical habitat is the spring, spring run, ditch and buffer within the 64 m (210 ft) diameter circle centered on UTM coordinate 664259, 3468499 in Zone 12.

The proposed Tule Spring Unit is currently unoccupied by the San Bernardino springsnail, but is considered to have been historically occupied (Malcom *et al.* 2007, p. 19) and shares a common aquifer and similarities in water chemistry, temperature and hydrology with Snail Spring. Tule Spring is essential to the conservation of the species because it provides a reintroduction opportunity to provide population redundancy of the species. When developing conservation strategies for species whose life histories are characterized by short generation time, small body size, high rates of population increase, and high habitat specificity; greater emphasis should be placed on the maintenance of multiple populations as opposed to protecting a single population (Murphy *et al.* 1990, pp. 41–51).

Effects of Critical Habitat Designation

Section 7 Consultation

Section 7 of the Act requires Federal agencies, including the Service, to ensure that actions they fund, authorize, or carry out are not likely to jeopardize the continued existence of a listed species or destroy or adversely modify critical habitat. Decisions by the courts of appeals for the Fifth and Ninth Circuit Courts of Appeals have invalidated our definition of "destruction or adverse modification" (50 CFR 402.02) (*see Gifford Pinchot Task Force* v. *U.S. Fish and Wildlife Service*, 378 F. 3d 1059 (9th Circuit 2004) and *Sierra Club* v. *U.S. Fish and Wildlife Service et al.*, 245 F.3d 434, 442F (5th Circuit 2001), and we do not rely on this regulatory definition when analyzing whether an action is likely to destroy or adversely modify critical

habitat. Under the statutory provisions of the Act, we determine destruction or adverse modification on the basis of whether, with implementation of the proposed Federal action, the affected critical habitat would remain functional (or retain those PCEs that relate to the ability of the area to periodically support the species) to serve its intended conservation role for the species.

If a species is listed or critical habitat is designated, section 7(a)(2) of the Act requires Federal agencies to ensure that activities they authorize, fund, or carry out are not likely to jeopardize the continued existence of the species or to destroy or adversely modify its critical habitat. If a Federal action may affect a listed species or its critical habitat, the responsible Federal agency (action agency) must enter into consultation with us. As a result of this consultation, we document compliance with the requirements of section 7(a)(2) through our issuance of:

(1) A concurrence letter for Federal actions that may affect, but are not likely to adversely affect, listed species or critical habitat; or

(2) A biological opinion for Federal actions that are likely to adversely affect listed species or critical habitat.

An exception to the concurrence process referred to in (1) above occurs in consultations involving National Fire Plan projects. In 2004, the USFS and the Bureau of Land Management (BLM) reached agreements with the Service to streamline a portion of the section 7 consultation process (BLM 2004, pp. 1–8; USFS 2004, pp. 1–8). The agreements allow the USFS and the BLM the opportunity to make "not likely to adversely affect" (NLAA) determinations for projects implementing the National Fire Plan. Such projects include prescribed fire, mechanical fuels treatments (thinning and removal of fuels to prescribed objectives), emergency stabilization, burned area rehabilitation, road maintenance and operation activities, ecosystem restoration, and culvert replacement actions. The USFS and the BLM must ensure staff are properly trained, and both agencies must submit monitoring reports to the Service to determine if the procedures are being implemented properly and that effects on endangered species and their habitats are being properly evaluated. As a result, we do not believe the alternative consultation processes being implemented as a result of the National Fire Plan will differ significantly from those consultations being conducted by the Service.

When we issue a biological opinion concluding that a project is likely to jeopardize the continued existence of a listed species or destroy or adversely modify critical habitat, we also provide reasonable and prudent alternatives to the project, if any are identifiable. We define "Reasonable and prudent alternatives" at 50 CFR 402.2 as alternative actions identified during consultation that:

- Can be implemented in a manner consistent with the intended purpose of the action;
- Can be implemented consistent with the scope of the Federal agency's legal authority and jurisdiction;
- Are economically and technologically feasible; and
- Would, in the Director's opinion, avoid jeopardizing the continued existence of the listed species or destroying or adversely modifying critical habitat.

Reasonable and prudent alternatives can vary from slight project modifications to extensive project redesign or relocation of the project. Costs associated with implementing reasonable and prudent alternatives are similarly variable.

Regulations at 50 CFR 402.16 require Federal agencies to reinitiate consultation on previously reviewed actions in instances where we have listed a new species or subsequently designated critical habitat that may have been affected and the Federal agency has retained discretionary involvement or control over the action (or the agency's discretionary involvement or control is authorized by law). Consequently, Federal agencies may sometimes need to request reinitiation of consultation with us on actions for which formal consultation has been completed, if those actions with discretionary involvement or control may affect subsequently listed species or designated critical habitat.

Federal actions that may affect the Three Forks springsnail or the San Bernardino springsnail or their designated critical habitat require section 7(a)(2) consultation under the Act. On private lands, examples of Federal actions include, but are not limited to, Environmental Protection Agency authorization of discharges under the National Pollutant Discharge Elimination System and registration of pesticides; Federal Highway Administration approval of funding of road or highway infrastructure and maintenance; Corps authorization of discharges of dredged and fill material into waters of the United States under section 404 of the CWA; U.S. Department of Agriculture (USDA) Natural Resources Conservation Service technical assistance and other programs; USDA-Rural Utilities Service infrastructure or development; U.S. Department of Homeland Security activities in regard to immigration enforcement and regulation; the Department of Housing and Urban Development Small Cities Community Development Block Grant and home loan programs; or a permit from us under section 10(a)(1)(B) of the Act. Federal actions not affecting listed species or critical habitat, and actions on State, Tribal, local, or private lands that are not federally funded, authorized, or permitted, do not require section 7(a)(2) consultations. In addition to several of the specific examples above, other Federal actions that may require consultation on Federal lands include land-management actions implemented by the applicable Federal land management agency.

Application of the "Adverse Modification" Standard

The key factor related to the adverse modification determination is whether, with implementation of the proposed Federal action, the affected critical habitat would continue to serve its intended conservation role for the species, or would retain those PCEs that relate to the ability of the area to periodically support the species. Activities that may destroy or adversely modify critical habitat are those that alter the PCEs to an extent that appreciably reduces the conservation value of critical habitat for the Three Forks springsnail or the San Bernardino springsnail. As discussed above, the role of critical habitat is to support the life history needs of the species and provide for the conservation of the species.

Section 4(b)(8) of the Act requires us to briefly evaluate and describe, in any proposed or final regulation that designates critical habitat, activities involving Federal actions that may adversely modify such habitat, or that may be affected by such designation.

Activities that, when carried out, funded, or authorized by a Federal agency, may affect critical habitat and, therefore, should result in consultation for the Three Forks springsnail and the San Bernardino springsnail include, but are not limited to:

(1) Actions that would reduce the quantity of water flow within the spring systems proposed as critical habitat.

(2) Actions that would result in the inundation of springheads within the spring systems proposed as critical habitat.

(3) Actions that would degrade water quality within the spring systems proposed for designation as critical habitat.

(4) Actions that would reduce the availability of coarse, firm aquatic substrates within the spring systems that are proposed as critical habitat.

(5) Actions that would reduce the occurrence of native aquatic macrophytes, algae, and/or periphyton within the spring systems proposed as critical habitat.

(6) Actions that would cause, promote, or maintain the presence of nonnative predators and competitors at unacceptable levels within the spring systems proposed as critical habitat.

Exemptions

Application of Section 4(a)(3) of the Act

The Sikes Act Improvement Act of 1997 (Sikes Act) (16 U.S.C. 670a) required each military installation that includes land and water suitable for the conservation and management of natural resources to complete an integrated natural resource management plan (INRMP) by November 17, 2001.

The National Defense Authorization Act for Fiscal Year 2004 (Pub. L. 108–136) amended the Act to limit areas eligible for designation as critical habitat. Specifically, section 4(a)(3)(B)(i) of the Act (16 U.S.C. 1533(a)(3)(B)(i)) now provides: "The Secretary shall not designate as critical habitat any lands or other geographical areas owned or controlled by the Department of Defense, or designated for its use, that are subject to an integrated natural resources management plan prepared under section 101 of the Sikes Act (16 U.S.C. 670a), if the Secretary determines in writing that such plan provides a benefit to the species for which critical habitat is proposed for designation."

There are no Department of Defense lands with a completed INRMP within the critical habitat designation.

Exclusions

Application of Section 4(b)(2) of the Act

Section 4(b)(2) of the Act states that the Secretary must designate and revise critical habitat on the basis of the best available scientific data after taking into consideration the economic impact, national security impact, and any other relevant impact of specifying any particular area as critical habitat. The Secretary may exclude an area from critical habitat if he determines that the benefits of such exclusion outweigh the benefits of specifying such area as part of the critical habitat, unless he determines, based on the best scientific data available, that the failure to designate such area as critical habitat will result in the extinction of the species. In making that determination, the legislative history is clear that the Secretary has broad discretion regarding which factors to use and how much weight to give any factor.

Under section 4(b)(2) of the Act, in considering whether to exclude a particular area from the designation, we must identify the benefits of including the area in the designation, identify the benefits of excluding the area from the designation, and determine whether the benefits of exclusion outweigh the benefits of inclusion. If based on this analysis, we make this determination, then we can exclude the area only if such exclusion would not result in the extinction of the species.

Exclusions Based on Economic Impacts

Under section 4(b)(2) of the Act, we consider the economic impacts of specifying any particular area as critical habitat. In order to consider economic impacts, we are preparing an analysis of the economic and other impacts of proposing critical habitat for the Three Forks springsnail and San Bernardino springsnail. We will announce the availability of the draft economic analysis as soon as it is completed, at which time we will seek public review and comment. At that time, copies of the draft economic analysis will be available for downloading from the Internet at *http://www.regulations.gov*, or from the Arizona Ecological Services Field Office (*see* **FOR FURTHER INFORMATION CONTACT** section). We may exclude areas from the final rule based on the information in the economic analysis. During the development of a final designation, we will consider economic impacts, public comments, and other new information, and areas may be excluded from the final critical habitat designation under section 4(b)(2) of the Act and our implementing regulations at 50 CFR 424.19.

Exclusions Based on National Security Impacts

Under section 4(b)(2) of the Act, we consider whether there are lands owned or managed by the Department of Defense (DOD) where a national security impact might exist. In preparing this proposal, we have determined that the lands within the proposed designation of critical habitat for the Three Forks and San Bernardino springsnails are not owned or managed by the Department of Defense, and therefore, anticipate no impact to national security. There are no areas proposed for exclusion based on impacts on national security.

Exclusions Based on Other Relevant Impacts

Under section 4(b)(2) of the Act, we consider any other relevant impacts, in addition to economic impacts and impacts on national security. We consider a number of factors including whether the landowners have developed any HCPs or other management plans for the area, or whether there are conservation partnerships that would be encouraged by designation of, or exclusion from, critical habitat. In addition, we look at any Tribal issues, and consider the government-to-government relationship of the United States with Tribal entities. We also consider any social impacts that might occur because of the designation.

We have evaluated the Forest Management Plan for the Apache-Sitgreaves National Forests with respect to providing adequate protection and management for the Three Forks springsnail. At this time, the Plan does not provide sufficient protection and management to satisfy the criteria necessary for proposed exclusion from critical habitat. There are currently no conservation plans for the private lands in the Snail Spring Unit for the San Bernardino springsnail.

In preparing this proposal, we have determined that the proposed designation does not include any Tribal lands or trust resources. We anticipate no impact to Tribal lands, partnerships, or HCPs from this proposed critical habitat designation. There are no areas proposed for exclusion from this proposed designation based on other relevant impacts.

Peer Review

In accordance with our joint policy published in the **Federal Register** on July 1, 1994 (59 FR 34270), we are requesting the expert opinions of at least three appropriate and independent specialists regarding this proposed rule. The purpose of peer review is to ensure that our proposed rule is based on scientifically sound data, assumptions, and analyses. We will invite these peer reviewers to comment, during the public comment period, on the specific assumptions and conclusions regarding the proposal to list the Three Forks springsnail and San Bernardino springsnail as endangered, and our decision regarding critical habitat for these species.

We will consider all comments and information received during the comment period on this proposed rule during preparation of a final rulemaking. Accordingly, the final decision may differ from this proposal.

Public Hearings

The Act provides for one or more public hearings on this proposal, if we receive any request for hearings.

Requests must be received within 45 days after the date of publication of this proposal in the **Federal Register**. Send your request to the person named in **FOR FURTHER INFORMATION CONTACT**. We will schedule public hearings on this proposal, if any are requested, and announce the dates, times, and places of those hearings, as well as how to obtain reasonable accommodations, in the **Federal Register** and local newspapers at least 15 days before the first hearing.

Required Determinations

Regulatory Planning and Review

The Office of Management and Budget (OMB) has determined that this rule is not significant and has not reviewed this rule under Executive Order 12866. OMB bases its determination upon the following four criteria:

(a) Whether the rule will have an annual effect of $100 million or more on the economy or adversely affect an economic sector, productivity, jobs, the environment, or other units of the government.

(b) Whether the rule will create inconsistencies with other Federal agencies' actions.

(c) Whether the rule will materially affect entitlements, grants, user fees, loan programs, or the rights and obligations of their recipients.

(d) Whether the rule raises novel legal or policy issues.

Regulatory Flexibility Act (5 U.S.C. 601 et seq.)

Under the Regulatory Flexibility Act, (RFA; 5 U.S.C. 601 *et seq.*, as amended by the Small Business Regulatory Enforcement Fairness Act (SBREFA) of 1996), whenever an agency must publish a notice of rulemaking for any proposed or final rule, it must prepare and make available for public comment a regulatory flexibility analysis that describes the effects of the rule on small entities (*i.e.*, small businesses, small organizations, and small government jurisdictions). However, no regulatory flexibility analysis is required if the head of the agency certifies the rule will not have a significant economic impact on a substantial number of small entities. SBREFA amended RFA to require Federal agencies to provide a statement of the factual basis for certifying that the rule will not have a significant economic impact on a substantial number of small entities.

At this time, we lack the available economic information necessary to provide an adequate factual basis for the required RFA finding. Therefore, we defer the RFA finding until completion of the draft economic analysis prepared under section 4(b)(2) of the Act and E.O. 12866. This draft economic analysis will provide the required factual basis for the RFA finding. Upon completion of the draft economic analysis, we will announce availability of the draft economic analysis of the proposed designation in the **Federal Register** and reopen the public comment period for the proposed designation. We will include with this announcement, as appropriate, an initial regulatory flexibility analysis or a certification that the rule will not have a significant economic impact on a substantial number of small entities accompanied by the factual basis for that determination. We have concluded that deferring the RFA finding until completion of the draft economic analysis is necessary to meet the purposes and requirements of the RFA. Deferring the RFA finding in this manner will ensure that we make a sufficiently informed determination based on adequate economic information and provides the necessary opportunity for public comment.

Unfunded Mandates Reform Act

In accordance with the Unfunded Mandates Reform Act (2 U.S.C. 1501 *et seq.*), we make the following findings:

(a) This proposed rule will not produce a Federal mandate. In general, a Federal mandate is a provision in legislation, statute or regulation that would impose an enforceable duty upon State, local, or tribal governments, or the private sector and includes both "Federal intergovernmental mandates" and "Federal private sector mandates." These terms are defined in 2 U.S.C. 658(5)(7). "Federal intergovernmental mandate" includes a regulation that "would impose an enforceable duty upon State, local, or [T]ribal governments," with two exceptions. It excludes "a condition of Federal assistance." It also excludes "a duty arising from participation in a voluntary Federal program," unless the regulation "relates to a then-existing Federal program under which $500,000,000 or more is provided annually to State, local, and [T]ribal governments under entitlement authority," if the provision would "increase the stringency of conditions of assistance" or "place caps upon, or otherwise decrease, the Federal Government's responsibility to provide funding," and the State, local, or [T]ribal governments "lack authority" to adjust accordingly. At the time of enactment, these entitlement programs were: Medicaid; AFDC work programs; Child Nutrition; Food Stamps; Social Services Block Grants; Vocational Rehabilitation State Grants; Foster Care, Adoption Assistance, and Independent Living; Family Support Welfare Services; and Child Support Enforcement. "Federal private sector mandate" includes a regulation that would impose an enforceable duty upon the private sector, except (i) a condition of Federal assistance or (ii) a duty arising from participation in a voluntary Federal program.

The designation of critical habitat does not impose a legally binding duty on non-Federal Government entities or private parties. Under the Act, the only regulatory effect is that Federal agencies must ensure that their actions do not destroy or adversely modify critical habitat under section 7. While non-Federal entities that receive Federal funding, assistance, or permits, or that otherwise require approval or authorization from a Federal agency for an action, may be indirectly impacted by the designation of critical habitat, the legally binding duty to avoid destruction or adverse modification of critical habitat rests squarely on the Federal agency. Furthermore, to the extent that non-Federal entities are indirectly impacted because they receive Federal assistance or participate in a voluntary Federal aid program, the Unfunded Mandates Reform Act would not apply; nor would critical habitat shift the costs of the large entitlement programs listed above onto State governments.

(b) We do not expect this rule to significantly or uniquely affect small governments. Small governments will be affected only to the extent that any programs having Federal funds, permits, or other authorized activities must ensure that their actions will not adversely affect the critical habitat. Therefore, a Small Government Agency Plan is not required. However, we will further evaluate this issue as we conduct our economic analysis, and review and revise this assessment as warranted.

Takings

In accordance with E.O. 12630 (Government Actions and Interference with Constitutionally Protected Private Property Rights), we will analyze the potential takings implications of designating critical habitat for the Three Forks springsnail and San Bernardino springsnail in a takings implications assessment. The takings implications assessment will determine whether this designation of critical habitat for the Three Forks springsnail and San Bernardino springsnail poses significant takings implications for lands within or affected by the proposed revised designation. We will further evaluate

this issue as we conduct our economic analysis.

Federalism

In accordance with E.O. 13132 (Federalism), this proposed rule does not have significant Federalism effects. A Federalism assessment is not required. In keeping with Department of the Interior and Department of Commerce policy, we requested information from, and coordinated development of, this proposed critical habitat designation with appropriate State resource agencies in Arizona. The designation of critical habitat on lands currently occupied by the Three Forks springsnail or San Bernardino springsnail imposes no additional restrictions to those currently in place and, therefore, has little incremental impact on State and local governments and their activities. The designation may have some benefit to these governments because the areas that contain the features essential to the conservation of the species are more clearly defined, and the physical and biological features of the habitat necessary to the conservation of the species are specifically identified. This information does not alter where and what federally sponsored activities may occur. However, it may assist local governments in long-range planning (rather than having them wait for case-by-case section 7 consultations to occur).

Where state and local governments require approval or authorization from a Federal agency for actions that may affect critical habitat, consultation under section 7(a)(2) would be required. While non-Federal entities that receive Federal funding, assistance, or permits, or that otherwise require approval or authorization from a Federal agency for an action, may be indirectly impacted by the designation of critical habitat, the legally binding duty to avoid destruction or adverse modification of critical habitat rests squarely on the Federal agency.

Civil Justice Reform

In accordance with E.O. 12988 (Civil Justice Reform), the Office of the Solicitor has determined that the rule does not unduly burden the judicial system and that it meets the requirements of sections 3(a) and 3(b)(2) of the Order. We have proposed designating critical habitat in accordance with the provisions of the Act. This proposed rule uses standard property descriptions and identifies the physical and biological features within the designated areas to assist the public in understanding the habitat needs of the Three Forks springsnail and San Bernardino springsnail.

Paperwork Reduction Act of 1995

This proposed rule does not contain any new collections of information that require approval by OMB under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*). This rule will not impose recordkeeping or reporting requirements on State or local governments, individuals, businesses, or organizations. 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.

National Environmental Policy Act

It is our position that, outside the jurisdiction of the Circuit Court of the United States for the Tenth Circuit, we do not need to prepare environmental analyses as defined by the National Environmental Policy Act (NEPA) (42 U.S.C. 4321 *et seq.*) in connection with designating critical habitat under the Act. We published a notice outlining our reasons for this determination in the **Federal Register** on October 25, 1983 (48 FR 49244). This assertion was upheld by the Circuit Court of the United States for the Ninth Circuit (*Douglas County* v. *Babbitt*, 48 F.3d 1495 (9th Cir. 1995), cert. denied 516 U.S. 1042 (1996)).

Clarity of the Rule

We are required by Executive Orders 12866 and 12988 and by the Presidential Memorandum of June 1, 1998, to write all rules in plain language. This means that each rule we publish must:

(a) Be logically organized;

(b) Use the active voice to address readers directly;

(c) Use clear language rather than jargon;

(d) Be divided into short sections and sentences; and

(e) Use lists and tables wherever possible.

If you feel that we have not met these requirements, send us comments by one of the methods listed in the **ADDRESSES** section. To better help us revise the rule, your comments should be as specific as possible. For example, you should tell us the numbers of the sections or paragraphs that are unclearly written, which sections or sentences are too long, the sections where you feel lists or tables would be useful, etc.

Government-to-Government Relationship With Tribes

In accordance with the President's memorandum of April 29, 1994, "Government-to-Government Relations with Native American Tribal Governments" (59 FR 22951), E.O. 13175, and the Department of the Interior's manual at 512 DM 2, we readily acknowledge our responsibility to communicate meaningfully with recognized Federal Tribes on a government-to-government basis. In accordance with Secretarial Order 3206 of June 5, 1997 (American Indian Tribal Rights, Federal-Tribal Trust Responsibilities, and the Endangered Species Act), we readily acknowledge our responsibilities to work directly with Tribes in developing programs for healthy ecosystems, to acknowledge that tribal lands are not subject to the same controls as Federal public lands, to remain sensitive to Indian culture, and to make information available to Tribes.

We have determined that there are no Tribal lands occupied at the time of listing with features essential for the conservation, and no Tribal lands that are essential for the conservation, of the Three Forks springsnail and San Bernardino springsnail. Therefore, we have not proposed designation of critical habitat for the Three Forks springsnail and San Bernardino springsnail on Tribal lands.

Energy Supply, Distribution, or Use

Executive Order 13211, "Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use," requires agencies to prepare Statements of Energy Effects when undertaking certain actions. This proposed rule to designate critical habitat for the Three Forks springsnail and San Bernardino springsnail is not a significant regulatory action, and we do not expect it to significantly affect energy supplies, distribution, or use. Therefore, this action is not a significant energy action, and no Statement of Energy Effects is required. However, we will further evaluate energy-related issues as we conduct our economic analysis, and review and revise this assessment as warranted.

References Cited

A complete list of all references cited in this rule is available on the Internet at *http://www.regulations.gov* or upon request from the Field Supervisor, Arizona Ecological Services Field Office (*see* **FOR FURTHER INFORMATION CONTACT** section).

Authors

The primary authors of this document are the staff members of the Arizona Field Services Office (*see* **FOR FURTHER INFORMATION CONTACT**).

List of Subjects in 50 CFR Part 17

Endangered and threatened species, Exports, Imports, Reporting and recordkeeping requirements, and Transportation.

Regulation Promulgation

Accordingly, we propose to amend part 17, subchapter B of chapter I, title 50 of the Code of Federal Regulations, as set forth below:

PART 17—[AMENDED]

1. The authority citation for part 17 continues to read as follows:

Authority: 16 U.S.C. 1361–1407; 16 U.S.C. 1531–1544; 16 U.S.C. 4201–4245; Pub. L. 99–625, 100 Stat. 3500, unless otherwise noted.

2. In § 17.11(h) add entries for "Springsnail, San Bernardino" and "Springsnail, Three Forks" to the List of Endangered and Threatened Wildlife in alphabetic order under SNAILS to read as follows:

§ 17.11 Endangered and threatened wildlife.

* * * * *

(h) * * *

Species		Historic range	Vertebrate population where endangered or threatened	Status	When listed	Critical habitat	Special rules
Common name	Scientific name						
*	*	*	*	*	*		*
SNAILS							
*	*	*	*	*	*		*
Springsnail, San Bernardino	*Pyrgulopsis bernardina*	U.S.A. (AZ)	Entire	E	17.95(f)	NA	
*	*	*	*	*	*		*
Springsnail, Three Forks.	*Pyrgulopsis trivialis*	U.S.A. (AZ)	Entire	E	17.95(f)	NA	
*	*	*	*	*	*		*

3. In § 17.95, amend paragraph (f) by adding entries for "San Bernardino Springsnail (*Pyrgulopsis bernardina*)" and "Three Forks Springsnail (*Pyrgulopsis trivialis*)" to follow the entry for "Rough hornsnail (*Pleurocera foremani*)" to read as follows:

§ 17.95 Critical habitat—fish and wildlife.

* * * * *

(f) Clams and Snails.

* * * * *

San Bernardino Springsnail (*Pyrgulopsis bernardina*)

(1) Critical habitat units are depicted for Cochise County, on the map in paragraph (5) of this entry.

(2) The physical and biological features of critical habitat for the San Bernardino springsnail are:

(i) Adequately clean spring water (free from contamination) emerging from the ground and flowing on the surface;

(ii) Periphyton (attached algae), bacteria, and decaying organic material for food;

(iii) Substrates, which include cobble, gravel, pebble, sand, silt, and aquatic vegetation, for egg laying, maturing, feeding, and escape from predators; and

(iv) Either an absence of nonnative predators (crayfish) and competitors (snails) or their presence at low population levels.

(3) We have determined that all of the areas designated as critical habitat contain one or more of the physical and biological features, and there are no developed areas other than the road culvert and concrete springbox included to protect water within them.

(4) Critical habitat map units were plotted on 2007 USGS Digital Ortho Quarter Quad maps using Universal Transverse Mercator (UTM) coordinates in ArcMap. Because of the small size of the springs, spring runs and ditches, for mapping purposes we created a circle that encompasses them.

(5)

Note: Index map of critical habitat for the San Bernardino springsnail follows:

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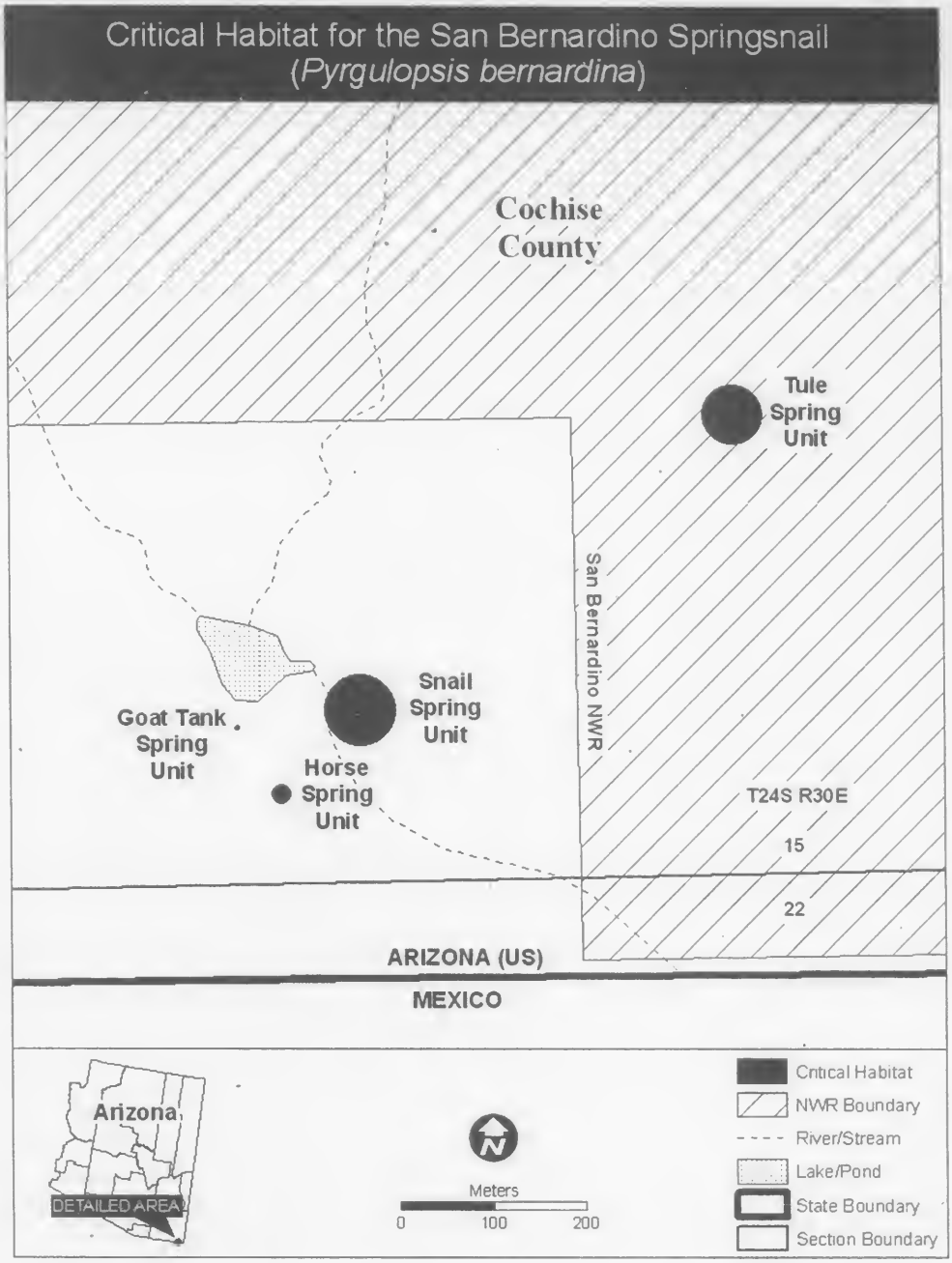

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(6) Snail Spring Unit 0.457 ha (1.129 ac) in Cochise County, Arizona. The proposed unit is a spring approximately 5 m (16 ft) in diameter and has a spring run that goes south from the spring approximately 23.5 m (77 ft) to a manmade ditch, which runs 10.2 m (33.5 ft) to a dirt road. It passes under the road in a 3.5 m (11.5 ft) culvert, then flows approximately 17 m (56 ft) below the road. The culvert beneath the road is included in critical habitat, but not the road itself. We include 1 m (3.3 ft) of upland area around the spring, spring run and ditch because it has moist soils and vegetation that produce food for the snails and protect the substrate essential to the species. The critical habitat is the spring, spring run, ditch and buffer within the 76 m (249 ft) diameter circle centered on UTM coordinate 663858, 3468182 in Zone 12 with the units in meters using North American Datum of 1983 (NAD 83).

(7) Goat Tank Spring Unit 0.002 ha (0.005 ac) in Cochise County. The unit is a spring contained entirely within a square concrete box approximately 0.61 × 0.91 m (2 × 3 ft) and spring seepage emanating from the base of cottonwood tree about 2 m (6.56 ft) from the springbox. We include 1 m (3.3 ft) of upland area around the spring box and spring. The critical habitat is the

springbox, spring seepage, and buffer within the 5 m (16.4 ft) diameter circle centered on UTM coordinate 663725, 3468162 in Zone 12 with the units in meters using North American Datum of 1983 (NAD 83).

(8) Horse Spring Unit 0.032 ha (0.078 ac) in Cochise County. The unit is a spring and springrun approximately 0.5 m (1.6 ft) wide and 15.5 m (50.9 ft) in length. We include 1 m (3.3 ft) of upland area around the springhead and spring run. The proposed critical habitat is the springbox, spring seepage, and buffer within the 20 m (66 ft) diameter circle centered on UTM coordinate 663772, 3468091 in Zone 12 with the units in meters using North American Datum of 1983 (NAD 83).

(9) Tule Spring Unit 0.324 ha (0.801 ac) in Cochise County, Arizona. The unit is a spring, which forms a pond approximately 23 m (75 ft) north-south and 13 m (43 ft) east-west, and it has a spring run that is approximately 21.7 m (71 ft) in length. The spring run emerges from the southeastern side of the spring pond, runs northeast for approximately 12.5 m (41 ft) to a manmade ditch, which runs southeast 9.2 m (30 ft). We include 1 m (3.3 ft) of upland area around the spring, spring run, and ditch. The proposed critical habitat is the spring, spring run, ditch and buffer within the 64 m (210 ft) diameter circle centered on UTM coordinate 664259, 3468499 in Zone 12 with the units in meters using North American Datum of 1983 (NAD 83).

* * * * *

Three Forks Springsnail (*Pyrgulopsis trivialis*)

(1) Critical habitat units are depicted for Apache County, Arizona, on the map at paragraph (5) of this entry below.

(2) The primary constituent elements of critical habitat for the Three Forks springsnail are:

(i) Adequately clean spring water (free from contamination) emerging from the ground and flowing on the surface;

(ii) Periphyton (attached algae), bacteria, and decaying organic material for food;

(iii) Substrates that include cobble, gravel, pebble, sand, silt, and aquatic vegetation, for egglaying, maturing, feeding, and escape from predators; and

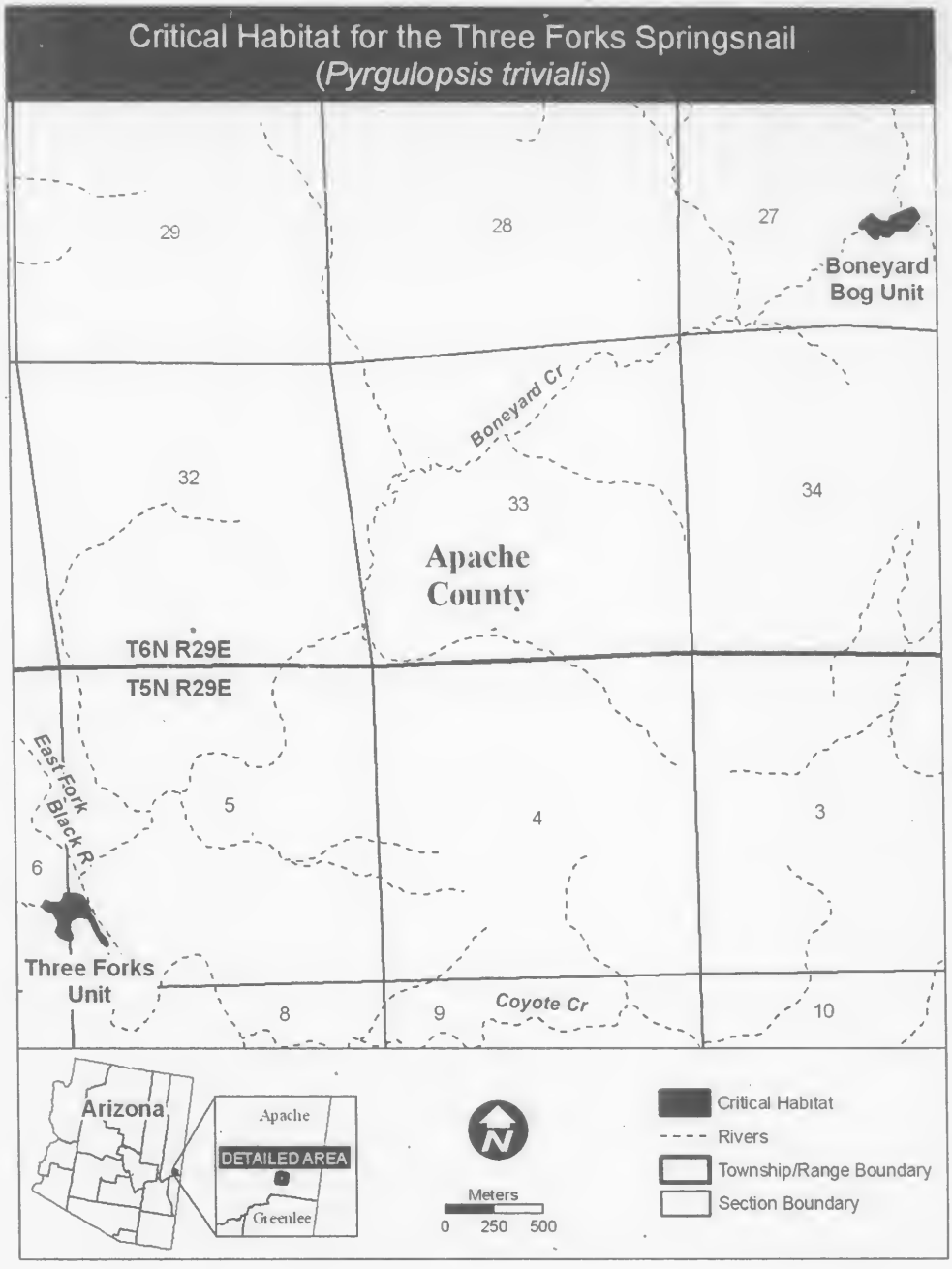
(iv) Either an absence of nonnative predators (crayfish) and competitors (snails) or their presence at low population levels. .

(3) We have determined that all of the areas designated as critical habitat contain one or more of the physical and biological features, and there are no developed areas other than concrete springboxes included to protect water within them.

(4) Critical habitat map units were plotted on 2007 USGS Digital Ortho Quarter Quad maps using Universal Transverse Mercator (UTM) coordinates in ArcMap.

(5)

Note: Index map of critical habitat for the Three Forks springsnail follows:



(6) Three Forks Springs Unit (2.5 ha; 6.1 ac). The Three Forks Spring Unit consists of all areas within boundary points with the following coordinates in UTM Zone 12 with the units in meters using North American Datum of 1983 (NAD 83): 655708, 3747262; 655714, 3747269; 655746, 3747258; 655777, 3747256; 655802, 3747270; 655808, 3747288; 655815, 3747304; 655877, 3747299; 655898, 3747291; 655911, 3747271; 655922, 3747253; 655932, 3747227; 655932, 3747209; 655939, 3747196; 655948, 3747186; 655958, 3747165; 655969, 3747142; 655979, 3747116; 655998, 3747094; 656013, 3747078; 656022, 3747061; 656023, 3747050; 656013, 3747052; 656001, 3747065; 655991, 3747086; 655973, 3747112; 655963, 3747133; 655951, 3747166; 655931, 3747191; 655906, 3747198; 655886, 3747201; 655869, 3747198; 655836, 3747179; 655826, 3747158; 655830, 3747123; 655841, 3747098; 655838, 3747083; 655818, 3747085; 655785, 3747097; 655771, 3747122; 655782, 3747144; 655784, 3747170; 655752, 3747216; 655715, 3747232; 655707, 3747242; Thence returning to 655708, 3747262.

(7) Boneyard Bog Springs Unit (2.0 ha; 5.0 ac). The Boneyard Bog Spring Unit consists of all areas within boundary points with the following coordinates in UTM Zone 12 with the units in meters using North American Datum of 1983

(NAD 83): 659968, 3750753; 659990, 3750731; 660021, 3750713; 660060, 3750717; 660070, 3750742; 660176, 3750787; 660190, 3750781; 660199, 3750758; 660208, 3750744; 660159, 3750685; 660125, 3750680; 660088, 3750684; 660081, 3750690; 660072, 3750691; 660072, 3750676; 660076, 3750675; 660076, 3750664; 660069, 3750664; 660067, 3750663; 660060, 3750654; 660052, 3750648; 660034, 3750649; 660029, 3750654; 660027, 3750663; 660008, 3750659; 659997, 3750649; 659997, 3750639; 659988, 3750639; 659982, 3750641; 659958, 3750660; 659954, 3750671; 659945, 3750675; 659942, 3750688; 659933, 3750685; 659921, 3750691; 659910, 3750693; 659919, 3750712; Thence returning to 659968, 3750753.

* * * * *

Dated: March 11, 2011.

Will Shafroth,

Acting Assistant Secretary for Fish and Wildlife and Parks.

[FR Doc. 2011–8176 Filed 4–11–11; 8:45 am]

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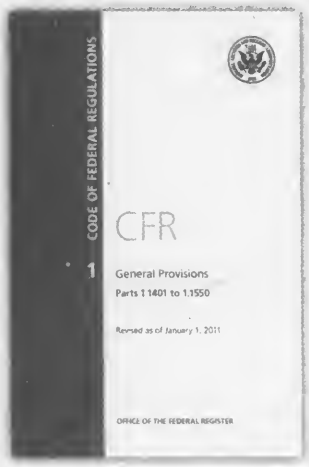

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